


IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKAN

MAR 01 2001

JAMES W. MCCORMACK, CLERK  
By:  DEPUTY CLERK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PLAINTIFF

VS.

LR-C-99-736

AUTOZONE, INC.

DEFENDANT

ORDER

The Equal Employment Opportunity Commission (“EEOC”) is the plaintiff in this Title VII employment discrimination lawsuit. In its complaint, the EEOC alleges that defendant Autozone, Inc. (“Autozone”), discriminated against an employee on the basis of her sex by failing to promote her. It also claims that Autozone retaliated against the employee after she filed her EEOC charge. The defendant has moved for summary judgment, and the EEOC has responded.

Summary judgment is appropriate in this case only if the record, viewed in a light most favorable to the EEOC, demonstrates that there is no genuine issue of material fact, so that the dispute should be decided as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. V. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

The inquiry performed is the threshold inquiry of determining whether there is a need for trial--whether, in other words, there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.



*Anderson*, 477 U.S. at 250.

The burdens of the respective parties are, by now, settled law:

[T]he burden on the party moving for summary judgment is only to demonstrate, i.e., '[to] point[] out to the District Court,' that the record does not disclose a genuine dispute on a material fact. It is enough for the movant to bring up the fact that the record does not contain such an issue and to identify that part of the record which bears out his assertion. Once this is done, his burden is discharged, and, if the record in fact bears out the claim that no genuine dispute exists on any material fact, it is then the respondent's burden to set forth affirmative evidence, specific facts, showing that there is a genuine dispute on that issue. If the respondent fails to carry that burden, summary judgment should be granted.

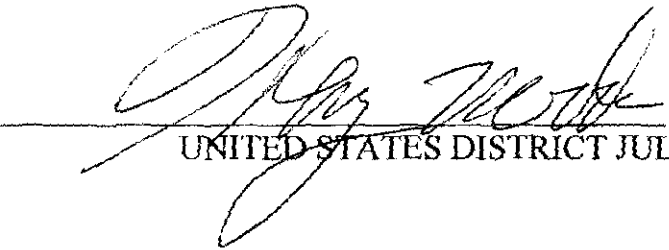
*Counts v. M.K.-Ferguson Co.*, 862 F.2d 1338, 1339 (8th Cir. 1988), (quoting *City of Mt. Pleasant v. Associated Elec. Coop.*, 838 F.2d 268, 273-74 (8th Cir. 1988) (citations omitted) (brackets in original)).

This is not a case where summary judgment is appropriate. There are genuine issues regarding virtually every material fact. The EEOC has set out a prima facie case of sex discrimination. The defendant has offered non-discriminatory reasons why a male employee with less tenure with Autozone was promoted over the female employee. The EEOC has evidence from which a jury could find that Autozone's proffered reason is pretextual. These are matters for a jury to decide, and it would be inappropriate for the Court to weigh the credibility of various witnesses.

The retaliation claim is not as strong as the sex discrimination claim, but there is enough evidence in the record to preclude the granting of summary judgment. Accordingly,

the defendant's motion for summary judgment is denied, and the case will proceed as scheduled.

DATED this 1<sup>st</sup> day of March, 2001.

  
UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON DOCK  
IN COMPLIANCE WITH RULE 58 AND/OR  
ON 3-2-01 BY 6

UNITED STATES DISTRICT COURT  
Eastern District of Arkansas  
U.S. Court House  
600 West Capitol, Suite 402  
Little Rock, Arkansas 72201-3325

March 2, 2001

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 4:99-cv-00736.

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Date:

3/2/01

BY:

