SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

VLADIMIR SHEKOYAN,	)	
	)	
Plaintiff,	)	
	)	**Civil Action No. 2004 CA 002980 B**
v.	)	**Calendar 4 – Civil 1**
	)	**Judge Herbert B. Dixon, Jr.**
SIBLEY INTERNATIONAL CORP.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter is before the court on plaintiff and defendant's motions for summary judgment. Upon consideration of the motions, oppositions, replies, and the entire record herein, plaintiff's motion shall be denied and defendant's motion shall be granted.

BACKGROUND

Plaintiff Vladimir Shekoyan is a naturalized American citizen, born in Armenia. Defendant Sibley International Corp. (Sibley) is an American corporation, headquartered in Washington, D.C. Sibley is a consulting company that assists foreign governments in implementing accounting reform through funding from the United States Agency for International Development (USAID). Plaintiff is a former employee of defendant.

In September 1997, USAID awarded Sibley the Task Order[1] (1997 Task Order) for the Republic of Georgia Enterprise Accounting Reform (GEAR) Project. On January 26, 1998, plaintiff and defendant entered into an employment contract that appointed plaintiff to work on the GEAR Project in the Republic of Georgia. Plaintiff's offer of

[1] A Task Order is a contract document that provides project-specific information including background information, general and specific objectives, project tasks, performance benchmarks, positions available, and reporting requirements.

employment letter stated that the project would be for twenty-one months from approximately January 26, 1998 to October 31, 1999.

In June 1999, Jack Reynolds became plaintiff's supervisor. Plaintiff and Reynolds had a poor working relationship. Plaintiff alleges national origin discrimination by Reynolds in this action.[2] Plaintiff contends that because of this discrimination, he was ultimately expelled from the job site in the Republic of Georgia on October 14 or 15, 1999. Thereafter, a letter dated October 20, 1999, from defendant to plaintiff, noted that plaintiff's employment terminated with Sibley on October 31, 1999. Defendant paid plaintiff his full contract compensation in connection with the 1997 Task Order through October 31, 1999. In November 1999, USAID awarded the defendant another Task Order (1999 Task Order) for the GEAR project, under which plaintiff was not hired to work.

On October 20, 2000, plaintiff instituted a lawsuit against defendant in the United States District Court for the District of Columbia. In that litigation, plaintiff alleged violations of Title VII of the Civil Rights Act of 1964 (national origin discrimination) and the False Claims Act. Also, plaintiff alleged various state law claims, including, national origin discrimination in violation of the D.C. Human Rights Act, defamation, intentional infliction of emotional distress, and breach of contract. Subsequently, the district court dismissed the Title VII and False Claims Act claims. Additionally, the district court dismissed plaintiff's state law claims without prejudice, with leave to file the state law

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[2] Plaintiff alleges that "Reynolds made derogatory and racist comments about Georgian people, as well as other *"Soviet" people*, stating that they were *"unintelligent"* and *knew nothing more than "stealing assistance money."* Plaintiff alleges further statements by Reynolds that, in Reynolds' native State of Texas, *"all these Blacks and other immigrants know their place,"* and *"we know how to treat them and how much to expect from these people."*

claims in Superior Court within 30 days. Plaintiff appealed the decision of the district court to the United States Court of Appeals for the District of Columbia Circuit.

On April 16, 2004, plaintiff filed the underlying action in this court for violation of the D.C. Human Rights Act (national origin discrimination), breach of contract, defamation, and intentional infliction of emotional distress. This litigation was stayed pending plaintiff's appeal of the district court ruling to the United States Court of Appeals for the District of Columbia Circuit. Thereafter, the United States Court of Appeals affirmed the ruling of the district court. As stated, this matter is before the court on the parties' cross-motions for summary judgment.

STANDARD OF REVIEW

Superior Court Civil Rule 56 governs the standard for summary judgment. Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Taylor v. District of Columbia*, 776 A.2d 1208, 1213 (D.C. 2001) (quoting *Turner v. District of Columbia*, 532 A.2d 662, 666 (D.C. 1987); *see also* Super Ct. Civ. R. 56 (c)). The moving party has the burden of proving that no genuine issue of material fact is in dispute. *Grant v. May Dep't Stores, Co.* 786 A.2d 580, 583 (D.C. 2001). "If the moving party does not meet its initial burden, summary judgment must be denied even where the opponent comes forth with nothing." *Brown v. GMAC*, 490 A.2d 1125, 1126 (D.C. 1985) (quoting *Burt v. First Am. Bank*, 490 A.2d 182, 185 (D.C. 1985)).

Summary judgment is an exceptional remedy that entitles the moving party to judgment as a matter of law only when no material fact is in dispute. *Murphy v. Army*

Distaff Found., Inc., 458 A.2d 61, 62 (D.C. 1983). Summary judgment should be granted when, considering all reasonable inferences in a light most favorable to the opposing party, no reasonable juror could find for the opposing party under the applicable burden of proof. *Sledd v. Washington Metro. Area Transit Auth.*, 439 A.2d 464, 468 (D.C. 1981).

In order to survive a motion for summary judgment, the non-moving party must present more than mere conclusory allegations or denials of her adverse party's pleadings. *Chang v. Inst. for Public-Private P'ships, Inc.*, 846 A.2d 318, 323-24 (D.C. 2004) (citations omitted); *see also* Super. Ct. Civ. R. 56 (e). In order to make the evidentiary showing that will permit the non-moving party to advance to trial, the party must make out a *prima facie* case in support of its claim. *Smith v. Washington Metro. Area Transit Auth.*, 631 A.2d 387, 390 (D.C. 1993) (citing *Nader v. De Toledano*, 408 A.2d 31, 48 (D.C. 1979)).

DISCUSSION

I. D.C. Human Rights Act Claims

Plaintiff alleges violations of the District of Columbia Human Rights Act (DCHRA). Plaintiff argues that he suffered national origin discrimination, which manifested itself in the form of a hostile work environment, and resulted in a termination of plaintiff from employment with defendant. Defendant argues, *inter alia*, that plaintiff's DCHRA claims concern conduct purported to have taken place in the Republic of Georgia that is not subject to the DCHRA, and, moreover, that plaintiff was not terminated. For the reasons stated below, the court shall deny plaintiff's motion for

summary judgment and grant defendant's motion for summary judgment concerning plaintiff's discrimination claim.[3]

A. Hostile Work Environment Based on National Origin

Plaintiff argues that his supervisor Jack Reynolds created a hostile work environment during plaintiff's employment on the GEAR Project. Plaintiff has identified certain remarks and actions from Reynolds to support this allegation.[4] Defendant denies these accusations. Defendant also contends that even if the allegations are true, they do not meet the standard for hostile work environment, and further argues that the conditions alleged are not severe and pervasive. Defendant argues that the court is without jurisdiction to consider this claim. In *Matthews v. Automated Business Systems and Service, Inc.*, 558 A.2d 1175 (D.C. 1989), the court determined, in considering this court's jurisdiction to consider a claim under the DCHRA, that the critical factual issue is whether the conduct took place in the District of Columbia. *Id.* at 1180. Therefore, to bring a claim under the DCHRA the alleged conduct must have occurred in the District of Columbia. Accordingly, plaintiff's claim must fail because the event alleged took place in the Republic of Georgia. In that plaintiff's claim is not cognizable under the DCHRA, defendant's motion for summary judgment shall be granted, and plaintiff's motion for summary judgment shall be denied.

[3] Although the court concludes that plaintiff's claims are not cognizable under the DCHRA, this member of the court will discuss certain aspects of the merits of plaintiff's claims.

[4] E.g., supra note 2.

B. Termination Based on National Origin

Plaintiff also contends that his position was terminated because of national origin discrimination in violation of the DCHRA.[5] In order to establish a *prima facie* case for discriminatory termination, the plaintiff must demonstrate that 1) he belongs to a protected class, 2) he was qualified for the job position, 3) he was terminated from the job position despite his qualifications, and 4) his termination was based on characteristics that put him in the protected class. *Blackmun v. Visiting Nurses Ass'n*, 694 A.2d 865, 868-69 (D.C. 1997).

Plaintiff submits that he is a member of a protected class based on his national origin. Plaintiff argues that he was qualified for the position he would have allegedly acquired under the 1999 Task Order. He contends that his supervisor terminated him around October 14 or 15, and, finally, that his termination was based on his national origin. Furthermore, plaintiff asserts that defendant Sibley fired him by letter dated October 20, 1999, and argues that the defendant facilitated the termination based on national origin discrimination by accepting Reynolds' termination of plaintiff without consulting the plaintiff.

Defendant argues that plaintiff does not satisfy the second, third and fourth prongs for a *prima facie* case of termination based on discrimination. Defendant contends that, in addition to a decline in plaintiff's work performance, plaintiff's position under the 1997 Task Order did not exist under the 1999 Task Order, and the positions in the 1999 Task Order required persons with different experience than plaintiff. Defendant

[5] There is no merit to plaintiff's argument that he was terminated in the District of Columbia; plaintiff's employment contract required him to work in the Republic of Georgia, and the actions on which his claims are based took place in the Republic of Georgia.

maintains its argument that plaintiff was never terminated, and that plaintiff's contract expired. Lastly, defendant denies allegations of national origin discrimination.

It is clear that the plaintiff's contract was for twenty-one months beginning January 26, 1998; the activity that plaintiff was hired for had an anticipated end date of October 31, 1999. It is undisputed that plaintiff was compensated until that time. A letter dated October 20, 1999 from D. David Bose of Sibley to plaintiff Shekoyan states that per a telephone conversation with plaintiff on October 1, 1999, plaintiff's employment would expire at the completion of his contract on October 31, 1999. This fact is uncontroverted. Plaintiff's employment with defendant ended on October 31, 1999 as set forth in his contract. Plaintiff suffered no termination, and his motion for summary judgment on this aspect of his claim shall be denied.

II. Breach of Contract Claim

Plaintiff alleges that the defendant breached three different contracts concerning plaintiff: violation of Executive Order 11,246, failure to renew employment contract, and breach of oral contract to compensate for training and editing books. Upon review of the record herein, the court shall deny plaintiff's motion for summary judgment and grant defendant's motion for summary judgment concerning each theory.

A. Executive Order 11,246

Plaintiff argues that, pursuant to Executive Order 11, 246, his employment contract specifically incorporated the federal regulations, policies and procedures applicable to defendant's contract with USAID on the GEAR Project; therefore, any violation of these is a direct violation of Sibley's contract with plaintiff. Plaintiff contends that the defendant's treatment toward him was in direct violation of Executive

Order 11,246, which forbids discrimination. The court notes that plaintiff made the identical claim in his district court litigation. In *Shekoyan v. Sibley International Corp.*, 217 F.Supp.2d 59 (D.D.C. 2002), the district court dismissed plaintiff's discrimination claim, holding that "it is clear that Executive Order 11,246 does not provide for a private cause of action . . . ." *Id.* at 70. Accordingly, this claim is barred in this court under the doctrine *res judicata.*[6] *See Scoville Street Corp. v. District TLC Trust*, 857 A.2d 1071, 1076 (D.C. 2004).

B. Renewal of Employment Contract

Plaintiff argues that defendant's failure to renew plaintiff's employment also was a breach of contract. Plaintiff relies on alleged oral representations by defendant's president to plaintiff's wife to support this claim. Plaintiff contends that the four corners of the employment offer letter do not constitute the full contract. Defendant argues that the contract's language is clear and unambiguous, and that defendant did not breach the contract when it did not renew plaintiff's employment.

The relevant portion of the offer letter or employment contract reads as follows:

> The overall scope of work and your responsibilities are outlined in the Task Order. Which is also included with this letter. It is anticipated that this activity will be for a period of twenty-one months beginning approximately January 26, 1998 and ending October 31, 1999. While this project is for a two-year period, we believe it will be extended for an additional period of times. Further, we are constantly developing new projects of this kind and hope that this will be the beginning of a longer association with you.

The court agrees with defendant's position. Any reasonable reading of the subject contract language demonstrates that defendant's employment was for a single project

[6] Even if this is not an issue of *res judicata*, this member of the court independently concludes that Executive Order 11, 246 does not provide for a private cause of action.

with duties outlined in an attached Task Order. If no project followed the single project referenced in the original contract, then plaintiff's employment would end pursuant to contractual terms. Neither plaintiff's nor defendant's belief of the future provides plaintiff an automatic renewal of the contract terms. Defendant's motion for summary judgment concerning plaintiff's claim of failure to renew employment contract shall be granted.

C. *Oral Contract for Compensation*

Plaintiff contends that defendant breached an oral contract to compensate plaintiff for translating and editing textbooks. The District of Columbia recognizes oral contracts, barring any statute of fraud limitations, if the parties agree to all material terms and intend to be bound by their oral agreement. *Jack Baker, Inc. v. Office Space Dev. Corp.*, 664 A.2d 1236, 1238 (D.C. 1995). Plaintiff proffers several e-mail discussions concerning trainings and book translations. Defendant does not contest the referenced e-mail messages in its written submissions; however, defendant argues that there was never a clear understanding between the parties. Defendant argues that plaintiff proffers no support regarding the terms of the alleged contract. Upon consideration of the record herein, the court concludes that plaintiff has failed to demonstrate the existence of an oral contract. The evidence proffered by plaintiff discusses the action to be taken for trainings and book translations, but there has been no proffered evidence establishing terms of a contract or any intent to be bound by such terms. Accordingly, defendant's motion for summary judgment on this issue shall be granted.

III. Defamation Claim

Plaintiff brings his claim of defamation based on an e-mail message from defendant's President, Donna Sibley, to USAID Program Managers for the GEAR Project. Plaintiff argues that the e-mail, which stated that plaintiff was terminated for insubordination, amounts to defamation *per se*. Defendant contends that the e-mail message was not defamatory, and that the statement is protected by the common interest privilege. For the reasons stated below, the court concludes that the contested e-mail is protected by the common interest privilege.

The elements of defamation are 1) the defendant made a false and defamatory statement concerning the plaintiff, 2) the defendant published the statement to a third party without privilege, 3) the defendant's publication amounted to at least negligence, and 4) the statement is defamatory as a matter of law or caused special damages. *See Klayman v. Segal*, 783 A.2d 607, 612 n.4 (D.C. 2001). To come within the protection of the common interest privilege, the statement must be made 1) in good faith, 2) by a person with an interest in the statement or who believes that they must report the statement, 3) to an interested third party. *See Millstein v. Henske*, 722 A.2d 850, 856 (D.C. 1999) (citation omitted).

Although the parties fully briefed the issue of whether the e-mail message fulfills the elements of defamation, the court concludes that the e-mail's privilege status is dispositive of this claim. The evidence is uncontroverted that USAID had an interest in knowing that the plaintiff was leaving the project and why, especially because USAID was involved in the hiring of the plaintiff for the project. Furthermore, plaintiff has failed to rebut the defendant's showing that Sibley acted in good faith in making the contested

statement. Defendant simply reported what it believed to be the circumstances surrounding plaintiff's departure from the project.[7] Plaintiff's defamation claim fails because the e-mail message is privileged.

IV. Intentional Infliction of Emotional Distress Claim

The elements of an intentional infliction of emotional distress claim are as follows: 1) extreme and outrageous conduct by defendant that 2) intentionally or recklessly caused 3) severe emotional distress. *Paul v. Howard University*, 754 A.2d 297, 307 (D.C. 2000). Extreme or outrageous conduct is that which is intolerable by society; the intent to cause harm may be inferred from the outrageousness of the conduct; and finally, the conduct must proximately cause the emotional distress. *Sere v. Group Hospitalization, Inc.*, 443 A.2d 33, 37 (D.C. 1982).

Plaintiff proffers his declaration and his wife's declaration as support of his emotional distress claim. Plaintiff argues that his family endured financial difficulty, and that this financial difficulty created a situation in which his then pregnant wife had to work contrary to doctor's orders. Plaintiff contends that as a man unable to sufficiently provide for his family, he suffered severe emotional distress. His wife stated that he suffered tremendously and looked terrible because of this situation.

In this case, plaintiff's proffer of mental anguish and distress does not amount to severe emotional distress. *See Futrell v. Dept. of Labor Fed. Credit Union*, 816 A.2d 793, 808 (D.C. 2003) (citing *Sere*, 443 A.2d at 37 ("the defendant's actions must

[7] Defendant explained plaintiff's departure as follows: "[W]e have removed [plaintiff] Vlad Shekoyan from the GEAR Project earlier than originally expected. This is because Vlad refused to acknowledge Jack [Reynolds] as his supervisor and he refused to do an assigned task. I fully support Jack's decision but I am nonetheless saddened by this situation because Vlad has been a diligent worker and has contributed a lot of energy and skill to the GEAR Project. . . ."

proximately cause the plaintiff emotional upset 'of so acute a nature that harmful physically consequences [are likely] to . . . to result'"). Furthermore, this member of the court concludes that because of the denial of plaintiff's summary judgment motion and the granting of defendant's motion for summary judgment, on claims for discrimination and termination, plaintiff's claim for intentional infliction of emotion distress predicated on those same claims is without merit. *See Futrell*, 816 A.2d at 808.

CONCLUSION

Plaintiff Shekoyan's motion for summary judgment shall be denied. Defendant Sibley's motion for summary judgment shall be granted. An appropriate order in accordance with this Memorandum Opinion is separately and contemporaneously issued this 9th day of January 2006.

Herbert B. Dixon, Jr.