

STATE OF MICHIGAN
COURT OF APPEALS

MICHELE GREEN and GREGORY
VARTANIAN,

UNPUBLISHED
December 7, 2001

Plaintiffs-Appellants,

V

No. 226842
Oakland Circuit Court
LC No. 98-010501-NZ

PARAGON INVESTMENT CO. LTD., d/b/a
ROYAL OAK MUSIC THEATER, PROPHET
PRODUCTIONS LTD., d/b/a BRASS RING
PRODUCTIONS and CHARLES FOX,

Defendants-Appellees.

Before: Bandstra, C.J., and Doctoroff and White, JJ.

BANDSTRA, C.J. (*concurring in part and dissenting in part*).

I concur with the majority in affirming the dismissal of plaintiff Vartanian's claims. I also would affirm the dismissal of plaintiff Green's Civil Rights Act (CRA) claim because it is barred by the three-year statute of limitations.

The alleged sexual assault of Green by defendant Charles Fox clearly occurred more than three years before suit was filed in this case. I agree with the majority that this matter is not properly considered under "present effects of past discrimination" precedents. See discussion, *ante* at 6. Fox's asking Green to disavow the sexual activity and then discharging her for failing to do so were new acts, separate and independent of the sexual activity itself.

However, recognizing that goes a long way toward properly resolving this case. The offensive behavior by Fox, committed within the statute of limitations period, was his asking Green to lie and his discharging her when she refused. While soliciting lies and punishing truth telling are undoubtedly offensive acts, they are not within the purview of the CRA. The CRA prohibits a discriminatory discharge on the basis of sex, MCL 37.2202(1)(a), but Green does not allege that she was treated differently than some male who also refused to lie at Fox's behest. The CRA also prohibits a discharge based on the submission to, or rejection of, unwelcome sexual activity, MCL 37.2103(i)(ii), but Fox's insistence that Green lie was not itself such activity.

The majority apparently thinks it enough that the lie Fox sought from Green had, as its subject matter, the alleged sexual assault. I fail to see how that result can flow from the language

of the statute, which the majority does not consider, or any available precedent, none of which the majority cites.

Green had a statutory right to seek redress for the sexual wrongs she claims Fox committed, within three years of their occurrence. Having failed to bring her claim within that period, she is foreclosed. The non-sexual activity now complained of cannot change that result.

I would affirm the summary disposition dismissal of both plaintiffs' claims.

/s/ Richard A. Bandstra