

NOT FOR PUBLICATION - FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

LINCOLN HINES,)	
)	
Plaintiff,)	
)	
v.)	
)	Civ. No. 2001-74
CANEEL BAY, INC.,)	
)	
Defendant.)	
_____)	

ATTORNEYS :

Archie Jennings, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

David J. Comeaux, Esq.
St. Thomas, U.S.V.I.
For the defendant

MEMORANDUM

Moore, J.

Lincoln Hines ["Hines" or "plaintiff" was employed by Caneel Bay, Inc. ["Caneel Bay" or "defendant"], a resort in St. John, U.S. Virgin Islands, from September 8, 1998, until the date of his departure in 2000. Hines worked in Caneel Bay's Cinnamon Bay location as Food Service Manager. Plaintiff alleges that he was constructively discharged by Caneel Bay and asserts causes of action for race discrimination under Title VII, violation of 42 U.S.C. § 1981, breach of contract, and wrongful discharge.

Hines failed to submit the required disclosures and responses to discovery propounded by the defendant. Defendant moved for summary judgment and to prohibit plaintiff from submitting to the court any information in opposition to defendant's motion for summary judgment which should have been provided in discovery. Although Hines has attempted to supply such evidence in an affidavit attached to his Supplement to Opposition to Defendant's Motion for Summary Judgment, it is woefully inadequate to raise a disputed material fact, even if I were to consider it at this late date. Accordingly, I will enter summary judgment against the plaintiff.

II. JURISDICTION AND LEGAL STANDARDS

This Court has jurisdiction over the federal questions pursuant to section 22(a) of the Revised Organic Act of 1954¹ and 28 U.S.C. § 1331. Supplemental jurisdiction over the territorial claims arises under 28 U.S.C. § 1367.

The Court must grant Caneel Bay's motion for summary judgment on Hines's claims if "the pleadings, depositions,

¹ 48 U.S.C. § 1612(a). The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2001), *reprinted in* V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp.2001) (preceding V.I. CODE ANN. tit. 1).

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); see also *Sharpe v. West Indian Co.*, 118 F. Supp. 2d 646, 648 (D.V.I. 2000). The nonmoving party may not rest on mere allegations or denials, but must establish by specific facts that there is a genuine issue for trial from which a reasonable juror could find for the nonmovant. See *Saldana v. Kmart Corp.*, 42 V.I. 358, 360-61, 84 F. Supp. 2d 629, 631-32 (D.V.I. 1999), *aff'd in part and rev'd in part*, 260 F.3d 228 (3d Cir. 2001). Only evidence admissible at trial shall be considered and the Court must draw all reasonable inferences therefrom in favor of the nonmovant. See *id.*

III. TITLE VII AND 42 U.S.C. § 1981

The elements of a discrimination claim under Title VII and 42 U.S.C. are identical. *Lewis v. University of Pittsburgh*, 725 F.2d 910, 915 n.5 (3d Cir. 1983), *Brown v. Vitelcom, Inc.*, 47 F. Supp. 2d 595, 603 (D.V.I. 1999). I will therefore discuss these elements together.

A. Prima Facie Case and Burden of Proof

As I recently discussed in *Rajbahadoorsingh v. Chase Manhattan Bank*, 168 F. Supp. 2d 496 (D.V.I. 2001) and *Hazell v. Executive Airlines*, 181 F. Supp. 2d 444 (D.V.I. 2002), the Supreme Court of the United States has established a three-prong test for the viability of a discrimination suit brought pursuant to Title VII (and section 1981). First, the plaintiff "must carry the initial burden under the statute establishing a prima facie case of [unlawful] discrimination." *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). To accomplish this, the plaintiff must show that: (1) he is part of a protected class; (2) he was qualified for his position; (3) despite these qualifications, he was terminated; and (4) he was replaced by a member of a non-protected class or "someone in a non-protected class, otherwise similarly situated, was treated more favorably." See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1983); *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 n.6 (1981); *McDonnell Douglas Corp.*, 411 U.S. at 802; *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994); *Hicks v. Arthur*, 878 F. Supp. 737, 738 (E.D. Pa. 1995), *aff'd*, 72 F.3d 122 (3d Cir. 1995). Under this first prong, "[e]stablishment of the prima facie case in effect creates a presumption that the employer unlawfully discriminated against the employee." *Burdine*, 450

U.S. at 254.

Once the plaintiff establishes this presumption, the burden of production shifts to the defendant to "articulate some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell Douglas Corp*, 411 U.S. at 802. Under this second prong, the employer has the burden of producing rebuttal evidence. *See Hicks*, 509 U.S. at 506-07; *see also Burdine*, 450 U.S. at 255, 255 n.9 (noting that such evidence must be admissible). The employer can satisfy this burden "by introducing evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision." *Fuentes*, 32 F.3d at 763 (citing *Hicks*, 509 U.S. at 507). This second prong does not require the employer to prove "that it was actually motivated by the proffered reasons. It is sufficient if the [employer's] evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff." *Burdine*, 450 U.S. at 254. Even though the burden of production shifts to the defendant, "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Id.* at 253.

