STATE OF MICHIGAN

COURT OF APPEALS

YOLANDA MAYS,

Plaintiff-Appellant,

v

INTERNATIONAL MARKET PLACE, INC., doing business as FISHBONES RHYTHM KITCHEN CAFÉ,

Defendant-Appellee.

UNPUBLISHED
October 21, 2021

No. 355224
Oakland Circuit Court
LC No. 2019-175066-CD

Before: MURRAY, C.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting summary disposition to defendant, International Market Place, Inc., doing business as Fishbones Rhythm Kitchen Café, under MCR 2.116(C)(8) and (10), denying plaintiff's cross-motion for summary disposition under MCR 2.116(C)(9), and dismissing plaintiff's complaint in its entirety. We affirm.

Plaintiff was employed as a server at Fishbones restaurant in Southfield from March 2, 2018, to May 29, 2018. Plaintiff was an at-will employee. On May 15, 2018, plaintiff was in a verbal altercation with Richard Bassett, another employee, during which she called Bassett a b***h. Bassett was terminated because he threatened plaintiff during this altercation; plaintiff was suspended for one day. The employee disciplinary report resulting from this incident stated that the next disciplinary step for plaintiff was termination. On May 21, 2018, plaintiff was involved in another incident. Plaintiff testified that she was in the kitchen talking with two other employees when Donald Knoll, the general manager of Fishbones, ran out of the office and accused her of getting into an argument with the two employees with whom she was speaking. On May 29, 2018, plaintiff was terminated from employment.

Following plaintiff's termination, she filed a cursory pro se complaint seeming to allege sexual discrimination, invasion of privacy, and defamation. Defendant moved for summary disposition in response. Defendant contended that summary disposition was proper under MCR 2.116(C)(8) because plaintiff failed to plead any legal claim, but rather, merely set forth a series

of conclusory statements. Defendant argued that summary disposition was proper under MCR 2.116(C)(10) because plaintiff failed to establish a claim for quid pro quo sexual harassment, invasion of privacy, or defamation.

Plaintiff filed a response to defendant's motion for summary disposition and a cross-motion for summary disposition under MCR 2.116(C)(9), contending that defendant did not have a valid defense. Plaintiff argued that she was subject to sexual harassment in the form of a hostile work environment after declining a sexual advance from Knoll. After declining Knoll, he discriminated against her by not giving her large parties to serve, while giving employees with whom he had a sexual relationship the large parties, which resulted in those employees making more money. Plaintiff argued that she was subject to quid pro quo sexual harassment by Bassett, who promised plaintiff that she would make more money "if she dated/implied having sex" with him, and that Bassett demonstrated sexual positions while looking plaintiff directly in the eyes. After she declined Bassett, he became aggressive and demeaning toward plaintiff, which ultimately resulted in her termination. Plaintiff argued that she was defamed because a falsified document regarding the May 21, 2018 incident with Bassett was included in her personnel file, and malicious statements were made to other employees by the managers after plaintiff was terminated. Finally, plaintiff argued that defendant violated her privacy because Jessica Pensom, a manager, disclosed to individuals plaintiff did not know plaintiff's personal information that she lived in a motel.

Without holding oral argument, the circuit court granted summary disposition to defendant. The court first concluded that summary disposition was appropriate under MCR 2.116(C)(8) because plaintiff's complaint was facially deficient, consisting of "broad statements and generalizations of mistreatment that are not expanded upon. The facts that Plaintiff does include are vague and disorganized and do not inform Defendant of the nature of her claims." The court also concluded that, assuming plaintiff's complaint was facially sufficient, summary disposition was proper under MCR 2.116(C)(10) because plaintiff failed to present evidence to establish a prima facie case of sexual discrimination under hostile work environment or quid pro quo harassment, invasion of privacy, or defamation. The court denied plaintiff's cross-motion for summary disposition under MCR 2.116(C)(9), because defendant denied liability in its answer to the complaint, and listed several defenses in its affirmative defenses. The court dismissed plaintiff's complaint in its entirety. Plaintiff now appeals.

I. PLAINTIFF'S CLAIMS

Plaintiff argues that the circuit court erred by granting defendant's motion for summary disposition because she stated plausible causes of action and presented sufficient evidence to establish her claims.

A. STANDARDS OF REVIEW

"A trial court's decision granting summary disposition is reviewed de novo." *Eplee v Lansing*, 327 Mich App 635, 644; 935 NW2d 104 (2019). "A motion made pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, and a court only considers the pleadings." *Id*. (citation and quotation marks omitted). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id*. (citation and quotation marks omitted). "Summary disposition is proper under MCR 2.116(C)(8) where the claims alleged are

so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id*. (citation and quotation marks omitted).

