

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

CASE NO. 16-20746-CV-JLK

CARL DELVA,

Plaintiff,

v.

DIAZ SUPERMARKET, INC.,  
a Florida corporation,

Defendant.

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**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

**THIS MATTER** comes before the Court upon Defendant DIAZ SUPERMARKET's Motion for Summary Judgment (DE 17), filed June 5, 2017. The Court has additionally considered Plaintiff's Response (DE 26), filed July 26, 2017, and Defendants' Reply thereto (DE 27), filed August 2, 2017. Upon review of the record and careful consideration, the Court finds that the Defendant's Motion for Summary Judgment should be granted.

**BACKGROUND**

Plaintiff is a Black Haitian male who worked as a produce manager for six years at Defendant's grocery store until he was terminated from this position in June 2012. Plaintiff alleges that he was terminated due to discrimination of his race and national origin. Defendant has moved for summary judgment, primarily contending that it had

legitimate business reasons to terminate Plaintiff.<sup>1</sup> In response, Plaintiff contends that the reasons Defendant has presented for termination are pre-textual. The matter is now ripe for the Court's review.

### LEGAL STANDARD

“Summary judgment is appropriate where the pleadings and supporting materials establish that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(a). Summary judgment “is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy[,] and inexpensive determination of every action.” *Pace v. Capobianco*, 283 F.3d 1275, 1284 (11th Cir. 2002). Summary judgment is appropriate unless there is a genuine issue of fact for trial. *Agee v. Porter*, 216 F. App'x 837, 840 (11th Cir. 2007). “For factual issues to be considered genuine, they must have a real basis in the record.” *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996). In opposing a motion for summary judgment, the nonmoving party “must show specific facts to support that there is a genuine dispute.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The nonmoving party may not rely on the pleadings, but rather must demonstrate a genuine issue for trial through affidavits, depositions, interrogatory answers, and admissions. *Celotex*, 477 U.S. at 323-24. The existence of a “mere scintilla” of evidence in support of the nonmoving party's position is

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<sup>1</sup> Defendant additionally contends that Plaintiff has sued the wrong corporate entity. However, in light of the Court's favorable findings on Defendant's alternative arguments, the Court need not address this issue.

insufficient; there must be evidence on which the finder of fact could reasonably find for the moving party. *Nat'l Cas. Co. v. Pickens*, 582 F. App'x 839, 840-41 (11th Cir. 2014) (quoting *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990)).

## DISCUSSION

Where, as here, a plaintiff alleges a single-motive theory of discrimination<sup>2</sup> and presents no direct evidence of discrimination, courts apply the familiar burden-shifting framework set out in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973). Under the *McDonnell Douglas* framework, the plaintiff bears an initial burden of establishing a *prima facie* case of discrimination. See *Holland v. Gee*, 677 F.3d 1047, 1055 (11th Cir. 2012). To assert a *prima facie* case for discrimination, a Plaintiff must show that “(1) he is a member of a protected class; (2) he was subjected to an adverse employment action; (3) his employer treated similarly situated employees outside of his protected class more favorably than he was treated; and (4) he was qualified to do the job.” *Burke-Fowler v. Orange County, Fla.*, 447 F.3d 1319, 1323 (11th Cir. 2006). Should the plaintiff meet his burden, the burden of production then shifts to the employer to proffer a legitimate, non-discriminatory reason for its adverse employment action. *Holland*, 677 F. 3d at 1055. If the employer meets this burden, the burden shifts back to the plaintiff to demonstrate that the proffered reason was not the true reason for the action. *Id.*

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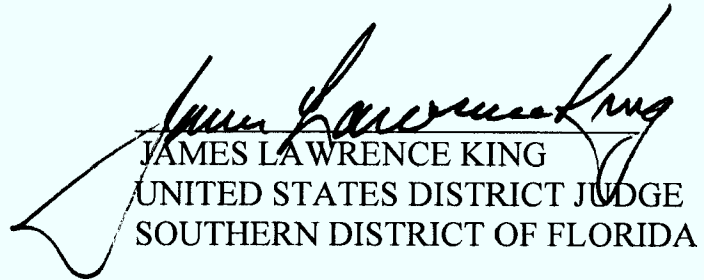
<sup>2</sup> In a single-motive theory of discrimination, a plaintiff alleges that he suffered an adverse employment action solely as a result of illegal, discriminatory reasons. In contrast, a mixed-motive theory of discrimination would allege that the plaintiff suffered an adverse employment action due to a mixture of both legal and illegal reasons. See *Quigg v. Thomas County Sch. Dist.*, 814 F.3d 1227, 1237 (11th Cir. 2016) (distinguishing the standard for a single-motive theory of discrimination from that of a mixed-motive theory of discrimination).

Defendant has offered several legitimate business reasons for terminating Plaintiff, including: (1) Plaintiff did not respect authority and was insubordinate when given directions; (2) Plaintiff did not keep the produce department clean; (3) Plaintiff allowed expired fruit to remain on display; (4) Plaintiff overbought produce, which later had to be discarded; and (5) Plaintiff worked less than forty hours per week toward the end of his employment. Accordingly, the burden shifted to Plaintiff to rebut those offered reasons. However, Plaintiff has failed to do so. Indeed, Plaintiff makes no attempt to present evidence to rebut the conduct described by Defendant. Instead, Plaintiff simply argues that he was never warned that Defendant was not satisfied with his performance. This is insufficient. Without concrete facts to rebut Defendant's legitimate business reasons for terminating Plaintiff, the Plaintiff cannot overcome his burden under the *McDonnell Douglas* framework. Therefore, summary judgment must be granted in Defendant's favor.

#### CONCLUSION

It is **ORDERED, ADJUDGED, and DECREED** that Defendants' Motion for Summary Judgment (**DE 17**), be, and the same is, hereby **GRANTED**. By separate Order, the Court shall enter Final Judgment on behalf of Defendants and against Plaintiff.

**DONE** and **ORDERED** in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse in Miami, Florida, this 9th day of August, 2017.



JAMES LAWRENCE KING  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF FLORIDA

Cc: All counsel of record