

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

MAUNG SAN DIN,) **CIVIL ACTION NO. 99-0561**
)
Plaintiff,)
)
v.)
) **ORDER FOLLOWING BENCH TRIAL**
EASTERN HOPE CORPORATION,)
)
d.b.a. KEERAKU & RAKUEN)
RESTAURANT and KEE JOON YOM,)
)
Defendants.)
_____)

I. INTRODUCTION

THIS MATTER came on for bench trial on April 1- 2, 2002, on Plaintiff’s Complaint for damages for wrongful termination and assault and battery. Plaintiff appeared with counsel, Stephen J. Nutting, Esq. Defendants Eastern Hope Corporation and Kee Joon Yom appeared with counsel, Steven P. Pixley, Esq. The Court, having considered the testimony of the witnesses, the exhibits admitted into evidence and being fully advised in the premises, renders the following findings of facts and conclusions of law.

II. FINDINGS OF FACTS

At trial, Maung San Din, Xue Hua Jin and Jun “Thomas” Sohn testified for the Plaintiff. Kee Jeon Yom, Mikyung Sung and Mr. Choi testified for the Defendants. Twelve (12) exhibits were admitted into evidence. Based on the evidence admitted at trial, the Court finds as follows:

- 1. Maung San Din (“Plaintiff”) is a Burmese national in his early twenties who was employed by Defendant Eastern Hope Corporation as a waiter in the Rakuen Restaurant in Garapan, Saipan.

1 Plaintiff arrived on Saipan on or about February 15, 1998, to work as a nonresident worker.

2 2. On January 12, 1999, Plaintiff voluntarily renewed his nonresident worker employment
3 contract with Eastern Hope Corporation for an additional one-year period. See Pl.'s Ex. 7
4 (Employment Contract). The expiration of the renewed contract was January 13, 2000. *Id.* Plaintiff
5 testified that he enjoyed working at the Rakuen Restaurant. Plaintiff worked at the Rakuen Restaurant
6 until June 15, 1999.

7 3. Kee Joon Yom ("Mr. Yom" or "Defendant") is Plaintiff's immediate supervisor and the
8 general manager of Rakuen Restaurant owned by Eastern Hope Corporation. See Compl. ¶ 6; Answer
9 ¶ 2. Mr. Yom testified that the Rakuen Restaurant was quite busy the evening of June 15, 1999. Before
10 closing that evening, Mr. Yom asked Plaintiff and a number of other employees to work overtime after
11 they completed their scheduled shift to help clean and prepare the restaurant for the next business day.
12 Mr. Yom regularly asks employees to work overtime when there is work to do. See Pl.'s Ex. 2
13 (schedule of overtime wages).

14 4. At the conclusion of his regular shift, Plaintiff left the Rakuen Restaurant with his co-worker
15 and girlfriend, Xuehua Jin ("Ms. Jin") without telling Mr. Yom. Shortly after Plaintiff left, Mr. Yom saw
16 Plaintiff cross the street outside the restaurant and flagged him to return to work. Plaintiff saw Mr. Yom
17 and returned with Ms. Jin to the restaurant.

18 5. Once inside the restaurant, Mr. Yom took Plaintiff to the kitchen to show Plaintiff that his co-
19 workers were working. A heated argument then ensued between Plaintiff and Mr. Yom. The argument
20 was observed by several witnesses and was loud enough for the other employees to hear.

21 6. Plaintiff testified that during the altercation inside the Rakuen Restaurant, Defendant yelled
22 at him and in doing so, moved his face extremely close to Plaintiff's face causing Defendant's face to
23 "butt" Plaintiff on the forehead and nose area. He stated that the altercation was very embarrassing
24 because it happened in front of his co-workers and that he went home after the incident emotionally
25 distraught. When asked to describe if he experience pain immediately after the incident, Plaintiff testified
26 that he did and that the pain was more emotional than physical.

27 7. Defendant testified that both he and Plaintiff were equally engaged in the argument while in
28 the Rakuen Restaurant and that he did not strike or hit Plaintiff. Mr. Yom stated further that Plaintiff's

1 attitude, mannerisms, tone of voice, and language were disrespectful, rebellious and aggressive and
2 inappropriate between an employee and his supervisor. *See also* Pl.'s Ex. 4. Following the argument,
3 Mr. Yom told Plaintiff that he was suspended from work.

4 8. Mikyung Sung ("Ms. Sung"), a supervisor at the restaurant and Mr. Yom's wife, testified that
5 she observed the entire argument from a distance of approximately 15-20 feet. She testified that both
6 parties were yelling at each other in a loud voice. According to Ms. Sung, she did not see Mr. Yom
7 strike or otherwise physically hit Plaintiff. Ms. Sung saw Plaintiff leave the Rakuen Restaurant shortly
8 after the argument.