A motion for summary disposition under MCR 2.116(C)(10) challenges the "factual adequacy of a complaint on the basis of the entire record, including affidavits, depositions, admissions, or other documentary evidence." *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 115; 839 NW2d 223 (2013). A trial court's grant of summary disposition under MCR 2.116(C)(10) is proper when the evidence, "viewed in the light most favorable to the nonmoving party, show[s] that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Richardson v Allstate Ins Co*, 328 Mich App 468, 471; 938 NW2d 749 (2019) (citations and quotation marks omitted).

1. DISCRIMINATION ON THE BASIS OF SEX

Plaintiff contends that her rights were violated when she was subject to sexual harassment while employed at Fishbones. Although plaintiff did not plead her claims under the Michigan Civil Rights Act (CRA), MCL 37.2101 *et seq*., in an effort to address the substance of plaintiff's claims, we address her arguments under the applicable Michigan law.

In Michigan, the CRA governs plaintiff's claims of sexual discrimination. MCL 37.2202(1)(a) provides that an employer may not "[f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status." "In pursuit of equality in the workplace, the [CRA] broadly defines sexual discrimination to include sexual harassment[.]" *Radtke v Everett*, 442 Mich 368, 379-380; 501 NW2d 155 (1993). MCL 37.2103(i) of the CRA provides, in relevant part:

> (i) Discrimination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:
>
> (*i*) Submission to the conduct or communication is made a term or condition either explicitly or implicitly to obtain employment. . . .
>
> (*ii*) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment. . . .
>
> (*iii*) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, . . . or creating an intimidating, hostile, or offensive employment . . . environment.

"The first two subdivisions of MCL 37.2103(i) describe quid pro quo sexual harassment, while the third subdivision refers to hostile-environment sexual harassment." *Hamed v Wayne Co*, 490 Mich 1, 9-10; 803 NW2d 237 (2011).

Plaintiff argues that she was subject to both hostile work environment sexual harassment and quid pro quo sexual harassment. Plaintiff did not allege that submission to conduct or communication was made a term or condition to *obtain* employment as required by MCL 37.2103(i)(*i*). Thus, MCL 37.2103(i)(*ii*) is applicable to plaintiff's quid pro quo sexual harassment claim, and MCL 37.2103(i)(*iii*) is applicable to plaintiff's hostile work environment sexual harassment claim. In regard to both forms, the court found that defendant was entitled to summary disposition under MCR 2.116(C)(8) because plaintiff's complaint failed to allege sufficient facts to state a cause of action, and under MCR 2.116(C)(10) because plaintiff failed to produce evidence to establish a prima facie cause of either form of sexual harassment.

a. HOSTILE WORK ENVIRONMENT

Plaintiff argues that she established a claim for sexual discrimination on the basis of a hostile work environment. We agree that plaintiff alleged hostile work environment harassment sufficient to survive summary disposition under MCR 2.116(C)(8); however, plaintiff failed to establish a prima facie claim for hostile work environment harassment to survive summary disposition under MCR 2.116(C)(10).

The following elements must be met to establish a claim of hostile work environment sexual harassment:

> To establish a claim of hostile environment sexual harassment in the workplace, a plaintiff must demonstrate, by a preponderance of the evidence, that: (1) the employee belonged to a protected group; (2) the employee was subjected to conduct or communication on the basis of sex; (3) it was unwelcome sexual conduct or communication; (4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior. [*Rymal v Baergen*, 262 Mich App 274, 312; 686 NW2d 241 (2004).]

i. MCR 2.116(C)(8)

A complaint must include "[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]" MCR 2.111(B)(1). "The primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Dalley v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010) (quotation marks, citation, and brackets omitted).

Plaintiff alleged the first element of a hostile work environment claim because "all employees are inherently members of a protected class in hostile work environment cases because

all persons may be discriminated against on the basis of sex." *Radtke*, 442 Mich at 383. In *Radtke*, our Supreme Court held that the plaintiff met the first element because "she is a member of a protected class—she is an employee who has been the object of unwelcomed sexual advances." *Id*. Here, plaintiff alleged that she was an employee of defendant, and during her employment she was subject to harassment in the form of sexual advances.

An employee meets the second element, i.e., "the employee was subjected to communication or conduct on the basis of sex," *id*. at 382, because "she alleges that she was subjected to harassment on the basis of sex," *id*. at 383. Plaintiff alleged that she was harassed in the form of several sexual advances and that "defendant" abused his power by giving parties to employees who were sleeping with him. Although plaintiff does not state who abused his power by giving large parties to employees with whom he slept with, it can be assumed that plaintiff was referring to an agent or employee of defendant because defendant is an entity. Further, plaintiff alleged that she was subject to conduct or communication on the basis of sex in the form of sexual advances made to her by an agent or employee of defendant while employed at Fishbones.

To allege the third element, i.e., the conduct or communication was unwelcome, the threshold is "that the employee did not solicit or incite it, and the employee regarded the conduct as undesirable or offensive." *Id*. at 384 (quotation marks and citation omitted). Plaintiff alleged that the sexual advances constituted harassment, and that she was subject to a hostile work environment. Her allegations were sufficient to allege unsolicited and unwanted behavior given her description of the sexual advances as "harassing," and the allegations that she was subject to a hostile work environment.

In regard to the fourth element, i.e., "the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with plaintiff's employment or created an intimidating, hostile, or offensive work environment," this Court has stated that "[t]he essence of a hostile work environment action is that one or more supervisors or co-workers create an atmosphere so infused with hostility toward members of one sex that they alter the conditions of employment for them." *Id*. at 385 (quotation marks and citation omitted). "[W]hether a hostile work environment existed shall be determined by whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment." *Id*. at 394. Plaintiff alleged that she was subject to sexual advances, employees who were sleeping with "defendant" received large parties in the restaurant, defendant created a hostile work environment, and she was wrongfully terminated based upon an agent of "defendant's" personal feelings. These allegations were sufficient to allege that the unwanted conduct or communication by an agent or employee of defendant created a hostile work environment.

In regard to the fifth element, i.e., respondeat superior, plaintiff's allegations were sufficient. As stated earlier, despite plaintiff referring to "defendant" as the perpetrator of the conduct, defendant is an entity, and plaintiff clearly describes the "defendant" as a singular individual. These allegations were sufficient to put defendant on notice that plaintiff's allegations referred to an agent or employee of defendant.

In conclusion, the allegations in plaintiff's complaint, viewed in the light most favorable to plaintiff, *Eplee*, 327 Mich App at 644, were sufficient to state a cause of action of sexual harassment on the basis of a hostile work environment. The allegations were sufficient to put defendant on notice of a claim for hostile work environment on the basis of sexual harassment, and the allegations were not "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id*. (citation and quotation marks omitted).

ii. MCR 2.116(C)(10)

However, the circuit court did not err in granting summary disposition to defendant under MCR 2.116(C)(10) because plaintiff failed to present *admissible* evidence to establish a prima facie case of a hostile work environment sexual harassment claim.

As stated earlier, plaintiff can establish the first element of a hostile work environment claim simply by being an employee. *Radtke*, 442 Mich at 383. Plaintiff argues that she established the second element because Knoll made an offensive comment to her. Plaintiff testified that Knoll stated to her that he "love[d] being with black girls with big butts," which plaintiff viewed as a sexual advance. In regard to the third element, plaintiff testified that she ignored Knoll's statement because she was not interested in a sexual relationship with him. Thus, plaintiff presented sufficient evidence to establish the first three elements of a prima facie claim of hostile work environment.

However, in regard to the fourth element, i.e., "the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment," *Rymal*, 262 Mich App at 312, plaintiff has failed to present anything other than speculation that Knoll's statement was intended to or in fact did substantially interfere with her employment, or that it created an intimidating, hostile, or offensive work environment. In the lower court and on appeal, plaintiff contends that Knoll was so insulted by plaintiff declining his sexual advance that he subjected her to such harsh treatment that it affected her employment. Plaintiff did not state what kind of harsh treatment; however, she contends that Knoll favored the women with whom he had a sexual relationship by giving them large parties. Plaintiff testified that it was "highly speculated," that Knoll was sleeping with two other female employees, both of whom she believed received favoritism from Knoll, including being given large parties. Plaintiff presented nothing other than speculation to show that the one statement made by Knoll had any relationship to Knoll's actions toward plaintiff, or that he discriminated against her for declining his sexual advance by unfairly assigning tables at the restaurant.

In regard to the fifth element—respondeat superior—plaintiff has failed to establish this element. The Michigan Supreme Court has stated that "strict imposition of vicarious liability on an employer is 'illogical in a pure hostile environment setting' because, generally, in such a case, 'the supervisor acts outside "the scope of actual or apparent authority to hire, fire, discipline, or promote." ' " *Chambers v Trettco, Inc*, 463 Mich 297, 311; 614 NW2d 910 (2000), quoting *Radtke*, 442 Mich at 396 n 46.

> Under the Michigan Civil Rights Act, an employer may avoid liability [in a hostile environment case] if it adequately investigated and took prompt and

> appropriate remedial action upon notice of the alleged hostile work environment. Such prompt and appropriate remedial action will permit an employer to avoid liability if the plaintiff accuses either a co-worker, or a supervisor of sexual harassment. An employer, of course, must have notice of alleged harassment before being held liable for not implementing action. [*Chambers*, 463 Mich at 312, quoting *Radtke* 442 Mich at 396-397 (citations and quotation marks omitted).]

"The bottom line is that, in cases involving a hostile work environment claim, a plaintiff must show some *fault* on the part of the employer." *Chambers*, 463 Mich at 312.

Here, Knoll was not the employer, but rather, he was the supervisor of the employer—defendant. Thus, plaintiff must establish that the employer was on notice of Knoll's sexual harassment. Plaintiff testified that Knoll's comment that he "love[d] being with black girls with big butts," was the only comment he ever made of that nature because he understood that plaintiff was not interested. Plaintiff testified that she handled that situation with Knoll herself. Thus, there is no evidence that defendant was on notice that Knoll had sexually harassed plaintiff. Plaintiff testified that she reported to Pensom that the seating rotation was unfair because certain people were getting parties, and "it wasn't fair that since people were sleeping with people they were getting these privileges." However, there is no indication that plaintiff related the unfair seating rotation to sexual harassment or sexual discrimination committed by Knoll.

b. QUID PRO QUO HARASSMENT

The circuit court did not err in granting defendant's motion for summary disposition under both MCR 2.116(C)(8) and (10) in regard to plaintiff's claim for quid pro quo harassment.

This Court has provided the following elements to establish a claim of quid pro quo sexual harassment:

> To establish a claim of quid pro quo sexual harassment in the workplace, a plaintiff must demonstrate, by a preponderance of the evidence, that (1) he or she was subjected to unwelcome sexual conduct or communications as described in the statute, and (2) that the employer or the employer's agent used submission to or rejection of the proscribed conduct as a factor in a decision affecting employment. [*Rymal*, 262 Mich App at 312.]

"To show quid pro quo harassment, it is not enough to demonstrate harassment and a tangible employment action—there must be a causal relationship between the two." *Chambers*, 463 Mich at 321 n 8. "[A] tangible employment action constitutes a significant change in employment status, such as hiring, firing, [or] failing to promote[.]" *Id*. at 320 n 7 (quotation marks and citation omitted).

i. MCR 2.116(C)(8)

Plaintiff alleged that she was subject to "several sexual harassing advances," and experienced unwanted sexual communication. Plaintiff also alleged that she was "wrongfully terminated." Thus, she was subject to a tangible employment action. However, plaintiff failed to

allege that there was a causal connection between the sexual harassment and the tangible employment action, which is specifically required for a claim of quid pro quo harassment. Not only did plaintiff fail to specifically allege a causal connection, it could not be reasonably inferred that plaintiff intended to allege a causal connection between the sexual harassment and wrongful termination. The vague statements in her complaint regarding sexual harassment were mixed with allegations regarding slander, the disclosure of private information, threats by defendant, and lost wages. Thus, even viewing the facts in the light most favorable to plaintiff, the complaint did not contain sufficient allegations to establish a cause of action for quid pro quo harassment. The circuit court properly granted defendant's motion for summary disposition as to plaintiff's claim for quid pro quo harassment under MCR 2.116(C)(8).

ii. MCR 2.116(C)(10)

Even if plaintiff sufficiently pleaded a cause of action for quid pro quo harassment, the circuit court did not err in granting summary disposition to defendant under MCR 2.116(C)(10).

In plaintiff's response to defendant's motion for summary disposition and on appeal, plaintiff argues that she established a prima facie case of quid pro quo harassment because of Bassett's actions. In regard to the first element of a claim of quid pro quo harassment, plaintiff contends that Bassett made a sexual advance by promising her that she could make more money if "she dated/implied having sex with him." Plaintiff asserts that Bassett would discuss his "sexual performances" loudly in front of other cooks, and he would look plaintiff "directly in the eyes while demonstrating a few sex positions." Plaintiff further contends that, after declining his sexual advances, "Bassett became aggressive and demeaning towards Plaintiff." In regard to the second element, plaintiff argues that she established that she suffered a tangible employment action as a result of Bassett's sexual harassment because plaintiff was "labeled a problematic employee which resulted in her wrongful suspension and termination."

In neither plaintiff's response to defendant's motion for summary disposition nor her brief on appeal does plaintiff cite to any evidence to support these contentions. Her testimony does not support her contentions. Plaintiff testified that Bassett tried to have sex with her, but after she declined, Bassett "just kind of hated" plaintiff. When asked to describe Bassett's sexual overture, plaintiff stated that it occurred when Bassett first started at the restaurant, when he would say that "he was about to be the new kitchen manager and he got all this money and all those kind of things he'd normally rant." Plaintiff testified that Bassett "hit on a lot of—the kitchen would hit on a lot of girls [sic]. He would hit on a lot of girls. He hitted [sic] on me." That was the extent of plaintiff's testimony regarding any sexual behavior or comments from Bassett.

Contrary to her contentions in her briefs, plaintiff provided no testimony that Bassett offered her more money if she had sex with him. There is no evidence that her termination had a

causal connection to her declining Bassett's sexual advances. Thus, plaintiff failed to establish the prima facie elements of a claim for quid pro quo harassment.[1]

c. PLAINTIFF'S EVIDENCE IN SUPPORT OF SEXUAL HARASSMENT CLAIMS

On appeal, plaintiff focuses primarily on the fact that she had supported her discrimination claims with "an extensive amount of sworn evidence," and therefore, the circuit court erred by not granting summary disposition in her favor. Plaintiff references FRE 807, the residual exception, as applying to her evidence. The analogous Michigan Rule of Evidence is MRE 803(24). "To be admitted under MRE 803(24), a hearsay statement must: (1) demonstrate circumstantial guarantees of trustworthiness equivalent to the categorical exceptions, (2) be relevant to a material fact, (3) be the most probative evidence of that fact reasonably available, and (4) serve the interests of justice by its admission." *People v Douglas*, 496 Mich 557, 576; 852 NW2d 587 (2014) (quotation marks and citation omitted).

In plaintiff's response to defendant's motion for summary disposition and her cross-motion for summary disposition, plaintiff cited to numerous sources as evidence for her claims. As an initial matter, the vast majority of plaintiff's statements to support her claims of sexual harassment are mere allegations with no citation to evidence to support her statement. For example, plaintiff asserted that, after she declined Knoll's sexual advance, Knoll would "purposely go to the host stand and seat tables in other servers' sections when it was Plaintiff[']s turn in rotation to receive a table." Plaintiff provided no evidence whatsoever to support this statement.

On occasion, plaintiff cited to sources to support her allegations. Contained within these footnotes as support for her claim of a hostile work environment are citations to caselaw, the United States Equal Employment Opportunity Commission (EEOC), defendant's brief in support of its motion for summary disposition, text messages, plaintiff's deposition testimony, and defendant's answers to interrogatories. General references to caselaw, the EEOC, and defendant's brief in support of its motion for summary disposition are not sworn testimony, and they are not evidence in support of plaintiff's statements.

Although the majority of plaintiff's statements were unsupported, plaintiff did cite a text message conversation between her and Knoll to support her contention that Knoll retaliated against plaintiff because she refused to acknowledge "Knoll as a man of honor" by declining his offer to pay for her Controlling Alcohol Risks Effectively (CARE) class. In the text message, plaintiff asserted that she could not afford "the class," and she did not mind taking the class, but she did not want to take Knoll's money because she did not know when she could pay him back. In response, Knoll asked if plaintiff could work that night, and then stated, "I'll pay for your class." " 'Hearsay' is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). To the extent plaintiff intended to offer these statements as evidence that she declined Knoll's offer to pay for her CARE

[1] In plaintiff's response to defendant's motion for summary disposition and her brief on appeal, plaintiff specifically discussed Bassett in regard to her claim for quid pro quo harassment and Knoll in regard to her claim for hostile work environment sexual harassment.

class, they are inadmissible because they are out-of-court statements offered for the truth of the matter asserted. Moreover, the text messages do not provide support for plaintiff's argument that Knoll retaliated against plaintiff for denying his sexual advances.

