Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-143

AUGUST TERM, 2003

Gary S. Orr v. Meristar Vermont Beverage Corp., Meristar Management Co., LLC, The Inn of the Six Mountains, and COA Food and Beverage Corp.	}	APPEALED FROM: Rutland Superior Court DOCKET NO. 182-3-01 Rdcv Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

Following his termination from defendants= employment, plaintiff Gary Orr sued for wrongful termination and breach of contract in Rutland Superior Court. He appeals the superior court= s dismissal of his claims on summary judgment, and we now affirm.

On appeal, we review the lower court= s decision to grant summary judgment using the same standard employed below. Dulude v. Fletcher Allen Health Care, Inc., 807 A.2d 390, 395 (2002). If the moving party establishes that no genuine issue of material fact exists for trial, and a party is entitled to judgment as a matter of law, the court must grant summary judgment. Id; see V.R.C.P. 56(c)(3) (setting forth summary judgment standard). When responding to a summary judgment motion, the nonmoving party A must set forth specific facts showing that there is a genuine issue for trial.@ V.R.C.P. 56(e).

The record establishes the following undisputed facts. Defendant Inn of the Six Mountains, located in Killington, Vermont, is managed by defendant Meristar Management Company. In March 1999, the Inn hired Orr as Director of Maintenance. In September that year, the Inn= s executive housekeeper accused Orr of sexually harassing her. She alleged that Orr made comments of a sexual nature to her and repeatedly touched her although she neither invited nor desired the contact. The Inn reprimanded Orr and warned him not to engage in similar conduct in the future. The Inn= s general manager at the time reviewed with Orr the company= s sexual harassment policy, and Orr understood that he could lose his job if his workplace conduct violated the policy. Notwithstanding the Inn= s actions, the executive housekeeper sued the Inn, and the case eventually settled out of court.

While the executive housekeeper= s lawsuit was pending, another housekeeping employee accused Orr of similar inappropriate conduct. Orr was suspended during the investigation of her allegations. The investigation revealed other allegations by housekeeping staff of unwanted touching and inappropriate comments by Orr. Orr denied most of the allegations, but admitted that he had touched a housekeeper and told her that her perfume smelled good. He told Inn management that he believed that members of the housekeeping staff were conspiring to get him fired. He theorized that the conspirators wanted him fired because he tried to enforce a state and hotel policy that forbids employees from taking from the premises alcoholic beverages guests leave behind in their rooms. Orr advised management to interview two other employees who could corroborate his theory. Both employees were interviewed, but neither confirmed Orr= s story. Aside from Orr= s testimony, no additional evidence of his conspiracy theory appears in the record.

After management completed its investigation of the second housekeeper= s complaint, it decided to terminate Orr= s employment. Management indicated that it based its termination decision on Orr= s lack of judgment evidenced by his touching another housekeeper and commenting to her that her perfume smelled good despite the warning to watch his

behavior after the previous allegations against him. Believing his termination was unfair and unlawful, Orr filed suit against the Inn and Meristar claiming, among other things, wrongful termination and breach of contract. This appeal followed the superior court= s order granting defendants= motion for summary judgment.

Orr first claims that he could be fired only for just cause because defendants= employee handbooks modified his at-will employment status. An employer may unilaterally modify the at-will status of its employees through written policies in an employee handbook and/or by implementing unwritten company-wide personnel policies. Dillon v. Champion Jogbra, Inc., 819 A.2d 703, 707 (2002); Ross v. Times Mirror, Inc., 164 Vt. 13, 19-20 (1995). A An employer not only may implicitly bind itself to terminating only for cause through its manual and practices, but may also be bound by a commitment to use only certain procedures in doing so.@ Dillon, 819 A.2d at 707. If the employer modifies an employee= s at-will status and binds itself to terminate for just cause only, we will uphold the termination on summary judgment if the undisputed material facts show that the employer= s discharge decision meets the two just cause criteria under an objective, good faith standard. Dulude, 807 A.2d at 395-96. The two criteria are (1) A that it is reasonable to discharge the employee because of certain conduct,@ and (2) A the employee had fair notice, express or fairly implied, that such conduct would be grounds for discharge.@ Id. at 396. We need not determine whether defendants modified Orr= s at-will employment status because even assuming that they did, defendants had just cause to terminate him.

It is undisputed that Orr was accused of sexual harassment, an accusation that led to a civil suit against his employer. Orr acknowledges that he understood that his job would be in jeopardy if another allegation of sexual harassment was made. The record also contains statements from several other housekeepers about similar inappropriate conduct by Orr directed to or witnessed by them. Although he denies that he engaged in conduct amounting to sexual harassment, the record demonstrates that defendants had a good faith belief, after investigating the housekeeper= s allegation, that Orr had touched another housekeeper and had made a comment to her about her smell despite defendants= warning to refrain from such conduct. Under an objective good faith standard, defendants acted reasonably in discharging Orr after giving him fair notice that his actions could result in dismissal.

Orr also argues that he was advised to refrain from sexual harassment and was not warned that exercising poor judgment, the reason defendants cited for his termination, would be grounds for dismissal. The argument has no merit. The poor judgment for which defendants terminated Orr was his physical contact with a housekeeper and his comment on her smell. Defendants properly warned Orr that actions like those could result in his dismissal after defendants were sued by the executive housekeeper. The record demonstrates no material factual dispute about whether the warning Orr received fairly implied that such actions could cause him to lose his job. Thus, the trial court properly granted summary judgment to defendants on Orr= s breach of contract claim.

Orr next argues that defendants terminated him in violation of public policy. To prevail on this claim, Orr must show that the reasons advanced for terminating him contravene A > clear and compelling public policy.= @ Id. at 397 (quoting Jones v. Keogh, 137 Vt. 562, 564 (1979)). In this case, Orr did not make that showing. Even if state and hotel policies concerning alcoholic beverages met the clear and compelling public policy standard, the record contains no evidence creating a genuine issue that defendants fired him because he sought to enforce those policies. The undisputed fact is that defendants terminated Orr because he touched another housekeeper and made a comment to her about how she smelled after being warned that such conduct could jeopardize his job. Termination for this reason does not contravene public policy, and defendants are therefore entitled to summary judgment on this claim as well.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice