IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn

Civil Case No. 08-cv-02487-REB-MJW

MARY BARONE,

Plaintiff,

v.

UNITED AIR LINES, INC.,

Defendant.

ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Blackburn, J.

The matter before me is defendant's **Motion for Summary Judgment** [#14][1], filed December 18, 2008. I grant the motion in part and deny it in part.

Plaintiff originally filed this lawsuit in 2007, alleging causes of action for discrimination and retaliation under the Age Discrimination in Employment Act ("ADEA"), Title VII, and the Colorado Anti-Discrimination Act ("CADA"), as well as state law claims for breach of contract and promissory estoppel. ***See Barone v. United Air Lines***, Civil Action No. 07-cv-01277-LTB-KMT. Senior District Judge Lewis T. Babcock dismissed with prejudice plaintiff's Title VII claims on summary judgment. (***See* Order** [#64], filed September 19, 2008.)[2] He declined to exercise supplemental jurisdiction over the remaining state law claims, and, therefore, dismissed those claims without prejudice.

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[1] "[#14]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management system (CM/ECF). I use this convention throughout this order.

[2] Prior to Judge Babcock's ruling, plaintiff voluntarily abandoned her ADEA claim.

(***Id.***) Plaintiff promptly refiled her CADA, breach of contract, and promissory estoppel claims in the District Court in and for the City and County of Dever, Colorado. Defendant removed that lawsuit to this court and now has filed a motion for summary judgment.

In response to defendant's motion for summary judgment, plaintiff confesses that her breach of contract claim is untenable, and, accordingly, agrees to dismiss that claim. Therefore, the motion will granted to the extent it seeks summary judgment as to the breach of contract claim. By contrast, concerning plaintiff's promissory estoppel claim, having reviewed the arguments, authorities, and evidence presented, I perceive one or more genuine issues of material fact of that are not amenable to summary resolution.

Likewise, considering plaintiff's CADA claim, there are genuine issues of material fact that preclude summary judgment.[3] Although defendant also argues that Judge Babcock's prior decision in Civil Action No. 07-cv-01277-LTB-KMT dictates the outcome in this case with respect to the parallel CADA claim, it offers no argument demonstrating how the doctrine of preclusion, collateral estoppel, or law of the case might make this

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[3] In particular, viewing the evidence in the light most favorable to plaintiff, I do not find it dispositive that plaintiff requested her former job back after allegedly being constructively discharged. The case on which defendant relies for this proposition, ***Zenaty-Paulson v. McLane/Sunwest, Inc.***, 2000 WL 33300666 (D. Ariz. March 20, 2000), specifically found that the threat of a demotion in lieu of termination was not sufficient to support a claim of constructive discharge under Arizona law. ***See id.*** at *9. ***See also King v. AC & R Advertising***, 65 F,.3d 764, 769 (9th Cir. 1995). The law in this circuit is to the contrary. ***Douglas v. Orkin Exterminating Co.***, 2000 WL 667982, at *4 (10th Cir. May 23, 2000); ***James v. Sears, Roebuck & Co.***, 21 F.3d 989, 993 (10th Cir. 1994). Considering that plaintiff was faced with the choice between being terminated or accepting a part-time position in California, I cannot say as a matter of law that her request to be reinstated to her former position absolutely forecloses a finding that her working conditions were objectively intolerable. ***See Apgar v. State***, 2000 WL 1059444 at *8 (10th Cir. Aug. 2, 2000) ("We hardly think it a tolerable work condition, under the facts of this case, to expect [plaintiff] to pick up her family and move hundreds of miles in order to avoid discriminatory conduct.").

prior decision binding in this case. I am neither required nor inclined to make defendant's legal arguments for it, and decline to do so here.

THEREFORE, IT IS ORDERED as follows:

1. That defendant's **Motion for Summary Judgment** [#14], filed December 18, 2008, is **GRANTED IN PART** and **DENIED IN PART**:

a. That the motion is **GRANTED** with respect to plaintiff's breach of contract claim, which is **DISMISSED WITH PREJUDICE**; and

b. That the motion is **DENIED** otherwise.

Dated August 26, 2009, at Denver, Colorado.

BY THE COURT:

Robert E. Blackburn
United States District Judge