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SCANNED ON 8/2/2004

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER PART IA Part 16

Justice

0119814/1999

LAWSON, RICHARD
vs
HOWARD SYSTEMS INTERNATIONAL

SEQ 7

PUNISH FOR CONTEMPT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

FILED
AUG 02 2004
COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: JUL 22 2004

ALICE SCHLESINGER J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 16

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RICHARD LAWSON,

Plaintiff,

Index No.119814/99

-against -

Motion Seq. Nos. 7-14

HOWARD SYSTEMS INTERNATIONAL and
NEW YORK LIFE INSURANCE COMPANY,

Defendants.

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SCHLESINGER, J.:

Before this Court are two motions for summary judgment by defendants and various motions by plaintiff for summary judgment and other relief. Plaintiff Richard Lawson ("Lawson"), an African-American male, seeks damages in this action for alleged racially-motivated employment termination. In addition, Lawson seeks to show that defendants, his employer Howard Systems International ("Howard Systems") and New York Life Insurance Company ("New York Life") where he was placed temporarily, wrongfully discharged him due to his absence from work while serving on jury duty. For the reasons stated below, defendants' motions for summary judgment are granted and plaintiff's motions are denied.

Background Facts

The following facts are undisputed. In April 1995, Howard Systems hired Lawson as a computer database consultant. Howard Systems placed Lawson in different offices as needed to work on various computer database projects. In May 1996, Howard Systems offered Lawson a salary increase and a promotion to the position of Project Manager. On February 3, 1997, Lawson was placed at New York Life to work on the Century Change

Project. Two months later, on April 10, 1997, Howard Systems renewed Lawson's contract for "at will" employment and increased his salary. Lawson was still involved with the Century Change Project at that time.

From May 5 through May 6, Lawson served on jury duty. Lawson returned to work at New York Life on May 7, 1997. Lawson's supervisor at New York Life, Joseph Agostini ("Agostini"), told Lawson that he would need to move workstations so that another employee could use his computer. It appears New York Life did not immediately pursue the move because Lawson remained at his workstation through May 9.

On May 7, Agostini held a meeting for Century Change Project team members. While Lawson was on jury duty, Agostini had sent an email informing employees about the meeting, yet Lawson had not read the email and was thus unprepared for the meeting. On May 8, Agostini held another meeting with the Century Change Project team members to discuss aspects of their work that needed improvement. During the meeting, Agostini asked Lawson if he had read and understood the companywide emails regarding informational updates, technological infrastructure, and proposed changes for the project, raising an issue as to whether Lawson's work was compliant with these changes. Agostini critiqued Lawson's work and the other team members' work, including two Caucasian workers.

After the meetings, Lawson sent a fax to Alan Isaacs ("Isaacs"), Technical Director of Howard Systems, informing him that his "interests . . . at New York Life are being threatened." On May 9, Lawson's direct supervisor, Sheila Sinicki ("Sinicki"), and Agostini met with Lawson to critique his work and to go through the work procedures. Lawson indicated that the New York Life workers were treating him like a criminal and a robot, and

he believed were harassing him due to his jury service. Agostini replied that the criticism had to do with his work, not jury service. Lawson then sent an email to Agostini and Isaacs criticizing Sinicki's spreadsheets and Agostini's managerial abilities. Later that day, Lawson sent another email to Agostini declaring that the manager has a duty to "post signs" to guide workers. Lawson wrote that he should not be blamed for mistakes if Agostini fails to "post signs" along the way. Lawson then sent a third email claiming that "the leader's role is to take us up the Hill! Not to crack us over the head for not being on top of the Hill, already!"

On May 10, Lawson contacted the Queens District Attorney to report that his employer had discriminated against him after Lawson's jury service. According to Lawson, the District Attorney advised him that this was a criminal act and referred Lawson to the Queens Supreme Court, which has jurisdiction. It appears that Lawson did not pursue the matter in Queens.

In the meantime, Agostini spoke with Isaacs and expressed concern over Lawson's attitude and misconceptions. On Monday, May 12, Lawson received a voicemail from Isaacs telling him to report to Howard Systems rather than New York Life on that morning. Later that day Lawson sent a fax to Joseph Olwell ("Olwell"), Agostini's boss, claiming that Agostini had been harassing him based on his jury service. Lawson asked Olwell to request that Agostini stop the abuse and not speak to him for two days. That same day, Isaacs met with Lawson to discuss the problem. Lawson expressed his concerns and Isaacs tried to resolve the matter.

