UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL SILVA,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	3:00 CV 636 (CFD)
SILVERMINE CLUB LEASING CORP.	:	
ET AL.,	:	
Defendants		

RULING ON MOTION FOR SUMMARY JUDGMENT

The plaintiff, Michael Silva ("Silva"), brings this action against the defendants, the Silvermine Golf Club and its owner and manager, the Silvermine Club Leasing Corporation, pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 to 634 ("ADEA"), claiming that the defendants' termination of his employment on the basis of his age violated the ADEA.

Pending before the Court is the defendants' motion for summary judgment [Doc. #30].

I. Facts[1]

Silva was employed as "head golf professional" at Silvermine Golf Club ("the Club"), a private golf club located in Norwalk, Connecticut, from 1979 until his termination in 1998. Silva was forty-four years old at the time of his termination. As head golf professional of the Club, Silva operated the Silvermine Golf Shop (the "pro shop") in which he sold golf equipment and merchandise. He also provided golf lessons, coordinated golf cart rentals, organized member golf tournaments and operated a "junior golf program." In the fall of 1997, Catherine Zucco and John

[1]The facts are taken from the parties Rule 9(c) statements and other summary judgment papers and are undisputed unless otherwise indicated.

Warner, two of the owners of the Club, met with Silva to discuss his work performance and the expectations of the Club. In July of 1998, Silva met again with Zucco and Warner to discuss Silva's performance. At this meeting, Zucco informed Silva of the intention to hire a new head golf professional for the following season. In October of 1998, Silva was informed that a new head golf professional was hired for the 1999 season, and in November or December of 1998, Silva was terminated from his position. Silva subsequently filed the present suit, alleging age discrimination in violation of the ADEA.

The defendants have filed a motion for summary judgment on the grounds that (1) Silva was an independent subcontractor, and thus is not entitled to the protections of the ADEA, and (2) there are no genuine issues of material fact that Silva was terminated because of his age.

II. Standard

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. Rule 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A court must grant summary judgment "'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . . .'" Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted). A dispute regarding a material fact is genuine "'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir.) (quoting Anderson, 477 U.S. at 248), cert. denied, 506 U.S. 965 (1992). After discovery, if the nonmoving party "has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof,"

then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The Court resolves "all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide." Aldrich, 963 F.2d at 523. Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991). See also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992). Additionally "[w]here, as here, the non- movant bears the burden of proof at trial, the movant can satisfy its burden of production by pointing out an absence of evidence to support an essential element of the non-movant's case." Gibsberg v. Healey Car & Truck Leasing, Inc., 189 F.3d 268, 270 (2d Cir. 1999) (citing Celotex, 477 U.S. at 323-24 and Tops Mkts.,Inc. v. Quality Mkts., Inc., 142 F.3d 90, 95 (2d Cir. 1998)).

The Court exercises caution in granting summary judgment in favor of an employer in employment discrimination cases "where, as here, the employer's intent is at issue." Kerzer v. Kingly Mfg., 156 F.3d at 400 (citing Gallo v. Prudential Residential Servs., Ltd. Partnership, 22 F.3d 1219, 1224 (2d Cir.1994)); see also Smith v. American Express Co., 853 F.2d 151, 154 (2d Cir.1988) ("summary judgment is ordinarily inappropriate in a Title VII action where a plaintiff has presented a prima facie case"); Meng v. Ipanema Shoe Corp., 73 F. Supp. 2d 392, 396 (S.D.N.Y. 1996). However, in order to defeat a defendant employer's motion for summary judgment, a plaintiff employee must offer "concrete evidence from which a reasonable juror could return a verdict in [her] favor" and may demand a trial simply because the central issue is the defendant employer's state of mind. Dister v. Continental Group, Inc., 859 F.2d 1108, 1114 (2d Cir.1988) (internal quotations omitted); see also Meng, 73 F. Supp. 2d at 396.

III. Discussion

A. Was Silva an Independent Contractor?

The ADEA applies only to employees and "provides no coverage for independent contractors." Frankel v. Bally, Inc., 987 F.2d 86, 89 (2d Cir. 1993). Whether an individual is an "employee" or an "independent contractor" for purposes of the ADEA "must be determined in accordance with common law agency principles." Frankel, 987 F.2d at 90 (citing Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 322-23 (1992) (holding that "where a statute containing the term 'employee' does not helpfully define it, the common law agency test should be applied")). The United States Supreme Court, in Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989), has articulated the factors to be considered in determining whether an individual is an employee or an independent contractor under federal common law agency principles. The factors include:

> [1] the hiring party's right to control the manner and means by which the product is accomplished . . . [2] the skill required; [3] the source of the instrumentalities and tools; [4] the location of the work; [5] the duration of the relationship between the parties;[6] whether the hiring party has the right to assign additional projects to the hired party; [7] the extent of the hired party's discretion over when and how long to work; [8] the method of payment; [9] the hired party's role in hiring and paying assistants; [9] whether the work is part of the regular business of the hiring party; [10] whether the hiring party is in business; [11] the provision of employee benefits; [12] and the tax treatment of the hired party.[2]

Reid, 490 U.S. at 751-52. "In balancing the Reid factors, a court must disregard those factors that, in light of the facts of a particular case, are (1) irrelevant or (2) of 'indeterminate' weight–that is, those factors that are essentially in equipoise and thus do not meaningfully cut in

[2]Other relevant factors may also be considered. See, e.g., Frankel, 987 F.2d at 90 (describing Reid as "offer[ing] a non-exhaustive list of factors to be considered").

favor of either the conclusion that the worker is an employee or the conclusion that he or she is an independent contractor." Eisenberg v. Advance Relocation & Storage, Inc., 237 F.3d 111, 114 (2d Cir. 2000). Additionally, "though no single factor is dispositive, see Reid, 490 U.S. at 752, 109 S.Ct. 2166, the 'greatest emphasis' should be placed on the first factor--that is, on the extent to which the hiring party controls the 'manner and means' by which the worker completes his or her assigned tasks." Id. "Questions of historical fact relevant to applying each factor are for the finder of fact, see Carter v. Helmsley-Spear, Inc., 71 F.3d 77, 85 (2d Cir. 1995), cert. denied, 517 U.S. 1208 (1996), but the ultimate determination, on settled facts, of whether a work qualifies as a work-for-hire is a question of law." Langman Fabrics v. Graff Californiawear, Inc., 160 F.3d 106, 110 (2d Cir. 1998).

After balancing the undisputed material facts in the framework provided by Reid, the Court concludes that Silva was an employee of Silvermine as a matter of law.[3] First, the Court notes that some facts weigh in favor of Silva's independent contractor status. For example, as to the degree of control Silvermine had over the manner in which Silva performed his duties, it is relevant that Silva independently managed several aspects of the pro shop: he obtained a loan to purchase the inventory of the shop; he selected the majority of the inventory for sale; he purchased, priced, and paid sales tax on the inventory; he purchased insurance for the inventory; he retained all revenue from the pro shop, and he was responsible for the pro shop's profit or loss. As to other Reid factors that indicate independent contractor status, the following are important:

[3]The Court considers only the undisputed material facts, and makes no factual findings, based on its determination that even if the disputed material facts were resolved in Silvermine's favor, the evidence in the aggregate would nonetheless compel a conclusion that Silva was an "employee," rather than an "independent contractor."

Silvermine paid Silva with an annual fee (furnished to him in weekly installments at his request), provided no benefits to Silva, other than a lump sum amount for health insurance and a Christmas bonus, and, for tax purposes, Silva was treated, and treated himself as, an independent contractor.[4] Additionally, it is somewhat relevant that for three of the years Silva was employed at Silvermine, he worked under a contract that labeled him an independent contractor.

On the other hand, several other of the Reid factors weigh strongly in favor of a finding that Silva was an employee of Silvermine. For example, as to the issue of control, Silvermine owned the pro shop facility and fixtures, named it the "Silvermine Golf Shop", paid for the shop's utilities, required Club members to make minimum annual purchases from the shop, and employed the pro shop's other employees and the assistant golf professionals, whom Silva supervised. The evidence also indicates that Silvermine had significant control over the manner in which Silva provided golf lessons to Club members and ran the junior golf program and member tournaments. As to the remaining Reid factors, the facts indicate the following: Silva's position of head golf professional required specialized skills; Silvermine provided the location of all of Silva's duties; the employment relationship between Silva and Silvermine was a considerably long one (nineteen years); Silvermine had much discretion over when Silva worked; Silva's work was part of the

[4]However, as the Second Circuit has noted, this factor may not be an accurate reflection of the work relationship in light of the employee and employer's ability to manipulate the employee's tax treatment. See Eisenberg, 237 F.3d at 116-17 ("[A] firm and its workers could all but agree for themselves, simply by adjusting [the employee's tax treatment or benefits], whether the workers will be regarded as independent contractors or employees. For example, workers who would otherwise be characterized as employees could accept a relatively larger salary in exchange for foregoing benefits and not having tax payments deducted from their wages."). The defendants also maintain that Silva's representation in tax documents that he was self employed judicially estops Silva from claiming independent contractor status. For the reasons articulated by the Second Circuit in Eisenberg above, the Court declines to find Silva judicially estopped in this context.

regular business of Silvermine; Silvermine is a business; and Silva had little control over hiring and firing his assistants.[5]

In light of the evidence presented and its evaluation under the Reid balancing test, the Court concludes that Silva was an employee of the defendants. Accordingly, the defendants' motion for summary judgment on the basis that Silva is an independent contractor is denied.

B. Merits of Silva's ADEA Claim

The framework for proving age discrimination under the ADEA is the same burden-shifting analysis for proving discrimination under Title VII. See Slattery v. Swiss Reinsurance America Corp., 248 F.3d 87, 91 (2d Cir. 2001). To prevail on his ADEA claim, Silva must first establish a prima facie case of age discrimination by showing (1) membership in a protected class, (2) qualification for the position, (3) an adverse employment action, and (4) circumstances giving rise to an inference of age discrimination. The defendants must then offer a legitimate, nondiscriminatory rationale for their actions, and Silva is then required to show the defendants' stated reason is mere pretext for discrimination. The final burden remains on Silva to persuade the trier of fact by a preponderance of the evidence that the defendants intentionally discriminated against him.

The Court concludes that genuine issues of material fact exist at least as to (1) whether Silva was qualified for the position of head golf professional, specifically, whether PGA certification became a requirement of the position of head golf professional in 1999, and (2)

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[5]The Court declines to address the third and sixth factors of the Reid test–the source of the instrumentalities and tools and the right to assign additional projects–as it finds they are "of 'indeterminate' weight" because they "are essentially in equipoise and thus do not meaningfully cut in favor of either the conclusion that the worker is an employee or the conclusion that he or she is an independent contractor." Eisenberg, 237 F.3d at 114.

whether the defendants discriminated against him on the basis of his age.

Accordingly, the defendants' motion for summary judgment [Doc.# 30] is DENIED.

SO ORDERED this ____ day of March 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE