

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL J. OLSEN,

Plaintiff,

v.

MARSHALL & ILSLEY CORPORATION, PAUL
SCHALLER and M&I MID-STATE BANK,

Defendants.

ORDER

99-C-0774-C

Plaintiff Michael J. Olsen has moved to alter or amend the judgment entered against him on September 7, 2000. Plaintiff brought this civil action, alleging that defendants Marshall & Ilsley Corporation and M&I Mid-State Bank violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, when they discharged him in March 1998. In addition, he claimed that defendant Paul Schaller had tortiously interfered with his employment. In an opinion and order dated September 7, 2000, I granted the motion of defendants Marshall & Ilsley Corporation and M&I Mid-State Bank for summary judgment because I concluded that no reasonable trier of fact could find that plaintiff was terminated because he was a male, because he had opposed sexual harassment or because he had participated in an investigation held

under Title VII. Further, I remanded plaintiff's state law claim to the Circuit Court for Portage County pursuant to 28 U.S.C. § 1367. For the reasons discussed below, plaintiff's motion to alter or amend the judgment pursuant to Rule 59 will be denied.

Plaintiff first argues that there is a genuine dispute whether Mid-State's reason for terminating him because of problems with other staff members is pretextual because he has discovered new evidence that Margie Hajdas, the Mauston branch's mortgage originator, was not frustrated with her job solely because of her problems with plaintiff. Even if this assertion is true, it does not provide support for plaintiff's argument that the judgment should be altered. First, plaintiff's difficulty in working with other staff members at the Mauston branch was only one reason proffered by Mid-State for terminating him. The other undisputed reason was his failure to meet his sales quotas. Because defendant needed to show only that it had one nondiscriminatory reason for firing plaintiff, this alone was sufficient to grant defendant's motion for summary judgment. See Crim v. Board of Education of Cairo School District, 147 F.3d 535, 541 (7th Cir. 1998).

Second, evidence that Margie Hajdas may have had reasons for being frustrated with her job other than having to work with plaintiff does not create an issue of fact regarding pretext. Plaintiff does not dispute that he was at least part of the reason that Hajdas was unhappy with her job; the fact that there may have been other causes does not show that

plaintiff did not in fact have problems getting along with Mauston branch staff members or indicate that defendant Mid-State did not have an honest belief that plaintiff had such difficulties. Plaintiff has still failed to adduce any evidence that the complaints that other employees had about him were not valid or that he had improved his relations with his staff between the time he received his last evaluation and the time he was discharged. Plaintiff's "new evidence" provides no basis for altering the judgment.

Plaintiff argues that the judgment should be altered because I "overlooked" evidence regarding his retaliation claim. Specifically, plaintiff claims that there is evidence supporting his assertion that he had a sincere belief Kathy Potter was being sexually harassed by Paul Schaller. He points to an affidavit dated July 5, 2000, in which he stated: "I also believed that the relationship may not have been invited by Ms. Potter and that there may have been an explicit or implied understanding between them that this relationship was in exchange for Mr. Schaller's decision to hire Ms. Potter as branch manager or to grant her favorable treatment. . . ." I considered this statement as it was slightly rephrased in plaintiff's proposed findings of fact and referred expressly to it in the opinion and order dated September 7, 2000. It does not show that plaintiff had a sincere belief. Plaintiff must produce evidence that he had a sincere belief *at the time* he was opposing the alleged harassment. Plaintiff has failed to do this; he has not alleged, much less provided evidence, that he told the Human Resources Director that he

believed Potter was being sexually harassed. In fact, there is no evidence that he expressed this belief to anyone. Rather, in the evidence introduced, plaintiff referred to the relationship of Potter and Schaller as an “affair.” Furthermore, as I noted in the opinion and order, even if plaintiff did have a sincere belief that he was reporting sexual harassment, his retaliation claim would still fail because he failed to show that his belief had been reasonable. See Hamner v. St. Vincent Hospital and Health Care Center, Inc., No. 99-3086, 2000 WL 1202287, *4 (7th Cir. Aug. 24, 2000) (holding that plaintiff must have had sincere *and* reasonable belief to receive protection under opposition clause of Title VII). In short, plaintiff has failed to show that there are any genuine issues of material fact regarding either his disparate treatment claim or his retaliation claim.

ORDER

IT IS ORDERED that plaintiff Michael J. Olsen's motion to alter or amend the judgment is DENIED.

Entered this 26th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge