

DOCKET NO: NNH-CV20-6104287S

SUPERIOR COURT

DENNIS MCCOY, ETA L

J.D. OF NEW HAVEN

V.

AT NEW HAVEN

CITY OF NEW HAVEN

MAY 28, 2024

**MEMORANDUM OF DECISION RE**  
**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT (#119)**

The issue before the Court is the defendant, City of New Haven’s, Motion for Summary Judgment (#119), plaintiff’s Opposition to Motion (#120), and Defendant’s Reply (#121). The Motion and Opposition were argued on February 8, 2024. The Court has considered the defendant’s Motion for Summary Judgment, plaintiff’s Opposition, defendant’s Reply, arguments of counsel, and the applicable law.

For the reasons set forth herein, the defendant’s Motion for Summary Judgment (#119) is denied as to Plaintiff Jody Taylor and the plaintiff’s Opposition (#120) is sustained; the Motion is granted as to the remaining plaintiffs and the Objection is over-ruled. As to plaintiff Taylor only, there exist genuine issues of material fact, and defendant is not entitled to summary judgment as a matter of law.

**FACTS AND PROCEDURAL HISTORY**

The instant action arises from a claim of age discrimination in the hiring practices for the position of Parks Foreperson of the City of New Haven (“the City”) brought by eight individuals. In Count One, as to Dennis McCoy, it is alleged that the defendant violated the Connecticut Fair Employment Practices Act by failing to place the plaintiff among the top three

candidates, based on a civil service examination, from which the position of Parks Foreperson would be selected. Plaintiff alleges that the three persons selected for consideration for the position were significantly younger than plaintiff with significantly less job-related experience. Count Two was withdrawn on September 5, 2023 as to plaintiff Charles Brooks. The remaining counts as to the remaining plaintiffs allege the same essential claims as Count One that defendant discriminated against them based on age by not hiring them or considering them for the position.

Plaintiff Taylor has submitted an affidavit attached to plaintiffs' Opposition to Motion for Summary Judgment. No other evidence was filed by any of the remaining plaintiffs in support of their objection to summary judgment. Taylor's affidavit states: "I am a plaintiff in this case. This affidavit is based on my personal knowledge. 1. Despite my high score, Deputy Director Bill Dixon stated that I would not be promoted because I was out on compensation too much. 2. My repeated requests for additional training on equipment were ignored by management. 3. I also was told by management that I would not be promoted because I am a woman." Count Seven of the complaint, which relates to plaintiff Jody Taylor, does not allege gender or sex discrimination, but is limited to an allegation that Taylor was "subjected by the defendant to discrimination on the basis of her age."

The parties agree that plaintiff Taylor was ranked second in the results of the civil service examination for the position, and that the New Haven Civil Service rules required appointment from those eligible for the position with the three highest scores on the civil

service exam, the so-called “rule of three”. The individual who ranked first, Crnkovic, was ultimately hired for the position.

### DISCUSSION

“Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” (Internal quotation marks omitted.) *Graham v. Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018); see also *Rompney v. Safeco Ins. Co. of America*, 310 Conn. 304, 312 (2013).

“The fundamental purpose of summary judgment is preventing unnecessary trials. . . . If a plaintiff is unable to present sufficient evidence in support of an essential element of his cause of action at trial, he cannot prevail as a matter of law. . . . To avert these types of ill-fated cases from advancing to trial, following adequate time for discovery, a plaintiff may properly be called upon at the summary judgment stage to demonstrate that he possesses sufficient counterevidence to raise a genuine issue of material fact as to any, or even all, of the essential elements of his cause of action. . . .” (Internal quotation marks omitted.) *Doe v. Board of Education of the Town of Westport, et al.*, 213 Conn. App. 22, 27 (2022). “[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way. . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to

disbelieve and which would require a directed verdict for the moving party. . . . [A] directed verdict may be rendered only where, on the evidence *viewed in the light most favorable to the nonmovant*, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed.” (Citations omitted; emphasis in original; internal quotation omitted.) *Dugan v. Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003).

