SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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(VIA E-FILED)

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RE: *Stephanie Smith v. Delaware State University*
C.A. No. 09C-12-101 FSS

Upon Plaintiff's Motion for Reargument – *DENIED.*

Dear Counsel:

Summarizing, in granting Defendant's summary judgment on September 27, 2011, the court explained that when a whistle-blower resigns, the burden of proof falls on her to show that the resignation came under circumstances tantamount to having been fired. The court further explained the law requires more than that the whistle-blower found herself in a hostile work environment. Thus, it is not enough that a whistle-blower, such as Plaintiff, presents a modicum of evidence tending to support her constructive discharge claim. Plaintiff must have evidence from which a juror could find that she was constructively discharged. Plaintiff filed this timely motion for reargument.[1]

[1] Del. Super. Ct. Civ. R. 59(e) ("A motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion.").

I.

As often happens after summary judgment, the losing party files for reargument highlighting snippets of the decision and the record, with no regard for the rest of the decision and the record. Here, Plaintiff focuses, again, on the fact that before she went on medical leave at the beginning of 2007, her supervisor told her, "You need to be gone by the new year [i.e. 2007]." Plaintiff then reminds the court, "When Plaintiff asked why she was being threatened, [the supervisor] responded, 'I do not have grounds to fire you but I will make your life hell if you don't leave.'" The court believed Plaintiff. It still does.

The undisputed fact remains, however, that despite the "threat," Plaintiff was not "gone by the new year." By her own admission, she went on medical leave and when she returned, before there was time for her supervisor to carry out his threat, she resigned. No one made Plaintiff's life even difficult. As the decision explained, as a matter of law, an empty threat does not amount to constructive discharge.

Moreover, as the decision mentions, when she filed a claim for unemployment benefits, the Department of Labor asked, "What was the reason you left this job?" Plaintiff's answer was:

> I left as a result of my supervisor placing me in a very compromising position. His wife worked on campus and began to spread untrue rumors about a fictitious relationship between myself and her husband [my boss]. This began in September [actually before this]. I learned about this in September. We worked very closely since I was his deputy, we attended meetings, had conferences - normal activities that are required to effectively run a Police Department. I noticed

> that he began to change his working style. He did not inform
> me of changes. He had me impose sanctions on employees [that I did not agree with] then [] rescind the sanction. He made untrue statements to other employees about problems that came up and placed blame on me. I had to go on medical leave in January for six weeks. He asked me "what are your plans" once my six weeks are up. I asked what did I mean and he stated "I was just wondering if you were going to find another job."

The court continues to appreciate that Plaintiff's application for unemployment benefits is not the be-all, end-all on whether Plaintiff was constructively discharged. But it reflects on Plaintiff's failure to meet her burden of proving that Defendant retaliated for whistle-blowing.

Plaintiff's continuing insistence that she felt "extreme hostility" continues to confuse her feelings with evidence from which a jury could find that DSU actually misbehaved. Otherwise, it is unclear why Plaintiff reminds the court that her whistle-blower complaint did not run afoul of the statue of limitations. Perhaps, that was intended to deflect the fact that Plaintiff's relating her resignation to her whistle-blowing came sixteen months after she resigned, and only after she had retained counsel.

II.

As to reargument of Plaintiff's defamation claim, Plaintiff reiterates that she has a witness who will testify that the defamation delayed her hiring in New York. Plaintiff re-emphasizes that Defendant never sought discovery about that witness. Plaintiff, however, continues to ignore the fact that Defendant filed a motion for summary judgment and, even now, Plaintiff has not supplied any evidence, such

as an affidavit, to fend-off that summary judgment.

At best, Plaintiff's counsel merely responded by assuring the court that Plaintiff would have the necessary proof at trial. The court stands by its holding that a motion for summary judgment puts the non-moving party to its proof. A naked proffer from counsel is not enough to stop summary judgment. Again, the court emphasizes the fact that Plaintiff's proffer is vague and unsupported. While the court does not question the proffer's sincerity, the court will not lower its motion practice standards by sending this case to trial just to see what turns up.

III.

In closing, the court reiterates that it has reviewed the record in context and as a whole. The court remains satisfied that even if the jury believes Plaintiff's claims that she was threatened and treated hostilely, and even if she can point to some things that vaguely support her claim, taken as a whole, those things do not rise to the point where a jury could find that her resignation was justified and her claims can be proved. That is so, even when Plaintiff's claims are viewed in the light most favorable to her.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes
oc: Prothonotary (Civil)