2002 WL 1634013
United States District Court, C.D. California.

US EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
v.
ROBERT L. REEVES AND ASSOCIATES, a Professional Corporation, Defendants.

No. Civ.00–10515 DT. | Feb. 19, 2002.

Attorneys and Law Firms

Anna Y. Park, Gregory Lee McClinton, Kathleen Mulligan, U.S. Equal Employment Opportunity Commission, Los Angeles District Office, Los Angeles, California, for the Plaintiff.

Linda C. Miller Savitt, John Peter Schaedel, Ballard Rosenberg Golper & Savitt, Universal City, California; Richard M. Wilner, Robert L. Reeves & Associates, Pasadena, California, for the Defendant.

Opinion

TEVRIZIAN, J.

***1** This action is brought by Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC") against Defendant Robert L. Reeves and Associates, a Professional Corporation ("Defendant") under Title VII of the Civil Rights Act of 1964, as amended, the Pregnancy Discrimination Act of 1978 and Title I of the Civil Rights Act of 1991 to correct alleged unlawful employment practices on the basis of sex, and to provide appropriate relief to certain females who were adversely affected by such practices ("Claimants").

The following facts are undisputed and relevant to the issues currently before this Court:

This matter began on August 11, 1997, when Judith Quilaton filed a charge of Discrimination with the EEOC on the grounds that she was terminated because she was pregnant. On June 20, 2000, the EEOC issued a Letter of Determination finding that:

pregnant females as a class, were terminated in violation of Title VII of the Civil Rights Act of 1964, as amended and that females as a class, were subjected to frequent harassment that was intimidating, hostile and offensive and unreasonably interfered with work performance in violation of Title VII of the Civil Rights Act of 1964, as amended.

After "conciliation" failed, the EEOC filed this lawsuit against Defendant. In an interrogatory dated February 2, 2001, Defendant asked, "State the name of all persons you allege comprise the 'Class of Female' employees indicated in paragraph 8(b) of your complaint." The EEOC answered: "Investigation continues. At present, Plaintiff alleges that all current former employees of Defendant who are female are potential members of this class, and that the following persons have been identified to date: Clarissa (Fang) Liao, Nikki Mehrpoo Jacobson, Lisa Wilkerson, Joyce Wang, Jeanette Catuira, Miwa Arai, Elizabeth Babida, Margaret Eum, Nadia Preciado, Judith Quilaton, Rowena Silva, and Deanna Saez. EEOC will timely supplement all discovery responses."

The facts with respect to the Claimants at issue in this motion, Lisa Wilkerson, Nikki Mehrpoo Jacobson and Clarice Fang Liao are discussed within the analysis portion of this order.

B. Procedural Summary

On September 29, 2000, the EEOC filed the Complaint for Civil Rights Employment Discrimination in the United States District Court for the Central District of California, which was assigned to District Judge Dickran Tevrizian as Case No. CV 00–10515 DT (RZx).

On December 5, 2000, Defendant filed an Answer to the Unverified Complaint.

On June 11, 2001, Defendant filed a Motion for Leave to Amend Answer, which this Court granted on July 9, 2001.

On June 26, 2001, the EEOC filed a Motion for Review and Reconsideration of Magistrate Judge's Order on Plaintiff's Motion to Compel, which this Court denied on July 27, 2001 and further ordered a clarification of the Magistrate Judge's protective order.

On August 31, 2001, Defendant filed a Motion for Partial Summary Judgment as to Claimants Catuira and Preciado.

***2** On September 25, 2001, this Court entered an Order Granting Defendant Robert L. Reeves and Associates' Motion for Partial Summary Judgment as to Claimants Catuira and Preciado.

On October 18, 2001. Defendant filed the Statement of Fact and Conclusions of Law as to Claimants Catuira and Preciado.

On October 19, 2001, this Court entered a Partial Summary Judgment Following September 24, 2001

Ruling.

On November 1, 2001, Defendant filed a Motion for Attorneys' Fees, which this Court denied on November 26, 2001.

On November 27, 2001, Defendant filed a Motion for Partial Summary Judgment as to Claimants Quilaton, Silva, Saez, Wang, Arai and Eum, which this Court granted on January 22, 2002. This Court's Order Granting Defendant's Motion was thereafter entered on January 23, 2002.