The next day, however, on May 13, after receiving Lawson's emails, Agostini told Isaacs that he did not want Lawson to return. Agostini indicated that Lawson's mistrust in

him would jeopardize the work environment and the project's productivity. During a meeting that day, Isaacs, who is also African-American, asked Lawson to resign, explaining that New York Life was a dissatisfied customer. Lawson signed a resignation letter, yet later that day sent a letter to Isaacs claiming that he did not resign, but rather was fired.

On October 24, 1997, Lawson filed a claim against Howard Systems and New York Life with the Equal Employment Opportunity Commission ("EEOC"). On March 26, 1998, the EEOC closed its file on Lawson's charge, stating that it was "unable to conclude that the information obtained establishes violations of statutes." (Exhibit D to New York Life's Motion for Summary Judgment).

Lawson filed this complaint against Howard Systems and New York Life on September 27, 1999, alleging discrimination on the basis of race. Thereafter, many depositions and other discovery occurred. These motions ensued. Lawson first moved for a finding that defendants' actions constituted criminal contempt pursuant to Judiciary Law §519. Howard Systems and New York Life opposed the motion, and Lawson replied. In addition, Lawson, Howard Systems, and New York Life all moved for summary judgment, and Lawson moved for other relief discussed below.

Discussion

It is "an unlawful discriminatory practice for an employer . . . because of the age, race, creed, [or] . . . color . . . of any individual to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment." Executive Law § 296, subd. 1(a) (McKinney's Cons. Laws 2004). To establish a prima facie case of race discrimination, a plaintiff must prove: "(1) that he is a member of the class protected by the statute; (2) that he was actively or

constructively discharged; (3) that he was qualified to hold the position from which he was terminated; and (4) that the discharge occurred under circumstances giving rise to an inference of [racial] discrimination." Ferrante v. American Lung Association, 90 NY2d 623, 629 (1997); see also, Jefferies v. The New York City Housing Authority, 2004 WL 1404466 (1st Dep't 2004). Once the employee proves these four points, the burden shifts to the employer to rebut the presumption of discrimination by providing evidence of "legitimate, independent, and nondiscriminatory reasons to support its employment decision." Id., (quoting Matter of Miller Brewing Co. v. State Div. of Human Rights, 66 NY2d 937, 938 (1985)). The employer need not prove the reasons that actually motivated the termination. Texas Dept of Cmty. Affairs v. Burdine, 450 U.S. 248, 259 (1981) cited with approval in Ferrante. Rather, the employer need only provide sufficient evidence to raise a genuine issue of material fact as to whether there was discrimination against the plaintiff. Ferrante, 90 NY2d at 629. In such, a case, the presumption is rebutted and drops from the case. Id.

The burden then shifts back to the plaintiff to prove that the employer's given reasons are merely a pretext for discrimination. Ferrante, 90 NY2d at 629-630. The plaintiff must show that the nondiscriminatory reasons are false and that discrimination was the real basis for termination. Id. The plaintiff always has the ultimate burden of proof to show that intentional discrimination occurred, and the court must believe the plaintiff's claim of intentional discrimination for the plaintiff to prevail. 90 NY2d at 630.

Applying the law to the facts of this matter, this Court finds that Lawson failed in the first instance to prove the four elements discussed above needed to establish a prima facie case. While Lawson might satisfy the first three elements, he has not proven the fourth

necessary element, that the discharge occurred under circumstances giving rise to an inference of discrimination. There was not one instance in which anyone at either Howard Systems or New York Life made a racially disparaging remark towards Lawson. In his lengthy accounts of the events, Lawson describes problems in his relationship with Agostini. He claims that Agostini avoided him and gave him dirty looks, yet Agostini never said anything derogatory about Lawson's race. Moreover, Agostini testified in his deposition that, as of May 9, there were no plans to terminate Lawson. He made his decision to terminate Lawson only after receiving the mistrustful and insubordinate emails.

Additionally, Lawson claims that the discrimination began when Agostini informed him that he would be moving workstations. New York Life gave a valid reason for this change; another employee, Charles Carswell, also an African-American, was beginning a new project and needed to use the computer located at Lawson's desk. Moreover, Agostini invited Lawson to meetings and offered him advice on his work. Criticisms were given to all members of the project, regardless of race. This behavior is not indicative of someone with an agenda to terminate an employee based on his race. Therefore, the Court finds that the circumstances surrounding the discharge do not give rise to an inference of discrimination.

Further, Lawson acknowledged at his deposition that the stated reason for his discharge from Howard was a dissatisfied customer, New York Life. He acknowledged that Howard Systems was probably unaware of any alleged discrimination at New York Life. He never complained to anyone at Howard Systems, nor did he ask for reassignment or consider quitting. Wholly unpersuasive is Lawson's claim that he never told anyone about the alleged discrimination because neither company provided him with an employee-

relations officer or informed him that he had a right to complain. Lawson felt comfortable sending several reproachful messages to Agostini, Olwell, and Isaacs. Lawson did not hesitate to send emails cautioning and complaining to his superiors. Therefore, it appears he had the resources necessary to communicate his problems. It is also significant that Lawson's emails never mentioned racial bias. See Forrest, 309 AD2d at 558 (plaintiff's grievances with her union not mentioning race failed to support claim that the employer had racial bias).

Even if Lawson had established a prima facie case, defendants rebutted the presumption of discrimination by proving several legitimate, independent, and nondiscriminatory reasons to support the termination decision. Specifically, they asserted that since Lawson was confrontational, refused to listen to his superiors, and mistrusted his coworkers, management did not feel he could work productively in a collegial setting. Once Howard Systems and New York Life offered these reasons, Lawson did not meet his burden of showing that the reasons were a mere pretext for discrimination. Rather, he continued to insist, without evidence, that although no one ever mentioned his race, race was the primary factor motivating his termination. Therefore, Lawson has not met his burden of raising a genuine issue of material fact, and summary judgment for defendants is proper and plaintiff's motion is denied.[1]

Lawson has also moved for contempt, claiming that his absence from work for jury service motivated his termination, and that the termination thus violates Section 519 of the

[1] Plaintiff also submitted a motion in the nature of summary judgment specifically listing the allegations in his EEOC complaint as the basis for alleged discrimination in this action. The motion essentially raises the same issues as his summary judgment motion and is denied on the same ground.

New York State Judiciary Law. That section provides in pertinent part that:

> Any person who is summoned to serve as a juror under the provisions of this article and who notifies his or her employer to that effect prior to the commencement of a term of service shall not, on account of absence from employment by reason of such jury service, be subject to discharge or penalty.

The court is empowered by §519 to punish for criminal contempt an employer who discharges an employee because of jury service. Judiciary Law §750, subd. A(7) (McKinney's Cons. Laws 2003). However, there is no private cause of action for wrongful termination based on jury service, meaning that the statute does not give an aggrieved employee a civil remedy. See e.g., Gomariz v. Foote, Cone & Belding Communications, Inc., 228 AD2d 316 (1st Dept 1996), Di Blasi v. Traffax Traffic Network, 256 AD2d 684, 685 (3d Dept 1998). Accordingly, the motion is denied.

Plaintiff's claim of criminal contempt need not be discussed in detail since there is no private cause of action. It is nevertheless noteworthy that to hold defendants in criminal contempt, their guilt must be proven "beyond a reasonable doubt." See e.g., County of Rockland v. Civil Service Employees Association, Inc., 62 NY2d 11 (1984); Gold v. Valentine, 35 AD2d 958 (2d Dept 1970). Here, plaintiff did not prove beyond a reasonable doubt that his termination was based on his jury service. Lawson's original complaint does not even mention jury service, and he has not offered any evidence in his moving papers of an occasion on which he suffered hostility due to jury service.

Plaintiff has also moved to have Agostini charged with criminal assault, felonies, and misdemeanors. That motion is also denied. This Court does not have jurisdiction over criminal matters and therefore denies the motion. See John Lauricella v. Tanya Towers,

Inc., 2004 WL 1381601 (App. Div., 1st Dep't).

Accordingly, it is hereby

ORDERED that plaintiff's various motions are denied and defendants' motions for summary judgment are granted and the complaint is dismissed without costs and disbursements; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: July 22, 2004

JUL 22 2004

J.S.C.
ALICE SCHLESINGER

FILED
AUG 02 2004
NEW YORK
COUNTY CLERK'S OFFICE