UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

ANTONIO ANGLIN,

Intervenor,

vs. Case No. 8:00-civ-2012-T-24 EAJ

ENTERPRISE LEASING COMPANY OF FLORIDA , d/b/a ENTERPRISE RENT-A-CAR,

Defendant.
_____/

ORDER

This cause comes before the Court on Defendant's Motion for Summary Judgment Regarding Intervenor Antonio Anglin's Claims (Doc. No. 138). Anglin filed a response in opposition (Doc. No. 144).

I. Background

Anglin, an African-American man, was hired as a management trainee on December 12, 1994. Anglin worked for Defendant until he resigned in August of 1997. Thereafter, Anglin filed suit for race discrimination under Title VII and §1981 due to Defendant's failure to promote him during his tenure with the company. Additionally, Anglin asserts a retaliation claim under Title VII and constructive discharge claims under Title VII and the Florida Civil Rights Act ("FCRA").

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The management trainee position for which Anglin was hired is an entry level position. The next level up from his position is management assistant. The management assistant position is a non-competitive position, which means that any number of qualified management trainees could be promoted to management assistant at any time.

There were no written requirements for promotion from management trainee to management assistant until March of 1997. (Doc. No. 85, p.76-78). Prior to that time, Anglin contends that in order to qualify for a promotion to management assistant, a management trainee needed to achieve a Collision Damage Waiver ("CDW") sales percentage of 55% and needed to pass a certain qualifying exam called the "grill." Id. at 123, 201. Anglin met this CDW sales goal in March of 1995, August of 1995, January of 1996, and February of 1996.[1] Anglin took the grill in September of 1996. (Doc. No. 85, p.149-150; Doc. No. 102, Ex. 4).

The grill is a two part exam–there is an objective portion and a subjective portion. (Doc. No. 85, p.150-51; Doc. No. 102, Ex. 9). Anglin passed the objective portion, but he failed the subjective portion. Id. The subjective portion, which consisted of a mock sales call, was administered by Drew Akers. Id. Akers, who was the Area Manager at that time, was the sole decision maker as to Anglin's performance on the mock sales call portion. (Doc. No. 102, Ex. 9).

Anglin was entitled to retake the grill, and he attempted to retake the subjective portion within 30 days after he had failed it. (Doc. No. 89, p.183; Doc. No. 102, Ex. 9). After he had scheduled to retake the subjective portion, Steven Barger (who became the new Area Manager)

[1](Doc. No. 103, Item Number 4, Bates stamped page 000548; chart summarizing Item Number 4).

told Anglin that the rules had changed, and therefore, he was barred from retaking the grill. (Doc. No. 85, p.153).

Anglin believes that Akers discriminated against him. (Doc. No. 85, p.258). Previously, in July or August of 1996, Akers told Anglin that he could not put in for any more promotions. Id. at 135-138. At that time, Akers told Anglin that he could not be promoted because he did not have a dynamic presence–that if they lined up every employee in the office and no one was allowed to say a word and a customer walked in and was asked who they thought the branch manager was, the customer would never choose Anglin.[2] Id. at 137. Akers had also told Anglin that he could train a monkey to do the things that Anglin did. (Doc. No. 102, Ex. 9).

Akers once commented to another employee, William Westergom, that if you lined up all of the management trainees, Anglin just does not look like a manager. (Doc. No. 105, p.104-05). Westergom asked Akers what he meant by that comment, and Westergom asked if it was because Anglin is black. Id. at 105. Akers responded, "'Well, there you go.'" Id.

In mid-December of 1996, Anglin filed a complaint with Christina Roberts in human resources regarding the alleged discriminatory treatment. (Doc. No. 92, p.30). Christina Roberts discussed Anglin's complaint with Dave Finklea, the Group Rental Manager. Id. at 35-36. Thereafter, in December, Dave Finklea spoke with Anglin about Anglin's concerns. (Doc. No. 85, p.226-27). The next day, Dave Finklea called Anglin and told Anglin that he was being put on a 12 week review, which Plaintiff characterizes as a "probationary period." Id. at 227, 242-43. Bill Westergom, an assistant manager, stated that he had never heard of Defendant putting

[2]Akers contends that Anglin was not considered for promotions, because Anglin was repeatedly counseled in 1995 and 1996 for performance deficiencies which had not improved. (Doc. No. 81, ¶ 17).

anyone else on this type of probationary period.

The 12 week probationary period consisted of Mary Mortensen, Anglin's branch manager, meeting with Anglin weekly to review his performance in ten specified areas. Id. at 245-47. Anglin did not complete the 12 week probationary period, because he felt that the reviews were a means of retaliating against him. Id. at 247-48. Anglin was not disciplined for failing to complete the probationary period; Dave Finklea told Anglin that he would not be fired, but that he also would not be promoted. (Doc. No. 85, p.224).

On April 1, 1997, while still employed by Defendant, Anglin filed a charge of discrimination with the EEOC. Id. at 256. Anglin contends that near the end of his employment with Defendant, customers began questioning why he had not been promoted, which caused him humiliation and validated his feelings of discrimination. Id. at 361-65. Anglin resigned on August 8, 1997.

Anglin remained a management trainee throughout his entire tenure with Defendant. Plaintiff contends that Defendant discriminated against Anglin by failing to promote him while promoting equally or less qualified white employees. Anglin identified eleven comparators[3], and he contends that a review of his and their employment histories reveals that he was discriminatorily denied several promotions.

II. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that the moving

[3]Kristen Beeman, Mary Mortensen, Dave Straquadine, Dana Sheffield, Bill Westergom, Bob Offerman, Sherri Williams, Tim Grubisic, Robert Boehmler, Dave Lenton, and Cathy Kelly.

party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of showing the Court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A moving party discharges its burden on a motion for summary judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving party's case. Id. at 325. When a moving party has discharged its burden, the non-moving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing there is a genuine issue for trial. Id. at 324.

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the Court must draw inferences from the evidence in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. See Spence v. Zimmerman, 873 F.2d 256 (11th Cir. 1989); Samples on behalf of Samples v. City of Atlanta, 846 F.2d 1328, 1330 (11th Cir. 1988).

Thus, if a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, then the court should not grant the summary judgment motion. See Augusta Iron & Steel Works v. Employers Ins. of Wausau, 835 F.2d 855, 856 (11th Cir. 1988). A dispute about a material fact is "genuine" if the "evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc, 477 U.S. 242, 248 (1986). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or

whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52.

III. Defendant's Motion for Summary Judgment

Defendant filed a motion for summary judgment, in which it argues that the Court should grant it summary judgment as to all of Anglin's claims. Accordingly, the Court will address each of Anglin's claims.

A. Race Discrimination Under Title VII and § 1981

Defendant argues that the Court should grant it summary judgment as to Anglin's race discrimination claims under Title VII and §1981. The Court previously addressed an identical claim of race discrimination alleged by the EEOC.[4] Therefore, the Court adopts and incorporates by reference its analysis in its prior summary judgment order (Doc. No. 148) regarding the EEOC's race discrimination claims. Accordingly, the Court grants Defendant's motion for summary judgment to the extent that Anglin is attempting to pursue claims for promotions that occurred prior to June 5, 1996 and for claims that Anglin was discriminatorily denied the assistant manager positions that Dave Lenton and Robert Boehmler received. Otherwise, the motion is denied as to Anglin's race discrimination claims under Title VII and §1981 due to Defendant's failure to promote him.

B. Retaliation Under Title VII

Next, Defendant argues that the Court should grant it summary judgment on Anglin's

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[4]The EEOC alleged a claim of race discrimination under Title VII due to Defendant's failure to promote Anglin, and Anglin challenges the same promotions. The Court notes that Anglin's race discrimination claims are based on Title VII and §1981; however, race discrimination claims under §1981 are analyzed in the same way as race discrimination claims under Title VII. See Rice-Lamar v. City of Fort Lauderdale, Florida, 232 F.3d 836, 843 n.11 (11th Cir. 2000) Therefore, the Court's analysis of the EEOC's discrimination claim applies equally to the Court's analysis of Anglin's discrimination claims.

retaliation claim. Anglin contends that Defendant retaliated against him after he reported the alleged discrimination to Christina Roberts in human resources. Specifically, Anglin contends that Defendant retaliated against him by (1) inadequately investigating his claim of discrimination; (2) instituting goals that were applied stringently to Anglin and waived for other employees; and (3) placing Anglin on the 12 week probationary period.[5]

In order to establish a prima facie case of retaliation, Anglin must show three things: (1) that he "engaged in [a] statutorily protected activity, (2) that an adverse employment action occurred, and (3) that the adverse action was causally related to [his] protected activities." Coutu v. Martin County Board of County Commissioners, 47 F.3d 1068, 1074 (11th Cir. 1995). If Anglin establishes a prima facie case, then the burden shifts to Defendant to produce a legitimate, non-discriminatory reason for its action. See Shannon v. Bellsouth Telecommunications, Inc., 292 F.3d 712, 715 (11th Cir. 2002). If Defendant produces a legitimate, non-discriminatory reason, then the burden shifts back to Anglin to show that the proffered reason is pretextual. See id.

In the case at bar, there is no dispute that Anglin's complaint to Christina Roberts in human resources constituted a statutorily protected activity. Defendant, however, contends that there was no adverse employment action to support Anglin's retaliation claim.

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[5]Anglin also argues in his response to Defendant's motion for summary judgment that Steven Barger's decision not to allow Anglin to retake the mock sales portion of the grill also constituted an adverse action. (Doc. No. 144, p.8). However, it appears that the decision not to let Anglin retake the grill occurred before Anglin complained to human resources in December of 1996 about the alleged discrimination (because Anglin contends that he was entitled to retake the grill within 30 days, and he had taken the grill in September of 1996). Therefore, the failure to allow Anglin to retake the grill could not have been done in retaliation for Anglin making the complaint.

Adverse employment actions include not only ultimate employment decisions, such as termination, but they also include actions falling short of an ultimate employment decision if the actions rise to a threshold level of substantiality. See id. at 716 (citation omitted). "'While not everything that makes an employee unhappy is an actionable adverse action, conduct that alters an employee's compensation, terms, conditions, or privileges of employment does constitute adverse'" employment actions. Id. (quoting Bass v. Bd. of County Comm'rs, 256 F.3d 1095, 1118 (11th Cir. 2001)).

Anglin contends that the adverse actions consisted of Defendant's (1) inadequate investigation of his claim of discrimination; (2) instituting newly created qualifications in January of 1997 in order to be promoted to the management assistant position, which were stringently applied to Anglin but waived for other employees; and (3) placing Anglin on the 12 week probationary period. The Court finds that the challenged acts, considered together, do not rise to the level of an adverse employment action.

To begin with, Anglin provides no authority for his assertion that an inadequate investigation of his claim of discrimination somehow constitutes an adverse employment action. Further, Anglin provides no evidence that the newly created qualifications were more stringently applied to him and waived for other employees. Instead, Anglin points to the deposition testimony of Steven Barger in which Barger states that he "did the best [he] could to make sure that everybody met those set criteria . . . [but] there have been times that [Defendant] ha[s] had to take . . . [the] best employee candidate, that best person for promotability and promote them" even if they did not meet the set criteria. (Doc. No. 87, p.63-64, 67-68). Anglin offers no evidence of specific times that the rules were more stringently applied to him even though he was

better qualified; instead, Anglin makes the vague, conclusory assertion that Defendant imposed newly created qualifications that were more stringently applied to Anglin and waived for other employees.

Additionally, Anglin has not cited to any case law to support his assertion that the 12 week probationary period, during which he had weekly review meetings with Mary Mortensen, constitutes an adverse employment action. Anglin does not contend that his salary was decreased, that his job title changed, that his benefits were affected, that his responsibilities changed, or that being put on a probationary period affected his future with the company[6]. Further, the Court notes that Anglin chose not to complete the probationary period by failing to attend all of the weekly meetings, and Anglin suffered no repercussions beyond being told that he was still not promotable. Therefore, the Court concludes that the probationary period did not constitute an adverse employment action. See Christopher v. Motorola, 2001 WL 293935, No. 99 C 6532, at *11 n.12 (N.D. Ill. March 19, 2001)(stating that without evidence that an informal performance improvement plan "had some material or adverse effect on [the plaintiff's] job or future job prospects, the court would not find that" the performance improvement plan constituted an adverse employment action).

