

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

JESSE L. WILLIAMS,)	
)	Civil Action No. 5:02cv00054
Plaintiff,)	
)	<u>Memorandum Opinion</u>
v.)	
)	By: Samuel G. Wilson
STAPLES, INC.,)	Chief United States District Judge
)	
Defendant.)	

Plaintiff Jesse L. Williams, an African-American, brings this suit under 42 U.S.C. § 1981 of the Civil Rights Act of 1866 against Staples, Inc. (“Staples” or “the Company”) alleging that the Company’s store in Winchester, Virginia, discriminated against him, by accepting the out-of-state checks of white customers as payment for goods, but refusing Williams’ Maryland check because of his race. This matter is before the court on Staples’ motion for summary judgment on the grounds that Williams is unable to marshal evidence that creates a genuine issue of triable fact. The court agrees, and accordingly, grants Staples’ motion for summary judgment.

I.

Staples’ locations nationwide officially accept all customer checks preprinted with the customer’s name and account number and approved by Staples’ check guarantee services. (Staples Check Acceptance Policy, Pl.’s Ex. 9). The geographic location of the customer’s address, in-state or out-of-state, has no bearing. If the check appears altered, if the check lacks the appropriate information, or if the check guarantee system rejects the check, the cashier refuses to accept it as payment. (Id.).

On June 26, 2001, Williams, a graduate student at Shenandoah University in Winchester, entered the local Staples store to purchase a printer cartridge. (Williams Dep. at 49). Williams

requested the cartridge from a white female sales clerk who retrieved the cartridge and proceeded to the cash register to complete the sale. (Id. at 50-51). Williams does not remember the clerk's name or her demeanor. (Id. at 49-50). Williams wrote a personal check and handed it to the clerk for payment. (Id. at 53). The check was imprinted with his permanent address in Clinton, Maryland. (Id. at 8). The sales clerk informed Williams that "the store did not accept out-of-state checks." (Id. at 54). Williams offered to show her various forms of identification, including his driver's license and his Shenandoah University student identification. (Id. at 54). He cannot recall whether the cashier asked for an alternative form of payment or whether he had any. (Id. at 56). Although Williams "thought it was strange," he "assumed that the employee was enforcing the policy," and left the store to purchase the cartridge elsewhere. (Id. at 72).

Several weeks later, during a conversation with fellow students, Heather Hutchinson, another Shenandoah University graduate student, told Williams that she used an out-of-state check to purchase goods at the Winchester Staples. (Id. at 70; Hutchinson Decl.). She produced a carbon copy of her check explaining that the same date that Williams attempted to make a purchase from the store, June 26, 2001, Hutchinson offered a check printed with her Maryland address to the Staples' cashier who accepted the check without incident. (Hutchinson Decl.).

Williams then called Staples on or about July 21, 2001, and informed Dennis Fisher, the sales manager, that the store accepted a Maryland check from Hutchinson but refused to do the same for Williams. (Id. at 75-77). According to Williams, Fisher said that checks were accepted, but it was a "judgment call." (Id. at 77). Williams asked how the clerks make their judgment call and Fisher simply stated it was "case-by-case." (Id.). Williams responded that he thought the cashier had refused his check for a racially discriminatory reason. (Id. at 77-78).

Next, Williams contacted the Equal Rights Center (“ERC”) to report the incident. The ERC hired two men, Herman Hill, an African-American male, and Daniel Sullivan, a white male, to test the check acceptance policy at the Winchester store. On November 26, 2001, both Hill and Sullivan attempted to make purchases by personal check using Maryland addresses. Mary Cook, an African-American employee, completed both transactions. First, Hill entered the store and asked an African-American male employee for blank compact discs; the employee “kindly showed” him where they were located. (Hill Test Report). Hill selected his purchase and proceeded to the cashier. (Id.) He asked her if Staples would accept a check. (Hill Test Report). Cook, an African-American, whom Hill describes as “friendly” (id.), looked at the check, “observed that it was an out-of-state check,” (Hill Dep. at 68), and informed him that according to store policy, she could not accept out-of-state checks. (Hill Test Report). Hill asked her if she were sure, (Hill Test Report; Hill Dep. at 68), and then paid with his debit card. (Id.)

Less than an hour later, Sullivan, the white tester, entered the store and asked a white employee for markers and pens. (Sullivan Test Report). The employee assisted him, and afterward Sullivan proceeded to the cash register. Sullivan tendered a Maryland check to Cook who “studied the check” and told him “that the store usually did not accept out-of-state checks.” (Sullivan Test Report). She asked him if he had a credit card but he did not. (Id.) Cook then called for a manager, and a white female arrived who directed Cook to put the check into the check guarantee system. (Id.; Sullivan Dep. at 114). The system rejected Sullivan’s check. (Sullivan Test Report; Sullivan Dep. at 117). He asked why, and was told that he “could call a 1-800 number to ask.” (Id. at 119).

None of the Staples employees who served Hill, Sullivan or Williams applied Staples’

purported check policy.¹ Fisher, the sales manager, claims that he “had a misunderstanding of the check acceptance policy.” Fisher testified in his deposition that he believed that the customer had to live within 45 miles of the store. (Fisher Dep. at 110). Fisher, as the manager, would accept checks from certain locations outside of that milage radius, from the District of Columbia, for example, because “it’s not that far past the 45 mile limit.” (Id. at 113). Until another manager corrected Fisher’s mistake after Williams brought this lawsuit, Fisher considered only “distance” in accepting or rejecting a customer’s check. (Id. at 119). He testified that he believes someone during his training several years earlier incorrectly informed him about the policy. (Id. at 112, 120). According to Fisher, although Staples minimizes the risk of bad checks by contracting with a check guarantee service, the distance policy, as he understood it, made sense because his two previous employers, Eckerd Drugs and Nichols, had similar check cashing policies.

II.

Section 1981 prohibits racial discrimination in “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” A plaintiff may establish racial discrimination through direct evidence or through the cumulative effect of indirect evidence using the three-stage proof scheme of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 803 (1973) adapted from Title VII of the Civil Rights Act of 1964. Lovelace v. Sherwin-Williams Co., 681 F.2d 230, 240 (4th Cir. 1982).

Within the commercial context, courts use various formulations of the first stage of the

¹No Staples’ employee recalls any of the events involving Williams, Hutchinson, Hill or Sullivan, (Fisher Dep. at 191-92; Hill Dep. at 165-8; Cook Dep. at 106, 121-22, 132-34), but they testified that they now understand the correct check acceptance policy. (Cook Dep. at 85, 125, 129; Hill Dep. at 91; Fisher Dep. at 110).

McDonnell Douglas burden-shifting analysis. Murrell v. The Ocean Mecca Motel, Inc., 262 F.3d 253 (4th Cir. 2001). Staples and Williams rely on the expanded three-part formulation of the prima facie case as set forth in Callwood v. Dave & Buster's, Inc., 98 F. Supp.2d 694, 707 (D. Md. 2000).² Callwood addresses racial discrimination claims in a retail setting where the “ephemeral nature of interpersonal interactions in the public accommodations context” makes it difficult to compare the plaintiff to “similarly situated non-protected individuals” who may be unavailable for comparison. Callwood, 98 F. Supp.2d at 706. Under Callwood, 98 F. Supp.2d at 707, plaintiffs must show:

- 1) they are members of a protected class;
- 2) they made themselves available to receive and pay for services ordinarily provided by the defendant to all members of the public in the manner in which they are ordinarily provided; and
- 3) they did not enjoy the privileges and benefits of the contracted for experience under factual circumstances which rationally support an inference of unlawful discrimination in that
 - a) they were deprived of services while similarly situated persons outside the protected class were not deprived of those services, and/or
 - b) they received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable.

Assuming Williams can establish a prima facie case, the burden shifts to Staples to offer a legitimate, non-discriminatory reason for its actions. McDonnell, 411 U.S. at 802. Then Williams has the burden to show “either directly by persuading the court that a discriminatory reason more likely motivated the [defendant] or indirectly by showing that the [defendant’s] proffered

²The Sixth Circuit explicitly adopted Callwood in Christian v. WalMart Stores, Inc., 252 F.3d 862, 872 (6th Cir. 2001). See also Dobson v. Central Carolina Bank & Trust Co., (M.D.N.C. 2003) (adopting the Callwood test in the retail context); cf. Wilkins v. Denamerica Corp., (W.D.N.C. 2000); Bobbitt v. Rage, Inc., 19 F. Supp.2d 512, 517 (W.D.N.C. 1998) (using a more general formulation of the prima facie case applicable in many commercial contexts, specifically restaurants).

