

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STEVEN GREGORY JOHNSON, :
 :
 Plaintiff, :
 :
 v. :
 :
ERIC CAMPBELL, et al., :
 :
 Defendants. :

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MEMORANDUM OPINION

March 30, 2001
Wilmington, Delaware.

Farnan, District Judge.

Presently before the Court is a Motion for Summary Judgment (D.I. 55) filed by Defendants Ocean Breeze, LLC and Christine Price ("Defendants"). For the reasons stated below, the Court will deny Defendants' Motion for Summary Judgment (D.I. 55).

BACKGROUND

Plaintiff Steven Gregory Johnson ("Plaintiff") filed this action on May 22, 2000, seeking compensatory and punitive damages against: Defendant Ocean Breeze, LLC, which operates a motel in Dewey Beach, Delaware, known as Sea Esta III; against Christine Price, an employee and agent of Ocean Breeze, LLC (collectively "the Ocean Breeze Defendants"); against the Township of Dewey Beach, Delaware; and against a police officer employed by Dewey Beach, Erik Campbell (collectively "the Dewey Beach Defendants").

Claims against the Ocean Breeze Defendants are premised upon 42 U.S.C. § 1981 and § 2000a and assert that Ocean Breeze Defendants impaired Plaintiff's ability to enjoy the benefits of a contractual relationship between Plaintiff and the motel. Plaintiff also asserts a state law defamation claim against Defendant Price.

Plaintiff, who is a 43 year old black male, has been employed as a teacher and student advisor at William Penn High

School since 1995. From 1995 until this year, Plaintiff was the Head Coach of the William Penn Boys Varsity Basketball Program. (D.I. 65, B-19).

The incident that is the subject matter of this lawsuit took place over the Christmas/New Year holiday in 1999. The William Penn Basketball team was a participant in the annual Slam Dunk to the Beach Tournament in Dewey Beach, Delaware. William Penn was scheduled to play on December 28 and December 30, 1999. (D.I. 65, B-21). Arrangements were made by the Tournament's sponsors to have the William Penn team stay at the Sea Esta III Motel in Dewey Beach. (D.I. 65, B-20). The motel is owned and operated by Defendant Ocean Breeze, LLC. (D.I. 57, Exh. B).

The team arrived at the Sea Esta III Motel on the evening of December 27th and checked into the motel. (D.I. 65, B-23). The team played a game on December 28th and returned home to the Wilmington area after the game. Plaintiff gave the motel their travel arrangements and schedule. (D.I. 65, B-24-26). The team returned on the evening of December 29, 1999.

After giving the team some brief instructions, Plaintiff then walked to a gas station for a cup of coffee and returned to the motel office lobby. (D.I. 65, B-27-30, B-46-48). Defendant Christine Price ("Price") was working as the desk clerk at the motel that night. (D.I. 57, Exh. D, at 14).

Price is a retired State Police Officer. (D.I. 65, B-112). Plaintiff indicated to Price that he was a motel guest. (D.I. 65, B-122, 124-125). Defendants contend that Plaintiff did not identify himself as a motel guest. (D.I. 57, Exh. I, at 49). There was a brief exchange of pleasantries and both Plaintiff and Defendant, for a short time, watched a television show. Although Plaintiff spoke sparingly, Price acknowledged that Plaintiff was polite and courteous. (D.I. 65, B-124-125). After finishing his coffee, Plaintiff picked up one of the free newspapers that was in the office lobby and left the office.

According to Plaintiff, he did not want to go up to his room yet, so he went and sat in the team van to read the newspaper. (D.I. 65, B-31-32, B-60-63). After a few minutes, Plaintiff was joined in the school van by Assistant Coach Abblitt and they discussed team related matters. (D.I. 65, B-73-76).

Just after Plaintiff left, Price telephoned her husband and asked him to call the Dewey Beach Police Department and request that Sergeant Berry walk around the Sea Esta III Motel premises. (D.I. 57, Exh. E, at 42). Price claims that she did that because Plaintiff's behavior made her nervous. (D.I. 65, B-127, 131).

Earlier in 1999, Price had been robbed while working the

desk at the Sea Esta III Motel. (D.I. 57, Exh. E, at 36). In this robbery, a man entered the office, engaged Price in a short conversation then left the office at which time another man entered, the first man returned and the two robbed her. (D.I. 57, Exh. E, at 37-39).

After the call from Price's husband, Sgt. George Berry and Defendant Campbell of the Dewey Beach Police responded to the suspicious person complaint. Price repeated to Sgt. Berry what she had told her husband. Sgt. Berry told Officer Campbell why Price said she thought Plaintiff was suspicious. (D.I. 65, B-98, B-132, 133). Price did not tell the officers that Plaintiff was a motel guest and Officer Campbell concluded that he was not a motel guest. (D.I. 65, B-89-92, 99). Due to Price's statements to the police, Officer Campbell considered Plaintiff to be a trespasser on the motel's grounds. (D.I. 65, B-109-110).

Sgt. Berry and Officer Campbell then went looking for the person Price described. Officer Campbell saw Plaintiff sitting in the school van and approached the van. Campbell told Plaintiff that he was being detained and demanded identification. (D.I. 65, B-100-101). Plaintiff initially disputed Officer Campbell's right to demand identification and asked why he was being questioned. Eventually, Officer Campbell told Plaintiff that Price had reported

"suspiciousness" about Plaintiff. (D.I. 65, B-103).

During this exchange, Mr. Abblitt, who is white, left the passenger side of the van and approached Officer Campbell. Mr. Abblitt told Officer Campbell that they were basketball coaches registered at the motel. According to Plaintiff, Officer Campbell completely ignored Abblitt and would not speak to him. (D.I. 65, B-44, B-80-83).

Plaintiff gave Officer Campbell his Delaware driver's license and the officer attempted to make some verification of the license over his radio. At this point, Plaintiff used profanity toward Officer Campbell. Officer Campbell then placed Plaintiff under arrest for disorderly conduct in using profane language in public. (D.I. 65, B-42-43).

At some point after Officer Campbell approached the school van, a number of the William Penn team members came out from their rooms and witnessed much of the incident. Team members saw their coach arrested, handcuffed and led to the police station. (D.I. 65, B-53, 84-85). Though told by team members, whom Price knew were guests, that their coach had been arrested, Price did not contact the Dewey Beach Police to inform them that Plaintiff was a motel guest. (D.I. 65, B-138).

Plaintiff was taken to the Dewey Beach Police Station across the street, but he was not charged with any offense and

was released in less than an hour by Sgt. Berry. (D.I. 65, B-93-94).

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment may be granted if the Court determines "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). In making this determination, "courts are to resolve any doubts as to the existence of genuine issues of fact against the moving parties.'" Hollinger v. Wagner Mining Equipment Co., 667 F.2d 402, 405 (3d Cir. 1981) (citations omitted). Furthermore, any reasonable inferences drawn from the underlying facts must be viewed in the light most favorable to the non-moving party. Spain v. Gallegos, 26 F.3d 439, 446 (3d Cir. 1994) (citing Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1230 (3d Cir. 1993)). Moreover, the Court of Appeals for the Third Circuit has instructed that the summary judgment standard is to be applied in an even more stringent fashion where the movant bears the burden of proof on the issue being considered. National State Bank v. Federal Reserve Bank, 979 F.2d 1579, 1582 (3d Cir. 1992).

DISCUSSION

I. Plaintiff's Claim Under 42 U.S.C. § 1981.

Section 1981 claims are analyzed under the burden-shifting

framework developed in Title VII cases including McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973), and St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993). Accordingly, Plaintiff must first establish a prima facie case of discrimination by demonstrating that : (1) Plaintiff is a member of a racial minority; (2) Defendants intended to discriminate against Plaintiff on the basis of race; and (3) the discrimination concerned one or more of the activities enumerated in Section 1981. Lewis v. J.C. Penney Co., 948 F.Supp. 367, 371 (D. Del. 1996). Upon a prima facie showing by Plaintiff, the burden shifts to Defendants to assert a "legitimate, nondiscriminatory" reason for their actions, which Plaintiff may rebut with evidence of pretext. See McDonnell Douglas, 411 U.S. at 802.

In support of their Motion for Summary Judgment, Defendants contend that Plaintiff fails to establish his prima facie case. Defendants concede that Plaintiff is a member of a racial minority. Defendants, however, contend that Plaintiff fails to show: (1) an intent to discriminate on the basis of race and (2) that Plaintiff suffered discrimination concerning one of the activities enumerated in Section 1981.

A. Intent to Discriminate

Defendants assert that Plaintiff has alleged no specific facts which suggest an intent to discriminate on the basis of race.

Upon viewing the evidence in a light most favorable to Plaintiff, the Court concludes that Plaintiff has offered sufficient evidence to support an inference of intentional discrimination on the part of Defendants. There is evidence in the record that Defendant Price caused the Dewey Beach Police to investigate Plaintiff. The description of Plaintiff given to the police by Price focused partly on the fact that Plaintiff is a black male. Thus, by Defendant Price's own description, Plaintiff's race played a part in her decision to have him investigated. Thus, the Court concludes that Plaintiff has made a prima facie showing of intentional discrimination.

B. Whether the Discrimination Concerned an Activity Enumerated in Section 1981.

Defendants also contend that Plaintiff has not established that the discrimination concerned one or more of the activities enumerated in Section 1981.

Section 1981 prohibits race-based discrimination in the making and enforcement of contracts. 42 U.S.C. § 1981(a). Section 1981, as amended by the Civil Rights Act of 1991, provides that:

[A]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Id. The coverage of the statute "includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b). These rights are protected from encroachment by both private and state actors. See 42 U.S.C. § 1981(c).

For purposes of this motion, Defendants do not dispute the allegation that Plaintiff had a contractual relationship with Defendant Ocean Breeze, LLC, in that Ocean Breeze, LLC did agree to provide Sea Esta III motel rooms to participants in the Slam Dunk to the Beach Tournament, i.e., Plaintiff was a third-party beneficiary to the contract between Defendant Ocean Breeze, LLC and the organizers of the Slam Dunk to the Beach Tournament. Instead, Defendants contend that Plaintiff's contractual rights were not adversely affected by Defendants.

In this case, Plaintiff and his team were actually guests of the motel and used the rooms on the night of December 27, 1999. They then returned to their homes in New Castle County

where they spent the night of December 28, 1999. On December 29, 1999, they returned to the same motel rooms. The contractual relationship did not change in the interim. Thus, the Court concludes that Plaintiff was entitled to enjoy the benefits of the contractual relationship between Ocean Breeze, LLC and the organizers of the basketball tournament. There is evidence in the record that Plaintiff's benefits under this contract were interfered with when he was stopped, investigated and arrested by police. It is undisputed that Defendant Price caused the Dewey Beach Police to investigate Plaintiff. Upon viewing the evidence in a light most favorable to Plaintiff, the Court finds that the discrimination concerned an activity enumerated in Section 1981, namely, the making and enforcement of a contract. Therefore, the Court concludes that Plaintiff has established a prima facie case under Section 1981.

Once Plaintiff has established a prima facie case, the burden shifts to Defendants "to articulate some legitimate nondiscriminatory reason" for their actions. McDonnell Douglas, 411 U.S. at 802. If Defendant carries this burden, the presumption of discrimination drops from the case, and Plaintiff must "cast sufficient doubt" upon the proffered reasons with evidence of pretext. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1072 (3d Cir. 1996).

Although Defendants' Memorandum of Law in Support of their Motion for Summary Judgment (D.I. 56) does not follow the burden-shifting framework, it appears to the Court that Defendants have cited "legitimate" reasons for their actions. Defendants contend that the reason the police were called in was due to Plaintiff's behavior in the motel lobby, not his color or his race. (D.I. 57, Exh. E, at 26, 28, 33, 36-37, 42). Plaintiff has countered with testimony that his behavior provided no justification for calling in the police. (D.I. 65, B-66-67). Thus, Plaintiff has offered evidence that Defendants' legitimate reasons are merely a pretext. Courts have concluded that "[t]he ultimate determination of 'whether there was intentional discrimination against a protected class is considered a question of fact.'" Hampton v. Dillard Department Stores, Inc., 18 F.Supp. 2d 1256, 1265 (D. Kansas 1998) (quoting EEOC v. Flasher, 986 F/2d 1312, 1317 (10th Cir. 1992)). Upon viewing the viewing the evidence in a light most favorable to Plaintiff, the Court concludes that a genuine issue of material facts exists as to whether Defendants intended to discriminate against Plaintiff on the basis of race in violation of Section 1981. Therefore, Defendants' Motion for Summary Judgment on Plaintiff's Section 1981 claim will be denied.

II. Plaintiff's Claim Under 42 U.S.C. § 2000a.

Defendants move for summary judgment on Plaintiff's claim under 42 U.S.C. § 2000a. Plaintiff concedes, however, that after discovery, it appears that Plaintiff does not have a claim for injunctive relief, which is the sole remedy under Section 2000a. Therefore, Defendants' Motion for Summary Judgment on Plaintiff's Section 2000a claim will be denied as moot.

III. Plaintiff's Claim for Defamation.

Defendant Price moves for summary judgment on Plaintiff's claim for defamation.

Under Delaware law, "[d]efamation consists of the twin torts of libel and slander; in the shortest terms, libel is written defamation, and slander is oral defamation." Spence v. Funk, 396 A.2d 967, 970 (Del. 1978). To establish a claim for slander, a plaintiff must prove: (1) a defamatory statement of fact that is false; (2) publication to a third party; and (3) special damages except in the case of slander per se. See id. There are four categories of defamation, commonly called slander per se, which are actionable without proof of special damages. Id. In broad terms, these are statements which: (1) malign one in a trade, business or profession; (2) impute a crime; (3) imply that one has a loathsome disease; or (4) impute unchastity to a woman. Id.

Plaintiff asserts that Defendant Price made false

statements that imputed a crime to him. Plaintiff offers evidence that Defendant Price made statements that Plaintiff was a trespasser on the motel's property and that Plaintiff was acting in a suspicious manner. (D.I. 65, B-96, 97, 101, 109). Price did not tell the officers that Plaintiff was a motel guest and Officer Campbell concluded that he was not a motel guest. (D.I. 65, B-89-92, 99). Defendant Campbell understood Defendant Price's statements as indicating Plaintiff committed the crime of trespass. (D.I. 65, at B-109-110). According to the Restatement (Second) of Torts, "[i]t is not necessary that the charge be made in technical language. It is enough that the language used imputes to the other a criminal offense." Restatement (Second) of Torts, § 571, comment (c). Defendant Price contends that her statements were truthful and that she merely told her husband and police that Plaintiff's behavior was making her nervous. (D.I. 57, Exh. E, at 34-35, 44).

Viewing the evidence in a light most favorable to Plaintiff, the Court concludes that disputed issues of material fact exist as to whether the statements made by Defendant Price imputed a crime to Plaintiff, i.e., whether those statements are actionable as slander per se. Therefore, Defendants' Motion for Summary Judgment on Plaintiff's claim for defamation will be denied.

CONCLUSION

For the reasons discussed, Defendants' Motion for Summary Judgment (D.I. 55) will be denied.

An appropriate Order will be entered.