

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

KENNETH W. PETERS and
LOU L. XIONG,

Plaintiffs,

MEMORANDUM and ORDER

v.

06-C-511-S

HAYWARD MOTEL COMPANY, INC.
d/b/a CEDAR INN MOTEL,

Defendant.

Plaintiffs Kenneth W. Peters and Lou L. Xiong commenced this action against defendant Hayward Motel Company under 42 U.S.C. § 1981 and 42 U.S.C. §3604. Plaintiffs allege that an employee of the defendant refused to rent them a hotel room because of their race.

On January 10, 2007 defendant filed a motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendant's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Lou Xiong and Kenneth Peters are adult residents of Wisconsin. Plaintiff Xiong is Hmong and plaintiff Kenneth Peters is Hispanic. Defendant Hayward Motel Company, Inc., d/b/a Cedar Inn Motel, is owned in part by Steven Lauer.

On September 15, 2005 plaintiffs were in Hayward, Wisconsin in connection with the Chai Vang murder trial. They needed hotel

accommodations for September 16, 2005 because the hotel at which they were staying was full. There were many visitors in Hayward, Wisconsin because of the murder trial and other events.

On September 15, 2005 at about 8:45 p.m. plaintiffs went to the Cedar Inn Motel to rent a room for the night of September 16, 2005. Pat Rein, the Caucasian clerk, appeared and stood two to three feet behind the counter. Plaintiffs asked Rein whether there was a room available for the night of the 16th. Rein answered, "Nope." Plaintiffs asked Rein if he could suggest another hotel that might have available rooms. Rein said to try Rice Lake or Ashland. Plaintiffs left the hotel about 8:48 p.m.

Plaintiff Peters then called Amy Fuelleman who was a paralegal at the Department of Justice and asked her to call the Cedar Inn to ask if there was a room available. Amy Fuelleman called the Cedar Inn and spoke to Rein. She did not identify her race but told him she was from the Department of Justice. She and another co-worker had already reserved rooms at the Cedar Inn for the 16th. Rein recognized Fuelleman's name because he had previously spoken to her. Fuelleman asked Rein if she could reserve two rooms for the 16th. He said he only had one and Fuelleman reserved it.

When Fuelleman called back on the 16th to cancel some rooms she told him he had turned away two Department of Justice agents the night before. Rein asserted that he had "made a mistake and if I could have run after them, I would have."

The Cedar Inn motel had the practice of saving the last room in case of either overbooking or in case a party with a pre-existing reservation needed to add to their reservation.

Mr. Rein died on October 11, 2005 at the Cedar Inn Motel.

MEMORANDUM

Defendant moves for summary judgment on plaintiffs' claims. Plaintiffs agree that their claim under 42 U.S.C. 3604 should be dismissed but argue that their race discrimination claim should not be dismissed.

To prevail on their race discrimination claim plaintiffs must show that they are members of a racial minority; the defendant had an intent to discriminate on the basis of race and that the discrimination concerned the making and enforcing of a contract. In the absence of direct evidence of discrimination plaintiffs may proceed under the indirect burden-shifting method of proving discrimination. See Oates v. Discovery Zone, 116 F. 3d 1161, 1171 (7th Cir. 1997).

The burden shifting method requires a plaintiff to initially establish a prima facie case of racial discrimination. The burden then shifts to the defendant to articulate a legitimate non-discriminatory reason for its actions. Should defendant meet this burden plaintiff must then show that the defendant's articulated

reasons were a pretext for discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

In the context of a retail transaction a plaintiff may prove a prima facie case of race discrimination by showing that he received services in a markedly hostile manner and/or that the defendant deprived plaintiff of services while persons outside their protected class were not deprived of services. O'Neill v. Gourmet Systems of Minnesota, Inc., 213 F. Supp. 2d 1013, 1018 (W.D. Wis. 2002). Factors relevant to addressing whether services were received in a markedly hostile manner are whether the conduct is so profoundly contrary to the manifest financial interests of the merchant, so far outside widely-accepted business norms, and so arbitrary on its face that the conduct supports a rational inference of discrimination. Id., at 1020.

In this case it is undisputed that when the plaintiffs entered the Cedar Inn Motel and requested a room for the night of the 16th Rein told them that there was not a room available for the night. He did not say anything derogatory or inappropriate to the plaintiff in the three minutes they were in the hotel.

Plaintiffs argue that persons outside their protected class were provided services when Rein rented the room to Amy Fuellman. There is no evidence that Hein knew Fuelleman's race. He knew, however, that he had previously rented her more than one room. According to the policy of the hotel to save the last room should

a party with a pre-existing reservation need to add to their reservation, he rented Fuelleman the room he had saved. The Cedar Inn Motel's policy of saving a room for such an occasion is not contrary to the financial interest of the hotel which wanted to please its customers who rented more than one room or to prevent overbooking.

The undisputed facts do not support an inference that Rein's response to the plaintiffs' request for a room was racially discriminatory. Plaintiffs have not demonstrated a prima facie case of discrimination.

Had plaintiffs shown a prima facie case, defendants would have the burden to articulate the legitimate business reason for the denial. The denial of the room to the plaintiffs was pursuant to the policy of the hotel to save a room in case of either overbooking or should a party with a pre-existing reservation need to add to the reservation.

Plaintiffs have submitted no evidence that this reason was a pretext for race discrimination. Any suggestion by plaintiffs that defendant Rein acted with a particular mental state is merely speculative and cannot be directly proven because defendant Rein died shortly after the incident.

Defendant is entitled to judgment in its favor as a matter of law on plaintiffs' race discrimination claim. Accordingly, its motion for summary judgment will be granted.

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ORDER

IT IS ORDERED that defendant's motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant against plaintiffs dismissing their complaint and all claims contained therein with prejudice and costs.

Entered this 22nd day of February, 2007.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge