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United States District Court, N.D. Texas, Dallas
Division.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff,

v.

ASI MILLWORK, INC., Defendant.

No. 3:00-CV-2124-H. | Dec. 10, 2001.

Opinion

MEMORANDUM OPINION AND ORDER

SANDERS, Senior J.

*1 Before the Court are Plaintiff and Defendant's separate Motions for Partial Summary Judgment, both filed October 9, 2001. The relevant Responses and Replies to these motions are also before the Court.

I. BACKGROUND

Susie Grice began working for Defendant ASI Millwork, Inc. ("ASI") in August 1993 as an office manager. In August 1995, Grice moved from the Dallas area to Martin's Mills, yet remained employed by ASI. While employed by ASI, Grice's supervisor was George Hoover, an ASI co-owner. Grice alleges that Hoover repeatedly sexually harassed her and made unwanted sexual advances. Grice further alleges that Hoover's actions created a sexually hostile work environment. Plaintiff claims to have repeatedly told Hoover to stop his harassing conduct, and complained to others at ASI regarding Hoover's conduct. Yet, Grice claims Hoover continued his harassing actions, and she alleges constructive discharge from her job at ASI in May 1998. At the time of her departure from ASI, Grice had been commuting from Martin's Mills to ASI in Dallas for approximately three years. After Grice left ASI, it is undisputed that Hoover telephoned Grice to unconditionally offer Grice her job back. He assured Grice there would be no more offensive activity. Hoover also promised Grice two months of severance pay if any conduct she found offensive reoccurred. Grice refused Hoover's offer. In the three years since leaving ASI, Grice has pursued no employment opportunities in the Dallas area. Grice has, however, pursued employment in East Texas, and has searched several East Texas papers

for employment opportunities.

The Equal Employment Opportunity Commission ("EEOC"), on behalf of Grice, brings this suit against ASI charging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1). Specifically, the EEOC claims ASI maintained a sexually hostile work environment, discriminated against Grice based on her sex, and constructively discharged her as a result of the hostile work environment and their discriminatory practices. Both parties have moved for summary judgment on the issue of mitigation of damages. These motions are now ripe for disposition.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the facts and law as represented in the pleadings, affidavits and other summary judgment evidence show that no reasonable trier of fact could find for the nonmoving party as to any material fact. *See* FED. R. CIV. P. 56; *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888 (1990); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986); *Innovative Database Sys. v. Morales*, 990 F.2d 214 (5th Cir.1993). "The moving party bears the initial burden of identifying those portions of the pleadings and discovery in the record that it believes demonstrate the absence of a genuine issue of material fact, but is not required to negate elements of the nonmoving party's case." *Lynch Properties, Inc. v. Potomac Ins. Co. of Ill.*, 140 F.3d 622, 625 (5th Cir.1998) (citing *Celotex*, 477 U.S. at 322-25).

*2 If the movant meets its burden, the nonmovant must go beyond the pleadings and designate specific facts showing that a genuine issue of material fact exists for trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Edwards v. Your Credit, Inc.*, 148 F.3d 427, 431 (5th Cir.1998). A party opposing summary judgment may not rest on mere conclusory allegations or denials in its pleadings unsupported by specific facts presented in affidavits opposing the motion for summary judgment. *See* FED. R. CIV. P. 56(e); *Lujan*, 497 U.S. at 888; *Hightower v. Texas Hosp. Assn.*, 65 F.3d 443, 447 (5th Cir.1995). In determining whether genuine issues of fact exist, "[f]actual controversies are construed in the light most favorable to the nonmovant, but only if both parties have introduced evidence showing that a controversy exists." *Lynch*, 140 F.3d at 625; *see also Eastman Kodak v. Image Technical Services*, 504 U.S. 451 (1992). However, in the absence of any proof, the Court will not assume that the nonmoving party could or would prove the necessary facts. *See Lynch*, 140 F.3d at 625. "If the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Friou v. Phillips Petroleum Co.*, 948 F.2d

972, 974 (5th Cir.1991).

With these summary judgment standards in mind, the Court turns to the parties' summary judgment motions.

III. ANALYSIS

A. Plaintiff's Motion for Partial Summary Judgment

Before reaching the EEOC's motion for summary judgment, a brief discussion of the relevant mitigation standard is useful to the Court's analysis. Successful Title VII plaintiffs have a corresponding statutory duty to mitigate their damages. *See Sellers v. Delgado*, 902 F.2d 1189, 1193 (5th Cir.1990). In this case, Grice was required to use reasonable diligence to obtain substantially similar employment after she left ASI. *See id.* Yet, while the duty to mitigate rests with Grice, the burden of proving she failed to mitigate falls on ASI. *See id.* To satisfy this burden, ASI must demonstrate that (1) substantially equivalent work was available to Grice and (2) that she failed to exercise reasonable diligence to obtain it. *See id.* "Substantially equivalent employment" is that "employment which affords virtually identical promotional opportunities, compensation, job responsibilities, working conditions, and status as the position from which the Title VII claimant has been discriminatorily terminated." *Id.* But, if ASI can demonstrate that Grice has not made reasonable efforts to obtain work, ASI is no longer required to demonstrate the availability of substantially similar employment. *See id.* The reasonableness of the Grice's diligence "should be evaluated in light of [her] individual characteristics ... and the job market." *Id.*

The EEOC moves for summary judgment arguing that ASI cannot demonstrate Grice failed to mitigate her damages as required by Title VII. In its Response to plaintiff's motion, ASI asserts a cross-motion for summary judgment arguing that the EEOC's motion

established that Grice has failed to mitigate as a matter of law. *See U.S. Fleet Services v. City of Fort Worth, Tex.*, 141 F.Supp.2d 631, 637 n. 3 (N.D.Tex.2001) (explaining the role and propriety of a "[c]ross-motion for summary judgment"). The Court need not determine if ASI's cross-motion for summary judgment is appropriate in this case because the Court finds that the summary judgment evidence raises material questions of fact as to whether ASI has demonstrated Grice failed to properly mitigate her damages. The conflicting nature of the evidence on this issue makes summary judgment for either party inappropriate. Accordingly, the EEOC's motion for partial summary judgment is DENIED; any cross-motion by ASI on this issue is also DENIED.

B. Defendant's Motion for Partial Summary Judgment

*3 ASI argues that its unconditional offer to reinstate Grice immediately following her resignation mandates summary judgment on the issue of mitigation pursuant to the Supreme Court's holding in *Ford Motor Co. v. EEOC*, 458 U.S. 219, 241 (1982). The Court disagrees. At this juncture, it appears to the Court that material questions of fact may remain on this issue making summary judgment inappropriate. Accordingly, ASI's motion for summary judgment is DENIED.

III. CONCLUSION

As material questions of fact remain on the issue of plaintiff's mitigation of damages, parties' motions for summary judgment on the issue are DENIED.

SO ORDERED.