In addition, plaintiff argues that, when plaintiff informed Pensom of the issues she was having at work, Pensom told plaintiff to contact Maria Gatzaros, the owner of defendant. Plaintiff alleged in her response to defendant's motion for summary disposition that, despite Pensom's instruction to contact Gatzaros about plaintiff's issues, "when Plaintiff inquired about Ms. Gatzaros contact information, Ms. Pensom would inform Plaintiff to not talk to Ms. Gatzaros because she was simply only going to inform Mr. Knoll and that would make matters worse." As evidence to support this statement, plaintiff cited to a text message conversation between Pensom and plaintiff, wherein Penson told plaintiff to call Fishbones and talk to management, and to e-mail Gatzaros. When plaintiff did not respond to six of Pensom's messages, Pensom asked if plaintiff was ignoring her, and plaintiff responded that she would call Pensom. Even if this text was admissible, it provides no support for plaintiff's claim of a hostile work environment. The context of the conversation is unclear. There is no indication that plaintiff was having issues at work. There is no mention of Knoll, or Pensom's fear that Knoll would become upset. This evidence simply does nothing to support plaintiff's claim of sexual harassment on the basis of a hostile work environment.[2]

Plaintiff cited to no evidence whatsoever to support her statements regarding the quid pro quo harassment she experienced by Bassett. Upon review of the evidence filed by plaintiff, we conclude that the circuit court did not err in determining that plaintiff's evidence was inadmissible and did not establish a prima facie claim of quid pro quo harassment or hostile work environment harassment. Plaintiff's evidence is not probative of any material fact for her discrimination claims. Her sworn testimony is the most probative evidence. Thus, the circuit court did not err by concluding that plaintiff's evidence was not admissible and did not support her claims. Accordingly, the court did not err in granting summary disposition as to plaintiff's sexual discrimination claims under MCR 2.116(C)(10).

2. INVASION OF PRIVACY

"Michigan has long recognized the common-law tort of invasion of privacy." *Dalley*, 287 Mich App at 306 (citation and quotation marks omitted). There are four distinct theories for an invasion of privacy tort: "(1) the intrusion upon another's seclusion or solitude, or into another's private affairs; (2) a public disclosure of private facts about the individual; (3) publicity that places someone in a false light in the public eye; and (4) the appropriation of another's likeness for the defendant's advantage." *Id*. (citation and quotation marks omitted). Plaintiff's allegations only concern a cause of action for invasion of privacy under the theory of a "a public disclosure of private facts about the individual." *Id*. (citation and quotation marks omitted).

[2] Plaintiff filed 77 exhibits in the lower court, most consisting of text message conversations. Upon review of the exhibits, none of plaintiff's exhibits assisted in any of her claims.

"[T]o prove invasion of privacy through the public disclosure of private facts, a plaintiff must show (1) the disclosure of information (2) that is highly offensive to a reasonable person and (3) that is of no legitimate concern to the public." *Doe v Henry Ford Health Sys*, 308 Mich App 592, 597; 865 NW2d 915 (2014) (citation and quotation marks omitted). "The information revealed must relate to the individual's private as opposed to public life." *Id*. at 597-598 (citation and quotation marks omitted). "Liability will not be imposed for giving publicity to matters that are already of public record or otherwise open to the public." *Id*. at 598 (citation and quotation marks omitted). "Further, the 'publicity' must consist of communicating that information to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." *Id*. (citation and quotation marks omitted). "A defendant does not invade a plaintiff's right of privacy by communicating a fact concerning the plaintiff's private life to a single person or even to a small group of persons." *Nyman v Thomas Reuters Holdings, Inc*, 329 Mich App 539, 551; 942 NW2d 696 (2019) (citation and quotation marks omitted).

a. MCR 2.116(C)(8)

In plaintiff's complaint, the following statements are relevant to her claim for invasion of privacy: (1) "Defendant Fishbone[]s deliberately disclosed Plaintiff Mays[']s personal information to a group of known and unknown parties," (2) "The Defendant disclosed personal information to individuals, which led to the Plaintiff Mays[']s humiliation and verbal abuse," and (3) "Defendant Fishbone[]s discloses Plaintiff Mays[']s personal issues with employees from other Fishbone[]s locations."

In *Nyman*, 329 Mich App at 551-552, this Court held that the circuit court properly granted the defendant summary disposition under MCR 2.116(C)(8) because the plaintiffs failed to sufficiently plead a cause of action for invasion of privacy under the theory of public disclosure of private facts.

> In this case, plaintiffs did not allege that defendant actually disclosed their private information to so many persons that made it substantially certain that their Social Security numbers would become public knowledge. Rather, they alleged that subscribers might be capable of accessing, duplicating, and disseminating that information. Plaintiffs also did not allege that their private information constituted information highly offensive to a reasonable person. Instead, plaintiffs alleged that reasonable persons might find Social Security number disclosure offensive. Therefore, plaintiffs failed to allege a claim of invasion of privacy by the public disclosure of embarrassing private facts. Accordingly, the trial court did not err by dismissing this claim without prejudice. [*Id*. at 551-552.]

Here, plaintiff did not allege (1) what statements were disclosed, (2) that the statements were disclosed to a substantially large group of people, and therefore, the private information would become public knowledge, or (3) that the statements were highly offensive to a reasonable person. The allegations in plaintiff's complaint were too vague and facially deficient to put defendant on notice of the basis of plaintiffs claim of invasion of privacy. Thus, the circuit court properly granted defendant's motion for summary disposition under MCR 2.116(C)(8).

b. MCR 2.116(C)(10)

Even if plaintiff had sufficiently pleaded a cause of action for invasion of privacy under a theory of public disclosure of private facts, the circuit court properly granted summary disposition under MCR 2.116(C)(10).

On May 29, 2018, plaintiff was terminated from defendant. Plaintiff testified that she received a text message from Tara Myatt on June 27, 2018, stating that Myatt knew plaintiff had lived in a motel. Because of that message, plaintiff knew that someone told Myatt about plaintiff's living arrangement. Plaintiff "called around and asked a couple of people," and discovered that Pensom told Myatt. Plaintiff then learned that there was a social gathering at the home of Tanesha Covington, an employee of defendant. Pensom was at Covington's house, and everyone was "smoking and drinking," when Pensom said, "I don't know how [plaintiff] drives around in an Escalade but she lives in a hotel."

Plaintiff testified that, prior to Pensom conveying this information at Covington's house, plaintiff had told Covington, Pensom, and another employee, Arlene, about living in a motel. The four individuals had all been in the office at Fishbones when plaintiff told them she lived in a motel.

Plaintiff argues that she established a claim of invasion of privacy because (1) Pensom discussed plaintiff's private living arrangements with a group of people, although plaintiff had "never met one of the individuals," (2) plaintiff's living arrangements would be considered offensive to any reasonable person because it was embarrassing and anyone who is financially struggling does not want others to know, (3) plaintiff's living arrangements were not a legitimate concern to the public, and (4) Pensom maliciously and intentionally disclosed plaintiff's personal information, which led others to believe the information was true. Plaintiff admits that she shared the information with Covington, Pensom, and Arlene, but contends that she did not share the information with the group of people at Covington's house, and Pensom violated plaintiff's rights by disclosing this information.

Plaintiff cannot maintain a claim for invasion of privacy. She admitted to making her living arrangements known when she told Pensom, Covington, and Arlene at Fishbones. In addition, other than Pensom and Covington, plaintiff lists four other individuals she believed were at Covington's house when Pensom disclosed the information. That is a small group of people and does not constitute "the public at large" or "so many persons that the matter must be regarded as substantially certain to become one of public knowledge." *Henry Ford Health Sys*, 308 Mich App at 597. Although information about plaintiff's living arrangements may have been embarrassing because it was the result of her financial struggles, it is not "highly offensive" information to a reasonable person. *Id*. Thus, the circuit court did not err in granting summary disposition to defendant under MCR 2.116(C)(10).

3. DEFAMATION

In Michigan, the elements of a claim of defamation are:

> (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of

> special harm (defamation per se) or the existence of special harm caused by publication. [*Ghanam v Does*, 303 Mich App 522, 544; 845 NW2d 128 (2014) (citations and quotation marks omitted).]

"[A] plaintiff claiming defamation must plead a defamation claim with specificity by identifying the exact language that the plaintiff alleges to be defamatory." *Id*. at 543 (quotation marks and citation omitted). In *Ghanam*, this Court held that the plaintiff's claim for defamation was facially deficient and could not survive a motion for summary disposition under MCR 2.116(C)(8) because "the alleged defamatory statements were not identified in [the] plaintiff's complaint," but rather, the alleged defamatory statements were first cited in a response for a protective order. *Id*. at 543.

a. MCR 2.116(C)(8)

In plaintiff's complaint, paragraph 5, stating "[a]s of today, Defendant Fishbone[]s slanders Plaintiff Mays," and paragraph 14, stating that "[d]efendant Fishbone[]s defames Plaintiff Mays to past, new, and current employees," are the only statements relevant to her claim for defamation. Plaintiff neither provided the alleged defamatory statements in her complaint, nor provided any specific facts regarding alleged defamatory action by defendant. Rather, she made only these two legal conclusions that she was defamed by defendant. Thus, plaintiff's complaint was deficient to state a claim for defamation, and the circuit court properly granted summary disposition under MCR 2.116(C)(8).

b. MCR 2.116(C)(10)

The circuit court also properly granted summary disposition to defendants under MCR 2.116(C)(10) regarding plaintiff's defamation claim.

