

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

**EDWARD J. MORGAN**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO: xx-xxxx**

**ARCHITRONICS, INC.**

**DEFENDANT**

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT**

**INTRODUCTION**

This Court should grant Defendant, Architronics, Inc.’s, motion for summary judgment because Plaintiff, Edward Morgan, fails to show that age was the but-for cause of Architronics’ decision to eliminate his position. Morgan filed a claim alleging that the decision to eliminate his position violated the Age Discrimination in Employment Act. This Court denied Architronics’ motion for summary judgment as to the prima facie elements of the discrimination claim.

Architronics now proffers legitimate, nondiscriminatory reasons for its decision including Architronics’ reduction in force and Morgan’s failure to adapt to Architronics’ high-tech business model. Morgan fails to produce any evidence that these reasons are pretextual. Even if Morgan had provided evidence of pretext, his evidence is also insufficient to show that age was the actual but-for cause of Architronics’ decision. Consequently, Morgan has not raised any genuine issue of material fact, and this Court should grant Architronics’ motion.

**STATEMENT OF FACTS**

Architronics is an architectural firm known primarily for its creative design work. (Baker Dep. at 11:104-18.) In 2011, Architronics invested in structural improvement of its headquarters and employee bonuses. (Whitlow Aff. ¶ 5.) More recently, Architronics went through a financial downturn due to increasing difficulty competing for bids with more technologically advanced firms. (Baker Dep. at 12:155-95.) Architronics' President, Henry Baker, recognizing the urgency of the situation in May 2012, decided to reduce business travel and implement a restructuring plan. (*Id.* at 19:504-11.) The plan accommodated Architronics' increasingly design-oriented business model, enabling Architronics to purchase the Quixotic 3000 CAD system and hire a Quixotic operator. (*Id.*) This model elicited enthusiastic support from Architronics' VP, Stephan Abernathy, who noted the resultant younger atmosphere at Architronics in an interview. (*Id.* at 18:455-63.)

With the exception of one design group, all Architronics architects employed CAD and signed a letter advocating the Quixotic purchase. The dissenting design group relied primarily on time-consuming hand-drawn renderings, (*Id.* at 25:62-100), leading Architronics' CFO, Philip Whitlow, to refer to them as the "Leonardo group." (*Id.* at 17:428-36.) That design group consisted of Morgan, one other architect who was 61, and an administrative assistant who was 35. (*Id.* at 15:328-30.) Although Morgan claims he could acquire Quixotic proficiency in three months, he admits he knew nothing about the system. (Morgan Dep. 26:101-23.) Morgan declined to take any of the non-mandatory training courses Architronics sponsored. (*Id.*)

Morgan's design group was responsible for pre-design technical work. (Baker Dep. at 15:313-20.) The restructuring plan, reflecting Architronics' decreased requirement for pre-design work, folded those responsibilities into a single separate position. (*Id.* at 15:304-22.) Architronics managed to limit position eliminations to that design group. (*Id.* at 15:323-27.) Because

Morgan's performance reviews were positive, Architronics offered him a transfer. (Morgan Dep. 25:50-51.)

However, Morgan occasionally quarreled with Baker and Abernathy over the direction of Architronics on issues ranging from boutique specialization to expense accounts. (Baker Dep. at 18:448-80.) During a heated exchange where Morgan made condescending remarks to Abernathy, Abernathy indicated his feeling that company decisions should be made by people who were not around at the time protractors were invented, and speculated that Morgan's views represented an "old way" of thinking. (*Id.* at 18:448-54.) However, despite their differences, Baker empathized with Morgan, saying that times change and "everyone's time comes eventually." (*Id.* at 18:425-54).

### **ARGUMENT**

According to Federal Rules of Civil Procedure 56(c), summary judgment is appropriate when the evidence demonstrates a lack of genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. See *Celotex v. Catrett*, 477 U.S. 317, 322-23 (1986). An issue is genuine only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party;" the "mere existence of a scintilla" of supporting evidence will not preclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

In the Fifth Circuit, courts apply a burden-shifting framework to age discrimination cases. *Jackson v. Cal-Western Packaging Corp.*, 602 F.3d 374, 378 (5th Cir. 2010). Under that framework, the plaintiff must first establish a prima facie case of age discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The burden of production then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the challenged decision. *Id.* If the employer carries this burden of production, the plaintiff bears the burden of persuasion that

the employer's reason is actually a pretext for discrimination. *Id.* The plaintiff's ultimate burden is to persuade the factfinder that discrimination was the but-for cause of the challenged decision. *Jackson*, 602 F.3d at 377.

Architronics carries its burden by proffering two legitimate, nondiscriminatory reasons for the challenged decision. Baker asserts first that Architronics needed to reduce its workforce. Baker additionally asserts that Morgan failed to adapt to Architronics' new business model. Either reason is sufficient to carry Architronics' burden. The ultimate burden, then, lies with Morgan, but his evidence does not raise a genuine issue of material fact as to pretext. Moreover, Morgan's evidence cannot support an inference that discrimination was the but-for cause of Architronics' decision. Therefore, this Court should grant Architronics' motion.

#### **I. ARCHITRONICS PROFFERS LEGITIMATE REASONS**

Architronics has carried its burden of production because Baker proffers two independently sufficient legitimate, nondiscriminatory reasons. First, Baker asserts that a downturn in successful bids necessitated a new high-tech business model, and this model required a reduction in force. Second, Baker asserts that Morgan lacked the technological skills and motivation to adapt to Architronics' high-tech model. In ADEA cases, the employer's burden "is only one of production, not persuasion, involving no credibility assessments." *Russell v. McKinney Hosp. Venture*, 235 F.3d 219, 222 (5th Cir. 2000). It entails "only . . . explaining clearly the nondiscriminatory reasons for its actions" to "frame the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext." *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 255-56, 260 (1981).

##### ***a. Architronics required a reduction in force***

In *EEOC v. Texas Instruments*, the defendant proffered that its elimination of the plaintiff's position was part of a workforce reduction to adapt to a demand downturn. 100 F.3d 1173 (5th Cir. 1996). That court accepted reduction in force as a legitimate, nondiscriminatory reason in itself, acknowledging that "some employees may have to be let go despite competent performance." *Id.* at 1181.

Architronics likewise carries its burden though Baker's assertion that Architronics had to reduce its workforce to pay for the Quixotic system it needed to reverse a downturn in successful bids.

***b. Morgan lacked the technological skills and motivation to adapt to Architronics' high-tech model***

The court in *Texas Instruments* also accepted as legitimate the defendant's reason that one plaintiff "lacked high tech skills and interacted poorly with other employees." 100 F.3d at 1178.

In another case, the court accepted the defendant's rationale that the plaintiff "possessed low motivation to adapt to a rapidly changing business environment and new company management style." *Machinchick v. PB Power, Inc.*, 398 F.3d 345, 349 (5th Cir. 2005).

Here, Morgan resisted the new company management style by quarreling with Baker and Abernathy over boutique specialization and reduced expense accounts. Morgan lacked the skills to operate Quixotic. Moreover, Morgan exhibited a low motivation to adapt to Architronics' high-tech environment through his failure to take any optional training courses that Architronics sponsored, and by refusing to sign the letter requesting the Quixotic purchase.

Thus, Architronics has proffered two legitimate, nondiscriminatory reasons: workforce reduction and Morgan's failure to adapt. Each is sufficient to carry Architronics burden of production; therefore, this Court should grant Architronics' motion.

## **II. MORGAN FAILS TO ESTABLISH PRETEXT**

Morgan fails to show that Architronics' proffered reasons are pretextual because he cannot demonstrate that they are unworthy of credence, or that Architronics subjected him to disparate treatment. After the employer proffers legitimate reasons, the plaintiff's burden entails "rebut[ting] each nondiscriminatory reason articulated by the employer." *Laxton v. Gap Inc.*, 333 F.3d 572, 578 (5th Cir. 2003). "To carry this burden, the plaintiff must produce substantial evidence indicating that the proffered legitimate nondiscriminatory reason is a pretext for discrimination." *Id.* The plaintiff may show pretext either by showing either (a) that the employer's reasons are unworthy of credence, or (b) that the employer treated the plaintiff disparately with respect to similarly situated younger employees. *Jackson*, 602 F.3d at 378. Morgan cannot show either of these things; therefore, this Court should grant Architronics' motion.

### ***a. Morgan Fails to Show Architronics' Reasons are Unworthy of Credence***

Because Morgan lacks evidence to disprove that Architronics' proffered reasons for Morgan's dismissal are worthy of credence, Morgan is unable to show the reasons are pretextual. An explanation is false or unworthy of credence if it is not the real reason for the adverse employment action. *Laxton*, 333 F.3d at 578. The court is not concerned with whether the employer's reason for dismissal later turned out to be incorrect. *Id.* at 579. Instead, the court determines whether the plaintiff's evidence is capable of disproving that the reason was the employer's true motivation. *Id.*

In *Brown v. CSC Logic, Inc.*, the plaintiffs' pretext evidence against the defendant's reduction in force rationale was that the employer implemented across-the-board raises and hired some new employees. 82 F.3d 651 (5th Cir. 1996). The court reasoned that evidence must disprove that an employer's proffered reason actually motivated the employer, not merely question the wisdom of the employer's business strategy. *Id.* Accordingly, the court rejected the plaintiff's evidence as insufficient, concluding, "There is no precedent for requiring a financially strapped company to only make cutbacks . . . in the specific manner suggested by the terminated plaintiff." *Id.* at 657-58.

Here, Morgan's only evidence challenging Architronics' force reduction rationale is his speculation that employee bonuses, business trips, and structural improvements meant that force reduction was unnecessary. However, the relevant question is not *Morgan's* belief but *Baker's*—and on that inquiry, the only evidence is Baker's assertion that he believed Architronics had to reduce force to remain competitive.

Likewise, Morgan cannot show his failure to adapt is pretext because his only evidence to that effect is his claim that he could learn to use Quixotic in three months. Again, the only evidence regarding *Baker's* belief is his assertion that he believed Architronics needed to hire an operator who was already proficient to begin using the system as soon as possible, rather than wait three months to see whether Morgan could achieve that proficiency.

Like the plaintiffs' evidence in *Brown*, Morgan's evidence only questions Architronics' business strategy; it does not disprove that the strategy really motivated Architronics. Morgan's consequent failure to carry his burden of showing pretext entitles Architronics to summary judgment.

***b. Morgan Fails to Show Disparate Treatment***

Morgan has not offered evidence sufficient to demonstrate pretext through a showing of disparate treatment because no employee similarly situated to Morgan received better treatment. To establish pretext via a showing of disparate treatment, a plaintiff must have evidence that a similarly situated employee who was outside the protected class received better treatment. *Vaughn v. Woodforest Bank*, 665 F.3d 632, 637 (5th Cir. 2011). To be similarly situated, the compared employee must have held the same job or responsibilities and must have had their employment status determined by the same person. *Id.*

In *Berquist v. Washington Mutual Bank*, the plaintiff attempted to show disparate treatment by comparing his treatment to that of other employees in his department. 500 F.3d 344 (5th Cir. 2007). The court rejected that comparison because those employees specialized in small-asset change requests, while the plaintiff worked primarily with other types of requests, dealing with small-asset requests only on rare occasions. *Id.* That court reasoned that the dissimilarities in job responsibilities meant those employees were not similarly situated to the plaintiff. *Id.* Accordingly, that employer's retention of those other employees was not disparate treatment. *Id.*

In our case, the same analysis applies to both of Architronics' reasons: other Architronics employees regularly utilized CAD technology to do design work and therefore were already specialized in high-tech methodology. Morgan's group, by contrast, relied on hand-drawn renderings to do pre-design work. Those group members all received the same treatment—elimination of positions—regardless of age. Therefore, Morgan cannot show pretext as no similarly situated employee received disparate treatment.

Because Morgan also cannot establish pretext via a showing that Architronics' reasons are unworthy of credence, Architronics is entitled to summary judgment.

### III. AGE-RELATED COMMENTS CANNOT SAVE MORGAN'S CASE

Even if Morgan could show pretext, this Court should nevertheless grant Architronics' motion because Morgan's evidence is insufficient to support an inference that discrimination was the but-for cause of Architronics' decision. A court's ultimate inquiry in discrimination cases is whether the employer intentionally discriminated against the plaintiff. *Burdine*, 450 U.S. at 253. Therefore, a plaintiff's showing of pretext will not prevent summary judgment where the evidence is "not so persuasive so as to support an inference that the real reason was discrimination." *Rubinstein v. Administrators of the Tulane Educ. Fund*, 218 F.3d 392, 400 (5th Cir. 2000).

A plaintiff may offer age-related comments as additional evidence to bolster his case. *Auguster v. Vermilion Parish Sch. Bd.*, 249 F.3d 400, 404 (5th Cir. 2001). Under the two-prong test detailed in *Russell v. McKinney Hosp. Venture*, such comments must: (a) be made by "a person that is either primarily responsible for the challenged employment action or by a person with influence or leverage over the relevant decisionmaker," and (b) actually evince discriminatory animus. *Reed v. Neopost United States, Inc.*, 701 F.3d 434, 441 (5th Cir. 2012) (construing *Russell*, 235 F.3d at 225).

In our case, the comments Morgan offers may be categorized by the *Russell* prong under which each fails:

#### ***(a) Failures under the 'Responsible Party' prong***

In *Reed*, other employees called the plaintiff "old man", "old fart," "pops," and "grandpa." *Id.* at 438. The court upheld summary judgment for the employer, reasoning that comments by employees without responsibility for the challenged decision are insufficient to survive summary judgment. *Id.*

In our case, Abernathy implied that Morgan was around when protractors were invented and speculated that Morgan adhered to an “old way” of thinking. Abernathy spoke of Architronics’ new “younger” feel in an interview. Whitlow referred to Morgan’s group as the “Leonardo group.” However, Baker alone decided to eliminate Morgan’s position; Morgan has no evidence that Abernathy or Whitlow bore responsibility for that decision. Thus, their comments fail under the ‘responsible party’ prong of the *Russell* test.

***(b) Failures under the ‘Discriminatory Animus’ prong***

In *Berquist v. Washington Mutual Bank*, the court considered a supervisor’s comments that “We will . . . attract younger talent,” and that younger employees needed the plaintiff’s leadership as a “senior officer.” 500 F.3d 344, 348 (5th Cir. 2007). That court concluded that though a supervisor made the comments, neither comment represented discriminatory animus because the first was a broad statement not directed at any particular employee, and both were consistent with a separate, benign meaning that the employer was committed to building leaders internally. *Id.*

Baker’s comment that times change and “everyone’s time comes eventually” fails the discriminatory animus prong of *Russell* because the comment is much more consistent with a benign purpose of breaking the news gently than it is indicative of a discriminatory animus—particularly in context of Baker’s offer to retain Morgan through a transfer.

Thus, even if Morgan could demonstrate pretext, this Court should still grant Architronics’ motion because Morgan’s comment evidence cannot support an inference of but-for causation.

**CONCLUSION**

Summary judgment is appropriate because Architronics proffers legitimate, nondiscriminatory reasons: Architronics' reduction in force, and Morgan's failure to adapt to a high-tech environment. Morgan has not offered sufficient evidence of pretext. Morgan fails to show Architronics' reasons are unworthy of credence because his evidence merely questions Architronics' wisdom, not whether the reasons actually motivated the decision. Morgan fails to show disparate treatment because Architronics treated Morgan as well as all similarly situated employees. Even if Morgan's evidence were sufficient to establish pretext, it is too weak to support an inference of intentional discrimination. The comments Morgan offers as additional evidence cannot save his case because employees without responsibility for the decision made them, or they do not evince discriminatory animus. Consequently, this Court should grant Architronics motion.

Respectfully Submitted,

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**Anthony D. Glosson**

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