UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

STANLEY J. HANCZYC, JR.	:	
Plaintiff	:	Case No.: 3:10-CV-02397
	:	
- vs -	:	
	:	JURY TRIAL DEMANDED
VALLEY DISTRIBUTING AND	:	
STORAGE COMPANY, INC.,	:	
CONRAD KOTLOWSKI, CAROL	:	Honorable A. Richard Caputo
KEUP	:	
Defendants	:	

BRIEF IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S COUNTER-MOTION FOR SUMMARY JUDGMENT

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Plaintiff Stanley Hanczyc, by and through his attorney, George R. Barron, Esq. respectfully submits this brief in opposition to the defendants' Motion For Summary Judgment (Doc. 25) and in support of plaintiff's Counter-Motion for Summary Judgment (Doc. 33).

STATEMENT OF FACTS

Plaintiff incorporates the facts set forth in Plaintiff's Counter-Statement of Facts ("CSOF") (Doc. 34).

Plaintiff Stanley J. Hanczyc, Jr. ("Mr. Hanczyc") was employed as a Distribution Manager with Valley Distributing and Storage Company, Inc. ("Valley") from August 2006 to August 2009. (CSOF ¶3, ¶51). In October 2007, Mr. Hanczyc learned that he had heart disease with significant blockages and underwent triple bypass heart surgery. (CSOF ¶21).

Approximately six weeks after his surgery, Mr. Hanczyc returned to work at Valley and informed defendants of the restrictions on his work hours imposed by his physicians. (CSOF¶23, ¶34). Defendants ignored Mr. Hanczyc's medical restrictions and demanded that Mr. Hanczyc work in excess of his physician's restrictions, denying him both the reasonable accommodation required by ADA/PHRA and FMLA intermittent leave to which he was entitled. (CSOF¶23, ¶34). Defendants Keup and Kotlowski, Mr. Hanczyc's supervisors ordered Mr. Hanczyc to work in excess of his physicians' restrictions, and threatened to fire

him if he refused. (CSOF¶23, ¶34). Mr. Hanczyc reported these violations to Defendant Valley. (CSOF¶23, ¶34).

Defendant Valley did nothing to stop these violations, and characterized them as "only a joke." (CSOF¶23, ¶34).

Mr. Hanczyc was an exempt, salaried employee from August 2006 to October 2007. (CSOF¶40). When he returned to work in December 2007 following his heart surgery, defendant Valley changed Mr. Hanczyc to a non-exempt, hourly employee. (CSOF¶40). Defendant Valley initially paid Mr. Hanczyc $20.19 per hour, an hourly rate of 1/40th his prior weekly salary. (CSOF¶40).

Despite the fact that Mr. Hanczyc was a non-exempt, hourly employee, upon his return from surgery defendants refused to pay Mr. Hanczyc overtime - and in fact did not pay him at all - for hours worked in excess of 40 per week. (CSOF¶40). Mr. Hanczyc was the only one of Valley's managers denied payment for overtime. (CSOF¶40).

Mr. Hanczyc reported these violations to the Department of Labor ("DOL") in a formal complaint in October 2008. (CSOF¶41). In November 2008, DOL found that defendants had violated the law. (CSOF¶41). Immediately after said finding, defendants reduced Mr. Hanczyc's hourly wage from $20.19 to $14.50. (CSOF¶40).

Afraid to fire Mr. Hanczyc because they knew their actions were unlawful, defendants attempted to force Mr. Hanczyc to quit. (CSOF¶46). Unable to force him to quit, defendants Valley, Kotlowski and Keup ultimately fired Mr. Hanczyc on August 10, 2009, after offering one last time to let him continue working if he would withdraw his legal claims against defendants. (CSOF¶46).

ARGUMENT

Defendants have moved for summary judgment on all of plaintiff's claims. As set forth below, defendants' motion for summary judgment should be denied in its entirety. Further, for the reasons set forth herein, this Honorable Court should grant judgment in favor of Mr. Hanczyc and against defendants on his ADA/PHRA Failure to Accommodate claims (Counts I and III), his FMLA Interference claim (Count IV) his FLSA claim (Count VI) and his Pennsylvania Minimum Wage Act claim (Count VII).

A. Applicable Summary Judgment Standard

Summary judgment is appropriate where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." F.R.C.P. 56(c). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." *Pennsylvania Coal Association v. Babbitt*, 63 F.3d 231, 236 (3d Cir.1995).

Summary judgment is appropriate where the evidence is such that no reasonable jury could return a verdict for the nonmoving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (U.S. 1986).

B. This Court Should Deny Defendants' Motion for Summary Judgment on Plaintiff's Fair Labor Standards Act Claim and Pennsylvania Minimum Wage Act Claims and Enter Summary Judgment in Favor of Plaintiff and Against all Defendants on Those Claims.

1. Fair Labor Standards Act

The Fair Labor Standards Act ("FLSA") requires that covered employees be compensated for every hour worked in a workweek. See 29 U.S.C. § 206(b). The FLSA requires that covered employees receive overtime compensation "not less than one and one-half times' their regular rate of pay for all hours worked over 40 in a workweek". See 29 U.S.C. § 207(a) (1).

Upon his return from heart surgery in December 2007, Mr. Hanczyc was a non-exempt, hourly employee, and therefore a "covered employee" pursuant to the FLSA. (CSOF¶40, ¶41).

Defendant Valley admitted in its deposition that from December 2007 to November 2008, it did not compensate Mr. Hanczyc at all for hours he worked in excess of 40 per week. (CSOF¶40). Mr. Hanczyc worked in excess of 40 hours per week on numerous occasions between December 2007 and November 2008 and did so without pay for the hours in excess of 40. (CSOF¶40).

Defendants' claim that Mr. Hanczyc was a salaried employee until November 2008 is simply false. The testimony of Valley as well as the payment advices from that period shows conclusively that Mr. Hanczyc was an hourly employee, paid an hourly rate for each of the first 40 hours of work per week, and paid Mr. Hanczyc nothing - in violation of the law - for hours worked in excess of 40 per week. (CSOF¶23, ¶40).

Because defendants failed to pay Mr. Hanczyc "not less than one and one-half times' their regular rate of pay for all hours worked over 40 in a workweek" for those hours worked between December 2007 and November 2008, this Court should enter summary judgment against defendants and in favor of plaintiff on this count.

2. Pennsylvania Minimum Wage Act

The Pennsylvania Minimum Wage Act requires that employers pay employees at least minimum wage for each hour worked, and 1 and 1/2 times the regular hourly rate for hours in excess of 40 per week. See 3 P. S. §§ 333.101et seq. Because defendants did not pay Mr. Hanczyc at all for the hours he worked in excess of 40 per week between December 2007 and November 2008, this Court should enter summary judgment against defendants and in favor of plaintiff on this count.

C. This Court Should Deny Defendants' Motion for Summary Judgment with Regard to Plaintiff's FMLA Interference Claim, and Should Enter Summary Judgment in Favor of Plaintiff and Against all Defendants on This Claim.

The Family Medical Leave Act ("FMLA") provides that covered employees are "entitled to a total of 12 workweeks of leave during any 12-month period . . . [b]ecause of a serious health condition that makes the employee unable to perform the functions of [his or her] position." *Hilborn v. Cordaro,* 2007 U.S. Dist. LEXIS 76879 (M.D. Pa. Sept. 28, 2007), internal citations omitted.

Mr. Hanczyc was an FMLA eligible employee, and defendant Valley was a covered employer. (CSOF ¶41). Eligible employees may take FMLA leave on an intermittent basis. "An eligible employee under 29 U.S.C. § 2612(a)(1)(C) or (D) may be entitled to take FMLA leave "intermittently or on a reduced leave schedule when medically necessary". 29 USCS § 2612.

Plaintiff's burden in an FMLA interference claim is to show that he was entitled to benefits, and that those benefits were denied:

> To establish a violation of the entitlement provision, an employee need only show that she was entitled to FMLA benefits, 29 U.S.C. § 2612(a)(1), and the employer interfered with them, 29 U.S.C. § 2614(a)(1). An interference action is not about discrimination, it is only about whether the employer provided the employee with the entitlements guaranteed by the FMLA. Consequently, it is irrelevant whether the employer had a legitimate reason to deny the benefits or treated disparately or similarly other employees.

Reifer v. Colonial Intermediate Unit 20, 462 F. Supp. 2d 621, 637 (M.D. Pa. 2006) (internal citations and quotations omitted).

As set forth herein, there is no dispute of fact as to the following: Mr. Hanczyc was eligible for FMLA following his heart surgery.[1] (CSOF¶41). Mr. Hanczyc requested a reduced work schedule based upon the restrictions set by his physicians.[2] (CSOF ¶23, 34). Mr. Hanczyc worked in excess of the requested reduced work schedule. (CSOF ¶ 23). Because defendants refused to pay overtime to Mr. Hanczyc between December 2007 and November 2008, Mr. Hanczyc worked many of the hours in excess of the requested work schedule in exchange for no compensation whatsoever. (CSOF ¶ 34, 40).

The only question remaining is whether Mr. Hanczyc worked in excess of that schedule voluntarily, as defendants maintain, or as a result of defendant's denial of Mr. Hanczyc's request for intermittent FMLA leave.

Mr. Hanczyc submits that no reasonable juror could find that he worked in excess of his medical restrictions, jeopardizing his fragile health and violating his physician's orders - often without compensation of any kind - for any other reason that his belief that he would lose his job if he refused. Mr. Hanczyc testified to that belief, and the other evidence in this case supports the fact that defendants

[1] Defendants denied Mr. Hanczyc intermittent FMLA leave after his return to work in December 2007.

[2] Mr. Hanczyc's requests for a reduced work schedule - as set forth in the physician's notes that Mr. Hanczyc gave to Valley (CSOF ¶ 23) were requests for reasonable accommodations to which Mr. Hanczyc was entitled under the ADA and PHRA, and also requests for intermittent leave to which Mr. Hanczyc was entitled under the FMLA.

threatened Mr. Hanczyc's job if he did not work in excess of his physician's restrictions. (CSOF ¶ 34, 40, 41, 46, 51).

Defendants' argument on this issue - that Mr. Hanczyc volunteered, free of charge, to work in excess of his physician's restrictions - is absurd. Because no reasonable juror could so believe, this Court should enter summary judgment in favor of Mr. Hanczyc on this count.

D. This Court Should Deny Defendants' Summary Judgment Motion with Regard to Plaintiff's ADA/PHRA Discrimination Claims, and Should Enter Summary Judgment in Favor of Plaintiff and Against Defendant Valley on the ADA Claim and Against all Defendants on the PHRA Claim.

"To establish a prima facie case of discrimination under the ADA[3], a plaintiff must present evidence that: (1) he has a "disability" within the meaning of the ADA; (2) he was qualified for the position, with or without accommodation; and (3) he suffered an adverse employment decision as a result of the discrimination." *Shaw v. Cumberland Truck Equip. Co.,* 2010 U.S. Dist. LEXIS 124155, 6-7 (M.D. Pa. Aug. 20, 2010), citing *Shaner v. Synthes,* 204 F.3d 494, 500 (3d Cir. 2000).

At all times relevant hereto, Mr. Hanczyc suffered from heart disease which significantly impaired, inter alia, his ability to work and the function of his circulatory system. (CSOF ¶ 21). See 42 USCS § 12102(2)(B). Mr. Hanczyc was

[3] The same standard applies to plaintiff's PHRA claim. "Pennsylvania courts generally interpret the PHRA in accord with its federal counterparts, among them the ADA." *Kelly v. Drexel Univ.,* 94 F.3d 102, 105 (3d Cir. 1996).

qualified for the position that he held, as evidenced by the fact that he held the position for three years. (CSOF ¶3, ¶51)[4].

Mr. Hanczyc suffered several adverse employment decisions during his employment, set forth in further detail below. Defendants' refusal to make reasonable accommodations for Mr. Hanczyc's disability was an adverse employment decision. See *Williams v. Phila. Hous. Auth. Police Dep't,* 380 F.3d 751, 761 (3d Cir. 2004). A reasonable accommodation may include "part-time or modified work schedules." 42 U.S.C. § 12111(9)(B). As set forth below, there is no question of fact on this issue and no doubt that it was related to plaintiff's request for accommodation.

"An employee can demonstrate that an employer breached its duty to provide reasonable accommodations because it failed to engage in good faith in the interactive process by showing that:

1) the employer knew about the employee's disability;

2) the employee requested accommodations or assistance for his or her disability;

3) the employer did not make a good faith effort to assist the employee in seeking accommodations; and

4) the employee could have been reasonably accommodated but for the employer's lack of good faith.

[4] Defendants have not contested plaintiff's disability nor have defendants denied that plaintiff was qualified. See Doc. 26.

Williams v. Phila. Hous. Auth. Police Dep't, 380 F.3d 751, 772 (3d Cir. Pa. 2004).

As set forth above, defendants refused Mr. Hanczyc's requests for a reasonable accommodation, specifically, a reduced work schedule in compliance with his physicians' recommendations. (CSOF ¶23, 34). Defendants also refused to engage in anything resembling the interactive process required by the ADA. (CSOF ¶23, 34, 40, 45). Instead, defendants claim that they reprimanded Mr. Hanczyc for exceeding those restrictions, even when they knew that Mr. Hanczyc had been ordered to violate those restrictions by defendant Kotlowski, his immediate supervisor. (CSOF ¶ 23, 34, 40). Valley admitted that Mr. Hanczyc reported that his immediate supervisor, defendant Conrad Kotlowski, insisted that he work in excess of those restrictions. (CSOF ¶14, 15). Valley's response to that plea for help was to (purportedly) to discipline Mr. Hanczyc for working in excess of his doctor's orders – and for obeying the orders of his direct supervisor[5]. (CSOF ¶14, 15). Rather than engage in any interactive process, defendants placed Mr. Hanczyc in an untenable "damned if you do, damned if you don't" situation - ultimately intended to force him to quit.

[5] Mr. Hanczyc maintains that he was never presented with the write-up regarding his working hours in excess of his physician's restrictions, and never disciplined in any way for exceeding those restrictions. (CSMF¶14). To the contrary, Mr. Hanczyc was forced by defendants to exceed those restrictions. (CSMF¶14, 23, 34).

Because there is no question of fact and because Mr. Hanczyc is entitled to judgment as a matter of law, this Court should enter summary judgment in favor of Mr. Hanczyc on this count.

E. This Court Should Deny Defendants' Motion for Summary Judgment with regard to Plaintiff's ADA/PHRA and FMLA Retaliation Claims.

By asserting his rights, questioning defendants' unlawful decisions, contacting the Department of Labor and the EEOC, Mr. Hanczyc inconvenienced and annoyed defendants. Defendants punished him for it.

It is unlawful under the ADA, PHRA and FMLA for employers to retaliate against employees who engage in unlawful activity. See *Reid-Falcone v. Luzerne County Cmty. College,* 2005 U.S. Dist. LEXIS 12713 (M.D. Pa. June 28, 2005), and *Williams v. Phila. Hous. Auth. Police Dep't,* 380 F.3d 751, 759 (3d Cir. Pa. 2004). The proper framework for the analysis of plaintiff's retaliation claims under the ADA/PHRA and FMLA is that set forth in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973) . See *Gventer v. Theraphysics Partners of Western Pa., Inc.*, 41 Fed. Appx. 552, 553 (3d Cir. 2002) (considering FMLA retaliation case where district court applied *McDonnell Douglas* approach). Accordingly, plaintiff will examine these claims together.

"In order to establish a prima facie case of illegal retaliation under the anti-discrimination statutes [6], a plaintiff must show: (1) protected employee activity; (2) adverse action by the employer either after or contemporaneous with the employee's protected activity; and (3) a causal connection between the employee's protected activity and the employer's adverse action." *Williams v. Phila. Hous. Auth. Police Dep't,* 380 F.3d 751, 759 (3d Cir. Pa. 2004) (internal quotations and citations omitted). The United States Court of Appeals for the Third Circuit articulated two main factors that are relevant with respect to establishing a causal link to satisfy a prima facie case of retaliation: (1) timing or (2) evidence of ongoing antagonism. See *Abramson v. Wm. Patterson College of N.J.,* 260 F.3d 265, 288 (3d Cir.2001). See also *Crewl v. Port Auth.*, 2011 U.S. Dist. LEXIS 138495, 31-32 (W.D. Pa. Dec. 2, 2011, observing that "[t]emporal proximity ... is sufficient to establish the causal link. [A] plaintiff can [also] establish a link between his or her protected behavior and subsequent discharge if the employer engaged in a pattern of antagonism in the intervening period." *Id.*

[6] Establishment of plaintiff's prima facie case under the FMLA is functionally identical. Under the FMLA, plaintiff must show: (1) that he took advantage of the protected right to leave under the FMLA, (2) that he was adversely affected by an employment action taken by defendants, and (3) the unfavorable employment action was caused by his choice to take the leave under the FMLA. *Reid-Falcone v. Luzerne County Cmty. College,* 2005 U.S. Dist. LEXIS 12713 (M.D. Pa. June 28, 2005), internal citations omitted.

Plaintiff's establishment of a prima facie case shifts to defendant the burden to "clearly set forth, through the introduction of admissible evidence" its "legitimate, nondiscriminatory reason" for [the adverse employment action.] *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 255 (1981) (emphasis added).

> Should the defendant fail to satisfy this burden, judgment should be entered for the plaintiff. But if the defendant satisfies this burden, then the burden of production shifts back to the plaintiff to proffer evidence from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action.

Showalter v. University of Pittsburgh Medical Center, 190 F.3d 231, 234 (3d. Cir. 1999) (internal citations and quotations omitted). For the sake of clarity, plaintiff will examine in order each of Mr. Hanczyc's protected acts, the retaliation that followed, defendants' purported non-discriminatory reason for said action and the evidence that those reasons are pretextual.

1. Mr. Hanczyc's Request for a Reduced Schedule.

Immediately upon his return from surgery, Mr. Hanczyc requested a reduced work schedule in compliance with his physicians' orders[7]. (CSOF ¶23). His request was denied. (CSOF ¶23, 34) . In fact defendants repeatedly demanded that

[7] As set forth herein, that request constituted a request for reasonable accommodation under ADA/PHRA and a request for intermittent leave under FMLA.

Mr. Hanczyc exceed his medical restrictions, without heed to his rights or health. (CSOF ¶23, 34). Defendants not only denied Mr. Hanczyc's requests, they immediately retaliated against Mr. Hanczyc by imposing an unlawful compensation scheme that made Mr. Hanczyc an hourly employee, but failed to pay him at all for hours worked over 40 per week. (CSOF ¶40) Mr. Hanczyc was the only one of defendants' managers denied overtime pay. (CSOF ¶40).

Moreover, defendants repeatedly demanded release notes from Mr. Hanczyc's physicians. (CSOF ¶23). Defendants did so to pressure Mr. Hanczyc and his physicians to expand or lift his medical restrictions. (CSOF ¶15, 23, 46). Defendants even went so far as to request that Mr. Hanczyc's physician explain the reason for the restrictions. (CSOF ¶23).

Defendants have, understandably, been unable to offer a rational, lawful explanation for their acts. Defendants' failure to pay Mr. Hanczyc for his work in accordance with the law was not a mistake or a coincidence. Defendants paid every other manager overtime for hours worked over 40. (CSOF ¶40). Only Mr. Hanczyc was denied overtime pay. (CSOF ¶40).

2. Mr. Hanczyc's Department of Labor Complaint

Mr. Hanczyc contacted the Department of Labor ("DOL") in mid-2008 to complain about defendants' denial of FMLA leave and refusal to pay overtime. (CSOF ¶19, 23, 40, 41). DOL investigated and in November 2008 concluded that

defendants had violated plaintiff's FMLA rights. (CSOF ¶19, 23, 40, 41). Defendants immediately reduced Mr. Hanczyc's hourly rate from $20.19 to $14.50 per hour. (CSOF ¶ 37, 40).

Defendant's explanation for this is that Mr. Hanczyc's wage was reduced to give "all similarly situated managers the same status, consistent with the recommendation of the Department of Labor". (Doc. 26, p.16 of 23). Defendants do so as part of a passage in which they ignore the fact that plaintiff was paid $20.19 hourly immediately after his return to Valley, claim that "[f]or any time in excess of 40 hours, [plaintiff] would have received overtime" even though plaintiff did work in excess of 40 hours and did not receive overtime. (Doc. 26, pp.15, 16 of 23).

Defendants have produced no evidence regarding the wages paid to other managers, thus their reference to a desire to give "all similarly situated managers the same status" is meaningless. Defendants have produced no evidence, other than inadmissible hearsay testimony, for the proposition that the Department of Labor recommended a change in Mr. Hanczyc's hourly wage. (CSOF ¶ 41).