On January 25, 2002, Plaintiff filed a Motion for Partial Summary Judgment on Defendant's Fourteenth and Fifteenth Affirmative Defenses, which is presently before this Court.

On January 28, 2002, Defendant filed an Ex Parte Application for Leave of Court to File Final Motion for Summary Judgment, which this Court granted on January 29, 2002.

On January 29, 2002, Defendant filed a Motion for Summary Judgment as to Wilkerson, Jacobson and Liao, which is presently before this Court.

On February 1, 2002, this Court filed an Order Continuing Pretrial Conference and Trial as follows: Pretrial Conference is set for April 8, 2002 at 1:30 p.m.; Trial is set for May 7, 2002 at 9:30 a.m.

II. Discussion

A. Standard

Under the Federal Rules of Civil Procedure, summary judgment is proper only where "the pleadings, depositions, 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). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S.Ct. 2505, 2514, 91 L.Ed.2d 202 (1986). If the moving party satisfies the burden, the party opposing the motion must set forth specific facts showing that there remains a genuine issue for trial. See id.; Fed.R.Civ.P. 56(e).

A non-moving party who bears the burden of proof at trial to an element essential to its case must make a showing sufficient to establish a genuine dispute of fact with respect to the existence of that element of the case or be subject to summary judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). Such an issue of fact is a genuine issue if it reasonably can be resolved in favor of either party. See Anderson, 477 U.S. at 250–51, 106 S.Ct. at 2511. The non-movant's burden to demonstrate a genuine issue of material fact increases when the factual context renders her claim implausible. See Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). Thus, mere disagreement or the bald assertion that a genuine issue of material fact exists no longer precludes the use of summary judgment. See Harper v. Wallingford, 877 F.2d 728 (9th Cir.1989); California Architectural Building Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir.1987).

***3** If the moving party seeks summary judgment on a claim or defense on which it bears the burden of proof at trial, it must satisfy its burden by showing affirmative, admissible evidence.

Unauthenticated documents cannot be considered on a motion for summary judgment. See Hal Roach Studios v. Richard Feiner and Co., 896 F.2d 1542, 1550 (9th Cir.1990).

On a motion for summary judgment, admissible declarations or affidavits must be based on personal knowledge, must set forth facts that would be admissible evidence at trial, and must show that the declarant or affiant is competent to testify as to the facts at issue. See Fed.R.Civ.P. 56(e). Declarations on "information and belief" are inappropriate to demonstrate a genuine issue of fact. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.1989).

B. Analysis

Defendant brings this motion with respect to three of the sexual harassment Claimants: Lisa Wilkerson ("Wilkerson"), Nikki Mehrpoo Jacobson ("Jacobson") and Clarice Fang Liao ("Liao"). It argues that none of these Claimants was subjected to severe and sexual harassment as a matter of law. It further argues that there was no adverse job action, that Defendant maintained a valid, anti-harassment policy and that none of the claimants availed themselves of this policy.

The Supreme Court has held that sexual harassment constitutes sex discrimination in violation of Title VII. Meritor Savings Bank v. Vinson, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986). Courts recognize different forms of sexual harassment. Here, Claimants allege "hostile environment" sexual harassment–that they worked in offensive or abusive environments. The Ninth Circuit has held that hostile environment exists when an

employee can show: (1) that she was subjected to sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; (2) that this conduct was unwelcome; and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. See Ellison v. Brady, 924 F.2d 872, 876 (9th Cir.1991).

Here, Defendant challenges factor # 3 and argues that no reasonable person could believe that the incidents alleged by Wilkerson, Jacobson and Liao meet the requirement of severe or pervasive conduct.

1. The EEOC cannot establish a establish a prima facie case of sexual harassment with respect to Claimant Lisa Wilkerson

The following incidents form the basis of the EEOC's claim with respect to Lisa Wilkerson. Wilkerson was employed by Defendant as a receptionist in Defendant's law firm May 1997. Wilkerson was promoted to the position of Office Coordinator in about November 1997. Defendant terminated Wilkerson's employment on about April 24, 1998. Defendant informed her, and it was also her understanding, that Wilkerson was laid off due do a decline in Hispanic clientele.

Plaintiffs allege Wilkerson was sexually harassed because Reeves told her she looked better in tighter-fitting clothing on two occasions. This comment took place prior to Wilkerson's promotion, about six months after she began her employment. There is some dispute whether another employee, Martinez, told Wilkerson to follow Reeves' advise in order to get the promotion. In any case, Wilkerson did not wear tighter fitting clothes after Reeves' comment, but did receive the promotion. On another occasion, Reeves patted her on the shoulder and then moved his hand down her back and patted her buttocks. Wilkerson did not recall the duration of this incident, but thought it took a few seconds, perhaps about five. This took place soon after Wilkerson's promotion. On another occasion, Reeves tapped or touched Wilkerson's. Finally, Wilkerson overheard Reeves make a statement to someone else that "she gives good head." Wilkerson was unsure to whom Reeves was referring, but believed the comment referred to a woman who Wilkerson testified at one time was a secretary and at another time a client. Wilkerson believed this woman visited Reeves and engaged in sexual acts with him in his office. Wilkerson did not recall when or to whom this comment was made. Wilkerson felt uncomfortable and offended by these incidents. Prior to these incidents Wilkerson spent approximately ten minutes a day with Reeves, and after they occurred, she was able to reduce her contact with Reeves to about five minutes per day.

***4** This Court concludes as a matter of law that Reeves's conduct toward Wilkerson was not sufficiently severe and pervasive to alter the conditions of her employment and create an abusive environment. The required showing of severity or seriousness of the harassing conduct varies inversely with the pervasiveness or frequency of the conduct. "Conduct must be extreme to amount to a change in the terms and conditions of employment." Montero v. AGCO Corp., 192 F.3d 856, 860 (9th Cir.1999) (quoting Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998)). A sexually objectionable environment must be viewed both subjectively and objectively. In other words, the environment must be one that the victim perceived to be hostile or abusive and that a reasonable person would find hostile or abusive.

With respect to the tighter-fitting clothing comments, the EEOC offers no evidence that Wilkerson subjectively perceived these as abusive. Wilkerson testified that she felt only "uncomfortable" and "self-conscious." With respect to the incident wherein Reeves moved his hand from her shoulder down her back, and patted her buttocks, Wilkerson's testimony changed substantially during successive depositions, and she was able to recall few details other than that Reeves touched her shoulder and moved his hand down far down her back in one deposition, and then that he patted her buttocks in a subsequent deposition. While the incident was offensive and understandably caused Wilkerson discomfort, the EEOC also offered no evidence that Wilkerson subjectively perceived this as abusive, but only that she felt "uncomfortable at work," and attempted to avoid Reeves thereafter. Wilkerson admits she did not tell Reeves she did not like him tapping her on the shoulder or otherwise touching her, and that she complained to no one about the incident.

With respect to any suggestions made to her by Reeves, Wilkerson refers only to the comment that "she gives good head." Wilkerson admits that this conversation was only overheard by her, and she cannot recall the to whom Reeves made the comment or the specific conversation. Wilkerson did not feel damaged as a result of these incidents. She did not seek counseling for the touching incidents, or discuss them with others. Furthermore, Wilkerson did not perceive her termination of employment as discriminatory. She believed she was terminated as a result of the reduced Hispanic clientele. "If the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993).

While Plaintiff's factual allegations differ somewhat from those of Defendant, particularly with regard to the patting incident, those differences are not material. Furthermore, any factual disputes have been resolved in Plaintiff's

favor and still raise no triable issues of fact as to Defendant's liability. The EEOC has failed to carry its burden of showing a triable issue of fact exists as to whether Reeve's conduct created an abusive environment or that an adverse job action was taken with respect to Wilkerson's employment. Thus, the EEOC has failed to carry its burden of showing that a triable issue of fact exists as to whether Wilkerson subjectively felt she worked in an abusive environment.

***5** Moreover, even assuming that the EEOC could show that Wilkerson subjectively believed she endured a hostile or abusive environment, which it has not, the EEOC cannot meet the objective element of Wilkerson's claim. With respect to the objective element, the Ninth Circuit's opinion in Brooks v. City of San Mateo, 229 F.3d 917 (9th Cir.2000), is helpful. In Brooks, a co-worker approached the plaintiff, placed his hand on her stomach and commented on its softness and sexiness; the plaintiff told him to stop touching her and then forcefully pushed him away; the co-worker later positioned himself behind the plaintiff's chair, boxing her in against the communications console, forced his hand underneath her sweater and bra to fondle her bare breast; the plaintiff removed his hand again and told him that he had "crossed the line;" to this, the co-worker responded "you don't have to worry about cheating [on your husband], I'll do everything." See id. at p. 921. The district court held that this incident was not severe enough to give rise to a hostile work environment claim and granted summary judgment in favor of the defendant. The Ninth Circuit affirmed, and while it found the incident to be "highly offensive," it stated as follows: "Utilizing the Harris factors of frequency, severity and intensity of interference with working conditions, we cannot say that a reasonable woman in [the plaintiff's] position would consider the terms and conditions of her employment altered by [the co-worker's] actions." Id. at 926. Thus, if the actions in Brooks do not objectively constitute a hostile environment, then the conduct at issue here certainly does not even come close.

The EEOC argues that "the Ninth Circuit has held that sexual harassment may be found to exist on similar or less egregious facts." In support, it relies on the case of Ellison v. Brady, 924 F.2d 872 (9th Cir.1991). A review of the Ellison case, however, shows that the EEOC's reliance is misplaced. As the Ninth Circuit has subsequently described Ellison:

> Ellison alleged a sustained campaign of harassing conduct directed at her. See Ellison, 924 F.2d at 873–75 (recounting alleged harassment including love letters and date requests after plaintiff made it known that advances were unwelcome). Additionally, the course of conduct alleged by Ellison became more intense over time. Gray, the harasser, started by asking Ellison out a few times. He then sent her a brief love note followed by two letters. One of these comprised three single-spaced typed pages, and the other was sent after Gray had been told by his supervisors to cease his behavior. See id. Because Gray had continually ratcheted up the intensity of his advances, a reasonable woman could fear that this pattern would continue for as long as they were working in the same office.

Brooks, 229 F.3d at 927. The evidence here does not even come close to a "sustained campaign" by Reeves or remotely show that Reeves "continually ratcheted up the intensity of his advances." Thus, this Court concludes that no reasonable juror could find that the conduct alleged toward Wilkerson was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment as a matter of law.

2. The EEOC cannot establish a prima facie case of sexual harassment with respect to Claimant Clarice Fang Liao

***6** The following incidents form the basis of the EEOC's claim with respect to Liao. Liao was hired by Reeves as an attorney on March 2, 1998. She initially resigned her position in September 1998, but agreed to stay when Reeves offered her a raise. She then resigned her position in January 1999 to open her own law firm.

The grounds for Liao's sexual harassment claim is that Reeves said she looked beautiful on two occasions when she wore a blue business suit with white piping. Reeves gave Liao a hug when she arrived at his home for an office party. Reeves asked her to dance at a legal convention in Houston. Reeves knocked on her door one evening when she was meeting with clients, after which he said "Just checking," said good night and then left the office. Reeves told at least two sexual jokes in her presence, and made a comment that the firm should not get the Disney Channel for the children's room in the office but should get an x-rated channel instead. Finally, when Liao had completed some translation services for a client, Reeves said to Liao that "I always need you," in response to a question by her about whether or not she still needed her translation services that day.

Liao felt that the atmosphere at Defendant's firm was sexually charged, and as a result she felt very uncomfortable. By "charged," Liao meant that jokes and comments dealing with sex were frequently made. While conceding much of the conduct she alleges may appear innocuous on paper, Liao said she feared sexual advances by Reeves, and that his tone sometimes felt suggestive to her. With regard to the Disney comment, the comments that she looked beautiful, and the jokes, Liao said these were all made in the presence of others.

Her objection to being hugged by Reeves at an office party at his home was that she "felt uncomfortable being hugged by an employer." She testified that she had not been working for Defendant for very long, and admitted that she may have felt differently if she had been working for Defendant longer.

With regard to jokes, she testified that he made sexual jokes daily. However, Liao could only recall the subject of only one instance, when Reeves made a joke about Viagra. She could not recall the content of other jokes, but recalled they were told in the presence of others. As such, without knowing the content of the jokes, a fact finder could not objectively determine whether these jokes were such that a reasonable woman would find it sexual harassment. Liao never told Reeves the jokes bothered her or asked him to stop telling them. She did not complain to anyone about the jokes and comments.

With regard to asking Liao to dance at a conference, Liao testified that Reeves asked Liao to dance with him in a square dance, and stood in front of her and moved his hips in a circular motion with his arms up. She said she did not want to dance because she did not like to dance, and that she feared the music would change to a slow dance and she did not want to dance with someone if it entailed holding. She described feeling a general discomfort around men and receiving their attentions, particularly as a result of her upbringing as a practicing Catholic.

***7** This Court concludes that Reeves's conduct toward Liao was not sufficiently severe and pervasive to alter the conditions of her employment and create an abusive environment. Liao herself testified that she considered any attention by men to be sexual. While Liao felt uncomfortable with Reeves' conduct, but did not feel that the conditions of her work were altered. Liao never complained to anyone about Reeves' conduct, asked him to stop, or sought other employment prior to the time she left to start her own law firm. Furthermore, Liao admitted that Reeves' conduct did not affect her work or cause her stress.

While Liao appears to have perceived the environment as "sexually charged," based on Liao's own testimony, this Court concludes that no reasonable juror could find that Liao believed that Reeves's conduct toward her was sufficiently severe and pervasive to alter the conditions of her employment and create an abusive working environment. Liao's own testimony belies an allegation that she considered Reeves's conduct to be severe or pervasive. Moreover, Liao testified that the basis for tendering her resignation was to start her own firm, and in fact, when she first notified Defendant of her intention to leave, Reeves offered her a pay increase, and she decided to stay on with Defendant for several more months.

Even if the EEOC were able to offer evidence that met the subjective element of Liao's claim, which it has not, the evidence does not support an objectively offensive environment as a matter of law. This is especially true when evaluated in light of the aforementioned cases, Brooks and Ellison. The "inappropriate" comments, a hug and request to join Reeves in a square dance, knocking on her door in the evening before Reeves left for the day and saying, "Just checking," and "dirty" jokes, of which she could only the subject of one, all incidents which occurred in the presence of others, are not pervasive or severe and intense such that a reasonable person would consider the terms of her employment altered. Moreover, Liao's testimony shows that much of the conduct Wilkerson complains of does not appear sexual on its face, and is subject to nonsexual interpretations. For example, the occasion when Reeves knocked on her door in the evening and said, "Just checking," does not appear to be harassing or sexual in nature, and like other incidents, suggests that Liao interpreted much of Reeves' conduct as sexual when it would not appear so to an objective observer. This Court concludes that no reasonable person would find Reeve's conduct toward Liao as sexual harassment. In sum, the conduct toward Liao is not "physically threatening or humiliating," rather, it falls in the category of "mere offensive utterances." See Faragher, 118 S.Ct. at 2283.

This Court concludes that Reeves' conduct toward Liao was not sufficiently severe and pervasive to alter the conditions of her employment and create an abusive environment.

3. The EEOC cannot establish a prima facie case of sexual discrimination with respect to Nikki Mehrpoo Jacobson

***8** The following incidents form the basis of the EEOC's claim with respect to Nikki Jacobson. Jacobson was hired by Defendant as an associate attorney in April 1998. Jacobson tendered her resignation in June 1998 and ended her regular employment in July 1998, although she continued working for Defendant as an independent contractor for about two months thereafter. Jacobson testified she resigned in order to take a teaching position, because the firm asked her to be of counsel, which gave her an opportunity to go out on her own, and because Hanlon and Greene were leaving Defendant's firm.

Jacobson testified that Reeves' inappropriate conduct towards her began during her initial interview, when Reeves' asked Jacobson whether she was married, lived with her parents, and whether she had children. Jacobson testified she considered these questions offensive, but not sexual harassment. She felt that he looked at her

inappropriately, however, and felt that to be sexual harassment.

Jacobson testified that over the course of her employment with Defendant, Reeves told her many sexual jokes, most of which were told in her office, outside the presence of others. In particular, she recalled one joke involving Monica Lewinsky and President Clinton which referred to a cigars and vaginal use. Jacobson also recalled a joke about briefcase size and penis size. Reeves' jokes made Jacobson feel angry. Reeves also made various inappropriate sexual comments, for example, referring to condoms as "Kennedys," and something about sex on a table. Jacobson felt Reeves' conduct was not proper. While she never confronted him directly or report her complaints pursuant to Defendant's sexual harassment policy, Jacobson did place a copy of Defendant's sexual harassment policy in Reeves' box at one point. She did however discuss many of the incidents with Hanlon, a friend of Jacobson's and partner at that time at Defendant's law firm.

In addition to retelling the jokes Reeves told her, Jacobson testified she frequently used profane language in the presence of others at the office. Jacobson also received a basket from a suitor containing penis-shaped pasta at work and showed this to others. Jacobson, by her own testimony, admitted making sexual comments in the office, such as talking about "getting laid at one point." Jacobson also testified that frequently she would repeat the jokes to others in the office with whom she was friends, and that when she retold them, although initially it was "to let off steam," relating to her anger at Reeves, she and the others would laugh at the jokes, because they were funny. With regard to her feelings, Jacobson testified that Reeves' conduct made her feel angry, and eventually she began to feel "weird about being in the room with him" in the summer of 1998.

This Court concludes that Reeves' conduct, although distasteful, toward Jacobson was not sufficiently severe and pervasive to alter the conditions of her employment and create an abusive environment. With respect to the jokes, while they seemed to be numerous and certainly inappropriate, Jacobson's testimony suggests while they may have angered her, she did not find the jokes to be offensive. Indeed, Reeves' jokes appeared to be a mainstay of Jacobson's own conduct with others in her office. She often repeated them to others, making everyone "crack up" because the jokes were "funny."

***9** With respect to Reeves' comments about condoms and sex, Jacobson appears to have been disgusted with Reeves, and perhaps offended. However, the EEOC offers no evidence that Jacobson subjectively perceived these incidents to be abusive. A review of Jacobson's deposition testimony shows that she felt angry, offended, and finally, "weird" in Reeves' presence just prior to tendering her resignation. She never told Reeves she was uncomfortable with his jokes and comments or tell him not to repeat the conduct. Nor did she receive any counseling or make any reports about Reeves' behavior. "If the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993). Thus, the EEOC has failed to carry its burden of showing that a triable issue of fact exists as to whether Jacobson subjectively felt she worked in an abusive environment.

Furthermore, even assuming that the EEOC could show that Jacobson subjectively believed she endured a hostile or abusive environment, which it has not, the EEOC cannot meet the objective element of Jacobson's claim. Indeed, the evidence shows Jacobson, rather than being disturbed by the "charged" atmosphere at Defendant's law firm, contributed to it.

The evidence here does not even come close to a "sustained campaign" by Reeves or remotely show that Reeves "continually ratcheted up the intensity of his advances." Additionally, the evidence does not support the subjective element that Jacobson herself felt the environment was abusive or that she felt damaged by it. Thus, this Court concludes that no reasonable juror could find that the conduct alleged toward Jacobson was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment as a matter of law.

III. Conclusion

There is no question that Reeves's conduct at issue should be construed and interpreted as offensive and reprehensible. Indeed, this Court's conclusion should not be interpreted to condone such behavior. However, "not all workplace conduct that may be described as harassment affects a term, condition or privilege of employment within the meaning of Title VII." Meritor Sav. Bank v. Vinson, 477 U.S. 57, 67, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986) (internal quotation marks and citation omitted). In sum, this Court concludes that no triable issue exists about whether the conduct was frequent, severe or abusive enough to interfere unreasonably with the employment of Wilkerson, Liao or Jacobson. As such, the EEOC has failed to establish a prima facie case of hostile work environment with respect to these specific claimants. Defendant is thereby entitled to summary judgment with respect to these claimants.

Accordingly, this Court grants Defendant Robert L.

Reeves & Associates, a Professional Law Corporation's, Motion for Summary Judgment as to Claimants Wilkerson, Jacobson and Liao.

***10** Furthermore, as there are no remaining claimants in this matter, this Court denies as moot Plaintiff EEOC's Motion for Summary Judgment on Defendant's fourteenth and fifteenth affirmative defenses.

Parallel Citations

82 Empl. Prac. Dec. P 41,056