**IN THE COURT OF COMMON PLEAS**
**CUYAHOGA COUNTY, OHIO**

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| **MARY CATHERINE EDWARDS,** | ) | **CASE NO. CV 16 872340** |
| | ) | |
| **Plaintiff,** | ) | **JUDGE PAMELA A. BARKER** |
| | ) | |
| **v.** | ) | **OPINION AND JOURNAL ENTRY ON ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** |
| | ) | |
| **STAR PARTNER ENTERPRISES, LLC, et al.** | ) | |
| | ) | |
| **Defendants.** | ) | |

This matter is before the Court on Defendants' Motion for Summary Judgment, Plaintiff's Brief in Opposition, Defendants' Reply and Plaintiff's Surreply. Defendants seek judgment in their favor and against Plaintiff on Plaintiff's claims of age discrimination, retaliation and "aiding and abetting" age discrimination. Plaintiff argues that there are genuine issue of material fact that preclude granting summary judgment in favor of Defendants.

**THE EVIDENCE SUBMITTED**

From 1984 until early 2011, Plaintiff Mary Catherine Edwards was employed by Premier, which owned several KFC restaurants in Ohio. Premier employed Plaintiff in various positions in its restaurants. On March 24, 2011, in connection with its acquisition of Premier's KFC restaurants, Defendant Star Partner Enterprises, LLC, ("Star Partner"), hired Plaintiff as an Area Coach. She was 55 years old at the time. Defendant Chellie Stewart ("Stewart"), Star Partner's Chief Executive Officer, then 44 years old, and Defendant Tom Rose ("Rose"), a co-owner of Star Partner who was then 55 years old, jointly made the decision to hire Plaintiff.

In her position as Area Coach, Plaintiff's salary of $50,000 was the same as her prior salary as District Manager with Premier, and her direct supervisor was Rose. According to Stewart, on

May 2, 2011, "as a result of Edwards' unsatisfactory job performance as an Area Coach,"[1] Plaintiff was demoted to the position of Restaurant General Manager ("RGM") of the Lakewood restaurant, but her salary remained the same. Stewart did not elaborate on the meaning of, or factual bases for "Edwards' unsatisfactory job performance as an Area Coach." The only documentary evidence presented to demonstrate Plaintiff's "unsatisfactory job performance as an Area Coach" for Star Partner between March 24, 2011 and May 2, 2011 was an e-mail dated April 13, 2011 from Stewart to Plaintiff criticizing her for failing to ensure on multiple occasions over a several months period of time that a minor did not work over five hours.[2] Rose testified that he did not recall ever putting in writing that he considered Plaintiff's job performance being poor or inadequate during the time frame of 2011 to 2014.[3] Regardless, Plaintiff has admitted that Star Partner's demotion of her to RGM had nothing to do with her age.

Between May 2, 2011 and June of 2013, Plaintiff was supervised by Steve Fox ("Fox"), then age 62. While supervising Plaintiff, Fox found Plaintiff's performance as a RGM to be unsatisfactory in numerous respects, and so advised Stewart, Rose and Plaintiff. Indeed, on July 15, 2012, Fox emailed Rose and Stewart stating that it was not in their best interest to keep Plaintiff. However, instead of terminating Plaintiff, Star Partner decided to transfer her to its restaurant in Sheffield, Ohio. As of February 19, 2013, Plaintiff was the lowest-performing RGM in her area, even though she was earning more than most other RGMs.

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[1] Stewart Declaration, at ¶9, attached as Exhibit 1 to Defendants' Motion.

[2] According to Tom Rose, he and Stewart had begun operating the Premier restaurants in 2010. Deposition of Tom Rose, p. 13, lines 23-24, p. 14, lines 5-15.

[3] *Id.* At page 55, lines 15-19.

In June, 2013, Dan Turney, who was over 40 years old at the time, became Plaintiff's supervisor, and on June 10, 2013, Turney told Stewart that he thought Plaintiff's employment should be terminated as a result of her unsatisfactory job performance. However, Plaintiff was not terminated. Instead, Turney issued Plaintiff a Performance Counseling Notice on June 12, 2013, a warning on June 14, 2013, and a 30-day plan for Plaintiff to improve her restaurant's performance. Nonetheless, Plaintiff remained employed by Star Partner as the RGM of the Sheffield restaurant throughout the time-frame that Turney supervised her. Plaintiff admitted that while supervised by Rose, Fox, and Turney, she was not aware of any age discrimination against her by anyone at Star Partner.

In or around September, 2013, Bobby Hicks ("Hicks") became Plaintiff's supervisor. On October 15, 2013, Hicks inspected Plaintiff's restaurant and found the shifts "disappointing"; on October 24, 2013, he issued Plaintiff a Performance Counseling Notice; on December 22, 2013, he informed Plaintiff that all of the stores under his supervision were up in sales transactions except for hers; on January 16, 2014, he advised Plaintiff that her store was 10% down in sales and 4% down in transactions; on February 18, 2014, he issued Plaintiff a Final Written Warning because of consistently poor performance on the restaurant visitation feedback and achieving a red rating on the semi-annual performance review; and on March 9, 2014, he issued Plaintiff a performance improvement plan, but she failed to meet the requirements of the plan.

On April 1, 2014, Hicks issued a follow-up notice to Plaintiff that if she did not receive a rating of over 5 for the month, she would be demoted to a non-management position or possibly terminated. On April 27, 2014, Hicks and Andrea Gillin, another Area Coach for Star Partner, met with Plaintiff and informed her that she had failed to meet the requirements of the plan. They

informed Plaintiff that effective April 28, 2014, she was being demoted to the non-management position of Key Holder at Star Partner's restaurant in Solon, about 10 miles further away from her home than the Sheffield restaurant, and would earn $9.75 per hour in that position. Plaintiff did not report to work at the Solon restaurant. According to Rose, upon learning of her demotion, Plaintiff called him and asked that she be terminated so she could secure unemployment compensation benefits. It is Plaintiff's position that this demotion from RGM to key holder with the concomitant increase in travel time to and from her home and the dramatic decrease in pay associated therewith constitutes a constructive termination.

In support of their affirmative defense that Plaintiff has not mitigated her damages, Defendants have pointed to: the testimony of Plaintiff that she has not applied for any restaurant manager positions and does not intend to do so; and Stewart's Declaration that since turnover in the fast-food industry is high, fast-food restaurant management positions in the greater Cleveland area have been generally available at all relevant times. To counter Defendants' argument that Plaintiff has failed to mitigate her damages, Plaintiff points to her testimony that since November of 2014 she has been working 40-50 hours per week, earning $9.75 per hour at Macy's and $10.30 per hour at Giant Eagle.

Plaintiff claims that it was Hicks' assessment of her that constituted age discrimination. In support thereof, she testified that Hicks made the following comments to her in October or November of 2013, October 15, 2013, and during a managers' meeting on March 27, 2014, respectively: "you don't need people that have been around forever...those older folks, you gotta pry 'em loose, they stick around forever, you have to pry them loose;" after wishing her a Happy Birthday, asking Plaintiff if she was "up for the job"; and that Plaintiff's employment had been

"30 years of a series of bad decisions." Indeed, it was after the March 27, 2014 meeting that Plaintiff e-mailed Pat Craig with Star Partners complaining that during that meeting Hicks had insulted her by "literally [saying] [she[ was unintelligent", "had no common sense", and had been "just way out of line". Star Partners completed an investigation and Hicks apologized to Plaintiff. This complaint about Hicks to Star Partners management forms the basis of Plaintiff's claim of retaliation.

In further support of her claim that it was Hicks' assessment of her that constituted age discrimination, Plaintiff offered the affidavit of Sylvester Clayton ("Clayton"), who had begun his employment with Star Partners on or about May 28, 2013 as an assistant unit manager for Restaurant #6. Between December, 2013 and April 20, 2014, Clayton was the RGM for Store or Restaurant #3, and Hicks was his Area Coach. In his affidavit, Clayton averred that Hicks had told him Plaintiff was "too old", "set in her ways", "not coachable" and "couldn't be a good RGM". Clayton also averred that Hicks "openly and time after time" told him that "he could save money-bringing more money to the bottom line-by having younger employees running the KFC Restaurants and letting go of 'old', 'stuck-up', 'set-in-their-ways' tenured RGMs." Clayton averred that it was apparent to him from Hicks' comments that Hicks "gunned" for Plaintiff or wanted her out as an RGM, saying "new, fresh talent is easier and better."

**LAW AND ANALYSIS**

Civ.R. 56 provides that summary judgment may be granted only after the trial court determines: 1) no genuine issues as to any material fact remain to be litigated; 2) the moving party is entitled to judgment as a matter of law; and 3) it appears from the evidence that reasonable minds can come to but one conclusion and viewing such evidence most strongly in

favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 433 N.E.2d 615; *Temple v. Wean United, Inc.* (1977) 50 Ohio St.2d 317, 364 N.E.2d 267.

**Age Discrimination**

R.C. 4112.14(A) provides:

> "No employer shall discriminate in any job opening against any applicant or discharge without just cause any employee aged forty or older who is physically able to perform the duties and otherwise meets the established requirements of the job and laws pertaining to the relationship between employer and employee."

**Constructive Discharge**

Since Plaintiff in effect chose termination over her demotion, she must show that her choice was involuntary or, as the doctrine is known, that she was constructively discharged. In *Mauzy v. Kelly Services, Inc.*, 75 Ohio St.3d 578, 664 N.E.2d 1272, 1996 Ohio LEXIS 366, 1996-Ohio-265, the Ohio Supreme Court explained:

> Courts generally apply an objective test in determining when an employee was constructively discharged, *viz.*, whether the employer's actions made working conditions so intolerable that a reasonable person under the circumstances would have felt compelled to resign. [Citation omitted.]
>
> In applying this test, courts seek to determine whether the cumulative effect of the employer's actions would make a reasonable person believe that termination was imminent. They recognize that there is no sound reason to compel an employee to struggle with the inevitable simply to attain the "discharge" label. No single factor is determinative. Instead, a myriad of factors is considered, including reductions in sales territory, poor performance evaluations, criticism in front of co-employees, inquiries about retirement intentions, and expressions of a preference for employees outside the protected group. A transfer accompanied by measurable compensation at a comparable level does not necessarily preclude a finding of constructive discharge.

Applying the law set forth above to the facts of this case, this court concludes that there are genuine issues of material fact as to whether or not Plaintiff was constructively discharged because of her age. Within a couple of months of Star Partners hiring her and due to her unsatisfactory job performance as an Area Coach, Star Partners had demoted Plaintiff to a RGM with no decrease in compensation. Despite the recommendations from Plaintiff's supervisors, Rose, Fox and Turney, that Star Partners should terminate Plaintiff given her unsatisfactory job performance and the reviews and warnings associated therewith, Star Partners had kept her as a RGM. Star Partners has offered this evidence to demonstrate that Plaintiff was not demoted because of her age, but because of her poor performance. While a jury could conclude that this evidence supports Defendants' argument, it could also conclude that despite years of performance concerns it was not until Hicks became Plaintiff's supervisor that any compensation-reduction action was taken against her. It was while under the supervision of Hicks, the very person who Plaintiff and Clayton testified made the comments to Plaintiff, berated her in front of co-employees, inquired as to whether Plaintiff was still up for the job on her 58th birthday, expressed a preference for younger employees to Clayton, and was involved in the decision to demote Plaintiff from a management position to a non-management position resulting in a significant decrease in compensation and transfer to another restaurant a greater distance from her home, that Plaintiff chose not to return to work for Star Partners.