"[H]earsay evidence that was not capable of being admitted at trial could not be considered on a motion for summary judgment." *Mountbatten Sur. Co. v. Afny,* Inc., 55 Fed. Appx. 80, 82 (3d Cir. Pa. 2003) citing *Philbin v. Trans Union Corp.,* 101 F.3d 957, 961 n.1 (3d Cir. 1996). As set forth herein, Mr. Hanczyc believes

that defendants are fabricating the Department of Labor's "recommendation". But in any event, because they are hearsay, defendants' assertions regarding the Department of Labor's "recommendation" must be disregarded.

Defendants saw Mr. Hanczyc's DOL complaint as an opportunity and an excuse to punish Mr. Hanczyc further. Defendants told Mr. Hanczyc that DOL determined that defendant Valley had overpaid Mr. Hanczyc, and demanded that Mr. Hanczyc return the "overpayment" of $7,834.63. Valley then offered to "forgive" this overpayment if Mr. Hanczyc signed an agreement releasing defendants from liability for their unlawful actions. (CSOF ¶ 41).

The agreement references the "November 19, 2008" letter from DOL as the source of the "overpayment." (CSOF ¶ 41). The November 19, 2008 letter from DOL, the only letter defendants received from DOL, makes no mention of any "overpayment." (CSOF ¶ 41). Defendants attempted to mislead plaintiff then, and are trying to mislead this Court now.

3. Mr. Hanczyc's EEOC Charge and Defendants' Ongoing Antagonism.

In 2009, Mr. Hanczyc contacted EEOC with regard to defendant's violations. (CSOF ¶37, 46). Defendant was aware of Mr. Hanczyc's contact with EEOC long before they fired him. (CSOF ¶37, 46). Mr. Hanczyc's relationship with defendants became increasingly strained after he informed defendants of his contact with EEOC. (CSOF ¶37, 46). Defendants continued to harass Mr.

Hanczyc with meetings and demands for more physicians' notes permitting the schedule defendants were imposing upon him. (CSOF ¶15, 37, 40, 41, 45, 46).

Defendants' efforts were part of their concerted, unlawful effort to force Mr. Hanczyc out of his job. That effort was described by John Meyers, a former Valley manager who attended meetings with defendant Keup, the Chief Operating Officer of defendant Valley, and others. (CSOF ¶15, 45, 46). In those meetings Valley management discussed plaintiff's requests for a schedule in compliance with his doctor's orders. (CSOF ¶15, 45, 46). Defendant Keup instructed defendant Kotlowski that plaintiff should be fired if he refused to work in excess of his doctor's restrictions. (CSOF ¶15, 45, 46). When the defendants realized that firing plaintiff could expose them to legal action, "it was discussed that if they made his job hard enough, he would be forced to leave." (CSOF ¶15, 45, 46). Defendants did their best to achieve that goal.

4. Mr. Hanczyc's Termination

Defendants' decision to fire Mr. Hanczyc was made in the context of Mr. Hanczyc's ongoing dispute with defendants regarding the claims that are the subject of this litigation, including Mr. Hanczyc's complaints to DOL and EEOC. (CSOF ¶15, 45, 46). Moreover, the firing came after a long pattern of antagonism on the part of defendants, and as a last resort after defendants' attempts to make Mr. Hanczyc quit had failed. (CSOF ¶15, 45, 46).

At the eleventh hour, defendants offered to continue Mr. Hanczyc's employment if he would make his EEOC charge "go away," and suggested to Mr. Hanczyc that if he would "get rid of the case" then "everything would be ok". (CSOF ¶46).

Defendant's implausibilities and misrepresentations are themselves evidence of pretext. "The factfinder's disbelief of the reasons put forward by the defendant ... may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination." *St. Mary's Honor Center v. Hicks,* 509 U.S. 502, 511 (1993) (footnote omitted).

CONCLUSION

For the reasons set forth herein, Mr. Hanczyc respectfully requests that defendants' motion for summary judgment be denied in its entirety and that his motion for summary judgment be granted as set forth herein.

Respectfully Submitted,

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CERITIFCATION OF WORD COUNT

I, George Barron, Esq., counsel for plaintiff in the above-captioned matter, hereby certify that this brief contains 3,959 words as determined by the word count feature of Microsoft Word 2010.

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