

SHARON DONALDSON
v.
EMPIRE CAR RENTAL COMPANY*

Opening Arguments, Examinations, Cross-Examinations, and Closing Arguments
Judge Wiley Y. Daniel presiding

Fact Pattern

Empire Car Rental Company is a small car rental company that began in 2003. It is located only in this city, and presently has two offices, the downtown office, started in 2004, and the airport office, started in 2006.

Sharon Donaldson is a lifelong resident of this city. She graduated from the local state university in 2004 and began working for Empire, which had recently opened the downtown office. She worked as a rental agent after completing her training period.

When Empire opened the airport office in 2006, it hired Lou Smith as its manager. Donaldson was transferred to the airport office and promoted to assistant manager. A few months later Smith decided to leave Empire, and Donaldson was promoted to manager of the airport office.

In 2007 Empire created a new management position, the city manager, who would be in charge of both offices and any future ones in this city. Richard Jackson was hired as the new city manager.

Jackson and Donaldson did not work well together. The friction between the two came to a head in September 2008 when Jackson called Donaldson into his office and fired her, effective immediately. Jackson gave as his reason that Donaldson had violated company policy by authorizing the rental of a car with unlimited mileage to personal friend.

Donaldson was out of work for approximately one year. She contacted an employment agency, Career Placements, to find her a new job. In the course of its placement efforts Career Placements called Richard Jackson, Empire's city manager, who called Donaldson "dishonest"; Jackson repeated that statement in a follow-up letter to Career Placements. Donaldson finally received and accepted a job offer with another company, Equipment Leasing. Her salary at that job is substantially lower than her salary at Empire.

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In November 2008 Donaldson filed a discrimination claim with the Equal Employment Opportunity Commission (EEOC). The EEOC investigated the claim, determined that Title VII had been violated, and issued a right to sue letter. Donaldson then brought this lawsuit.

Pleadings

Plaintiff Donaldson sues defendant Empire Car Rental Company on three theories:

1. Title VII employment discrimination. Plaintiff claims that she was subjected to disparate treatment by Empire. To prove a claim of disparate treatment under Title VII, plaintiff must prove that her gender played a motivating part in a particular employment decision. If plaintiff proves this by a preponderance of the evidence, the burden of presenting evidence shifts to the defendant, who may avoid liability only by providing a nondiscriminatory reason for the plaintiff's treatment. Plaintiff then has the burden of proving the employer's reason is pretextual.
2. Breach of contract. Plaintiff claims that the personnel manual issued by Empire was part of her employment contract and that Empire breached that contract by firing her without taking the procedural steps required by the manual. The court has previously ruled as a matter of law that the Personnel Manual is a binding contract between the parties.
3. Defamation. Plaintiff claims that Richard Jackson, Empire's city manager defamed her when he called her "dishonest" in a letter to Career Placements.

Plaintiff seeks all damages allowed under applicable law, including lost wages and commissions, lost future income, and punitive damages.

Empire denies each of plaintiff's allegations. Empire says that the personnel manual's procedures permitted Donaldson's firing. Empire also asserts an affirmative defense to the defamation claim, stating that Jackson had a qualified privilege to repeat his evaluation of Donaldson to her employment agency and prospective future employers.

The case is being tried in the local U.S. District Court. No jurisdictional issues have been raised.

Witnesses

Plaintiff will call the following witnesses:

1. Sharon Donaldson, plaintiff, former office manager of airport office
2. Dana Ripley, renter of car with unlimited mileage provided in rental agreement

The parties have agreed that Sandy Hoffman, career counselor at Career Placement, Inc. will not be called due to unavailability but that evidence given by that individual may be included in arguments.

Defendant will call the following witnesses:

1. Richard Jackson, city manager, to whom both Donaldson and Kinney reported
2. Chris Steele, assistant manager of the airport office, who reported to Sharon Donaldson as a rental agent after her promotion to manager of the airport office and after Sharon Donaldson was fired reports to Sam Wilson, who was hired to replace Sharon Donaldson as manager of the airport office and who promoted him to assistant manager of the airport office.

The parties have agreed that John Kinney, manager of the downtown office, will not be called due to unavailability but that evidence given by that individual may be included in arguments.

If impeachment prove-up becomes necessary, the parties must prepare an appropriate stipulation to admit the prove-up evidence.

Exhibits and Materials

The following are available.

1. EEOC investigative file, which includes:
 - (a) Interviews of witnesses
 - (b) Empire's records
 - (c) Empire's personnel manual
 - (d) EEOC discrimination charge and right to sue and determination letters
 - (e) Career Placements' records, including Smith's and Jackson's letters to Hoffman
2. Excerpts of depositions of:
 - (a) Sharon Donaldson
 - (b) Dana Ripley
 - (c) Sandy Hoffman
 - (d) Richard Jackson
 - (e) Chris Steele
 - (f) John Kinney

Stipulations

The parties must stipulate to the following:

The EEOC witness interviews, right to sue letter, determination letter, and any other EEOC records are all certified public records, under FRE 803(8), of the EEOC.

The court has previously ruled as a matter of law that the Personnel Manual is a binding contract between the parties.

List of Documents in Evidence

Note to presenters: Documents in this collection have placeholders for years, e.g., “[-1]”, “[-2]”, etc. Please write on printouts of documents the following years according to the table below:

[-7] **2003**
[-6] **2004**
[-5] **2005**
[-4] **2006**
[-3] **2007**
[-2] **2008**
[-1] **2009**

EEOC DOCUMENTS

Memoranda: Interviews by Mary Johnson, EEOC Investigator

Sharon Donaldson, plaintiff..... E-1
Richard Jackson, city manager..... E-6
John Kinney, office manager, downtown office..... E-10
Dana Ripley, renter of car..... E-13
Chris Steele, assistant manager, airport office..... E-15
Sandy Hoffman, manager of Career Placements..... E-18

Other Documents

Organizational Flow Chart for Empire Car Rental Company..... E-20
Determination, by Norma Kelly, EEOC..... E-33
Notice of Right to Sue..... E-32

EMPIRE CAR RENTAL COMPANY DOCUMENTS

Letter Hiring Sharon Donaldson, plaintiff—from Dale Carpenter,
president..... E-21

Personnel Manual..... E-22

Rental Rate Schedule..... E-31

Memorandum from Richard Jackson, city manager

On Uniform Treatment of Customers..... E-25

Monthly Summary of Office Profitability..... E-34

Annual Reviews

—of Sharon Donaldson, plaintiff

First Annual Review, as rental agent, downtown office
(Jan. 2005 covering 2004)—by John Kinney,
manager, downtown office..... E-26

Second Annual Review, as rental agent, downtown office
(Jan. 2006 covering 2005)—by John Kinney,
manager, downtown office..... E-27

Third Annual Review (Jan. 2007 covering 2006), as
assistant manager, airport office—by Lou Smith,
then manager, airport office..... E-28

Fourth Annual Review (Jan. 2008 covering 2007), as
manager, airport office—by Richard Jackson,
city manager..... E-28

—of John Kinney, manager, Downtown Office

First Annual Review (Jan. 2005 covering 2004)—by

Dale Carpenter, president.....	E-38
Second Annual Review (Jan. 2006 covering 2005)—by Dale Carpenter, president.....	E-39
Third Annual Review (Jan. 2007 covering 2006)—by Dale Carpenter, president.....	E-40
Fourth Annual Review (Jan. 2008 covering 2007)—by Richard Jackson, city manager.....	E-41
Fifth Annual Review (Jan. 2009 covering 2008)—by Richard Jackson, city manager.....	E-42
–of Chris Steele	
First Annual Review (Jan. 2007 covering 2006), as rental agent, airport office—by Sharon Donaldson.....	E-43
Second Annual Review, (Jan. 2008 covering 2007) as assistant manager, airport office—by Richard Jackson, city manager.....	E-44
Rental Agreement of Dana Ripley.....	E-37
Memo Regarding Termination of Sharon Donaldson, plaintiff—from Richard Jackson, city manager to Dale Carpenter, President.....	E-36
Letter of Termination to Sharon Donaldson, plaintiff—by Richard Jackson, city manager.....	E-30
 CAREER PLACEMENTS, INC. DOCUMENTS	
Placement Questionnaire for Sharon Donaldson, plaintiff—by Sandy Hoffman, career counselor.....	E-45
Memo to File on Statements by Lou Smith, Richard Jackson— by Sandy Hoffman, placement counselor.....	E-47
letter from Lou Smith, former manager, airport office.....	E-48
letter from Richard Jackson, city manager.....	E-49
Memo to File on Plaintiff Sharon’s Donaldson’s Hire by Equipment Leasing, and Mention of Lawsuit—by Sandy Hoffman, placement counselor.....	E-50
 DEPOSITIONS	
Sharon Donaldson, plaintiff.....	E-51
Richard Jackson, city manager.....	E-54
John Kinney, manager, downtown office.....	E-59
Dana Ripley, renter of car.....	E-61
Chris Steele, assistant manager, airport office.....	E-63
Sandy Hoffman, placement counselor, Career Placements, Inc.....	E-64

Presiding Judge
HONORABLE WILEY YOUNG DANIEL
U.S. District Court for Colorado
Denver, CO

Opening

P: Barry D. Roseman
McNamara Roseman Martinez & Kazmierski LLP
Denver, CO

D: Leonard Court
Crowe & Dunlevy
Oklahoma City, OK

P Witnesses

P Examiner: Ty Hyderally
Ty Hyderally Associates
New Jersey

D Cross: Jonathan Swain
Lindner & Marsack, S.C.
Milwaukee, WI

Witness: *The Plaintiff*
Lauren Schwartzreich
Outten & Golden LLP
New York, NY

Witness: *Dana Ripley, car rental customer*
J. Nelson Thomas
Dolin Thomas & Solomon LLP
Rochester, NY

Unavailable Witness: Sandy Hoffman, placement counselor, Career Placements, Inc

D Witnesses

D Examiner: Mark Mallery
McGlinchey Stafford
New Orleans, LA

P Cross: Laura Schnell
Eisenberg & Schnell
New York, NY

Witness: *Richard Jackson, City Manager*
Steven W. Sufas
Ballard Spahr Andrews & Ingersoll, LLP
Vorhees, NJ

Witness: *Chris Steele, assistant manager, airport office*
Glenn A. Duhl
Siegel O'Connor O'Donnell & Beck PC
Hartford, CT

Unavailable Witness: John Kinney, manager, downtown office

Closing

P: Dan Klein
Buckley & Klein LLP
Atlanta, GA

D: Eric Iskra
Spilman Thomas & Battle, PLLC
Charleston, WV