In plaintiff's response to defendant's motion for summary disposition and her cross-motion for summary disposition, plaintiff argued that she could prove prima facie defamation because Knoll intentionally falsified a document and placed it in her personnel file, which tarnished her reputation because the false statements regarding an argument she got into on May 28, 2018, were perceived as true. Plaintiff argued that the document became public to third persons—Pensom and the human resources director—and the falsified document ultimately caused her to be terminated and lose wages.

Plaintiff has provided no evidence that Knoll's statement was false other than her own belief that the May 28, 2018 incident occurred differently. Plaintiff testified that she did not get into an argument with another employee on May 28, 2018, but rather, she was just talking to the employee and Knoll misunderstood what had occurred. There is no evidence that Knoll's conduct amounted to negligence, or that he intentionally falsified a document in order to terminate plaintiff. Plaintiff cannot maintain a claim of defamation on this ground.

In the lower court, plaintiff also argued that she could maintain a prima facie case of defamation on the basis of malicious statements allegedly told to Artina Duckworth by defendant's management staff. On June 28, 2018, plaintiff wrote a demand letter to Gatzaros. In the letter, plaintiff demanded $1.5 million in damages resulting from her termination. Plaintiff testified that, while working at a different establishment after being terminated from defendant, plaintiff met

Duckworth, who had previously worked at Fishbones. Duckworth recognized plaintiff's name. Duckworth told plaintiff that she heard things about plaintiff, including that Pensom never liked plaintiff; Dwayne Bradford, an employee of defendant, believed that plaintiff was manipulative; plaintiff had lived in a motel; and plaintiff had written a demand letter to Gatzaros. Duckworth knew exactly how much money plaintiff had demanded in the letter. Plaintiff did not know who told Duckworth that plaintiff had been living in a motel, but she assumed it was Pensom because Duckworth and Pensom were friends.

Plaintiff cannot maintain a claim of defamation on these facts because none of the information that Duckworth purportedly knew was false. Plaintiff testified that she lived in a motel during the time she worked at defendant, and she wrote a demand letter to Gatzaros asking for $1.5 million in damages. Moreover, even if Pensom or Bradford made statements to Duckworth about their personal opinions of plaintiff, i.e., that Pensom did not like plaintiff and Bradford thought she was manipulative, those are not false statements, but merely opinions. Thus, plaintiff cannot meet the first element of a claim of defamation. Further, despite stating in the lower court that the statements tarnished her reputation in her work community, caused her to suffer mental anguish, and caused her to experience hardship at her new place of employment, plaintiff has produced no evidence that she was harmed by the statements. Therefore, the circuit court did not err in granting defendant's motion for summary disposition under MCR 2.116(C)(10).

II. PLAINTIFF'S CROSS-MOTION FOR SUMMARY DISPOSITION

Plaintiff argues that the circuit court erred by failing to grant her motion for summary disposition under MCR 2.116(C)(9). We disagree.

"Summary disposition under MCR 2.116(C)(9) is proper if a defendant fails to plead a valid defense to a claim." *Attorney General v PowerPick Club*, 287 Mich App 13, 49; 783 NW2d 515 (2010) (quotation marks and citation omitted). "A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all well-pleaded allegations as true." *Village of Dimondale v Garble*, 240 Mich App 553, 564; 618 NW2d 23 (2000). "If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, then summary disposition under this rule is proper." *Id*. (citation and quotation marks omitted).

The circuit court properly denied plaintiff's cross-motion under MCR 2.116(C)(9) because defendant pleaded valid defenses. In defendant's answer to the complaint and affirmative defenses, defendant pleaded that plaintiff's complaint must be struck and barred "for failure to state a claim upon which relief can be granted," "failure to specify any time(s) or dates, individuals or specific conduct and uses bare conclusory allegations, and such pleading is legally insufficient," and failure "to attend a mandatory CARE class on April 24 or April 25, 2018[,] that was contingent on her continued employment with Defendant." Defendant also alleged that "Plaintiff had three separate employee disciplinary reports regarding tardiness, once on April 16, 2018, once on May 7, 2018[,] and another on May 21, 2018," "Plaintiff was involved in a verbal altercation on May 16, 2018 when Plaintiff called another employee a 'B***h,' " "Plaintiff has suffered no injury, and therefore lacks standing for this cause of action," and "Plaintiff is seeking to recover damages that are completely speculative in nature." Defendant set forth numerous valid defenses. Thus, the circuit court properly denied plaintiff's cross-motion for summary disposition.

Affirmed.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Michael J. Riordan