IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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STANLEY YOUNG,

Plaintiff,

v.

NAKOMA GOLF CLUB and
JAMES GRASSE,

Defendants.

ORDER

05-C-174-C

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Plaintiff Stanley Young was employed at defendant Nakoma Golf Club from August 2002 to April 2003. In this civil action for monetary relief, plaintiff alleges that the golf club and defendant James Grasse, one of its employees, terminated his employment because of his race in violation of 42 U.S.C. § 1981. Plaintiff seeks punitive and compensatory damages for his allegedly discriminatory discharge. Jurisdiction is present. 28 U.S.C. § 1331. This case is presently before the court on defendants' motion to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). For the reasons stated below, defendants' motion will be denied.

In support of their motion, defendants filed a brief in which they argue that plaintiff

entered into an oral agreement to settle his discrimination claim shortly before the parties were scheduled to appear for a hearing before the Madison Equal Opportunity Commission. They contend that this agreement constitutes an accord and satisfaction that bars plaintiff's claim. Defendants attached a number of documents to their brief, two of which purport to be letters from the lawyers representing plaintiff and defendants concerning the existence or non-existence of an agreement to settle plaintiff's discrimination claim. Plaintiff opposes the motion on two grounds: (1) defendants' introduction of matters outside the pleadings requires the court to convert the motion to dismiss into a motion for summary judgment under Fed. R. Civ. P. 12(b); and (2) any settlement agreement entered into by plaintiff is unenforceable.

Plaintiff's first argument would be on point if defendants had bothered to authenticate any of the documents attached to its brief. However, defendants failed to do this, either by attaching the documents to an affidavit or introducing other evidence indicating that the documents are what they purport to be. Fed. R. Evid. 901(a). Therefore, I will not consider them and will not convert defendants' motion to dismiss into a motion for summary judgment. Instead, I will deny defendants' motion to dismiss because they have not shown that they are entitled to dismissal of plaintiff's claim. The allegations in plaintiff's complaint are sufficient to state a claim under § 1981, which prohibits discrimination on the basis of race in the making and enforcing of contracts, including

employment contracts. Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975). Even if I assumed that a valid oral agreement to settle plaintiff's discrimination claim existed, it may be the case that the agreement merely constitutes an affirmative defense to liability. Fed. R. Civ. P. 8(c) (accord and satisfaction is affirmative defense). If that were the case, dismissal under Rule 12(b)(6) would be inappropriate. But I need not reach that question. Plaintiff's complaint states a claim and defendants' argument for dismissal is unpersuasive. Therefore, defendants' motion to dismiss is DENIED.

Entered this 19th day of September, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge