

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ELSA CELESTINE,

Plaintiff,

v.

ST. CROIX FINANCIAL CENTER, INC.

d/b/a TAMARIND REEF HOTEL,

Defendants.

SX-06-CV-658

ACTION FOR DAMAGES

(JURY)

MEMORANDUM OPINION & ORDER

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment ("Motion") and Statement of Undisputed Facts in Support thereof ("Defendant's SOF"), filed June 24, 2014; Plaintiff's Opposition to Defendant's Motion for Summary Judgment ("Opposition") and Response to Defendant's Statement of Undisputed Facts in Support of Summary Judgment and Plaintiff's Counter-Statement of Facts in Opposition to Summary Judgment ("Plaintiff's SOF"), filed July 24, 2014; Defendant's Reply to Plaintiff's Opposition ("Reply"), filed August 20, 2014; and Defendant's Reply to Plaintiff's Counter-Statement of Facts ("Defendant's SOF Reply"), filed August 20, 2014. For the reasons that follow, Defendant's Motion will be granted in part and denied in part.

BACKGROUND

Elsa Celestine ("Plaintiff") began work as a cook for the Tamarind Reef Hotel's ("Hotel") Deep End Restaurant and Bar ("Deep End") in March 1999. Plaintiff's position as a cook also involved prepping for the breakfast buffet. At that time the Hotel was owned by the Hotel Holding Corporation, but in 2003, Defendant St. Croix Financial Center, Inc. ("Defendant") took over ownership.

Plaintiff's employment at Deep End was terminated on January 15, 2005, due to numerous allegations of workplace violations, including lack of cooperation, substandard work, violation of company rules of conduct, and a failure to be a team player. A few days later, Plaintiff filed a Wrongful Discharge Complaint with the Department of Labor, but she withdrew that complaint to file the present action in Superior Court on October 18, 2006. Plaintiff contends that her dismissal was in violation of Virgin Islands Wrongful Discharge Act ("WDA"), V.I. CODE ANN. tit. 24, § 76, as she argues that she was dismissed for an illegitimate reason under the statute. She also seeks punitive damages. Defendant now moves for summary judgment.

DISCUSSION

I. Standard

A movant will prevail on a motion for summary judgment where the record shows no genuine issue of material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008). The Court must determine whether there exists a genuine dispute as to a material fact, the determination of which will affect the outcome of the action under the law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if the evidence is such that a reasonable fact finder could return a verdict for the nonmoving party. *Id.* In analyzing the evidence, the Court must consider the pleadings and full factual record, drawing all justifiable inferences in favor of the nonmoving party, to determine whether the movant has met its burden of showing there is no genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth affirmative evidence

showing that there is a genuine issue for trial, such that the jury could reasonably find for the nonmoving party. *Anderson*, 477 U.S. at 248.

II. Wrongful Discharge Act

There is no dispute between the parties that the WDA applies to both Plaintiff and Defendant. However, the parties do dispute the facts surrounding Plaintiff's termination. Under the WDA, there are nine enumerated lawful grounds for terminating an employee. The statute states that:

- (a) Unless modified by union contract, an employer may dismiss any employee:
 - (1) who engages in a business which conflicts with his duties to his employer or renders him a rival of his employer;
 - (2) whose insolent or offensive conduct toward a customer of the employer injures the employer's business;
 - (3) whose use of intoxicants or controlled substances interferes with the proper discharge of his duties;
 - (4) who wilfully and intentionally disobeys reasonable and lawful rules, orders, and instructions of the employer; provided, however, the employer shall not bar an employee from patronizing the employer's business after the employee's working hours are completed;
 - (5) who performs his work assignments in a negligent manner;
 - (6) whose continuous absences from his place of employment affect the interests of his employer;
 - (7) who is incompetent or inefficient, thereby impairing his usefulness to his employer;
 - (8) who is dishonest; or
 - (9) whose conduct is such that it leads to the refusal, reluctance or inability of other employees to work with him.

Grounds for discharge, 24 V.I.C. § 76. "A presumption exists that an employee has been wrongfully discharged if discharged for any reason other than those listed in Section 76(a)." *Maynard v. Rivera*, 675 F.3d 225, 228 (3d Cir. 2012) (quotation omitted). Although an employer is prohibited from firing an employee for any reason not listed, the WDA covers almost all legitimate reasons for discharge. *Id.* at 229.

III. Summary Judgment cannot be granted on Plaintiff's WDA claim because a genuine issue of material fact exists as to whether Plaintiff was in fact terminated for a legitimate reason

Defendant argues that it had legitimate, statutorily-approved reasons for terminating Plaintiff's employment under Sections (a)(4), (5), and (9) of the WDA.¹ Motion, at 7. Defendant supports this argument by citing three specific alleged incidents in its Statement of Facts:

- (1) On January 7, 2000, Plaintiff was given an Employee Warning Notice where she was cited for lateness, unsatisfactory work quality, failure to follow instructions, and insubordination. The Warning also noted that "she has refused to be a team player." Defendant's Statement of Facts ¶2, Exhibit A-1.
- (2) On January 1, 2001, Plaintiff's supervisor prepared an Employee Disciplinary Report for lack of cooperation/teamwork, failure to follow instructions, and unexcused absence. Defendant's Statement of Facts ¶3; Exhibit A-2 (Employee Disciplinary Report). The Report alleges that Plaintiff requested January 1, 2001 off from work and, though this time off was not granted, Plaintiff did not appear for work that day.
- (3) On January 15, 2005, Plaintiff was cited for lack of cooperation/teamwork, substandard work, violation of company rules of conduct, and refusal to follow direct instructions, which resulted in customer complaints. The cited incidents allegedly occurred between

¹ Both parties apply the *McDonnell Douglas* burden shifting standard for evaluating federal employment discrimination claims, as established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) and as adopted with regard to the WDA in *Rajbahadoorsingh v. Chase Manhattan Bank*, 168 F. Supp. 2d 496, 503-05 (D.V.I. 2001). For reasons stated by the Third Circuit, this Court has "reservations regarding the application of the *McDonnell Douglas* analytical framework to WDA claims." *Maynard v. Rivera*, 675 F.3d 225, 231 (3d Cir. 2012). Instead, the Court will simply apply the plain language of the statute to Plaintiff's claim. The Third Circuit noted that "the Supreme Court of the Virgin Islands has yet to speak on this issue," which is still the case. *Id.* at 230. However, even if the Court were to apply the burden shifting standard from *McDonnell Douglas*, the Court's decision would be the same in light of the wide-ranging factual disputes over the circumstances of Plaintiff's dismissal.

January 12–15, 2005. Defendant’s Statement of Facts ¶6; 1/15/05 Employee Disciplinary Report.

Based on these alleged incidents, Defendant argues that “Plaintiff has not produced any evidence from which this Court could disbelieve Defendant’s legitimate reasons for her termination or find that they were pretextual.” Motion, at 7. The Court disagrees. As discussed below, Plaintiff has provided enough evidence that, when drawing all justifiable inferences in favor of Plaintiff, a reasonable jury could find that Defendant terminated Plaintiff’s employment for illegitimate reasons.

Plaintiff’s Opposition disputes the disciplinary write-ups listed above on several grounds. Opposition, at 15–16. First, Plaintiff argues that the write-ups from 2000 and 2001 occurred under different ownership, therefore, those two incidents should not count towards the three disciplinary notices necessary to support termination under her employer’s employment policy. *Id.* at 15. Second, Plaintiff argues that those two previous write-ups were over four years old, that Plaintiff never received the January 7, 2000, disciplinary report, and that Plaintiff had adequate explanations to excuse the alleged issues and should not have been written up to begin with. *Id.* at 15–16.

Further, Plaintiff disputes the allegations of the January 2005 write-ups, stating that “the January 12–15, 2005 disciplinary notices were false, implausible, inconsistent and contradictory with the facts and are a pretext for Plaintiff’s wrongful discharge.” *Id.* at 16. Plaintiff offers support for this assertion through the January 15, 2005 Employee Disciplinary Report, in which Plaintiff disputed the allegations of that Report in the “employee’s comments” section. Plaintiff’s SOF, Exhibit 17.

Plaintiff also alleges that her manager, Ms. Riley, prepared “two false Employee Disciplinary Reports on Plaintiff all on the same day for various alleged infractions, some backdated several days prior to January 15, 2005, and including a claim that Plaintiff refused to make coffee when Ms. Riley was not even at work.” Plaintiff’s SOF, at ¶6. Plaintiff also offers her own written statement, contradicting many aspects of Defendant’s depiction of the events covered in the January 2005 Notices. *Id.* Exhibit 18. Finally, Plaintiff provides a statement from Plaintiff’s co-worker at the time, Esther Simon, which appears to support, at least in part, Plaintiff’s account of events of January 15, 2005. Plaintiff’s SOF, Exhibit 14.

In analyzing the evidence, the pleadings, and the full factual record, while drawing all justifiable inferences in favor of the nonmoving party, the Court finds that there is a genuine issue of material fact in dispute, namely, whether Plaintiff’s discharge was for a legitimate reason.

IV. Taking Plaintiff’s supported allegations as true, Plaintiff fails to meet her burden to support a claim for punitive damages

Plaintiff brings a claim for punitive damages, alleging that Defendant’s actions were “so outrageous and done with such a reckless disregard for the rights and interests of the Plaintiff as to entitle Plaintiff to an award of punitive damages.” Complaint, ¶ 24. Defendant seeks summary judgment on the issue of punitive damages, arguing that “Plaintiff’s allegations, even if believed, do not as a matter of law, rise to a level of outrageousness to justify an award of punitive damages.” Reply, at 12.

“Plaintiff must meet an extremely high burden of proof to establish entitlement to punitive damages.” *Thomas Hyll Funeral Home, Inc. v. Bradford*, 233 F. Supp. 2d 704, 713 (D.V.I. 2002) (quoting *David v. Pueblo Supermarket of St. Thomas*, 740 F.2d 230, 237 (3d Cir. 1984)). “[T]o be eligible for punitive damages, the plaintiff is required to show that the acts complained of were

outrageous, done with evil motive or reckless indifference to [the plaintiff's] rights.” *Id.* (internal quotations omitted). This “extremely high burden” must be met by a showing of clear and convincing evidence. *Id.* Though the Court finds that Plaintiff meets the minimum burden to survive summary judgment as to her WDA claim, her allegations, and her support for those allegations, fall short of meeting the burden necessary to survive summary judgment as to her claim for punitive damages.

Plaintiff rests her punitive damages claim on her allegations that Defendant’s employee created false, backdated disciplinary charges about Plaintiff, “willfully and outrageously relied upon old supposed disciplinary notices,” allowed a co-employee to “continuously” call Plaintiff lazy, and failed to follow its own disciplinary procedures. Opposition, at 19–24. However, where her claims may have met the lower burden as to a WDA claim facing summary judgment, Plaintiff fails to meet the “extremely high burden of proof” required for a claim of punitive damages.

Further, even if Plaintiff’s claims are taken as true, she fails to show that these actions were “outrageous,” or done with evil motive or reckless indifference to the plaintiff’s rights. Simply calling an action “outrageous” does not make that action sufficiently egregious to support a claim for punitive damages.

An employer relying on written disciplinary notices from a few years ago cannot be deemed “outrageous” conduct, nor can a co-worker calling another co-worker “lazy” be deemed outrageous conduct of the employer. Plaintiff’s argument that Defendant failed to follow its own disciplinary procedures which, if proven at trial, may support a claim for wrongful discharge, does not constitute the type of outrageous conduct necessary to support a punitive damages claim.

Even Plaintiff’s claim that Defendant created “false, back dated disciplinary charges” does not support a claim for punitive damages, as the allegation that the disciplinary charges are “false”

is simply Plaintiff's word against that of Defendant. Even if the events occurred as Plaintiff alleges, there is no evidence that Defendant "outrageously" or with "evil motive" created false charges. Taking all of Plaintiff's allegations as true would only show that Defendant incorrectly relied on the false information of Plaintiff's co-workers or customers, not that Defendant knowingly and with "evil motive" created false charges against Plaintiff.

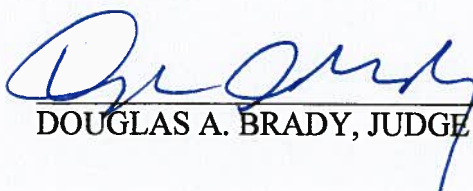
Therefore, taking Plaintiff's supported allegations as true and giving her the benefit of the all reasonable inferences to be drawn from the facts in the record, she has not met her burden such that a reasonable jury could find Defendant's alleged actions were "outrageous, done with evil motive, or reckless indifference to Plaintiff's rights."

In light of the forgoing, it is hereby

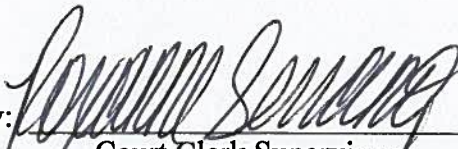
ORDERED that Defendant's Motion for Summary Judgment in regard to Plaintiff's WDA claim is DENIED. It is further

ORDERED that Defendant's Motion for Summary Judgment in regard to Plaintiff's claim of punitive damages is GRANTED, and Plaintiff's claim for punitive damages is dismissed with prejudice.

Dated: August 27, 2014.


DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

8/27/14