NO. 25134

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

CLARA K. RITA, Plaintiff-Appellant, v.
AON RISK SERVICES, INCORPORATED OF HAWAII,
Defendant-Appellee, and JOHN DOES 1-10,
JANE DOES 1-10, DOE CORPORATIONS 1-10,
DOE PARTNERSHIPS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 00-01-3856)

MEMORANDUM OPINION
(By: Burns, C.J., Lim and Foley, JJ.)

Plaintiff-Appellant Clara K. Rita (Rita) appeals from the May 6, 2002 "Order Granting Defendant AON Risk Services, Inc. of Hawaii's Motion for Summary Judgment Filed on April 4, 2002," and the May 20, 2002 Judgment entered against her by Judge Dan T. Kochi. The judgment (a) denied all claims Rita alleged in the complaint and (b) assessed costs against Rita in the amount of $3,113.02. We affirm.

RELEVANT STATUTES

Within Hawaiʻi's Employment Practices Law, Hawaii Revised Statutes (HRS) § 378-2 (Supp. 2002) states, in relevant part, as follows:

> It shall be an unlawful discriminatory practice:
>
> (1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:

> (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
>
> . . . .
>
> (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
>
> (3) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so[.]

HRS § 378-3 (Supp. 2002) states, in relevant part, as follows:

> Nothing in this part shall be deemed to:
>
> . . . .
>
> (10) Preclude any employee from bringing a civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto; provided that notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed in circuit court[.]

HRS § 378-62 (Supp. 2002) states, in relevant part, as follows:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:
>
> (1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of:
>
> (A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States[.]

Within Hawai‘i's Workers' Compensation Law, HRS § 386-5 (1993) states as follows:

> The rights and remedies herein granted to an employee or the employee's dependents on account of a work injury suffered by the employee shall exclude all other liability of the employer to the employee, the employee's legal representative, spouse, dependents, next of kin, or anyone else entitled to recover damages from the employer, at common law or otherwise, on account of the injury, except for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto, in which case a civil action may also be brought.

Within Hawai‘i's law pertaining to the Civil Rights Commission, HRS § 368-17(b) (Supp. 2002) states as follows: "Section 386-5 notwithstanding, a workers' compensation claim or remedy does not bar relief on complaints filed with the commission."

BACKGROUND

Rita was born on August 28, 1940. She is a high school graduate. Commencing in 1979, she was a file clerk with First Insurance Company of Hawaii. Commencing 1980, she was a Personal Lines Rater with Bishop Insurance Company. She subsequently became a Commercial Lines Underwriter there. Commencing 1990, she was a Commercial Lines Underwriter Assistant at National Mortgage and Finance. Commencing 1991, she was an Account Manager at Alexander of Hawaii, Inc., handling a book of small commercial accounts. Her salary was $26,000 per year.

In 1997, Aon Service Corporation purchased Alexander of Hawaii, Inc. In February 1998, Aon Service Corporation purchased Beck Kudlich & Swartman and the three insurance agency companies

were merged into Defendant-Appellee Aon Risk Services, Inc. of Hawaii (ARSIH).

John Beck (Beck) was the president of ARSIH. According to Beck, ARSIH operated with the following four departments/units: (1) Construction/Small Commercial, (2) Retail Brokerage, (3) Risk Management, and (4) Personal Lines. According to ARSIH Vice President/Account Executive Janet Ng (Ng), ARSIH operated with the following five departments/units: (1) Construction/Small Commercial, (2) Financial Institutions, (3) Hospitality, (4) Personal Lines, and (5) Finance. In this case, the relevant department/unit is Construction/Small Commercial.

ARSIH presented evidence that "beginning in late 1998 and on several occasions thereafter, Beck told Ng that the Construction Unit was overstaffed and that a cut of personnel would be needed."

In late 1998, ARSIH Account Manager Vicky Faber (Faber) complained to Ng about the hostile supervision of her by ARSIH Account Executive Gary Hashimoto (Hashimoto). Faber's age was in her "40s."

In March 1999, ARSIH offered early retirement to certain employees. Two account managers in the Construction/Small Commercial Unit accepted. Thereafter, another one resigned.

In May 1999, Ng hired Karen Kamakele (Kamakele) at $40,000 per year to handle the Construction/Small Commercial Unit and hired Sonia Barayuga (Barayuga) at the same salary range.

Barayuga and Rita joined Faber, and the three worked under the direct supervision of Hashimoto who worked under Ng who worked under Beck. According to Ng, Faber handled the more complex accounts, Barayuga handled the middle range accounts, and Rita handled mostly non-construction accounts.

Rita's pay was increased. In a deposition, Ng testified, in relevant part, as follows:

> Q. Do you recall that when [Rita] went from small accounts to the larger accounts that she did receive a $400-a-month increase in pay?
>
> A. I recall that I tried to increase her salary. Exactly when, I cannot tell you. But I do recall two increases, trying to get her more in line.

Barayuga's age was in her "40s." In 1999, Barayuga complained to Ng about the hostile supervision of her by Hashimoto. Employee May Blackman made the same complaint.

In January 2000, Rita obtained a Solicitor's License in Casualty and Property.

In February 2000, Rita met with Ng, and informed Ng of unreasonable, hostile, and improper supervision of Rita by Hashimoto. Among Rita's complaints of Hashimoto was "[t]hat he verbally humiliated, ridiculed and belittled [Rita]" and was "more interested in trying to find fault in what [Rita was] doing[.]" Rita asked for a meeting of the three. Instead, Ng met with Hashimoto. Thereafter, Ng informed Rita that Rita's problem with Hashimoto was a personality conflict and asked Rita if she would feel more comfortable returning to working on the smaller accounts

while her pay remained the same. Rita declined. Rita then wrote and submitted a typed, two-and-one-half page letter (Letter) to Ng in which she stated the following:

> To start it has been an agonizing weekend. I wonder now if it is worth it. . . . It was my idea. However, it appears that my wanting a grievance hearing has worked against me. I am going to be very frank. I'll admit I am afraid to do so but I need to speak up. This is what happened.
>
> The intent was for Janet, Gary and I to meet. This did not happen. Gary went ahead to Janet then Janet called me in. I was not asked what was bothering me, instead right off I was asked if I would be more comfortable in my old position, reason given a personality conflict between Gary and I. I was surprised, shocked. This is not what I expected. I was expecting a grievance hearing. Instead it seemed easier to lay blame on a personality conflict and deny me the due process of a grievance hearing with Gary present? Gary was given a chance to express his grievances? I volunteered some of my grievances to Janet and insisted on this meeting with Gary present.
>
> I need to know if there are other personal reasons on Gary's part that I should be made aware so that I can address them?
>
> It is nice that I was offered a comfortable assignment. But I do not see it that way. I see it as a demotion and an unjust one. I'm sure management is prepared, just checking, hypothetically speaking if I've take the offer, to be paid the same wages as Karen, if she makes more than me? If not, it would not seem fair. I'm being frank here.
>
> Why am I singled out in the "personality conflict" issue? [Ng] you said that [Hashimoto] backs off [Faber]? This is true. It is common knowledge. Why is that? What is her secret or weapon of defense? She seems protected. I wondered if he did not back off her, would she have a personality conflict with him and also be offered a more "comfortable" assignment? He does not back off [Barayuga], why? Why doesn't he back off of us too? Is there discrimination here? Please do not be offended by this, but this is how I see it.
>
> . . . .
>
> Others have had issues with Gary? How were they handled? Were they penalized for expressing themselves? Should we fear to express ourselves? Should we fear that we might lose our job because we speak out?
>
> Personally, I believe the problem is that I don't know the rules of his game. I feel there is no pleasing Gary heaven knows that I try my best to learn what it takes. . . .
>
> . . . .

> We enjoy a comfortable physical workplace, for this I am very grateful. Should we not also expect a safe emotional workplace where we can voice our opinions, express our feelings, make or give suggestions, disagree, all respectfully always, without fear of receiving a hostile attitude in return. I am not asking that he agrees with everything but be allowed some input in the process. Validation would be nice. . . .
>
> I love my work, the challenges and the potential for learning from Gary's vast knowledge and experience. However, for me to benefit fully, I need to know what he expects of me. Attainable expectation.
>
> . . . .
>
> Janet you said that Gary will not change. I am not trying to change him but merely trying to learn what it takes to please him. This is my goal also and I must admit it is not an easy task. To have or gain his confidence, trust, faith in my abilities is important to me and I must admit I do not know where I stand on this with him since there is very little praise.
>
> . . . .
>
> Thank you for allowing me to speak my mind. This has helped me tremendously. Now I feel like a load has been lifted off my shoulder. I know I have been brutally honest.

Rita did not identify the kind of "discrimination" she was talking about.

Subsequently, Ng, Hashimoto, and Rita met. According to Rita, Hashimoto "promised to treat [Rita] with more respect and tried to, I believe, verbalize in a proper manner." Instead, Hashimoto, thereafter, "totally distanced himself from [Rita] completely."

Early in 2000, according to Ng,

> Mr. Beck advised [Ng] that the unit, the matrix in our unit was not profitable; and that we, our unit, was being pretty much. pinpointed to be the unit that needed to perform a layoff; that the revenues generated from the unit do not support the expense of the employees.

Beck advised Ng "that [her] department [was] overstaffed; that [Ng had] more help in [her] unit than any other unit; and that there would eventually need to be a cut."

According to Beck, his

> first discussion with [Ng] regarding the possible downsizing of her department took place in either November, December, of 1999; and then [he] received instructions from [his] home office regarding the reduction in staff in approximately February of 2000; and then actually told [Ng] that she needed to make a decision in approximately March of 2000.

Early in March 2000, Beck told Ng

> that she was going to have to eliminate a position in her unit at the account management level; and that she needed to consider in her decision the fact that we were not hiring anybody as a replacement for whomever was let go; and that she would have to consider how she was going to reallocate the accounts that were being handled by whomever she let go; and that whole - all of that had to be considered in her decision.

Ng testified that, within two weeks, she told Beck that "Rita was the newest addition and that in the construction arena she was the least qualified." In other words, Ng's version is that Ng provided the information but Beck made the decision of whom to terminate.

In contrast, Beck testified that when Ng responded, "[s]he basically said that her decision was that the position that would be terminated would be the one that Rita Clara [sic] occupied." In other words, Beck's version is that the decision of whom to terminate was made by Ng. In her reply brief, Rita states that "[i]t was Ng, not Beck, who is alleged to have retaliated against [Rita] in this case."

On April 12, 2000, Beck personally informed Rita that "we have to let you go because of revenue."

The dispute between Beck's version and Ng's version of who decided to terminate Rita is described because ARSIH alleges

that: (1) Beck decided to terminate Rita and (2) Beck could not have decided to terminate Rita in retaliation for the Letter because Beck was not aware of the Letter when he terminated Rita. In its answering brief, ARSIH argues that

> Rita admitted that she never told Beck about her complaints about Hashimoto, and she never gave Beck a copy of the Complaint Letter. Further, it is uncontroverted that prior to Rita's termination, Beck did not know anyone had complained about Hashimoto; and he had not seen the Complaint Letter. Accordingly, Beck could not have considered these issues when he decided to terminate Rita as part of the corporate-mandated reduction-in-force.

(Emphasis in the original.)

On September 7, 2000, Rita presented to the Hawaii Civil Rights Commission a signed charge of age discrimination and retaliation. Rita received, from the Hawaii Civil Rights Commission, a right-to-sue letter dated September 22, 2000. Thereafter, on December 20, 2000, Rita filed the Complaint in this case against ARSIH alleging (1) age discrimination, (2) retaliation for opposing unlawful age discrimination and/or filing a complaint regarding age discrimination, HRS § 378-1 and -2 (Supp. 2002), (3) breach of implied contract, and (4) intentional infliction of emotional distress. Rita's Complaint sought compensatory, special and punitive damages and attorney fees and litigation expenses. In her reply brief, Rita alleges that her use of the word "discrimination" in her Letter included "sex discrimination."

In support of its motion for summary judgment, ARSIH alleged that "[h]ere, after Rita's termination, her accounts were distributed between the remaining (younger) account managers.

However, all of these account managers were subsequently terminated as part of [ARSIH's] continuing force reduction efforts." (Emphasis in original.) ARSIH argues that

> [e]ven if a party produces direct evidence of discrimination, the employer defeats the claim if it proves "that it would have taken the same adverse employment action against plaintiff." Shoppe [v. Gucci America, Inc.], 94 Hawai'i [368, 378], 14 P.3d [1049, 1059 (2000)]. Such is the case here. The evidence establishes that in February 2001, as part of [ARSIH's] continuing reduction-in-force, Beck terminated all of the remaining employees in the Construction Unit except for Ng.

On April 4, 2002, ARSIH filed a motion for summary judgment. On April 19, 2002, Rita filed a memorandum in opposition. The court hearing occurred on April 29, 2002, and the requested summary judgment was entered on May 6, 2002.