"A prima facie case of age discrimination may be established in one of two ways, indirectly by the four-part analysis set forth in *Barker v. Scovill, Inc.* (1983), 6 Ohio St.3d 146, 6 Ohio B. 202, 451 N.E.2d 807, as adopted from *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 36 L.Ed.2d 668, 93 S. Ct. 1817, or directly, which is other than the four-part demonstration of *Barker,*

*Kohmescher v. Kroger Co.*(1991) 61 Ohio St.3d 501, 575 N.E.2d 439." *Wilson v. Precision Envtl. Co.* (June 5, 2003), Cuyahoga App. No. 81932, 2003-Ohio-2873, 2003 Ohio App. LEXIS 2595, ¶23.

**Direct Evidence of Age Discrimination**

"In order to establish a prima facie case of age discrimination through direct evidence, the employee must present evidence, of any nature, that shows an employer is more likely than not motivated by discriminatory intent. Direct evidence means evidence that proves a fact directly, without an inference or presumption, which is in contrast to indirect evidence or raising an inference of discriminatory intent. *Mauzy v. Kelly Services, Inc.* (1996), 75 Ohio St.3d 578, 1998 Ohio 25, 664 N.E.2d 1272. Direct evidence requires no inferences to prove discrimination. *Blalock v. Metals Trades, Inc.* (6th Circuit 1985), 775 F.2d 703." *Wilson, supra*, at ¶24. "'The general rule is that age related comments referring directly to a worker may support an inference of age discrimination. But, isolated and ambiguous comments are too abstract to support a finding of discrimination.' *Moon v. Compass Group USA Inc.* (Aug. 27, 1999), Hamilton App. No. C-908927, 1999 Ohio App. LEXIS 3951." *Wilson, supra,* at ¶25.

"Direct evidence is 'that which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions.' *Jacklyn* [*v. Schering-Lough Health Care Products* (C.A. 6 1999), 176 F.3d 921, 926.' In all cases, the plaintiff 'must prove a causal link or nexus between evidence of a discriminatory statement or conduct and the prohibited act of discrimination.'" *Byrnes v. LCI Communications Holdings Co.* (1996), 77 Ohio St.3d 125, 130, 1996 Ohio 307, 672 N.E.2d 145. "Age-related comments referring directly to the worker may support an inference of age discrimination." *Id.*, 77 Ohio St.3d at 130. Discriminatory

statements or remarks must be "tied in time or fact to" Plaintiff's constructive discharge or termination. *Id.*

"Explicit statements of discriminatory intent constitute such direct evidence of discrimination. [Citations omitted.] "Such statements are distinguished from harmless, stray remarks by the nexus between the improper motive and the decision-making process or personnel. Accordingly, courts consider: (1) whether the comments were made by a decision maker; (2) whether the comments were related to the decision making process; (3) whether they were more than vague, isolated, or ambiguous; and (4) whether they were proximate in time to the act of alleged discrimination. [Citations omitted.]" *Birch v. Cuyahoga County Probate Court*, 173 Ohio App.3d 696, 705, 2007-Ohio-1689, 880 N.E.2d 132.

In the instant matter, Plaintiff and Clayton have testified that Hicks, Plaintiff's immediate supervisor and a decision-maker in demoting Plaintiff made the comments to Plaintiff. Defendants argue that the evidence demonstrates that it was Stewart, and not Hicks, who made the decision to demote Plaintiff. However, the very evidence Defendants cite to on page 13 of their Reply Brief in support of this argument demonstrates that reasonable minds could conclude that both Hicks and Stewart were involved in the decision-making to demote and transfer Plaintiff.[4]

While Plaintiff has testified that Hicks made three age-related comments to her, Clayton testified via affidavit that Hicks made ongoing and repeated comments and "gunned" for Plaintiff

[4] The evidence herein is distinguishable from that involved in and relied upon by the Court in *Moon, supra*, at *14-15, wherein the Court explained as follows. "Also, although Lataille was a decision-maker in that he approved Moon's termination, the evidence shows that the actual decision to terminate Moon came **solely** from Allridge. There is no evidence to reasonably infer that Lataille influenced Allridge."

over a four-month period of time immediately preceding her demotion and transfer.[5] Thus, reasonable minds could conclude that the comments were more than vague, isolated, or ambiguous.

According to Plaintiff, two of Hicks' comments were made directly to her within a month or so after Hicks became her supervisor, and one of the comments was made less than a month before she was demoted. According to Clayton, the comments made to him about Plaintiff by Hicks occurred between December, 2013 and April 20, 2014 when Hicks was his Area Coach. Therefore, reasonable minds could conclude that the comments Plaintiff and Clayton have testified Hicks made were sufficiently proximate in time to the act of alleged discrimination. (*See Birch v. Cuyahoga County Probate Court*, 173 Ohio App.3d 696, 705-706, 2007-Ohio-6189, ¶¶24-26, 880 N.E.2d 132, where in applying the four factors to evidence of two comments made during a meeting several years before in 1998, the Eighth District Court of appeals was "compelled to agree that reasonable minds could conclude that appellant ha[d] produced direct evidence of discrimination.")

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[5] Contrast the collectively multiple comments made specifically about Plaintiff and her age to both Plaintiff herself and Clayton, a colleague and younger RGM, with the isolated or limited, stray and ambiguous remarks at issue, and distinguishable facts or circumstances present, in the following cases. In *Moon, supra*, at *13-14, the Court found that "the majority of [] alleged comments were abstract; they were directed to older workers in general or to other older employees, but not to Moon in particular. Or they did not refer to Moon's age." In *Karaba v. Alltell Communs., Inc.*, (Sept. 5, 2002), Cuyahoga App. No. 80548, 2002-Ohio-4583, at ¶16, 2002 Ohio App. LEXIS 4702, the Court found that the reference to the appellant as a "dinosaur" was not probative because it occurred prior to the appellant's employment with Alltel and at a time when the decision-maker was not the appellant's supervisor. In *Dobozy v. Gentek Building Products, Inc.* (Nov. 22, 2000), Cuyahoga App. No. 77047, at 10-11, 2000 Ohio App. LEXIS 5469, the Court found that the comment by another employee that both he and the appellant were "dinosaurs" was not sufficient direct evidence of discrimination because it was an isolated, stray remark and the fellow employee who made the comment was not the decision-maker. In *Brewer v. Cleveland City Schs.Bd. of Educ.*, 122 Ohio App.3 378, 701 N.E.2d 1023, 1997 Ohio App. LEXIS 3008, involving claims for race and sex discrimination, a supervisor's/decision-makers' remarks referring to the appellant as "Aunt Jemima", referencing African-Americans on welfare and commenting about appellant once being on welfare were considered isolated, stray remarks, and not actionable because the appellant did not show any connection between the remarks and any adverse employment decision; in other words, they had no impact on the appellant's job – after the remarks were made she requested a transfer and her request was granted.

As to the final factor of whether the comments were related to the decision-making process, it is the Affidavit testimony of Clayton, specifically his testimony that Hicks "gunned" for Plaintiff that compels this Court to agree that reasonable minds could conclude that the comments were related to the decision-making process. Accordingly, and upon consideration of all four-factors as set forth above, this Court finds that a jury could conclude that Plaintiff has produced direct evidence of age discrimination.