Taking all of the alleged adverse actions together, the Court finds that they do not rise to the level of substantiality required to qualify as an adverse employment action. Therefore, the Court grants Defendant's motion for summary judgment as to Anglin's retaliation claim.

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[6]The Court notes that Anglin contends that the probationary period was used as a means of collecting negative performance reviews. However, Anglin does not contend that the act of being placed on probation, in itself, affected his future with the company.

C. Constructive Discharge Under Title VII and the FCRA

Next, Defendant contends that the Court should grant it summary judgment as to Anglin's constructive discharge claim.[7] Anglin contends that he was constructively discharged due to Defendant's consistent failure to promote him and Defendant's apparent decision that he would never be promoted. Anglin supports his contention by pointing out that Mary Mortensen, his branch manager, told him that he would never be promoted. (Doc. No. 85, p.217-18). Therefore, Anglin contends that a reasonable person would have quit long before he did.

In order to succeed on a claim of constructive discharge, Anglin must show "that his working conditions were so difficult or unpleasant that a reasonable person in [his] . . . shoes would have felt compelled to resign." Wardwell v. School Bd. of Palm Beach County, Florida, 786 F.2d 1554, 1557 (11th Cir. 1986)(citation omitted). "While a discriminatory refusal to promote [is] relevant to the issue of whether [a plaintiff] was constructively discharged, such evidence is not always sufficient." Id. (citation omitted).

Defendant argues that Anglin's constructive discharge claim must fail for four reasons: (1) there was not a sufficient degree of deterioration in Anglin's working conditions that would warrant his resignation; (2) Defendant's allegedly discriminatory actions were not done for the purpose of forcing Anglin to resign; (3) Anglin cannot show that his allegedly intolerable conditions were due to his race; and (4) Defendant has proffered a legitimate, non-discriminatory reason for its actions. Accordingly, the Court will address each argument.

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[7]The analysis of Anglin's constructive discharge claim under Title VII also applies to his constructive discharge claim under the FCRA. See Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385, 1387 (11th Cir. 1998), cert. denied, 525 U.S. 1000 (1998).

1. Intolerable Working Condition

Defendant first argues that there was not a sufficient degree of deterioration in Anglin's working conditions that would warrant his resignation. To support this contention, Defendant cites Weaver v. Tech Data Corporation, 66 F. Supp.2d 1258 (M.D. Fla. 199).

In Weaver, the plaintiff was removed from a time-sensitive project because the defendant believed that she was going to miss a deadline. See id. at 1268. As a result, the plaintiff was offered the opportunity to transfer to a non-managerial position on another project without a decrease in pay. See id. Instead of accepting the transfer, the plaintiff resigned. See id. The plaintiff filed suit for constructive discharge, but the court found that the plaintiff was not constructively discharged despite the fact that the plaintiff was told that she had no future with the defendant, that she would not be made a manager, and that the she should look for employment elsewhere. See id. at 1262, 1273-74.

While this Court acknowledges that Weaver provides some support for Defendant's position, this Court finds that under the facts alleged in the instant case, Anglin has submitted sufficient evidence to support the conclusion that his working conditions were so intolerable that he was compelled to resign. Anglin was consistently denied a promotion to the management assistant position, which is a non-competitive position. Further, Drew Akers, Anglin's Area Manager, barred Anglin from putting in for promotions. Additionally, Mary Mortensen, Anglin's branch manager, told Anglin that he would never be promoted. Therefore, the Court finds that Defendant's consistent refusal to promote Anglin or to even consider him for promotion is sufficient evidence for a jury to conclude that Anglin's conditions were so

intolerable that he was compelled to resign.[8]

2. Purpose of Defendant's Actions

Next, Defendant argues that since its allegedly discriminatory actions were not done for the purpose of forcing Anglin to resign, such actions cannot form the basis of a constructive discharge claim. The Court finds that this argument has no merit, since the argument has been rejected in this Circuit. See Bourque v. Powell Electrical Manufacturing Co., 617 F.2d 61, 65 (5th Cir. 1980).

3. Relationship of Intolerable Condition to Anglin's Race

Next, Defendant argues that Anglin cannot show that his allegedly intolerable conditions were due to his race. The Court, however, rejects this argument and finds that Anglin has submitted evidence that the refusal to promote Anglin (which forms the basis for his constructive discharge claim) was due to his race. Drew Akers, who served as the Area Manager during part of Anglin's employment with Defendant, barred Anglin from putting in for promotions and told Anglin that he could not be promoted because he did not have a dynamic presence. Akers also commented to another employee that Anglin did not look like a manager, and when Akers was asked if it was because Anglin was black, Akers responded, "Well, there you go."

The Court has already found that Plaintiff has submitted sufficient evidence for a jury to conclude that his working conditions were so intolerable that he was compelled to resign.

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[8]The Court notes that a discriminatory refusal to promote is not always sufficient to support a constructive discharge claim. See Wardwell, 786 F.2d at 1557 (citation omitted). However, this Court finds that under the facts of this case–where there is a consistent failure to promote the plaintiff to a non-competitive position and the plaintiff is told that he will never be promoted–a genuine issue of fact arises as to whether a reasonable person in the plaintiff's position would feel compelled to resign.

Further, the Court has found that Anglin has submitted sufficient evidence for a jury to conclude that the intolerable conditions were created due to his race. Therefore, the Court finds that Anglin has submitted sufficient evidence for a jury to conclude that he has established a prima facie case of constructive discharge.

4. Defendant's Legitimate, Non-Discriminatory Reason

Next, Defendant argues that it has proffered a legitimate, non-discriminatory reason for its actions. Defendant contends that Anglin was not qualified for promotion and that those promoted were more qualified. However, the Court finds that there is a genuine issue of material fact as to whether Defendant's proffered reasons are pretextual, given the fact that it appears that Defendant did not always adhere to its own promotion requirements.[9] Therefore, Defendant's motion for summary judgment on Anglin's constructive discharge claim is denied.

Accordingly it is ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment Regarding Intervenor Antonio Anglin's Claims (Doc. No. 138) is **GRANTED** as to Anglin's retaliation claim and **DENIED** as to Anglin's constructive discharge claim.

DONE AND ORDERED in Tampa, Florida, on July 16th, 2002.

SUSAN C. BUCKLEW
United States District Judge

Copies to:
Counsel of Record

[9]The Court adopts and incorporates by reference its analysis in its prior summary judgment order (Doc. No. 148) regarding Defendant's legitimate, non-discriminatory reasons for its actions.

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Notice sent to:

___ M. Teresa Rodriguez, Esq.
Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower
2 S. Biscayne Blvd., Suite 2700
Miami, FL 33131

___ Delner Franklin-Thomas, Esq.
Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower
2 S. Biscayne Blvd., Suite 2700
Miami, FL 33131

___ Gwendoln Y. Reams, Esq.
Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower
2 S. Biscayne Blvd., Suite 2700
Miami, FL 33131

___ Michael J. Farrell, Esq.
Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower
2 S. Biscayne Blvd., Suite 2700
Miami, FL 33131

___ C. Gregory Stewart, Esq.
Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower
2 S. Biscayne Blvd., Suite 2700
Miami, FL 33131

___ Peter W. Zinober, Esq.
Zinober & McCrea, P.A.
201 E. Kennedy Blvd., Suite 800
Tampa, FL 33602

___ Luisette Gierbolini, Esq.
Zinober & McCrea, P.A.
201 E. Kennedy Blvd., Suite 800
Tampa, FL 33602

___ Mitchell Dean Franks, Esq.
Gray, Harris, Robinson, Lane, Trohn
1 Lake Morton Dr.
P.O. Box 3
Lakeland, FL 33802-0003

___ Neil A. Roddenbery, Esq.

Gray, Harris, Robinson, Lane, Trohn
1 Lake Morton Dr.
P.O. Box 3
Lakeland, FL 33802-0003