

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

LUIS RAMIREZ, ET AL.,)
)
 PLAINTIFFS)
)
v.)
)
**AUSTIN J. DeCOSTER, D/B/A/
DeCOSTER EGG FARM, ET AL.,**)
)
 DEFENDANTS)

Civil No. 98-186-P-H

ORDER ON PLAINTIFFS' MOTION FOR RECONSIDERATION

The motion for reconsideration is **DENIED**.

While the plaintiffs have listed extensive charges of illegal discrimination in their legal memoranda, they have frequently failed to support these charges with admissible record citations. Their motion for reconsideration, for example, is bereft of a *single reference to the factual record*.¹ That is a critical omission in

¹ In their reply memorandum, the plaintiffs have a single reference to the record—not to a disputed or undisputed statement of material fact, see Local Rule 56, but a general reference to a deposition, not even to a particular page. The reference is to both admissible and inadmissible facts—admissible when it recounts statements by Austin DeCoster (see Fed. R. Evid. 801(d)(2)) and inadmissible when it gives Mr. Caron’s personal opinions about why Mr. DeCoster did what he did.

Although not citing to the record, the plaintiffs also allude to Justice Bradford’s 1992 state court opinion finding that DeCoster violated the Maine Civil Rights Act by intentionally interfering by force or threat of force with his workers’ rights to quiet enjoyment of their trailers. State v. DeCoster, No. CV-92-207 (Me. Super. Ct. Nov. 30, 1992), aff’d, 653 A.2d 891 (Me. 1995). This opinion concerns events that occurred primarily before 1992, the statute of limitations cut off in this action. If the plaintiffs wish to offer this opinion to establish the truth of the matters asserted within it, the opinion is inadmissible hearsay. See 3 Stephen A. Saltzburg et al., Federal Rules of Evidence Manual: A Complete Guide to the Federal Rules of Evidence 1691 (7th ed. 1998).

(continued...)

summary judgment practice—by the District of Maine’s Local Rule 56, by Fed. R. Civ. P. 56 and by the United States Supreme Court decisions like Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

The plaintiffs argue that I refused to let them rest their *prima facie* case of racial discrimination under McDonnell Douglas on inferences fairly to be drawn from statements and practices they did show; and that I ignored the “totality of the circumstances” and improperly focused solely on whether they had evidence for particular accusations of discriminatory conduct.

Several responses are in order. First, I did recognize the role of inference and the practices the plaintiffs showed and denied summary judgment to defendants as to certain plaintiffs.

Second, even if Austin DeCoster and his supervisory personnel are or were racist, that character flaw alone does not make them liable for damages under 42 U.S.C. § 1981. The plaintiffs must also prove—or at least at the *prima facie* stage offer sufficient proof to create an inference—that the defendants subjected them to worse treatment than white citizens as a result, whether it be in housing, pay or job conditions. They cannot rest on a general negative portrait of the farm. If the housing was discriminatory but the pay was equal, there is no discrimination claim

¹ (...continued)

While the plaintiffs argued in their summary judgment opposition that this decision has a collateral estoppel effect at least to the date of the decision, they concede that intentional racial discrimination was not a specific element of the Maine Civil Rights Act. See Pls.’ Opp’n Mem. to DeCoster’s Mot. for Summ. J. at 20 & n. 20. Therefore, Justice Bradford’s decision does little to assist them.

for the pay. If the pay was unequal but working conditions were equally intolerable for Mexicans and whites alike, there is no discriminatory claim for working conditions.

Third, something more important seems to lie at the heart of the plaintiffs' disagreement with my ruling. The plaintiffs claim that theirs is a unique case—

an anomaly in the sense that this is not a situation where the Mexican workers, for the most part, seek to show that they were not hired, or were fired and that their jobs were given to White workers. On the contrary, an entire race of workers was specifically and purposefully exploited to fill a workforce *because* of their race.

Pls.' Mot. for Reconsideration at 4 (emphasis original). If the plaintiffs think that by alleging that DeCoster had unpleasant jobs and specifically hired Mexican workers to fill them, they have thereby proven liability and need not show disparate treatment, they are wrong. The logical next step of this argument would be that if DeCoster had hired some whites for these jobs as well, there would be no discrimination—in other words, it is the failure to hire whites that is the gravamen of the Mexican plaintiffs' injury.² The plaintiffs also suggest that their case is even comparable to one of involuntary servitude under the Thirteenth Amendment. Pls.' Reply Mem. at 1-2. Involuntary servitude, however, distinctly is *not* the plaintiffs' claim here; the Amended Complaint unmistakably asserts

² I am aware of the cases permitting a plaintiff to raise discrimination claims of another race as, for example, in housing, see Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 237 (1969); DesVergenes v. Seekonk Water Dist., 601 F.2d 9, 13-14 (1st Cir. 1979), but the plaintiffs are not making such an argument here.

disparate treatment, not involuntary servitude. Discrimination and involuntary servitude are two distinct legal wrongs, and their proof should not be confused.

If I am wrong, the Court of Appeals will tell me so. But it would be a difficult rule of law to implement—liability, not for disparate treatment, but for an impure heart coupled with generally unsavory practices. DeCoster may have violated wage and hour laws, OSHA laws or other worker-protective legislation. But the issue here is whether he treated Mexican workers worse than he treated white workers. Perhaps the plaintiffs or their lawyers have knowledge that he did so; my ruling is only that their summary judgment papers have failed to point to the admissible evidence to support their *prima facie* case in accordance with court precedents, Fed. R. Civ. P. 56, and Local Rule 56.³

SO ORDERED.

DATED THIS _____ DAY OF MAY, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

³ The Court of Appeals has explicitly invited District Courts to develop rules for summary judgment practice so that a district judge need not comb through an unwieldy record on his own. Stepanischen v. Merchants Dispatch Transp. Corp., 722 F.2d 922, 931 (1st Cir. 1983). This District has such a local rule, and I have held the plaintiffs to its requirements. To deviate from it and consider evidence not properly referenced would make summary judgment rulings impossible in extensive records.

U.S. District Court
District of Maine (Portland)
Civil Docket for Case #: 98-CV-186

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