

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NANCY TRUMBULL,)	
)	
Plaintiff,)	Case No: 12-CV-00321
)	
v.)	Judge St. Eve
)	
SCI ILLINOIS SERVICES, INC. d/b/a)	Magistrate Judge Maria Valdez
ROSEHILL CEMETARY,)	
)	
Defendant.)	

**PLAINTIFF, NANCY TRUMBULL’S, SECOND AMENDED RESPONSE TO
DEFENDANT, SCI ILLINOIS SERVICES, INC.’S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

NOW COMES Plaintiff, NANCY TRUMBULL, hereby submits the following statements in opposition to defendant, SCI ILLINOIS SERVICES, INC.’s, Statement of Undisputed Material Facts:

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Admit. Plaintiff states further that the “Chicago Market” included properties owned by SCI Illinois from the Wisconsin border to the northwest corner of Indiana, comprising approximately a thirty (30) mile radius around the City of Chicago. (Def.’s Ex. C, at 7:9-19).
9. Admit
10. Admit.

**EXHIBIT
D**

11. Plaintiff admits the statements contained in paragraph 11 but adds that Exhibit 30 sets out in detail the plaintiff's reasons for requesting a transfer including:

[her] strained worked relationship with Bob LaVoncher. There are two identical documented incidents where Bob made the decision to speak and behave to [her] in a negative and unprofessional manner. These two incidents occurred without any direct dialogue with Bob regarding the situations to create a better work relationship and environment for us both. Plaintiff [had] become uncomfortable in the day to day Family Counselor work environment. (Def.'s Ex. 30).

12. Admit.

13. Admit.

14. Plaintiff admits that paragraph 14 contains an accurate statement of what is included in the Employee Handbook. However, Plaintiff denies that she was terminated for engaging in "theft, falsifying company records, being deceitful, [or] for engaging in any form of fraudulent activity." Thus, defendant's references to such are unnecessary and irrelevant to defendant's motion for summary judgment.

15. Admit, except that during her deposition, plaintiff was shown a document identified as Trumbull Deposition Exhibit 11. (Def.'s Ex. A, at 108:17-23 & Ex. 11, at SCI 000 756). Plaintiff was not able to identify the document. (Def.'s Ex. A, Trumbull Dep., at 108:21-24; 109:1-5 & Ex. 11 at SCI 000756).

16. Plaintiff admits the statements contained in paragraph 16 but further adds that she was asked if she "remembered any training *or discussions* regarding the distinction between at-need and pre-need contracts." (Def.'s Ex. A, at 80:7-9, *emphasis added*).

17. Admit.

18. Plaintiff admits, but see also See ¶ 23 of Pl.'s Second Am. Statement of Material Fact.

19. Admit.

20. Admit.

21. Agreed.

22. Admit, except that it has not been established that Plaintiff received commissions for selling the pre-need contract to Mrs. Henle (Pl.'s Ex. 4, Trumbull Aff., ¶¶ 43-45, Def.'s Ex. C, Michael Dep., at 125:12-24, 127:1-3; Def.'s Ex. E, Klein Dep., at 38:8-24, 39:1-5; 42:14-24, 44:1-9).

23. Denied. Trumbull knew at the time she wrote Charles Hall contact as pre-need and that the purpose of the contract was to bury a deceased person's cremated remains (or "cremains"). However, Trumbull's deposition Exhibit 10¹ which contained the definitions of "at-need" and "pre-need", did not clearly define how cremated remains should be treated when it came to the preparation of contract documents. (Def.'s Ex. A, Trumbull Dep., at 344:24, 348:24 & Ex. 10).

24. Admit.

25. Admit, except that David Klein did not recall having a conversation with Robert Caramusa. (Def.'s Ex. E, Klein Dep., at 30:24, 32:4). Gary Ritter only communicated with Caramusa by email. (Def.'s Ex. B, Ritter Dep., 86:18-20). Moreover, the reference to Larry Michael's deposition at Exhibit C, 45:20-24 appears to be an incorrect reference as it is not related to the preceding statement.

26. Trumbull is without knowledge as to whether Klein received a statement as alleged from June Speaker on December 1, 2008. (Def.'s Ex. D, Klein Decl. at ¶5, & Exhibit 3). Said Exhibit 3 contains hearsay and information that is entirely immaterial to the motion for summary judgment for the reason that it is not related to the reason for termination given to Trumbull.

27. Admit, however, this paragraph contains irrelevant and immaterial assertions for the reason that none of the alleged facts were a basis for Plaintiff's termination. David Klein testified in his deposition that his reason for recommending termination was the conversion of the contract from at-need to pre-need. (Klein Dep., 37:19, 38:2). Difficulty in communicating

¹ Plaintiff's previous response inadvertently failed to file a copy of Ex. 10. It has been attached to this filing.

with Trumbull had nothing to do with Defendant's decision to terminate her. (Pl.'s Ex. 3, Answers to Pl.'s Req. for Admis. Directed to Def., ¶ 33).

28. Admit.

29. Agreed. Trumbull also told Ritter he could talk to other counselors and they will tell him the same. (Def.'s Ex. B, Ritter Dep., at 189:19-23).

30. Denied. Defendant contends that Lawrence Michael asked Bob Caramusa if he had "given any instruction to [Plaintiff] or anybody to write [a] contract contrary to the company policies." However, this contention is directly contradicted by Defendant's own answers to Plaintiff's request to admit. Defendant answered "admitted" in response to Plaintiff's statement that neither Gary Ritter, Larry Michael, nor David Klein asked "Bob Caramusa if he instructed plaintiff to write the Charles Hall contract as pre-need." (Pl.'s Ex. 3, Def.'s Answers to Pl.'s Requests for Admission Directed to Def., ¶¶ 4-6; See Pl.'s Statement of Additional Material Facts, ¶ 27).

31. Denied. Larry Michael makes clear in his deposition that he chose to believe Bob Caramusa. (Def.'s Ex. C, at 60:20-24). Furthermore, it is irrelevant and immaterial to this motion for summary judgment whether Trumbull was aware of any reason why Larry Michael, David Klein or Gary Ritter would not trust Bob Caramusa's statements. See also paragraphs 24 and 25 of Plaintiff's Second Amended Statement of Additional Material Facts.

32. Plaintiff admits the statements contained in paragraph 32 but adds that while Hayes did write an e-mail explaining the general rule of pre-need versus at-need contracts; he also testified that SCI sales counselors often made errors in assigning the proper contract. (Def.'s Ex. K, Hayes Dep., at 46:16-19). Leonard Hayes testified that it was possible that there were more than 15 incidents of counselors using the wrong contract occurred (Def.'s Ex. K, Hayes Dep., at 46:20-24; 47:1-5). Thus, SCI management would: (a) sometimes issue a verbal warning to the counselor-in-error; (b) coach the counselor to explain to the family the contracting error; and (c) re-write the contract correctly. (Def.'s Ex. K, Hayes Dep. 47:6-19). Hayes did not

believe the SCI properly trained its employees as to its policies and procedures. (Def.'s Ex. K, Hayes Dep., 91:11-23).

33. Denied. Michael contends that based on his 20 years of experience Plaintiff's error in drafting a pre-need contract instead of an at-need contract is severe enough to warrant immediate termination because such conduct is deceptive. (Def.'s Ex. C, at 74:17-23). However, testimonies of SCI managers with substantial SCI experience refute Michael's contention. David Klein testified that in his 14 years with SCI, he cannot recall anyone being disciplined for writing the wrong kind of contract. (Def.'s Ex. E, Klein Dep., 50:13-18; 51:1-6).

34. Denied. (See Pl.'s Statement of Additional Facts, ¶¶ 12-16).

35. Admit that paragraph 35 contains an excerpt from Trumbull's February 18, 2009, termination letter but adds that the letter also contained an alleged resolution of Trumbull's Careline complaints which included Trumbull's complaints of possible discrimination on the basis of race and gender. (Pl.'s Ex. ___, Trumbull Dep. & Ex. 19², at NT00125; Def.'s Ex. A, Trumbull Dep. & Ex. 29, at SCI 00160, 161 and 163)

36. Denied. (See Pl.'s Resp. to Def.'s SOF ¶ 31). Whether Trumbull had any reason to believe the decision makers did not believe their statements of company policy is immaterial and irrelevant to this motion for summary judgment.

37. Denied. (See Pl.'s Resp. to Def.'s SOF ¶ 31). What Trumbull might have believed about the understanding on the decision makers is both immaterial and irrelevant to this motion for summary judgment.

38. Plaintiff admits but add that she could not recall if she knew of anyone outside SCI, besides herself, who wrote a pre-need contract for someone who was deceased (Def.'s Ex. A, Trumbull Dep., at 193:6-11); (See Pl.'s Statement of Additional Facts, ¶¶ 4-6).

39. Admit.

² Plaintiff's previous response inadvertently failed to file a copy of Ex. 19. It has been attached to this filing.

40. Admit in part and denied in part. It is both immaterial and irrelevant to this motion for summary judgment whether Trumbull expressed politeness in response to the investigation, particularly since there is no indication Trumbull was ever told what the resolution was. Trumbull admits the remaining statements in this paragraph.

41. Admit.

42. Admit.

43. Admit that Trumbull asserted several claims of possible discrimination against her based on her race and gender. (Def.'s Ex. A, Trumbull Dep. & Ex. 29³, SCI 00161).

44. Admit

45. Denied that this paragraph contains a complete recitation of the relevant portions of the notes of Emmanuel Diakoumakis. This paragraph is misleading in terms of what the notes of Diakoumakis contain. It appears that Diakoumakis asks: "Are you being harassed because you're African American?" Trumbull appears to have responded by saying, "I can't account for why he does things. Bob has never made any racial comments to me." Diakoumakis then appears to have asked, "Has he harassed you because you were female?" Trumbull appears to have responded by saying "No. It's his behavioral style, day-to-day in difference. Less professional. April 1 and May 2 incidents." (Pl.'s Ex. 7, at SCI 00592 7).

46. Admit.

47. Admit.

48. Admit. Trumbull states further that immediately after the colloquy cited in this paragraph, she was also asked, and answered as follows:

Q. Ok do you feel like he retaliated against you?

A. Yes. (Def.'s Ex. A, Trumbull Dep., at 302:1-7).

49. Admit.

³ Plaintiff's previous response inadvertently failed to file a copy of Ex. 29. It has been attached to this filing.

50. Trumbull admits that the documents appear to contain the information related in this paragraph.

51. Admit. Trumbull states further that as a part of that investigation she told Diakoumakis that a fellow sales counselor, Tom Bornstein, had asked her to handle the particular client when he left work for a leave of absence. (Pl.'s Ex. ___, Trumbull Dep. & Ex. 29, SCI00162).

52. Admit. Trumbull states further that as a part of that investigation she told Diakoumakis that a fellow sales counselor, Tom Bornstein, had asked her to handle the particular client when he left work for a leave of absence. (Def. Ex. A, Trumbull Dep. & Ex. 29 at SCI 00162).

53. Trumbull admits that the documents and information reflect the statements in paragraph 53.

54. Admit.

55. Admit.

56. Admit.

57. Admit. Trumbull states further that it is immaterial and irrelevant to this motion for summary judgment whether David Klein believed there was anything threatening or intimidating about a messenger delivering a letter to Trumbull's home.

58. Admit.

59. Admit.

60. Admit.

61. Admit that Michael, Klein nor Ritter ever told Trumbull she was being terminated because of her race, her sex or in retaliation for filing complaints about race or sex discrimination. It is immaterial and irrelevant to this motion for summary judgment as to whether Michael, Klein or Ritter were racist or sexist individuals.

62. Admit.

- 63. Admit.
- 64. Admit.
- 65. Admit.
- 66. Admit.
- 67. Admit.
- 68. Admit.

X:\MISCELLANEOUS\TRUMBULL 0000-00392\MOTION FOR SUMMARY JUDGMENT\Motion to Reconsider\10 08 2013 Trumbull v. SCI -- Amended Response to SCI Statement of Undisputed Facts.docx