



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
SYLVIA VEGA,)	
)	
Complainant,)	
)	CHARGE NO(S): 1999CF1617
and)	EEOC NO(S): 21B990918
)	ALS NO(S): 11165
CAMPAGNA-TURANO)	
BAKING CO., INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondent’s Motion for Summary Decision along with Respondent’s Memorandum in Support of Motion for Summary Decision with affidavits and exhibits attached. Complainant failed to file a written Response to the motion. The matter is ripe for decision.

CONTENTIONS OF THE PARTIES

Respondent contends, *inter alia*, that a ruling for summary decision should issue in its favor as a matter of law because Complainant's Charge and Complaint of sexual harassment are not supported by her deposition testimony and Complainant failed to create a triable issue on whether the alleged incidents rose to the level to create an abusive work environment. Respondent further contends that Complainant's Charge of retaliation should also be dismissed because she failed to create a triable issue on whether retaliation occurred. Respondents argue that Complainant has not shown that Respondent was made aware of any protected activity, no adverse action occurred and no causal connection had been shown to exist between any protected activity and any adverse act.

Respondents also contend that the alleged harasser, Raul Rodriguez, was not a managerial employee or a supervisor, and that once Respondent learned of Complainant's complaint they took the necessary action. Respondents also argued that some of the allegations made by Complainant were beyond the 180-day of her filed Charge.

Complainant did not respond to the contentions and arguments made by Respondents in their Memorandum. The Illinois Human Rights Complaint alleges that Complainant was sexually harassed and retaliated against by Raul Rodriguez, a supervisor for Respondent.

FINDINGS OF FACT

Based on the record in this matter, I make the following findings of fact:

1. Complainant, Sylvia Vega, is a female who was employed by Respondents at the time of the alleged incidents involving Raul Rodriguez.
2. Throughout her employment with Respondent, Complainant performed her duties in a manner considered acceptable by Respondent.
3. At the time of some of the incidents complained of herein, Respondent was an "Employer" within the meaning of Section 2-101(B)(1)(b) and was subject to the provisions of the Act.
4. Raul Rodriguez had no authority to hire, fire, demote, promote, transfer or discipline employees.
5. Raul Rodriguez was not a supervisor or managerial employee of Respondent at the time of the alleged incidents.

6. Respondent was not aware of any alleged sexual harassment against the Complainant until they received notice of the Charge from the Department of Human Rights.

7. Respondent took reasonable steps to rectify any alleged harassment as soon as it became aware of the alleged harassment by investigating the alleged incidents and subsequently terminating Raul Rodriguez.

8. The work assignments given to the Complainant by Armando Diaz do not constitute retaliation.

9. Complainant failed to file a Response to Respondent's Motion for Summary Decision and failed to contest Respondent's stated facts.

CONCLUSIONS OF LAW

1. Complainant is an “aggrieved party” as defined by section 1-103(b) of the Illinois Human Rights Act, 775 ILCS 5-1-101et seq. (1996).

2. Respondent is an “employer” as defined by section 2-101(B) (1) (a) of the Act and is subject to the provisions of the Act.

3. The Commission has jurisdiction over the parties to and the subject matter of this action.

4. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders.

5. Complainant has failed to present any evidence that Raul Rodriguez was a supervisor or managerial employee of Respondent for the purposes of holding Respondent liable for the actions of Raul Rodriguez.

6. Respondents timely discharged their duty of addressing the alleged incidents of sexual harassment by investigating the matter and terminating the alleged harasser, Raul Rodriguez.

7. The work assignments given to Complaint did not constitute a material adverse change in the terms or conditions of her employment.

8. Complainant was not retaliated against when she was assigned to various work duties.

9. There is no genuine issue of material fact on the issue of whether Respondent can be held liable for the actions of Raul Rodriguez.

10. There is no genuine issue of material fact on the issue of whether Respondent retaliated against Complainant.

11. Respondent has filed competent, admissible evidence to show that: 1) Raul Rodriguez was not employed by Respondent as a supervisor or a managerial employee; 2) that Respondents took steps to rectify the alleged incidents of sexual harassment once they were made aware of them, and 3); that Respondent did not retaliate against Complainant. There is no evidence in the record from which a fact-finder might draw a reasonable inference that Respondent is liable for the actions of Rual Rodriguez.

12. Based on the record in this matter, there is no issue of material fact for decision. Respondent is, therefore entitled to a summary decision in its favor as a matter of law.

DETERMINATION

Respondent's Motion for Summary Judgment should be granted because, based upon the admissible evidence in the record, there is no genuine issue of material fact as to

Complainant's claim that Respondent created a hostile working environment or retaliated against her.

DISCUSSION

The first issue I will address in this matter concerns Respondent's contention that the alleged sexual harasser, Raul Rodriguez, is not a supervisor or managerial employee for purposes of holding Respondent liable for his actions. It is well established that under the Human Rights Act, an employer is automatically liable for sexual harassment carried out by a supervisor. HRA §2-102(D); Board of Directors, Green Hills Country Club v. Illinois Human Rights Commission, 162 Ill.App.3d 216, 514 N.E.2d 1227, 113 Ill.Dec. 216 (5th Dist. 1987). Therefore, it would logically follow that if Mr. Rodriguez was not a supervisor at the time of the alleged incidents then Respondent Campagna Turano Baking Co., Inc. cannot be held liable for the harassing actions taken by Mr. Rodriguez against the Complainant prior to receiving knowledge of such actions.

The affidavits presented by the Respondents addressing this issue relies on personal knowledge from the various affiants. The admissibility of affidavits require that the document set forth facts within the personal knowledge of the affiant and that sworn certified copies of all papers upon which the affiant relies be attached to the affidavit. It is also true that in deciding a motion for Summary Decision, one may not consider evidentiary matters that would be inadmissible upon a trial of the issue including recitals of facts outside the personal knowledge of the affiant. Hendricks v. Deterts, 13 Ill. App. 3d 976, 301 N.E.2d 625 (4th Dist. 1973). The facts supplied by Respondent, along with the various attached affidavits have been sworn to by the affiants to be of personal knowledge. The attached deposition of the Complainant has also been attested to and

sworn by the Complainant. As such, the affidavits and deposition are considered to be admissible evidence for the purpose of the motion for Summary Decision.

As to this instant case before me, this matter is being considered pursuant to Respondent's Motion for Summary Judgment, so certain special rules must be followed. A summary decision is analogous to a summary judgment. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted where there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Strunin and Marshall Field & Co., 8 Ill. HRC Rep. 199 (1983). Because the resulting dismissal of the cause of action is a drastic measure, summary judgment should be awarded with caution. Solone v. Reck, 32 Ill.App.2d 308, 177 N.E.2d 879 (1st Dist. 1961). A court must consider the record as a whole, construing "the pleadings, depositions, and affidavits most strictly against the moving party and most liberally in favor of the opponent in order to determine whether there is a genuine issue as to a material fact." Rivan Die Mold Corp. v. Stewart-Warner Corp., 26 Ill.App.3d 637, 641, 325 N.E.2d 357, 360.

Where the party moving for Summary Decision files supporting affidavits containing well-pleaded facts and the opposing party files no counter-affidavits, the material facts set forth in the affidavits stand as admitted. Glen View Club v. Becker, 113 Ill.App.2d 127, 251 N.E.2d 778 (1st Dist. 1969); and, Fooden v. Board of Governors, 48 Ill. 2d 580, 272 N.E.2d 497 (1971). The party opposing the motion for Summary Decision cannot rely solely on his Complaint to rebut the allegations of fact in a supporting affidavit, and even the allegations of the Verified Complaint of Complainant cannot prevail over the uncontradicted facts set forth in the affidavits presented by

Respondent in support of their motion for Summary Decision. Janes v. First Federal Savings & Loan Association, 11 Ill.App.3d 631, 297 N.E.2d 255 (1st Dist. 1973); and, Walsh v. Monumental Life Insurance Co., 46 Ill. Ajpp.2d 431, 197 N.E.2d 124 (1st Dist. 1964).

Respondent has presented affidavits and deposition testimony stating that Raul Rodriguez had no authority to hire, fire, demote, promote, transfer or discipline any of Respondent's employees. Respondent's facts show that Mr. Rodriguez was an hourly paid employee working on the line with Complainant, and that Gene Tenuta was the person in charge of the employees in the packaging area where Mr. Rodriguez and the Complainant worked. It is manifest that the essence of supervisory status is the authority to affect the terms and conditions of an employee's employment. Parkins v. Civil Contractors of Illinois, 78 FEF Cases 1329, 1334 (7th Cir. 1998). Given the uncontradicted facts regarding Mr. Rodriguez' status, I find that he was not a supervisor or a managerial employee of Respondent. Hence, Respondent is not liable for any actions of Mr. Rodriguez prior to becoming aware of them at the time of the filing of a Charge with the Department.

Respondent has further presented uncontradicted facts showing that once Respondent was made aware of the alleged incidents of sexual harassment by Mr. Rodriguez they took appropriate action by investigating the matter and subsequently terminating him. I find that the problem was rectified by Respondent's actions, and therefore Respondent cannot be found liable for the creation of a hostile working environment for Complainant. Respondent also presented evidence that the various job assignments given to Complainant were ordinary job assignments, which were not more

difficult than others were. Therefore, I find that Respondent did not retaliate against Complainant when she was given the various job assignments.

Based on the record in this matter, there are no issues of material fact as to whether Complainant created a hostile working environment for Complainant or whether she was retaliated against by Respondent. Complainant has not submitted competent, admissible evidence from which a fact finder may draw an inference of sexual harassment or retaliation for which Respondent can be held liable.

The Complainant has not presented any evidence to contradict the facts set out by Respondent's Memorandum in Support of its Motion for Summary Decision. As in any motion for summary judgment, well-alleged facts within an affidavit must be taken as true when they are not contradicted by counter-affidavits. Conroy v. Andeck, 137 Ill. App.3d 375, 484 N.E.2d 525, 92 Ill. Dec. 10 (1st Dist.).

In this instance, the alleged facts contained in Respondent's affidavit are not contradicted by counter-affidavits. Complainant has failed to present any counter-affidavits that would negate taking the one submitted by the Respondent as being true. Under the present circumstances, Complainant has not shown any direct or indirect evidence to support a finding of sexual harassment or retaliation.

CONCLUSION

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has

adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

Taking the evidence in the record as competent, it appears that there is no genuine issue of material fact on the issue of whether Raul Rodriguez was a supervisor or managerial employee, whether Respondent took the necessary action once they were notified of the alleged sexual harassment incidents, and whether Respondent retaliated against Complainant. Therefore, Respondent's Motion for Summary Decision should be granted as a matter of law. As such, there is no need to address the issue of whether some of the alleged incidents were beyond the 180-day requirement set out by the Act.

RECOMMENDATION

Thus, for all of the above reasons, it is recommend that Respondent's Motion for Summary Decision be granted, and that the instant Complaint and underlying Charge of Discrimination be dismissed with prejudice as against Respondent.

HUMAN RIGHTS COMMISSION

BY: _____
NELSON EDWARD PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: June 4, 2002