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

EQUAL OPPORTUNITY COMMISSION, Plaintiff,
v.
BLEDSOE DODGE, LLC, and Autonation, Inc., Defendants.

No. Civ.A. 3:02–CV–1373–. | Dec. 29, 2003.

Attorneys and Law Firms

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Opinion

MEMORANDUM ORDER

FISH, Chief J.

***1** Before the court is the second motion of the defendants Bledsoe Dodge, LLC ("Bledsoe Dodge") and AutoNation, Inc. ("AutoNation") for summary judgment on the claims brought against them by the plaintiff Equal Employment Opportunity Commission ("EEOC").[*]

[*] On March 28, 2003, the defendants filed a motion for summary judgment. While that motion was pending, the EEOC filed its second amended complaint on July 16, 2003. On September 19, 2003, the defendants filed their second motion for summary judgment on the claims in the second amended complaint. Thus, the defendants' first motion for summary judgment, filed on March 28, 2003, is DENIED as moot.

I. *BACKGROUND*

AutoNation is the corporate parent of Bledsoe Dodge. Second Amended Complaint ("Complaint") ¶ 5. Anthony Barnett and Barron Jackson, both African–Americans, were employed by the defendants. Complaint at 1, ¶ 8. The EEOC alleges that the defendants engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII"). Complaint at 1, ¶¶ 1–2. Specifically, the EEOC has brought claims for failure to promote, hostile work environment, retaliation, and discriminatory discharge. *See generally* Complaint.

II. *ANALYSIS*

Summary judgment is proper when the pleadings and evidence on file show that no genuine issue exists as to any material fact and that the moving parties are entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). "[T]he substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

Movants for summary judgment make such a showing by informing the court of the basis of their motion and by identifying the portions of the record which reveal there are no genuine material fact issues to support the nonmovant's case. *Celotex Corporation v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The pleadings, depositions, admissions, and affidavits, if any, must demonstrate that no genuine issue of material fact exists. FED. R. CIV. P. 56(c).

Once the movants make this showing, the nonmovant may not rest on the allegations in its pleadings. *Celotex,* 477 U.S. at 324; FED. R. CIV. P. 56(e). Rather, it must direct the court's attention to evidence in the record sufficient to establish that there is a genuine issue of material fact for trial. *Celotex,* 477 U.S. at 324. To carry this burden, the "opponent must do more than simply show ... some metaphysical doubt as to the material facts." *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corporation,* 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Instead, the nonmovant must present evidence sufficient to support a resolution of the factual issue in its favor. *Anderson,* 477 U.S. at 257.

While all of the evidence must be viewed in a light most favorable to the plaintiff as the motion's opponent, *id.* at 255 (citing *Adickes v. S.H. Kress & Company,* 398 U.S. 144, 158–59, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)), neither conclusory allegations nor unsubstantiated assertions will satisfy its summary judgment burden. *Little v. Liquid Air Corporation,* 37 F.3d 1069, 1075 (5th Cir.1994) (en banc); *Topalian v. Ehrman,* 954 F.2d 1125, 1131 (5th Cir.), *cert. denied,* 506 U.S. 825, 113 S.Ct. 82, 121 L.Ed.2d 46 (1992). Summary judgment in favor of the defendants is proper if, after adequate time for

discovery, the EEOC fails to establish the existence of an element essential to its case and as to which it will bear the burden of proof at trial. *Celotex,* 477 U.S. at 322–23.

***2** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.,* prohibits discrimination on the basis of race, color, religion, sex, or national origin in federal and private employment. *Fitzgerald v. Secretary, United States Department of Veterans Affairs,* 121 F.3d 203, 206 (5th Cir.1997). In this case, there are so many disputed facts between the plaintiff's and the defendants' versions of events of alleged discrimination that the court is unable conclude that no genuine issue exists as to any material fact. Moreover, the court must view all of the evidence in favor of the EEOC as the nonmovant. Because disputes over material facts exist, the court cannot conclude that the movants are entitled to summary judgment.

III. *CONCLUSION*

Given the genuine issues of material fact still to be resolved, summary judgment is DENIED on all of the plaintiff's claims against the defendants.

SO ORDERED.