**Indirect or Circumstantial Evidence of Discriminatory Intent**

Moreover, even absent this Court's finding that reasonable minds could conclude that Hicks' comments constitute direct evidence of age discrimination, the fact remains that Hicks' alleged comments at a minimum create issues of fact with respect to circumstantial evidence of discriminatory intent. *See Birch v. Cuyahoga County Probate Court, supra*, at footnote 2. In order to establish a prima facie case of age discrimination using indirect evidence Plaintiff must demonstrate that she: (1) was at least 40 years old at the time of the alleged discrimination; (2) was subjected to an adverse employment action; (3) was otherwise qualified for the position; and (4) was replaced by, or that her discharge permitted the retention of, a person not belonging to the protected class. *Byrnes v. LCI Communications, supra*, 77 Ohio St.3d at 148. *Maury v. Kelly Services, Inc., supra*, 75 Ohio St.3d at 578.

Defendants do not dispute that Plaintiff was at least 40 years old at the time of the alleged discrimination, and that her experience likely satisfies the "qualified for" prong of a prima facie case.[6] This Court has determined that there are genuine issues of material fact as to whether

[6] Defendants' Motion for Summary Judgment, at page 20, footnote 4.

Plaintiff was constructively discharged. And, according to Plaintiff and as conceded by Defendants, she was replaced by a person not belonging to the protected class, i.e., Sonya Amill.

Having concluded that Plaintiff has submitted evidence sufficient to create a genuine issue of material fact as to whether or not Plaintiff has established through direct evidence a prima facie case of age discrimination, and/or has established through circumstantial evidence a prima facie case of discriminatory intent, this Court must now evaluate the following: whether or not the evidence submitted by Defendants is sufficient to meet their burden of both production and persuasion to prove that Star Partners would have made the employment decision in the absence of any discriminatory motivation;[7] and/or whether or not the evidence submitted by Defendants is sufficient to meet their burden of proof to articulate a legitimate non-discriminatory reason for Plaintiff's demotion.[8]

Whether considered as evidence that Defendants would have demoted Plaintiff in the absence of any discriminatory motivation, or to demonstrate a legitimate non-discriminatory reason for Plaintiff's demotion, Defendants produced testimonial and documentary evidence of poor job performance by Plaintiff, to include evidence of Plaintiff's failure to meet the requirements of her performance improvement plan put in place by Hicks, the very supervisor or decision-maker that made the comments about Plaintiff to her and Clayton. However, some of the very evidence submitted by Defendants demonstrates that Star Partner had a legitimate non-

[7] "In direct evidence cases, once a plaintiff shows that the prohibited classification played a motivating part in the employment decision, the burden of both production and persuasion shifts to the employer to prove that it would have made the employment decision in the absence of any discriminatory motivation." *Birch v. Cuyahoga County Probate Court, supra*, 173 Ohio App.3d at 706, citing *Chang v. Univ. of Toledo* (N.D.Ohio 2007), 480 F.Supp.2d 1009.
[8] *Wilson v. Precision Environmental Co., supra*, 2003-Ohio-2873, ¶28. If and when the employer articulates a legitimate non-discriminatory reason for a plaintiff's discharge, a plaintiff must then demonstrate that the rationale set forth by the employer was merely a pretext for unlawful discrimination. *Id.*

discriminatory reason for demoting or terminating Plaintiff before Hicks became her supervisor, yet did not do so. Moreover, Plaintiff provided testimonial and documentary evidence that she had never failed any of the KFC Corporate Cleanliness, Friendliness and Food ("CFF") inspections reports and had received a score of "green" on her CFF for the period 12/26/13 – 3/17/14. Indeed, construing the evidence in a light most favorable to Plaintiff, a jury could conclude that the evidence submitted by Defendants demonstrates that Defendants would not have made the decision to demote Plaintiff in the absence of any discriminatory motivation and/or that Hicks did harbor discriminatory motivation, and that the legitimate non-discriminatory reason espoused by Defendants was a pretext for unlawful discrimination.[9]

**Mitigation**

In Defendants' Motion, Defendants did raise and offer evidentiary support for their affirmative defense that "[i]n the event the Court declines to dismiss all of Plaintiff's claims as a result of their lack of merit, Plaintiff is still barred from recovering damages from any of the defendants, because she admitted that she failed to mitigate her damages as a result of Defendants' alleged actions."[10] Plaintiff did testify at her deposition that she has not applied for any restaurant manager positions. However, Defendants have not provided sufficient evidence that there was and is substantially equivalent employment available. Stewart did declare that

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[9] "To establish pretext, a plaintiff must demonstrate that the proffered reason (1) has no basis in fact, (2) did not actually motivate the employer's challenged conduct, or (3) was insufficient to warrant the challenged conduct. *Dews v. A.B. Dick Co.* (C.A.6, 2000), 231 F.3d 1016, 1021. Regardless of which option is chosen, the plaintiff must produce sufficient evidence from which **the trier of fact** could reasonably reject the employer's explanation and infer that the employer intentionally discriminated against him. *Johnson v. Kroger Co.* (C.A.6, 2003), 319 F.3d 858, 866. A reason cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false, and that discrimination was the real reason. *St. Mary's Honor Ctr. v. Hicks* (1993), 509 U.S. 502, 515, 113 S.Ct. 2742, 2752, 125 L. Ed. 2d 407." *Knepper v. Ohio State Univ.*, 10th Dist. Franklin No. 10AP-1155, 2011-Ohio-6054, ¶ 12.

[10] Defendants' Motion for Summary Judgment, at page 30.

"[b]ased on [her] extensive management experience in the restaurant industry, [she] knows that the turnover in the fast-food industry is high, and that fast-food restaurant manager positions in the greater Cleveland area have been generally available at all relevant times." However, Stewart did not provide any information or declare what her management experience in the restaurant industry is, particularly in the Cleveland area. Stewart's single declaration is insufficient to prove that there was and is substantially equivalent employment available in the Cleveland area.

Therefore, that part of Defendants' Motion seeking summary judgment in their favor and against Plaintiff on Plaintiff's claim for age discrimination is **DENIED**.

**Aiding and Abetting**

Since this Court has concluded that there are genuine issues of material fact as to whether or not Plaintiff was discriminated against because of her age, it follows, then, that there are genuine issues of material fact as to whether or not the individually named defendants "aided, abetted, incited, compelled and/or coerced" the alleged age discrimination. Therefore, that part of Defendants' Motion seeking summary judgment in their favor and against Plaintiff on Plaintiff's aiding and abetting claim is **DENIED**.

**Retaliation**

Plaintiff bears the initial burden of establishing a prima facie case of retaliation. In order to do so, the plaintiff must present evidence that: 1.) she engaged in a protected activity; 2.) Plaintiff's engagement in the protected activity was known to Defendants; 3.) Defendants thereafter took adverse employment action against Plaintiff; and 4.) there exists a causal connection between the protected activity and the adverse employment action. *Lynch v.*

*Studebaker*, Cuyahoga App. No. 88117, 2007-Ohio-4014, ¶17, 2007 Ohio App. LEXIS 3651, citing *Chandler v. Empire Chem., Inc.* (1994), 99 Ohio App.3d 396, 650 N.E.2d 950.

Based upon the evidence presented, this Court finds that Plaintiff was not engaged in a protected activity. The complaint that Plaintiff made to Pat Craig with Star Partners basically was that Hicks had insulted and verbally abused her – there was no reference to her age or allegation of any discrimination based upon her age made to Star Partners. Hicks comment in the March 27, 2014 meeting that Plaintiff's employment had been "30 years of a series of bad decisions" does not relate to her age. Indeed, Hicks' comment was in direct response to Plaintiff's statement that "I must be doing something right, I've been in this [business] for 30 years." Accordingly, Hicks' comment was not directed at or about Plaintiff's age, but about Plaintiff's length of employment in the business.

Therefore, that portion of Defendants' motion seeking summary judgment on Plaintiff's claim for retaliation is **GRANTED**.

**IT IS SO ORDERED.**

Pamela A. Barker 5-10-18

**Judge Pamela A. Barker** **Dated**