“The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [T]ypically [d]emonstrating a genuine issue requires a showing of evidentiary facts or substantial evidence outside the pleadings from which material facts alleged in the pleadings can be warrantably inferred. . . . Only if the defendant as the moving party has submitted no evidentiary proof to rebut the allegations in the complaint, or the proof submitted fails to call those allegations into question, may the plaintiff rest upon factual allegations alone. . . . [I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [I]ts function is not to decide issues of material fact, but rather to determine whether any such issues exist. . . .” *Doe v. Board of Education of the Town of Westport, et al.*, 213 Conn. App. at 28-29. “[I]n deciding a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party.” *Id.* at p. 35, citing *Ramirez v. Health Net of the Northeast*,

*Inc.*, 285 Conn. 1, 11 (2008) and *Lasso v. Valley Tree & Landscaping, LLC*, 209 Conn. App. 584, 592 (2022).

“A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case.” *Buell Industries, Inc. v. Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002). “[T]he party moving for summary judgment . . . is required to support its motion with supporting documentation, including affidavits.” (Internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of America*, 310 Conn. at 324 n.12. See also *Stuart v. Freiberg*, 316 Conn. 809, 820-21 (2015). “When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue.” (Internal quotation omitted.) *Sena v. American Medical Response of Connecticut, Inc.*, 333 Conn. 30, 53, 213 A.3d 1110 (2019). When the moving party’s documents establish no genuine issue of material fact, “[t]he existence of the genuine issue of material fact must be demonstrated by counter affidavits and concrete evidence [by the non-moving party]. . . . If the affidavits and the other supporting documents [of the non-moving party] are inadequate [to establish a genuine issue of material fact], then the court is justified in granting the summary judgment, assuming that the movant has met his burden of proof.” (Internal quotation omitted.) *Rivera v. CR Summer Hill, Ltd. Partnership*, 170 Conn. App. 70, 74, 154 A.3d 55 (2017). “A conclusory assertion . . . does not constitute evidence sufficient to establish the existence of a disputed material fact for purposes of a motion for summary

judgment.” 316 Conn. at 829, citing *Hoskins v. Titan Value Equities Group, Inc.*, 252 Conn. 789, 793-94 (2000).

Defendant has attached to its Motion for Summary Judgment documents which support its claim that summary judgment should be granted because there exists no genuine issue of material facts and defendant is entitled to judgment as a matter of law as to all plaintiffs, except plaintiff Taylor. Defendant’s submissions establish that impermissible age discrimination was not a factor in the hiring process. However, Taylor’s affidavit establishes a factual basis from which a reasonable inference could be drawn that the defendant failed to hire plaintiff Taylor based on age discrimination. Taylor states in her affidavit, “[d]espite my high score, Deputy Director Bill Dixon stated that I would not be promoted because I was out on compensation too much.” A reasonable inference could be drawn that the fact that Taylor was out on compensation too much was due to her age. Defendant’s submissions consist of facts which, if credited by the jury, would provide a non-discriminatory reason that Taylor was not hired. However, the inferences drawn from Taylor’s affidavit create the existence of a genuine issue of material facts as to whether Taylor was discriminated against in the hiring process due to her age.

Viewing the evidence in the light most favorable to the plaintiff Taylor, the court finds there exists a genuine issue of material facts as to whether defendant refused to hire Taylor for the position due to her age. As to the remaining plaintiffs, no genuine issue of material facts exists.

## **CONCLUSION**

For the reasons stated herein, the defendant's Motion for Summary Judgment (#119) is denied as to plaintiff Taylor only and defendant's Objection (#120) is over-ruled as to Taylor only. The Motion for Summary Judgment is granted as to the remaining plaintiffs, and the Objection is over-ruled as to the remaining plaintiffs.

Goodrow, J.

Juris Number 434439