In her opening brief, Rita contends that there are genuine issues of material fact regarding each of her four causes of action. However, attached to her reply brief is an unsigned two-page document entitled, "Stipulation to Dismiss the Appeal of Count I - Age Discrimination in Appellant's Complaint Filed on December 20, 2000[.]" It states, in relevant part, as follows: "IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their counsel, that the Appeal of Appellant's Count I - Age Discrimination in the Complaint filed on December 20, 2000, be dismissed with prejudice. All parties to bear their own attorney's fees and costs." In her reply brief, Rita notes that "[t]he law is clear that [Rita] need not prove her underlying claim (age discrimination) in order to proceed on a retaliation claim." (Citations omitted.)

It appears that (a) Rita's attachment of the unsigned stipulation to the reply brief was her method of offering to stipulate to a dismissal of her Count I Age Discrimination cause of action and (b) Rita's offer was not accepted. In her December 5, 2002 response to ARSIH's November 26, 2002 motion to dismiss her appeal, Rita states, in relevant part, "[s]ince [ARSIH] will not agree to stipulate to dismiss the appeal as to count I this claim should go forward with the others."

STANDARD OF REVIEW

Motion for Summary Judgment

We review a circuit court's grant or denial of summary judgment *de novo* under the same standard applied by the circuit court. Roxas v. Marcos, 89 Hawai‘i 91, 116, 969 P.2d 1209, 1234 (1998) (citation omitted); Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 104, 839 P.2d 10, 22, *reconsideration denied*, 74 Haw. 650, 843 P.2d 144 (1992) (citation omitted). As we have often articulated: "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Id. (citations and internal quotation marks omitted). We recognize that "[a] fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or

defense asserted by the parties." Hulsman v. Hemmeter Dev. Corp., 65 Haw. 58, 61, 647 P.2d 713, 716 (1982) (citations omitted).

When performing this review, "[w]e . . . view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion." Morinoue v. Roy, 86 Hawai‘i 76, 80, 947 P.2d 944, 948 (1997) (quoting Maguire v. Hilton Hotels Corp., 79 Hawai‘i 110, 112, 899 P.2d 393, 395 (1995)) (brackets omitted).

Hawai‘i Rules of Civil Procedure (HRCP), Rule 56(e) provides, in relevant part, as follows:

> When a motion for summary judgment is made . . . an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Thus, a party opposing a motion for summary judgment cannot discharge his or her burden by alleging conclusions, nor can the hope of producing the required evidence entitle the party to trial. Henderson v. Professional Coatings Corp., 72 Haw. 387, 401, 819 P.2d 84, 92 (1991) (quoting 10A C. Wright, A. Miller & M. Kane, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2727 (2d ed. 1983)).

DISCUSSION

When deposing Ng, Rita's lawyer stated that "[t]he crux of our case is that Ms. Rita: Was paid less than less qualified, less experienced employees; was terminated in favor of less qualified, less experienced employees; was treated differently than

less qualified, less experienced employees." Rita's lawyer did not identify the alleged unlawfulness of any of these alleged actions.

In its memorandum in support of its motion for summary judgment, ARSIH argued, in relevant part, that

> Rita has not alleged any direct evidence of discrimination by [ARSIH]. Accordingly, analysis of her disparate treatment claim is a three-step process: (1) Rita must establish a prima facie case of discrimination; (2) if (and only if) she does so, [ARSIH] must then "articulate a legitimate, nondiscriminatory reason for the adverse employment action[;]" [and] (3) if [ARSIH] articulates such a reason, "the burden reverts to [Rita] to demonstrate that [ARSIH's] proffered reasons were 'pretextual.' Shoppe v. Gucci America, Inc., 94 Haw. 368, 378-379, 14 P.3d 1049 (2000).

In the same document, ARSIH stated, in relevant part, that

> [i]n the context of a reduction-in-force, Rita must establish by a preponderance of the evidence that (1) she is a member of a protected class; (2) she is qualified for the position for which she was discharged; (3) she suffered some adverse action (e.g. discharge); and (4) "the discharge occurred under circumstances giving rise to an inference of age discrimination." Shoppe, 94 Haw. at 378; Coleman v. The Quaker Oats Co., 232 F.3d 1271, 1281 (9th Cir. 2000) (citations omitted).

In its answering brief, ARSIH states, in relevant part, as follows:

> To successfully establish a prima facie case of retaliation, Rita must show (1) that she "opposed any practice forbidden by [HRS chapter 378, Employment Practices, Part I, Discriminatory Practices]"; (2) that [ARSIH] "discharged, expelled, or otherwise discriminated against" her; and (3) "a causal link . . . existed between the protected activity and the adverse action." Schefke, 96 Hawai'i at 425, 32 P.3d at 70 (internal citations omitted). As with her claim of discrimination, even if Rita establishes a prima facie case for retaliation, summary judgment is proper if Rita does not present evidence that [ARSIH's] proffered legitimate, nondiscriminatory reason for the adverse employment action was a pretext.
>
> Rita's claim fails because she cannot sustain her burden of proof on parts one and three of the test to establish a prima facie case. Additionally, her claim fails because there is no evidence that [ARSIH's] proffered reason for Rita's termination - loss of revenue - was pretextual.

In her opening brief, Rita states, in relevant part:

> [T]he "Opposition Clause" [of HRS § 378-2] prohibits employers from discriminating against an employee because she has opposed any practice made an unlawful employment practice by HRS [§] 378-2;" . . . .
>
> "An employee need not establish the validity of his original claim to establish a charge of employer retaliation for having made the original charge or otherwise engaging in conduct [that is] protected." . . . .
>
> . . . In order to satisfy the "Opposition Clause" two (2) requirements must be met: 1) the form of the opposition must not be unlawful, excessively disloyal or hostile, or disruptive and damaging to the employer's business . . . ; and 2) the employee possesses a "reasonable belief" that the "employer is engaged in an unlawful employment practice."
>
> First, the form of [Rita's] opposition. [Rita's] letter concerning "discrimination" which was given to her supervisors, was lawful, reasonable, discreet, not excessive, and provided for in [ARSIH's] Employee Handbook. Second, [Rita's] belief that she was the victim of "discrimination" was a "reasonable belief" in light of the disparate treatment she was receiving. [Rita] clearly was engaged in protected activity when she submitted her letter reporting "discrimination" to her supervisors.

(Citations omitted; cites to record omitted.)

Rita also states the following burdens: "Once [Rita] met her burden of establishing a prima facie case of age discrimination, the burden shifted to [ARSIH] to articulate a legitimate nondiscriminatory reason for its employment decision." When ARSIH responded that it was "due to a reduction in revenue," the burden shifted back to Rita "to demonstrate that [ARSIH's] alleged reason for terminating her was a pretext for another motive which was discriminatory - age discrimination and retaliation."

DECISION

Rita states that "[t]o successfully establish a prima facie case of retaliation, Rita must show (1) that she 'opposed any

practice forbidden by [HRS chapter 378, Employment Practices, Part I, Discriminatory Practices][.]'" We agree. The deficiency in Rita's case is that Rita did not, in her Letter or otherwise, identify where she opposed a practice forbidden by HRS Chapter 378, Part I. Rita opposed the way Hashimoto treated her and others. She did not, however, identify how Hashimoto's treatment of her violated HRS Chapter 378, Part I, or any other relevant law. In her Complaint, Rita states that her termination was "unlawful retaliation for opposing unlawful age discrimination and/or filing a complaint regarding age discrimination practice[.]" Rita does not specify when and where, prior to her termination, she opposed unlawful age discrimination or filed a complaint regarding age discrimination practice, and the record does not show any such opposition.

Rita's claim of a Breach of Implied Contract alleges that ARSIH violated its Business Conduct Guidelines (BSC) when it unlawfully retaliated against Rita. Absent evidence of unlawful retaliation, this claim fails. In her opening brief, Rita argues that when several female employees complained to Ng "that they had difficulty working with Account Executive Hashimoto[,]" Ng violated a duty imposed by the BSC "to report the complaints of what may possibly have been sex discrimination to [ARSIH]." This is pure speculation. By itself, the fact that several female employees complained to Ng "that they had difficulty working with Account

Executive Hashimoto[,]" is not evidence of sex discrimination. Moreover, this argument is contradicted by Rita's Letter wherein she notes "that [Hashimoto] backs off [Faber]? This is true. It is common knowledge. Why is that? What is her secret or weapon of defense? She seems protected." Absent evidence of sex discrimination, this claim fails.

It appears that Rita's claim of age discrimination is based on the allegation that her employment was terminated when she was age 59 and other women who "were younger" and "less experienced" were not terminated. The relevant women are Kamakele, Barayuga, and Faber. Rita has no basis for complaining about the retention of Kamakele because Rita declined the offer to return to the position held by Kamakele. Although there is evidence that Faber and Barayuga are younger than Rita, there is no evidence that either was less experienced than Rita. The evidence that Faber handled the more complex accounts and Barayuga handled the middle range accounts, whereas Rita handled mostly non-construction accounts, indicates that Faber and Barayuga were more valuable to ARSIH than Rita.

Rita alleges that

> [i]n light of [ARSIH] violating [Rita's] rights under HRS [§] 378-2 for age discrimination, retaliation, and breach of implied contract, [ARSIH's] conduct constituted intentional infliction of emotional distress. [ARSIH's] actions were intentional, unreasonable, and they should have recognized that their actions were likely to result in illness to [Rita]. [ARSIH's] actions were without just cause or excuse, were beyond the bounds of decency, and were extreme and outrageous. If this Court reinstates [Rita's] underlying claims, [Rita's] claim for intentional infliction of emotional distress and general, special, and punitive damages should be reinstated as well.

(Citations omitted.) In other words, Rita contends that ARSIH's acts of age discrimination, retaliation, and breach of contract constitute the tort of intentional infliction of emotional distress. Thus, our decision that Rita has failed to sustain her burden regarding her allegations of age discrimination, retaliation, and breach of contract is also a decision that Rita has failed to sustain her burden regarding her allegation of intentional infliction of emotional distress.

Moreover, Hawai‘i's relevant precedent is as follows:

> *E. Intentional Infliction of Emotional Distress*
>
> Finally, Plaintiff contends that the circuit court erred in granting summary judgment in favor of Defendants with respect to the issue of intentional infliction of emotional distress. We have previously stated:
>
> > Recovery for intentional infliction of emotional distress is permitted only if the alleged tortfeasor's acts were "unreasonable." *An act is "unreasonable" if it is "'without just cause or excuse and beyond all bounds of decency[.]'"* In other words, the act complained of must be "outrageous," as that term is employed in the Restatement (Second) of Torts § 46 (1965).
> >
> > > "The question whether the actions of the alleged tortfeasor are unreasonable or outrageous is for the court in the first instance, although where reasonable persons may differ on that question it should be left to the jury."
>
> In addition, "mental distress may be found where a reasonable [person], normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case."
>
> In this case, Plaintiff maintains that "the shouting and abusive manner which Perreira displayed toward Plaintiff" gave rise to intentionally inflicted emotional distress, which caused "[h]er blood pressure [to rise] significantly . . . [and caused her] difficulty sleeping." Specifically, Plaintiff complains of a "vicious" verbal attack during which Perreira yelled, "You have to start doing your job" and slammed down the phone when Plaintiff inquired why Perreira was being rude. In addition, Plaintiff took exception to Perreira singling her out on three or four occasions and directing her to wear more makeup because "[Gucci is] aiming for a much younger look." On yet another occasion, Perreira allegedly chastised Plaintiff in front of other employees about her attire and need to comb her hair.

> Under these circumstances, we cannot declare that Perreira's actions were "without just cause or excuse *and* beyond the bounds of decency"; nor can we say that a reasonable person would be unable to adequately cope with Perreira's verbal criticism of and reprimands regarding Plaintiff's job performance. Although Plaintiff may have resented the tone and substance of Perreira's criticisms, we can hardly classify such remarks as "outrageous" or "beyond the bounds of decency." Accordingly, we hold that the circuit court correctly granted summary judgment in favor of Defendants.

Shoppe, 94 Hawai‘i at 387, 14 P.3d at 1068 (citations omitted, emphases in original). In light of this precedent, Rita has failed to sustain her burden regarding her allegation of intentional infliction of emotional distress.

Upon a review of the record in accordance with the applicable standard of review, we conclude that the record does not present a genuine issue of material fact regarding any of Rita's claims.

CONCLUSION

Accordingly, we affirm the May 6, 2002 "Order Granting Defendant AON Risk Services, Inc. of Hawaii's Motion for Summary Judgment Filed on April 4, 2002," and the May 20, 2002 Judgment.

DATED: Honolulu, Hawai‘i, April 17, 2003.

On the briefs:

Venetia K. Carpenter-Asui
for Plaintiff-Appellant.

Nadine Y. Ando and
Lisa W. Cataldo (McCorriston
Miller Mukai MacKinnon)
for Defendant-Appellee.

Chief Judge

Associate Judge

Associate Judge