explanation is unworthy of credence.” Texas Dep’t of Comty. Affairs v. Burdine, 450 U.S. 248, 256 (1981). With those precepts in mind, the court concludes that Williams’ evidence neither establishes a prima facie case nor demonstrates that Staples’ explanation, that its employees simply misunderstood its check cashing policy, is a pretext for race discrimination.³

Williams fails to establish the second element of a prima facie case because his evidence does not show that in June 2001, the Winchester Staples applied a different check cashing policy to African-Americans than it applied to other members of the public. Cook, also an African-American, refused the out-of-state checks of both the African-American tester, Hill, and the white tester, Sullivan. The fact that Cook applied the incorrect policy to both a white and an African-American customer tends to prove that she misunderstood the policy rather than prove the dubious claim that racial animus motivated her. Nor does the fact that Cook called a manager when Sullivan produced a Maryland check prove that Cook, herself an African-American, favored whites over African-Americans. Sullivan, unlike Hill, told Cook that he did not have a credit card as an alternative form of payment. This fact alone likely prompted Cook to respond differently to Sullivan than to Hill. Hill paid for his purchase with a debit card, and there was no reason to call the sales manager. Moreover, Williams received the same treatment that Sullivan received from a different store clerk, which suggests a degree of consistency rather than arbitrariness to the employees’ mistaken understanding of Staples’ check cashing policy. In short, Hutchinson is the

³Staples argues that Williams cannot establish step two of the prima facie case because he did not make himself available to pay for the purchase. It is true that after the clerk rejected his check, Williams offered no alternative form of payment. Despite this fact, if Williams can show that the Winchester Staples placed special conditions only upon African-Americans in the terms of the contractual relationship, an inference of racial discrimination would still result. See, e.g., Buchanan v. Consolidated Stores, 125 F. Supp.2d 730, 735 (D. Md. 2001).

only person, whom Williams identified, who successfully paid with an out-of-state check, and even Sullivan, who is also white, was treated differently than Hutchinson. At best, this evidence shows that Staples' employees did not have a clear understanding of Staples' check cashing policy. Anything else, is simply speculative.

Williams also fails to prove the third element of a prima facie case. For the reasons stated above, Williams cannot show, via prong 3(a), that only African-Americans were deprived of the privilege to pay by check "while similarly situated persons outside the protected class were not deprived of those services." Callwood, 98 F. Supp.2d at 707. Williams argues, alternatively, that under prong 3(b), he "received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable." Id. Williams, however, marshals no evidence that remotely supports that claim. In fact, Hill stated that his service was "kindly" and "friendly." (Hill Test Report).

Yet, because the employees incorrectly applied Staples' policy, Williams suggests that they acted in an arbitrary manner and in a manner contrary to Staple's business interests, which Callwood held was sufficient to satisfy prong 3(b) of the prima facie case. Callwood, 98 F. Supp.2d at 708 (holding that arbitrary conduct or actions contrary to the retailer's financial interests may satisfy prong 3(b)). Besides Williams' bare allegations, however, nothing remotely suggests that Staples acted in a manner contrary to its business interests or "widely-accepted business norms." Id. Indeed, Fisher testified that other employers in the Winchester area do not accept checks outside of a certain mileage radius. (Fisher Dep. at 120).

Accordingly, Williams has failed to establish a prima facie case of race discrimination or to show that Staples' proffered legitimate reason for its actions was false.

III.

Section 1981 prohibits intentional discrimination based on race. On that score, Williams' evidence is insufficient to raise a triable issue of fact. Accordingly, the court grants Staples' motion for summary judgment.

ENTER this April 8, 2003.

CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
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JESSE L. WILLIAMS,)	
)	Civil Action No. 5:02cv00054
Plaintiff,)	
)	<u>FINAL ORDER</u>
v.)	
)	By: Samuel G. Wilson
STAPLES, INC.,)	Chief United States District Judge
)	
Defendant.)	

In accordance with the court's Memorandum Opinion entered on this day, it is **ORDERED** and **ADJUDGED** that Staples, Inc.'s motion for summary judgment is **GRANTED**. It is further **ORDERED** that this action be stricken from the docket of this court.

ENTER this April 8, 2003.

CHIEF UNITED STATES DISTRICT JUDGE