

Toomire v. Town & Country Janitorial CV-01-24-B 03/30/01

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Michael Toomire

v.

Civil No. 01-24-B
Opinion No. 2001DNH067

Town & Country Janitorial
Services, Inc., et al.

O R D E R

I respond to defendants' motion for judgment on the pleadings as follows:

1. Plaintiff's Title VII claims against Paul Thompson and Daniel Thompson (Counts I and II) must be dismissed because a Title VII claim cannot be maintained against a co-employee. See March v. Technical Employment Servs., Inc., 2000 DNH 055, 7-8. A different result is not warranted here merely because Daniel Thompson is the president and a shareholder of the employer.

2. Plaintiff's claims based on N.H. Rev. Stat. Ann. § 354-A (Counts III and IV) must be dismissed because this statute does not provide a private cause of action. See Bergstrom v. Univ. of New Hampshire, 943 F. Supp. 130, 132 n.3 (D.N.H. 1996).

3. Plaintiff's wrongful discharge claim (Count V) must be

dismissed because plaintiff cannot maintain a wrongful discharge claim for conduct that is actionable under Title VII. See Smith v. F.W. Morse & Co., 76 F.3d 413, 429 (1st Cir. 1996).

4. Defendant Town & Country challenges plaintiff's breach of contract (Count VI) and unpaid wages (Count VII) claims. Town & Country's challenges to those claims cannot be resolved by reference to the pleadings. Accordingly, defendant's motion to dismiss these claims is denied without prejudice.

In summary, Counts I and II are dismissed as to Paul Thompson and Daniel Thompson. Counts III, IV, and V are dismissed in their entirety. Defendant's motion to dismiss Counts VI and VII is denied without prejudice.

SO ORDERED.

Paul Barbadoro
Chief Judge

March 30, 2001

cc: Jennifer A. Lemire, Esq.
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