

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 04-4746

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JULIO BAHAMONDES,  
Appellant

v.

ITW MARK-TEX INC.; ILLINOIS TOOLS WORKS, INC.;  
MARK-TEX CORPORATION; AMERICAN SAFETY TECHNOLOGIES

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. Civil No. 02-cv-03879)  
District Judge: Honorable Jose L. Linares

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Submitted Under Third Circuit LAR 34.1(a)  
on March 27, 2006

Before: RENDELL, SMITH, and BECKER\*, Circuit Judges.

(Filed July 13, 2006)

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OPINION OF THE COURT

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\* This case was submitted to the panel of Judges Rendell, Smith and Becker. Judge Becker died on May 19, 2006, before the filing of the Opinion. The decision is filed by a quorum of the panel. 28 U.S.C. § 46(d)

RENDELL, Circuit Judge.

Julio Bahamondes brought this case under the New Jersey Law Against Discrimination (“NJLAD”), claiming that ITW Mark-Tex, Inc., Illinois Tool Works, Inc., Mark-Tex Corp., and American Safety Technologies (“AST”), violated the statute by firing him because of his age.<sup>1</sup> On March 29, 2000, ITW Dymon, “an ITW business unit within the ITW Fluid Product Businesses Group” purchased most of Mark-Tex’s assets, and thirteen (13) jobs were eliminated, including Bahamondes’ job as batchmaker. ITW Mark-Tex thereupon outsourced this job to AST and Bahmondes interviewed for, and accepted, the batchmaker position with AST, but quit after one day of working. After Bahamondes quit, AST temporarily assigned his duties to Acosta, a younger co-worker, but later hired Wallace Young to replace Bahamondes as batchmaker. Young was only four years younger than Bahamondes. Bahamondes urged that the various corporate entities were one and the same, and had acted together to discriminate against him.

The District Court granted defendants’ motion for summary judgment, determining that Bahamondes failed to establish a prima facie case of age discrimination. The District Court stated that Bahamondes’ theory that there was some kind of “scheme among the separate corporate entities to fire” Bahamondes was unsupported by any evidence in the record that indicated that defendants’ actions were “motivated by any type of unlawful

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<sup>1</sup>This action was originally commenced in state court, but removed to federal court. The District Court had diversity jurisdiction pursuant to 28 U.S.C. § 1332. We have appellate jurisdiction over the final order of the District Court pursuant to 28 U.S.C. § 1291.

animus or discriminatory intent.” App. at 5. Conversely, the court noted that defendants provided non-discriminatory reasons for eliminating Bahamondes’ position. The District Court ruled that although ITW was the parent company of ITW Mark-Text and AST, it had never directly employed Bahamondes. The District Court held that Bahamondes did not suffer an unlawful employment action because 1) his position at Mark-Text was eliminated due to corporate reorganization and 2) Bahamondes voluntarily quit his job at AST, which, according to the District Court was a separate employment entity from ITW Mark-Text. The District Court concluded:

There appears to be no material issue of fact in dispute that ITW, AST and ITW Mark-Text are in fact different entities for the purpose of this lawsuit. Therefore, since there are different entities and plaintiff voluntarily quit his job with AST after having applied and obtained the job, there is no basis upon which plaintiff’s cause of action can stand.

It is clear that the reason that the plaintiff lost his position as batch maker with AST is because he voluntarily left that position. It is also undisputed based on the facts, as I see them, that the two divisions are separate employers for the purpose of this lawsuit, and that plaintiff did not work at ITW. Therefore, for the reasons stated, I am granting the defendant’s motion for summary judgment and dismissing the plaintiff’s case.

App. at 10.

Having examined the record in light of applicable law, we find no error in the District Court’s grant of summary judgment. Accordingly, we will AFFIRM the Order of the District Court.