9 9. Ms. Jin, testified that she was present in the Rakuen Restaurant. According to Ms. Jin, she
10 observed the argument between Plaintiff and Defendant from some distance away. She testified that the
11 argument between Plaintiff and Defendant was loud and heated and that she saw Defendant Yom move
12 his face extremely close to Plaintiff's face. On cross-examination, Defendant established that the lighting
13 at the restaurant was poor from Ms. Jin's vantage point and that she was positioned further away from
14 where Ms. Sung made her observations. There were also issues raised regarding Ms. Jin's motives and
15 credibility. *See* Def.'s Exs. B & C; Pl.'s Ex. 7. The Court finds that Ms. Sung's testimony regarding the
16 incident more credible than Ms. Jin's testimony about what happened that evening.

17 10. Jun "Thomas" Sohn ("Thomas"), a co-worker and friend of Plaintiff, testified that he was
18 present in the kitchen when Mr. Yom pointed out to Plaintiff that he and the other co-workers were
19 working overtime that evening. Thomas testified that the argument between Defendant and Plaintiff was
20 loud but he did not observe any physical contact between the two parties.

21 11. The next day, on June 16, 1999, Plaintiff reported to work. Mr. Yom told Plaintiff that he
22 was suspended. That evening, about 6:00 p.m., Mr. Yom and Plaintiff met in the Rakuen Restaurant
23 office to discuss issues relating to the June 15, 1999, incident. During that meeting, Plaintiff advised Mr.
24 Yom that he was resigning from his position with Eastern Hope Corporation and demanded a return
25 airline ticket to Burma and full payment of the balance of his contract. Mr. Yom did not agree to
26 Plaintiff's demands.

27 12. After the meeting with Mr. Yom on June 16, 1999, Plaintiff filed a formal DPS complaint
28 against Mr. Yom alleging that he was struck in the nose by Mr. Yom during the argument of June 15,

1 1999. More than 24 hours after the incident and after Mr. Yom rejected Plaintiff's demands, Plaintiff
2 went to the Commonwealth Health Center emergency room for medical treatment. *See* Pl.'s Ex. 3;
3 Transcript of Proceedings - Excerpts at 3 ¶¶ 9-12. Dr. Linehan, the attending physician, testified that
4 he treated a bruise to Plaintiff's nose which he was told was from a head butt to the facial area. *Id.* at
5 ¶¶ 15-21. When asked by defense counsel why Plaintiff sought medical attention more than twenty-four
6 (24) hours after the incident, Plaintiff replies simply that he did not know where the hospital was located
7 and that he was waiting for his friend to take him there. In June of 1999, Plaintiff was living in Garapan,
8 less than two blocks from the hospital.

9 13. On June 17, 1999, Ms. Sung, at the request of Mr. Yom, met with Plaintiff at the Rakuen
10 Restaurant office. At the meeting, Ms. Sung asked Plaintiff to return to work. Plaintiff told Ms. Sung that
11 he was resigning and that he wanted full payment of his contract and a return airline ticket to Burma.

12 14. On June 17, 1999, Plaintiff was served with a Warning Notice from Mr. Yom, his manager
13 and supervisor, advising him of violating the Rules & Regulations of Eastern Hope Corporation because
14 Plaintiff failed to report to work after being told to do so. *See* Def.'s Ex. D. On June 22, 1999,
15 Defendant Eastern Hope Corporation notified the CNMI Department of Labor & Immigration ("DOLI")
16 that Plaintiff was being terminated. *See* Def. Hope's Ex. 5.

17 15. On June 22, 1999, Plaintiff filed a labor complaint with DOLI against Eastern Hope
18 Corporation. *See* Def. Hope's Exs. A-1 & A-2. On September 29, 1999, Plaintiff filed this civil action
19 seeking damages from Eastern Hope Corporation and Mr. Yom. *See* Compl.

20 16. Mr. Yom was subsequently charged with the criminal offense of Assault and Battery and
21 Disturbing the Peace. A bench trial was conducted before Presiding Judge Edward Manibusan in
22 February 2000. *Commonwealth v. Yom*, Crim. No. 99-0477 (N.M.I Super. Ct. Feb. 25, 2000)
23 ([Unpublished] Judgment of Conviction). Following that trial, the court found Mr. Yom not guilty of
24 Assault and Battery but guilty of Disturbing the Peace. *See Id.*

25 17. In September 1999, Plaintiff began working at the Chamorro House as a waiter under
26 DOLI's temporary work authorization. He was employed by the Chamorro House through the remaining
27 term of his contract with Eastern Hope Corporation.

28 III. CONCLUSIONS OF LAW

1 1. Wrongful Termination. Under Plaintiff’s employment contract with Defendants, either party
2 may move to terminate the contract for cause by giving the other party 15 days’ notice and only after an
3 unsuccessful good faith settlement attempt. In this case, Mr. Yom and Ms. Sung of Defendant Eastern
4 Hope Corporation attempted to settle the dispute with Plaintiff on at least two occasions to no avail.
5 Plaintiff quit on June 16, 1999 when he informed Mr. Yom of his resignation and demanded a return
6 ticket. It is well settled that a person who quits or abandon his job does not have a claim for breach of
7 contract or wrongful termination. *See also* Pl.’s Ex.7 (Employment Contract).

8 2. Constructive Discharge/Termination. Commonwealth law does not include the doctrine of
9 “constructive discharge.” Section 3401 of Title 7 of the Commonwealth Code provides that in the
10 absence of written law or local customary law to the contrary:

11 In all proceedings, the rules of the common law, as expressed in the restatements
12 of the law approved by the American Law Institute and, to the extent not so
13 expressed as generally understood and applied in the United States, shall be the
14 rules of decision in the courts of the Commonwealth.

15 7 CMC § 3401; *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54, 61 (1990); *Ada v. K. Sadhwani’s,*
16 *Inc.*, 3 N.M.I. 303, 308 (1992); *Castro v. Hotel Nikko Saipan, Inc.* 4 N.M.I. 268, 275 (1995).

17 The doctrine of “constructive discharge” has been developed largely through the federal courts
18 in cases involving unfair labor practices. To prove a constructive discharge, a plaintiff must present
19 sufficient evidence establishing deliberate action on the part of an employer which makes or allows an
20 employee’s working conditions to become so difficult or intolerable that the employee has no choice but
21 to resign. *Irving v. Dubuque Packing Co.*, 689 F.2d 170, 172 (10th Cir. 1982); *see also Junior v.*
22 *Texaco, Inc.*, 688 F.2d 377 (5th Cir. 1982); *Alicea Rosado v. Garcia Santiago*, 562 F.2d 114 (1st
23 Cir. 1977); *Civil Rights Comm’n v. Colorado*, 488 P.2d 83 (Colo. 1971). The determination of
24 whether the actions of an employer amount to a constructive discharge depends upon whether a
25 reasonable person under the same or similar circumstances would view the working conditions as
26 intolerable, and not necessarily upon the subjective view of the individual employee. *Wilson v. Adams*
27 *County Bd. of Comm’rs*, 703 P.2d 1257, 1260 (Colo. 1985). The test, therefore, is whether “a
28 reasonable person in the employee’s shoes would have felt compelled to resign,” irrespective of the
employer’s intent.

1 Based upon the evidence admitted at trial, the Court concludes that Plaintiff was not
2 constructively terminated from his job at the Rakuen Restaurant. The actions of Mr. Yom constituted
3 an isolated incident. The working conditions at the Rakuen Restaurant were not intolerable. Under the
4 majority rule, the employer must have created or maintained working conditions so intolerable that any
5 reasonable employee would have felt compelled to quit rather than endure them. Here, it is clear that the
6 altercation between Plaintiff and Mr. Yom was isolated and that there was an opportunity made by Mr.
7 Yom and Ms. Sung, on behalf of Defendant Eastern Hope Corporation, to mitigate the situation but
8 Plaintiff was not receptive. It is also clear from Plaintiff's testimony that it was not the work environment
9 that made working with Defendants intolerable. According to Plaintiff's testimony, the altercation in front
10 of his co-workers caused him such embarrassment that he did not want to face his co-workers.

11 3. Assault and Battery. The Court concludes based upon the evidence submitted during the
12 trial that Plaintiff has failed to prove by a preponderance of the evidence that Kee Joon Yom intended
13 to inflict a harmful or offensive bodily contact with Plaintiff during the altercation which occurred on June
14 15, 1999. *In re Estate of Barcinas*, 4 N.M.I. 149, 154 (1994) (stating that the preponderance of the
15 evidence standard is described as "evidence which is of greater weight or more convincing than the
16 evidence which is offered in opposition to it; that is, evidence, which as a whole shows that the fact
17 sought to be proved is more probable than not"). At trial, there was an absence of evidence that Mr.
18 Yom inflicted bodily contact or intended to inflict bodily contact with Plaintiff which was either harmful
19 or offensive. Plaintiff and Mr. Yom were apparently tired after a busy evening and both were upset with
20 each other's disrespect of the other, causing the argument to ensue. The evidence showed further that
21 both Plaintiff and Mr. Yom were equally engaged in and responsible for the altercation.

22 4. Punitive Damages. Punitive damages are awarded to punish the wrongdoer and to
23 discourage him from similar future conduct. RESTATEMENT (SECOND) OF TORTS § 908 (1979);
24 *Mendiola v. Marianas Agupa Enter*, 1998 MP 10 ¶ 25, 5 N.M.I. 169, 173. "The Court shall look
25 only to see if the record gives rise to an inference of outrageous conduct in affirming an award for punitive
26 damages." *Id.* Applying this principle to the case at bar, the Court finds that Defendant's actions were
27 not wilful and malicious or so outrageous as to be intolerable in a civilized society and thus to warrant
28 an award of punitive damages. The evidence presented shows that the circumstances that gave rise to

1 the altercation between Plaintiff and Defendant were isolated and apparently arose from lack of respect
2 and lack of communication between the parties. Defendant Yom's conduct, although emotionally
3 charged, was not wilful and malicious and certainly not so intolerable or outrageous so as to warrant
4 punitive damages.

5 **IV. CONCLUSION**

6 For the reasons set forth above, judgment is entered in favor of Defendant Eastern Hope
7 Corporation and Defendant Yom. Each party shall be responsible for their own costs and attorney fees.

8 **SO ORDERED** this 29th day of November 2002.

9
10 /s/
VIRGINIA S. SABLAN-ONERHEIM, Associate Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28