Finally, once the defendant has offered a legitimate,

nondiscriminatory reason for its actions, the burden of production under the third and final prong shifts back to the plaintiff to show, by a preponderance of the evidence, that the proffered reason is pretextual. See *id.* at 256. To satisfy this burden, "the plaintiff must point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." *Fuentes*, 32 F.3d at 764 (citing *Hicks*, 509 U.S. at 511).

B. Hines's Title VII and Section 1981 Claims

I will grant the defendant's motion for summary judgment because Hines's Title VII and section 1981 claims fail even to establish a prima facie claim of employment discrimination. In particular, Hines has offered no evidence to prove that he was qualified for the position, that any similarly situated white employees were treated more favorably, or that he was constructively discharged. Hines does offer an affidavit claiming that he is a member of a protected class. As I discussed above, the plaintiff did not offer this fact as part of the normal discovery process; he submitted the affidavit with an

untimely opposition to the defendant's motion for summary judgment. Even if I ignore the violation of discovery rules and consider the evidence presented in the affidavit, the plaintiff's claims still do not survive defendant's summary judgment motion.

First of all, Hines's attempt to establish his prima facie case fails on account of his inability to prove that his cessation of employment amounted to a constructive discharge. Hines offers absolutely no evidence tending to prove a constructive discharge. Further, Hines offers no evidence sufficient "to find that the working conditions at Caneel Bay were 'so unpleasant or difficult that a reasonable person in the employee's shoes would resign.'" See *Harley v. Caneel Bay*, 193 F. Supp. 2d 833, 836-37 (D.V.I. 2002) (citing *Gray v. York Newspapers, Inc.* 957 F.2d 1070, 1079 (3d Cir. 1992)).

Even if Hines's cessation of employment did, in fact, constitute a constructive discharge, his prima facie case would still fail because he offers no evidence that any similarly situated employees were treated more favorably. Hines does state in his affidavit that he was treated unfairly and unequally compared with the treatment afforded "Tony Kemett, a white male, assistant manager, a position similar to the one held by [Plaintiff]." Plaintiff's Affidavit at ¶ 3. Although Hines

asserts that he and Kemett were similarly situated, he offers no evidence that Kemett had the same or similar job performance history as Hines. See *Harley*, 193 F. Supp. 2d at 837.

Accordingly, plaintiff has not established the last requirement of the first prong of the *McDonnell-Burdine-Hicks* test, namely, that he was replaced by a member of a non-protected class or that "someone in a non-protected class, otherwise similarly situated, was treated more favorably."

Therefore, as Hines has failed to establish a prima facie case of discrimination under the *McDonnell-Burdine-Hicks* test, I will grant the defendant's motion for summary judgment on plaintiff's Title VII and section 1981 claims.

IV. BREACH OF CONTRACT AND WRONGFUL DISCHARGE CLAIMS

It seems that the plaintiff has abandoned his breach of contract and wrongful discharge claims. Caneel challenged Hines's ability to bring forward evidence in support of these claims. (Defendant's Memorandum in Support of Motion for Summary Judgment and for Sanctions at 7-8.) Plaintiff does not refer to these claims in his Opposition or Supplement, nor does he provide any evidence in support of these claims. Accordingly, summary judgment in favor of the defendant on these claims is also

appropriate.

It is also worth noting that plaintiff has provided no evidence of his damages, although he requests monetary relief. Plaintiff was required to submit evidence of damages in his initial disclosures. Fed. R. Civ. P. 26(a)(2)(B). This total failure to present evidence of damages similarly entitles the defendant to summary judgment.

An appropriate order follows.

ENTERED this 3rd day of December, 2002.

For the Court

Thomas K. Moore
District Judge

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LINCOLN HINES)
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David J. Comeaux, Esq.,
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For the defendant

ORDER

For the reasons set forth in the accompanying Memorandum of even date, it is hereby

ORDERED that the defendant's motion for summary judgment (Docket No. 11) is **GRANTED**; it is further

ORDERED that defendant's motion for sanctions (Docket No. 11) is **DENIED** as **MOOT**, and it is further

ORDERED that the complaint is **DISMISSED**. The Clerk shall

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close the file.

ENTERED this ____ day of December, 2002.

For the Court

Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By: _____
Deputy Clerk

Copies to:
Hon. Raymond L. Finch
Hon. Jeffrey L. Resnick
Hon. Geoffrey W. Barnard
Territorial Court Judges
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