IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

SARA BROWN	PLAINTIFF
VS.	1:95CV327-D-D
INTER-CITY FEDERAL BANK FOR SAVINGS	DEFENDANT

CONSOLIDATED WITH

SARA BROWN	PLAINTIFF
VS.	1:95CV361-D-D
INTER-CITY FEDERAL BANK FOR SAVINGS	DEFENDANT

MEMORANDUM OPINION

This cause comes before the court upon the motion of the defendant, Inter-City Federal Bank for Savings ("Inter-City"), for summary judgment against all the plaintiff's claims against it. The plaintiff concedes the defendant's motion in regard to all of her federal claims and her state law claim for breach of the duty of good faith and fair dealing. She contests the motion insofar as it challenges her state law claims of intentional infliction of emotional distress and violation of the defendant's Equal Employment Policy. The court is of the opinion that the defendant is entitled to a judgment as a matter of law on the uncontested federal law claims and the court shall grant the summary judgment in part and remand the remaining state law claims to state court.

FACTUAL BACKGROUND[1]

Inter-City hired Mrs. Brown in 1972 as a bookkeeper and teller at its location in Louisville, Mississippi. She worked with the defendant's manager, Nancy McCool, and eventually began to assist Ms. McCool with the bank's lending activities. In 1985, Inter-City hired Terry Woods as its President. Approximately two (2) years later, Woods promoted the plaintiff to the position of loan officer. Although Woods was responsible for training Mrs. Brown for this position, he was neither very helpful nor accessible to the plaintiff. He avoided the plaintiff and consistently refused to return

[1]In a motion for summary judgment, the facts must be construed in the light most favorable to the non-moving party. Matagorda County v. Russell Law, 19 F.3d 215, 217 (5th Cir. 1994). The court's recitation of the facts in this case reflects this rule.

her phone calls requesting guidance.

In 1993, Inter-City and Woods hired C.M. McAdory to fill the position of Vice President of the bank. Shortly afterwards, the defendant promoted the plaintiff to the bank branch manager position and increased her salary commensurately.[2] Despite the advancement, hard feelings developed between the plaintiff and Woods. Mrs. Brown alleges that on one occasion in May 1995, Woods raged at her in her office and slung a file across her desk. Woods would repeatedly ask her what her age was and when she would retire, and he frequently told her the bank needed "young people."

When the plaintiff missed work due to a diagnosis of breast cancer and subsequent mastectomy, Woods made no effort to alleviate the backlog of the plaintiff's work, allowing it to accumulate during her absence. The defendant also reduced the plaintiff's insurance payments by $100 without offering any justification for such a reduction. Additionally, Joe Suttle, the defendant's Chairman of the Board, constantly made reference to the plaintiff's medical condition and commented on one occasion that cancer was a sign of weakness.

In May 1995, the Board of Directors voted to terminate the plaintiff's employment. Woods informed Mrs. Brown of the Board's decision on May 24, 1995, and the plaintiff subsequently filed the present lawsuit on October 27, 1995.[3]

LEGAL DISCUSSION

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P.

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[2] The plaintiff avers that this promotion actually cloaked a more ulterior motive, that being the removal of the plaintiff from the main office because of Woods' need for "a man to help him." Plaintiff's Depo., July 11, 1996, at 60.

[3] The plaintiff had also filed a lawsuit in Winston County Circuit Court concerning the plaintiff's employment. The defendant removed that action to federal court on November 30, 1995, and it was later consolidated with the plaintiff's suit originally filed in federal court. Brown v. Inter-City Federal Bank for Savings, Case No. 1:95cv361 (N.D. Miss. Jan. 9, 1996) (Davis, M.J.) (Order Granting Motion to Consolidate With Case No. 1:95cv327).

56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986); Vera v. Tue, 73 F.3d 604, 607 (5th Cir. 1996). Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Banc One Capital Partners Corp. v. Kniepper, 67 F.3d 1187, 1198 (5th Cir. 1995); Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

II. FEDERAL CLAIMS

Mrs. Brown concedes that her federal law claims should be dismissed. Thus, the defendant is entitled to a judgment as a matter of law on the plaintiff's federal claims arising under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and the Equal Pay Act, 29 U.S.C. § 206(d).

III. STATE CLAIMS

With the dismissal of the federal claims on summary judgment, the court declines to exercise its supplemental jurisdiction over the remaining pendent state law claims and shall remand them to the Circuit Court of Winston County. 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction . . . ."); United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S. Ct. 1130, 1139, 16 L.Ed.2d 218 (1966). As noted earlier, the plaintiff filed separate lawsuits in federal court and in state court concerning the same set of facts as set out by the court supra. The

defendant removed the state court suit and this court denied the plaintiff's subsequent motion to remand based upon the court's conclusion that Title VII and the Age Discrimination in Employment Act were clearly implicated on the face of the plaintiff's state court complaint. Brown v. Inter-City Federal Bank for Savings, Lead Case No. 1:95cv327 (N.D. Miss. Jun. 10, 1996) (Davidson, J.) (Order Denying Motion to Remand). In her response to the defendant's summary judgment motion, however, the plaintiff concedes the dismissal of all of her federal claims.[4]

The court notes that its dismissal of the plaintiff's federal claims does not divest it of supplemental jurisdiction over the plaintiff's state law claims. Baker v. Farmers Elec. Co-op., Inc., 34 F.3d 274, 283 (5th Cir. 1994) ("[P]endent jurisdiction may continue even after the federal claims upon which jurisdiction is based have been dismissed or rendered moot.") (citing Hefner v. Alexander, 779 F.2d 277, 281 (5th Cir. 1985)). However, "[w]hen all federal claims are dismissed, the district court enjoys wide discretion in determining whether to retain jurisdiction over the remaining state law claims." Hubbard v. Blue Cross & Blue Shield Ass'n, 42 F.3d 942, 947 (5th Cir.) (remanding to district court so court could exercise discretion either to accept supplemental jurisdiction over state law claim or decline jurisdiction and remand claim to state court), *cert. denied*, --- U.S. ---, 115 S. Ct. 2276, 132 L.Ed.2d 280 (1995); Noble v. White, 996 F.2d 797, 799 (5th Cir. 1993); Parker & Parsley Petroleum Co. v. Dresser Indus., 972 F.2d 580, 590 (5th Cir. 1992). This court is of the opinion that the wisest course for it to follow is to remand the state law claims, particularly the plaintiff's employee handbook claim, to state court for resolution.

CONCLUSION

As the plaintiff acquiesces in the dismissal of her federal law claims, the court finds that the defendants are entitled to a judgment as a matter of law as to them. With that action, only state law claims remain and the court declines to exercise supplemental jurisdiction over them. The plaintiff's

[4]She also concedes the dismissal of one of her state court claims -- breach of the duty of good faith and fair dealing. However, as this court declines to exercise supplemental jurisdiction over the plaintiff's state law claims, the court is without authority to dismiss the conceded state law claim.

state law claims shall be remanded to the Winston County Circuit Court.

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of November 1996.

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United States District Judge

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ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN PART AND REMANDING TO STATE COURT

Pursuant to a memorandum opinion issued this day, the court upon due consideration of the defendant's motion for summary judgment finds that it shall be granted in part and the remaining state law claims remanded to state court.

Therefore, it is ORDERED that:

1) the motion of the defendant Inter-City Federal Bank for Savings for summary judgment is hereby GRANTED with respect to the plaintiff's federal law claims.

2) the plaintiff's federal claims arising under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and the Equal Pay Act, 29 U.S.C. § 206(d), are hereby DISMISSED WITH PREJUDICE.

3) the plaintiff's remaining state law claims are hereby REMANDED to the Winston County Circuit Court.

4) the defendant's Motion to Strike Affidavit is hereby DENIED AS MOOT.

5) the plaintiff's Motion to Strike Rebuttal is hereby DENIED AS MOOT.

6) the plaintiff's Motion to Submit Corrected Affidavit is hereby DENIED AS MOOT.

All memoranda, depositions, affidavits and other matters considered by the court in granting in part the defendant's motion for summary judgment are hereby incorporated and made a part of the

record in this cause.

SO ORDERED this ___ day of November 1996.

_____
United States District Judge