SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

DEBI O'BRIEN, a married woman, Plaintiff, v. LEONARD CARDER, HUGH KOSKINEN, MATT PURVIS, DAN LAWSON, PAULETTE KETZA, ROD HOWREY, VIVIAN SMITH, ABMI, ABM PARKING SERVICES; et al., Defendants.	NO. 15-2-06791-5 SEA ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

The three remaining defendants in this case have each brought a Motion for Summary Judgment seeking dismissal of the employment-related claims the plaintiff has brought in this lawsuit. Those defendants are ABM Industries ("ABMI"), ABM Parking Services ("ABM Parking") and Leonard Carder (and his marital community). The Court has considered all of the written submissions in connection with the present motions. If there is a perceived need to more precisely catalogue those submissions, this may be accomplished by entry of an

agreed order supplementing this order. The Court has also heard oral argument of counsel and reviewed their evidentiary submissions. Having considered all of the foregoing, the Court would now rule as follows:

There are two preliminary matters. First, the defendants filed a Motion to Strike directed at the Declaration of Debi O'Brien. As the Court observed at the hearing, much in that 34 page document is accurately characterized as "conclusory" and "speculative" and "lacking in foundation." Without going through the declaration line-by-line, portions falling into those categories have been disregarded by the Court. To that extent, the Motion to Strike is GRANTED.

Second, the plaintiff, along with her arguments against entry of summary judgment, has asked that the motions be continued pursuant to CR 56(f) so that more discovery could be conducted. However, the case has been pending for over two years, there has been active discovery and motions practice with certain things left undone seemingly by choice (such as a deposition of Leonard Carder). In those matters not diligently pursued, there is no indication of specific evidence that is likely to be found and likely to create material issues of fact. The Motion for Continuance is DENIED.

ABMI's Motion for Summary Judgment is premised on the circumstance that it was never the employer of the plaintiff who worked for its wholly owned subsidiary ABM Parking at the relevant times. There is no evidence that employees, officers or agents of ABMI were responsible for any adverse employment action against the plaintiff and no basis for any inference that ABMI

acted with any discriminatory motivation. ABMI's Motion for Summary Judgment is GRANTED.

The various claims against Leonard Carder and ABM Parking must be examined by considering whether there is available evidence in support of each of the requisite elements of each claim. Some elements are common to multiple claims and others are more limited. For each discrimination claim, the plaintiff must have evidence that an adverse employment action was taken against her. She asserts two such actions: her termination in February of 2013 and her being subjected to a work environment that was purportedly hostile. Certainly termination of employment is an adverse employment action but the asserted hostility does not seem sufficiently "severe and pervasive" to meet the requirements of the law. The purported "ostracism" and being "glared at" are uncorroborated, purely subjective and insufficient; the parking lot inspections do not seem to be outside the scope of anticipatable duties.

Next, plaintiff must produce evidence that would at least support a reasonable inference that a discriminatory intent (based on age or a disability or in retaliation for some WLAD protected activity) was a substantial motivating factor in the decision to take the adverse employment action. At this time, the plaintiff gives voice to suspicions about the motivation for her termination but there exists a striking absence of evidence to support the posited inference. The defendants have put forth an entirely plausible explanation for the elimination of plaintiff's position (loss of business revenues leading to the necessity for cutbacks) as well as evidence of how, when, why and by whom the decision was

made. The plaintiff has not met her burden of showing there is admissible evidence which, if believed, would establish the employer's explanation as a pretext for discrimination.

As to the age discrimination claim, there is an absence of evidence that the plaintiff was treated in a disparate manner from younger employees, similarly situated to her. There is no valid "comparator;" she was not replaced with a younger person; and her duties were reassigned to existing personnel. As to the disability claim, there is an absence of evidence that the plaintiff suffered from a cognizable disability, that she had made the employer aware of it, and had requested, but not received, a reasonable accommodation. Finally, as to the retaliation claim, there is an absence of evidence that the decision-makers were aware of (much less motivated by) the plaintiff's having engaged in any WLAD protected activity sometime in the past.

Often a contract claim based on terms contained in an employee handbook will be asserted by an at-will employee (like the plaintiff) with respect to the way in which disciplinary matters will be handled. This is not a discipline case. The ABM "Code of Business Conduct" evidently contains an anti-retaliation policy and it is this provision that the plaintiff claims was breached. However, this Court has concluded she lacks sufficient evidence to go forward on her retaliation claim. In addition, this document contained an express disclaimer that it was not to be considered as creating any contractual rights.

The plaintiff has brought claims for the intentional and negligent infliction of emotional distress. These claims are really subsumed in her discrimination

claims rather than existing independently. Clearly the allegations in this case fall far short of what could be considered the "extreme and outrageous" conduct required for an outrage claim. In addition, it must be noted that the plaintiff has no evidence that her understandable emotional distress at the elimination of her job resulted in the necessary "objective symptomology" susceptible to a medical diagnosis. Both the tort of outrage and NIED claims must be dismissed.

Each of the remaining defendants' Motions for Summary Judgment will be GRANTED and all of the plaintiff's claims DISMISSED WITH PREJUDICE.

DATED this 16th day of November, 2015.

HON. WILLIAM L. DOWNING