

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

EQUAL EMPLOYMENT) CIV. NO. 05-00479SPK/LEK
OPPORTUNITY COMMISSION,) CIV. NO. 05-00496SPK/LEK
) (Consolidated Cases)
Plaintiff,)
)
and)
)
CHARLES DANIELS,)
)
Intervenor,)
)
vs.)
)
LOCKHEED MARTIN, dba)
LOCKHEED MARTIN LOGISTICS)
MANAGEMENT, INC.,)
)
Defendant.)
_____)

ORDER DESIGNATING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT and DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

This order concerns two motions in these consolidated cases heard on
November 3, 2006. In the first motion, Plaintiffs have filed a Motion for Partial
Summary Judgment seeking to strike Defendant's affirmative defenses based upon
Burlington Industries v. Ellerth, 524 U.S. 742 (1998) and Faragher v. Boca Raton,
524 U.S. 775 (1998). In the second motion, Defendant seeks summary judgment

on the merits of its affirmative defenses.

As announced in open court, the Court DESIGNATES the first motion under LR 72.4 to U.S. Magistrate Judge Leslie E. Kobayashi. Resolving the first motion depends, in large part, upon discovery matters that are the subject of ongoing proceedings before Judge Kobayashi. The record reflects that the latest discovery order by Judge Kobayashi was issued on October 25, 2006, and that a further discovery conference is set for November 6, 2006. It is apparent that full resolution of the first motion (if it is not moot) would involve this Court in issues which are being managed by Judge Kobayashi. It is more appropriate that the same judge handle (at least initially) these intertwined issues.

Also as announced in open court, the Court DENIES the second motion. There are genuine issues of material fact at many steps of the Title VII analysis and under Faragher/ Ellerth. Among the factual issues are:

1) Was J.J. Gutierrez a “supervisor” within the meaning of Faragher/ Ellerth and Title VII? Did Gutierrez have the ability to directly affect the terms and conditions of Daniels’ employment and thereby have the necessary economic effect?

2) Was Lockheed’s investigation and response in October 2000 appropriate?

There are questions of fact as to the scope and reasonableness of the investigation

and whether the action taken was appropriate – regardless of whether Lockheed applied the correct standard under cases such as McGinest v. GTE Service Corp., 360 F.3d 1103 (9th Cir. 2004). This question is compounded by a disputed factual situation whereby Lockheed later reassigned the same accused co-workers to work with Daniels after he was transferred to Hawaii. See, e.g., Swenson v. Potter, 271 F.3d 1184, 1192 (9th Cir. 2001). This factual situation would be considered in deciding whether Lockheed responded appropriately to the prior complaint of discrimination.

3) What specific knowledge did Lockheed have of renewed harassment in July of 2001? This would depend, at least in part, upon whether Gutierrez was a “supervisor.” In any event, there is a question of fact whether Daniels “unreasonably” failed to take advantage of a complaint process given the (disputed) circumstances of Lockheed’s prior investigation. Ellerth, 524 U.S. at 765. There are also disputes of fact regarding the scope of alleged harassment by Gutierrez after Daniels was reassigned to the team led by Gutierrez.

4) Was there “tangible (adverse) employment action?” There are numerous disputes of fact regarding the circumstances and timing of Daniels’ selection for reassignment to a position in Maine, apparently to work with and for some of the same co-workers who allegedly harassed him in the past.

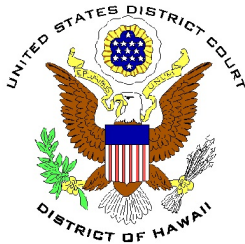
In short, this is clearly a case where summary judgment in favor of Defendant would be inappropriate.

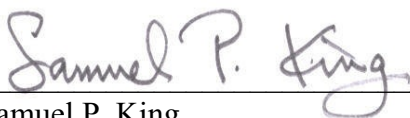
Plaintiffs' Motion for Partial Summary Judgment is DESIGNATED to U.S. Magistrate Judge Leslie E. Kobayashi.

Defendant's Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

DATED: November 6, 2006.





Samuel P. King
Senior United States District Judge

EEOC and DANIELS v. LOCKHEED MARTIN, Civ. No. 05-00479SPK/LEK
CIV. NO. 05-00496SPK/LEK, ORDER DESIGNATING PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT and DENYING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT