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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4974-15T4

CHRISTINE ROSE,

Plaintiff-Appellant,

v.

STONE HILL RECREATION CORPORATION, MINERALS RESORT & SPA MANAGEMENT, INC.; MINERALS RESORT & SPA, INC.; GRAND CASCADES LODGE AT CRYSTAL SPRINGS, LLC; GRAND CASCADES LODGE MANAGEMENT, INC.; CRYSTAL SPRINGS BEVERAGES, INC.,

Defendants-Respondents.

Argued December 12, 2017 – Decided February 5, 2018

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey, Law Division, Sussex County, Docket No. L-0679-14.

Deborah L. Mains argued the cause for appellant (Costello & Mains, LLC, attorneys; Deborah L. Mains, on the brief).

Stefanie C. Schwartz argued the cause for respondents (Schwartz Simon Edelstein & Celso, LLC, attorneys; Stefani C. Schwartz, of

counsel and on the brief; Jody T. Walker, on the brief).

PER CURIAM

Plaintiff Christine Rose appeals from a June 13, 2016 order granting summary judgment, dismissing her Law Against Discrimination (LAD) complaint against defendants Stone Hill Recreation Corporation, Minerals Resort & Spa Management, Inc., Minerals Resort & Spa, Inc., Grand Cascades Lodge at Crystal Springs, LLC, Grand Cascades Lodge Management, Inc. and Crystal Springs Beverages, Inc.

Plaintiff's LAD complaint alleged that she experienced an unlawful hostile work environment, and suffered reprisals after complaining about the hostile environment. See N.J.S.A. 10:5-12(d) (prohibiting reprisals against persons who complain about LAD violations). Our review of the summary judgment order is de novo, using the Brill[1] standard. Townsend v. Pierre, 221 N.J. 36, 59 (2015). After reviewing the undisputed facts[2] in light of that legal standard, we conclude that plaintiff failed to present evidence sufficient to constitute a hostile work environment. We

[1] Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

[2] Our summary of the facts is partly drawn from the parties' statements of material facts (SMF), filed as part of their summary judgment papers. See R. 4:46-2(a). Like the trial court, we deem undisputed all facts asserted in one party's SMF and admitted in the other party's response. R. 4:46-2(b).

also conclude that she failed to present a prima facie case of unlawful reprisal under the LAD. Accordingly, we affirm.

I

Plaintiff first worked as a hostess at Kites Restaurant (Kites), located in a hotel called the Minerals Resort & Spa (Minerals), and later worked as a hostess at the Crystal Tavern (Tavern) in the Grand Cascades Lodge (Grand Cascades). Both Minerals and Grand Cascades were part of a vast complex called the Crystal Springs Resort (Crystal Springs), which included three hotels and twelve restaurants. The Tavern was operated by Crystal Springs Beverages, Inc., and Kites was operated by Stonehill Recreation Corp. However, it was undisputed that "[w]hile individuals may work at various restaurants within Crystal Springs, they ultimately work for Crystal Springs. . . ."

According to plaintiff, on one occasion while she was working at the Tavern, she heard her supervisor use an obscene sexist term in referring to a group of female customers. She asserts that during the same incident, the supervisor also stated, "What do you want, they are a bunch of women."[3] The comments were not made in

[3] At the motion argument, plaintiff's attorney confirmed that there was only one incident, telling the judge: "The harassing comments arise out of a single incident. There . . . are essentially three comments that were made in a single incident by

the customers' presence, nor were they directed at plaintiff. According to plaintiff, the customers had complained about the Tavern's service. The supervisor was angry that the customers had complained, and he made the derogatory comments about them after they left the premises.

Plaintiff attested that she found her supervisor's use of the obscene term to be shocking and unprofessional, although she did not say anything to the supervisor about it. Plaintiff did not produce any other evidence of a hostile work environment. She did not hear any other offensive statements. Nor did she receive any unwarranted criticism of her work, experience any hostile or demeaning remarks directed at her by co-workers or supervisors, or experience any inappropriate conduct directed toward her. Her entire hostile environment claim rested on the one incident in which the supervisor made sexist comments about the customers.

According to plaintiff, on September 28, 2013, which was a couple of days after this isolated incident, she was terminated from her job at the Tavern for poor job performance. On this appeal, as in the trial court, she does not contest the reason for her termination or claim that it was unlawful. The same day she

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a supervisor. But a single incident can form the basis of a harassment claim."

was fired, plaintiff went to see Jenny Tapia, who had been her supervisor at Kites. She told Jenny that she had been fired from the Tavern for allegedly "not taking ownership" of her job, and told Jenny about the Tavern supervisor's offensive comments.

On September 29, 2013, plaintiff filed a claim for unemployment benefits naming both Kites and the Tavern as her employers. Plaintiff later told an unemployment appeals examiner that, on October 2, 2013, she attempted to sign up for work at Kites through the company's website and discovered that she had been locked out of the system. Based on that information, the examiner concluded that plaintiff was terminated from both Kites and Tavern.

According to plaintiff's deposition testimony, "a week or two" after her termination, she went to Crystal Springs's human resources (HR) office to discuss her termination and the supervisor's crude comments. The HR receptionist told plaintiff that she needed to file a written complaint, but plaintiff did not do so.

At her deposition, plaintiff testified that someone from the HR office gave her the impression that she would be able to apply for jobs at other facilities within the resort. However, despite applying for twenty-five to thirty jobs within the resort complex, she was never hired.

At his deposition, Youssef Ghantous, the former director of restaurants, in charge of overseeing the Tavern and other restaurants at the resort, testified that plaintiff's termination was documented on a form indicating that her work was substandard. One of the questions on the form was "would you re-hire this individual?" That box was checked "no." Ghantous explained that, because the box was checked "no" plaintiff was not eligible to be re-hired at any other facilities within the Crystal Springs Resort, including Kites. According to Ghantous, his superior, Loretta Westling, authorized plaintiff's termination, based on his recommendation, and authorized the "do not re-hire" designation on the termination form. Ghantous testified that, at the time the decision was made to fire plaintiff, he did not know that plaintiff had alleged her supervisor made sexist comments about customers.

II

To state a claim for hostile work environment sexual harassment in this context, plaintiff must allege that the complained-of conduct:

> (1) would not have occurred <u>but for</u> the employee's gender; and it was
>
> (2) <u>severe or pervasive</u> enough to make a
>
> (3) <u>reasonable woman</u> believe that

> (4) the conditions of employment are altered and the working environment is hostile or abusive.
>
> [Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 603-04 (1993).]

In this case, the focus is on factor two, whether the supervisor's conduct was severe enough to create a hostile work environment. As our courts have recognized, in most cases, "it is the cumulative impact of successive incidents from which springs a fully formed hostile work environment claim." Godfrey v. Princeton Theological Seminary, 196 N.J. 178, 197 (2008). However, "[a]lthough it will be a rare and extreme case in which a single incident will be so severe that it would, from the perspective of a reasonable woman, make the working environment hostile, such a case is certainly possible." Lehmann, 132 N.J. at 606-07 (emphasis added).

The motion judge concluded that the one incident in which the supervisor made sexist comments about the customers was insufficient, by itself, to create a hostile work environment. The judge distinguished Taylor v. Metzger, 152 N.J. 490 (1998), in which a county's sheriff directed a racist slur at one of his subordinates, a black sheriff's officer, in front of her colleagues, who then laughed at her. The judge reasoned that

> [I]n Taylor, the New Jersey Supreme Court held that a single comment could create a hostile work environment, not because the comment alone was offensive, but because all of the circumstances surrounding the comment altered the conditions of employment in order to establish the requisite severity of the discrimination. Id. at 506-07. The [C]ourt summarized how the single comment altered the conditions of the Taylor plaintiff's employment.

The judge then quoted the following language from Taylor:

> The offensive remark was made in the presence of another supervising officer. When plaintiff told her co-workers of defendant's remark, they laughed, and one apparently mocked her. Moreover, plaintiff had no realistic opportunity for redress. Defendant indirectly persisted in perpetuating the harassment and its hostile impact. When plaintiff confronted defendant about his comment, he would not acknowledge that he had vilified her. Instead, he badgered her for interpreting the remark as a racial slur. He was reluctant to apologize. His first proffered letter did not constitute a sincere apology; rather, it evaded the patent racial import of the epithet defendant had used by falsely stating that plaintiff had worn fatigues at the time of the comment. Thereafter, her co-employees acted coolly toward her; she was labeled a troublemaker. They were afraid to talk to her and created the impression that they had been told to stay away from her. Consequently, a rational factfinder, crediting such evidence, may conclude that defendant's racial slur altered plaintiff's working conditions.
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> [Taylor, 152 N.J. at 507-08.]

The motion judge reasoned that the "single incident" in this case did not directly affect plaintiff's working conditions, the comments were not directed at her, and they did not stem from hostility against her. There was no evidence of any later similar conduct or comments by the supervisor. The judge considered that "offhand comments and isolated incidents cannot be deemed to constitute discriminatory changes in the terms and conditions of one's employment." (citing Herman v. Coastal Corp., 348 N.J. Super. 1, 23 (App. Div. 2002)).

On the record presented here, we agree with the motion judge that plaintiff's reliance on Taylor is misplaced. This is not the "rare and extreme case" where a single incident creates a hostile work environment. Lehman, 132 N.J. at 606-07. Plaintiff presented one isolated instance of a supervisor making sexist comments about a group of women customers, because he was angry that they complained about the restaurant's service. Unlike Taylor, there was no other evidence to illuminate how this remark created a hostile environment for plaintiff. The remarks were not directed at plaintiff and were not repeated on any other occasion. In fact, by her own testimony, plaintiff only worked at this restaurant for another day or two, before being fired for nondiscriminatory reasons. The trial court properly dismissed the hostile environment claim on summary judgment.

We reach the same conclusion with regard to the retaliation claim. A prima facie case of retaliation under the LAD requires evidence of the following factors: "(1) that [plaintiff] engaged in protected activity; (2) the activity was known to the employer; (3) plaintiff suffered an adverse employment decision; and (4) there existed a causal link between the protected activity and the adverse employment action." Young v. Hobart West Group, 385 N.J. Super. 448, 465 (App. Div. 2005); see also Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 547 (2013).

In this case, plaintiff failed to satisfy the second prong, by demonstrating that the person or persons who fired her or failed to rehire her were aware of her complaint. She also failed to satisfy the fourth prong of the test by producing evidence of a causal nexus between her complaint and her termination.

> "[T]he mere fact that [an] adverse employment action occurs after [the protected activity] will ordinarily be insufficient to satisfy the plaintiff's burden of demonstrating a causal link between the two." Only where the facts of the particular case are so "unusually suggestive of retaliatory motive" may temporal proximity, on its own, support an inference of causation. Where the timing alone is not "unusually suggestive," the plaintiff must set forth other evidence to establish the causal link.
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> [Young, 385 N.J. Super. at 467 (citations omitted).]

Plaintiff contends that, because she complained to the Kites supervisor, Jenny Tapia, and to the HR receptionist, she was fired from Kites and was not rehired at any other Crystal Springs restaurant. There is no evidence that Tapia had any authority to make hiring or termination decisions at Kites. Nor is there evidence that Tapia or the HR receptionist were involved in any decision to fire plaintiff or not rehire her.

Further, there is no dispute that plaintiff was fired from the Tavern for poor job performance. Ghantous, the high-level manager who recommended the firing, also indicated on the termination form that he would not rehire her. On this record, the mere fact that plaintiff made a complaint and then was not rehired is not "unusually suggestive" of a retaliatory motive. Id. at 467. The more logical inference is that she was not rehired because she had been fired for poor job performance. Accordingly, we also affirm the grant of summary judgment on the reprisal claim.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION