

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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ESTATE OF DONALD ZARDA,

Plaintiff-Appellant,

-against-

ALTITUDE EXPRESS & RAYMOND MAYNARD,

Defendants-Appellees

x-----x

REPLY  
DECLARATION

GREGORY ANTOLLINO, an attorney admitted to this Court does hereby  
declare under penalty of perjury as follows.

1. I represent Plaintiff-Appellant herein and represented both the Estate and the decedent in the lower court. I make this declaration in reply to my adversary's opposition to deny my request relief to expand the word limitation my 1000 works on my opening brief.

2. First, my colleague at the bar is correct - the defendant is Altitude Express - not of any country. In my haste to make this motion, with my brief and appendix due in a month, I adapted a previous caption in a motion from a different case - but not completely. I apologize for the confusion.

3. The reasons supplied by the defense for denying the requested relief are not persuasive. Is a thousand words, a seven percent increase, really too much to request? I understand that extensions on word limits are disfavored, and I believe I write succinctly. Nevertheless, I am taking a big bite legally - not factually - and I have cut down the brief as much as possible. The defense is wrong in suggesting we have simply two sexual orientation claims - one under state, one under federal law - if federal law

were to allow a sexual orientation-discrimination claim. The latter point is the major question of this appeal. What we have is a Title VII claim dismissed on summary judgment, and a state law claim that was dismissed after a jury trial. Although the claims are similar, the standards in evaluating them are not: (1) the facts are construed in favor of the non-movant on summary judgment; and (2) the standards for errors at trial are decided on a more deferential standard. There are, thus, two standards of law that I must use to convince the court to grant the appeal. The facts are similar, but the standards are not identical.

4. I am asking the Court, based on new holdings adopted by the Equal Employment Opportunity Commission, to extend sex discrimination claims under Title VII to sexual orientation, and to adopt Baldwin v. Foxx, 2015 EEOPUB LEXIS 1905 (EEOC July 16, 2015), as the prevailing precedent in this Circuit. This requires that the Circuit deem Simonton v. Runyon, 232 F.3d 33 (2d Cir. 2000), legally stale.

5. This is major request, and I ask for an understanding that this is not something I can dispense with in the standard word limits. As noted on my Form C, this case raises an issue of new impression, as well as an issue of Constitutional law. I cannot squeeze this argument - contrary to Simonton - plus the state law points, into 14,000 words, and I'm only asking for an additional 1,000. There is no prejudice to the defense and I will consent to an order allowing appellee the same extension.

6. If I win Point I, it might render the sexual-orientation claim under state law moot. But, in the alternative, plaintiff believes he received an unfair trial under the state law on a few grounds. I do not want to win my first point simply to get a retrial with the same errors and lose again. Concomitantly, if the Court does not deem Simonton

