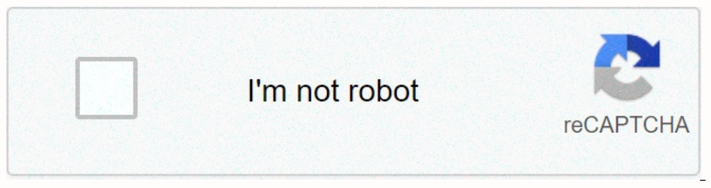

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Dollar tree handbook and policies

Before MANION, CANNE and EVANS, district judges. Robert Balfour (argument), Yeneva, Illinois, for the plaintiff-applicant. Michael D. Carpeles, Goldeberg, Cohn, Bell, Black, Rosenblum and Moritz, Chicago, Illinois, Beth Hirsch Berman (argument), Hofheimer and Nusbaum, Norfolk, Virginia, for the defendants-appellants. This is he said/she said a case where one party claims they share a mutually beneficial, consensual relationship and the other claims sexual harassment. Gloria Mosher, a part-time cashier at the Dollar Bills store (owned by the defendant, Dollar Tree Stores, Inc.) in Aurora, Illinois, alleges that she was sexually harassed by store manager Nick Limo, with whom she shared an apartment and a bed. Mosher allowed Limo to pay half the rent, accepted his gifts, met with his parents, called him his boyfriend and continued their relationship for months after she quit her job at the store. However, she says the 9-month relationship, during and after her work, occurred against her will. Even by giving credence to what she said and viewing the facts in light of the most favorable to her, we find that she cannot claim sexual harassment, and so we confirm the provision of a summary judgment in favor of her employer. We also find Mosher's allegations that a district judge treated her and abused his discretion when he denied her a third request to extend the opening as unavailable.1 The tale begins in January 1997 when Mosher, who had been out of work for 11 years, took one as a beggar to a cashier at an Aurora store after hiring Limo, a store manager. In her testimony, Mosher admits that Limo helped her fill out a questionnaire and gave her a manual for the staff. However, she later claims that her memory became hazy and she could not remember whether she had actually received the benefit. Dollar Tree alleges that it had a policy and practice of extending guidance to all employees and that each store displayed a poster with employment in the employee's bathroom, listing a contact number where employees could report harassment. Mosher denies ever seeing the poster. After her first day of work, Limo invited Mosher to dinner, and she accepted his invitation. She claims she only went because she thought that if she didn't, there might be problems at work. However, she admits that at the time Limo had not said anything that could be construed as threatening. Over dinner, they discussed work responsibilities and the number of hours the mosher would work. Mosher claims that Limo also told her that if she correctly picks up the cards, she would go to places, but he did not explain what he meant by that comment. Mosher returned to work the next day. On the third day at work, during a break, Mosher emerged from and went to the back of the store. There Limo pulled her to her knees and caressed her breasts. She protested, got up and went back to the cash register. In addition, Mosher claims that Limo continued to Ask her for dinner after each shift and often asked her out of nowhere how she loved her job.2 She finds these questions were asked in a threatening manner. About two weeks after she started working, Limo asked for directions to Mosher's house, which Mosher provided, though she now claims to have done so under duress. However, that evening Limo went to Mosher's apartment. They had sex, and he stayed the night. He returned the next evening and many nights afterwards, bringing with him a change of clothes. At the time, Limo was living at home with his parents, and he claims that Mosher and he agreed that he would start paying half her rent and live with her. Mosher admitted that Limo paid half the rent from March 1997 until their relationship ended in October of that year. She also admitted that she had taken a check from Limo for clothes and that he had bought a microwave and air conditioning for her apartment, which he left with her after their relationship ended. Although Limo paid half the rent, Mosher never gave him the key to the apartment, but she let him in every time he called. They also participated in social activities together. Mosher admitted that she attended a birthday party at a local restaurant with Limo's parents and then went to her parents' house for a cake. While in the Dollar Bills store, neither Mosher's work duties, nor the schedule, nor the salary have changed. Although Mosher claims she was forced to resign because of the harassment, she admits she never reported the situation to Limo's boss, district manager Bill Rice. At the beginning of his tenure, in February 1997, Mosher did speak with the new assistant manager Richard Martin. She told Martin she was upset and didn't like working conditions. Although she did not provide details, she said Limo was after her. 3 Four months later, at the end of May, Mosher left her job at a dollar store. However, her sexual relationship with Limo lasted another 5 months, and he continued to pay rent. After she retired, Mosher took a more oval position at a clothing store a few blocks from the dollar-dollar store. Although she continued to work in the same shopping plaza, Mosher revealed that Limo did not visit her at her new job, and he did not try to contact her after their relationship ended in October. From March 1997, while she was working at the Dollar Bills store, Mosher was seeing two doctors, one for medication, Dr. Chris Gururajan and the other for counseling, Dr. Stephen De Janes.4 Both doctors testified that during her visits Mosher reported that she had found a job, stated that she was quite happy with her new job, and that she had a new boyfriend.5 She did not tell the doctor. that she is afraid of losing her job or that she is being harassed by the work environment. We are reviewing the district court's decision decision in favor of Dollar Tree Tree New. Dow vs. Howe Military School, 227 F.3d 981, 990 (7th Cir.2000). The summary decision must be granted if the statements, testimony, answers to interrogations, confessions and affidavits do not leave a genuine question of material fact, and the moving party has the right to a judicial decision within the law. FED. R.Civ.P. 56(c). In recent cases, the Supreme Court has abandoned the widely used categories of quid pro quo and hostile harassment of the working environment, choosing instead to distinguish between cases based on whether the supervisor has taken tangible employment measures against a subordinate complainant and where such measures have not been taken. Burlington Industries vs. Ellert, 524 U.S. 742, 760-65, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998); Faragher vs. Boca Raton City, 524 U.S. 775, 807, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998). By setting standards governing the employer's deputy responsibility for employee harassment, we look at the agency's principles developed by the Court. Ellert St., 524 U.S., 754-55, 118 S.Ct. 2257; See also Molnar V. Booth, 229 F.3d 593, 600 (7th Cir.2000). Here, Mosher claims that she suffered from a palpable work and that she was sexually harassed. A tangible employment measure represents a significant change in employment status, such as hiring, dismissal, inability to promote promotion, reassignment with vastly different responsibilities or a decision that causes a significant change in benefits. Ellert, 524 U.S. at 761, 118 S.Ct. 2257. Mosher wasn't fired. She resigned and now claims she was constructively fired. First, it should be noted that we have yet to determine whether constructive discharge is a tangible employment action within the meaning of Ellert and Farager. Cf. Caridad v. Metro-North Commuter R.R., 191 F.3d 283, 294 (2nd Cir.1999) (Cuastruct discharge is not a tangible activity in employment, as this term is used in Ellert and Farager). 6 However, today we do not need to address this issue, because we believe that Mosher did not raise the genuine issue of the material fact that she was constructively dismissed. An employee may declare constructive dismissal when he is forced to resign because her working conditions, from the point of view of a reasonable worker, have become unbearable. Lindale vs. Tokheim Corp., 145 F.3d 953, 955 (7th Cir.1998). Although an employee facing discriminatory or disturbing working conditions is not required to file a claim prior to resignation, the inability to object to egregious conditions or seek some form of redress is strong evidence that the employee, or any reasonable worker, will not find the conditions intolerable. In the absence of emergency conditions, the complained employee is expected to stay at work while seeking redress. Perry vs. Harris Chernin, Inc., 126 F.3d 1010, 1015 (7th Mosher admits that she never trusted anyone in the store. She never reported rice, Rice, Head. As a last resort, we may find that she spoke rather obliquely with the newly appointed assistant manager Martin at the beginning of her tenure in February 1997. However, she did not retire until four months later in May. Thus, Mosher cannot claim that incidents occurring in February, such as asking for dinner, being interrogated, or caressing were initiating events that made it impossible for her to stay in the store. Rather, she bases her constructive discharge claim on a patchwork of factors, including her residency arrangement with Limo.Mosher and Limo entered into a live agreement and ongoing sexual relationship shortly after she started working at the store. Mosher claims that the situation was completely involuntary and that she only agreed to it because she had to keep her job. However, the facts related to Mosher's relationship with Limo do not indicate an objectively hostile or offensive situation. Mosher allowed Limo to pay half the rent for nine months and had regular sex with him. She never gave him a key, but rather allowed him into his apartment during each visit. She accepted his gifts, met his parents and called him her boyfriend. Although Mosher claims that subjectively she was afraid of Limo and had sex with him only to keep her job, her claims are incompatible with her actions. Not only did she not report the situation to the management, but she never warned her counselor or doctor. Rather,

her report to both doctors was positive, indicating that she was involved in a consensual relationship. What's more, she wasn't trying to get rid of Limo. After she left work, she took a new one just a few blocks away and continued to see Limo and have sex with him for another five months until their relationship ended in October. Finally, although Mosher claims that Limo was voracious as soon as their relationship ended, Mosher admitted that he never came to her new job or tried to contact her by phone or in person. In general, Mosher's passivity, her reluctance to warn anyone or change her living conditions with Limo, are incompatible with her assertion that she was exposed to an unbearable work environment and that her only option was to flee Limo by driving her out of work. Thus, we see that Mosher was not constructively discharged. Mosher further alleges that she was subjected to a hostile work environment. Since the claim is not related to a tangible employment action, Dollar Tree argues that under Ellert and Farager, it has the right to argue that it exercised reasonable caution to prevent and correct any sexual harassment and that Mosher unreasonably failed to take advantage of preventive or corrective opportunities. Ellert, 524 765, 118 S.Ct. 2257; Faragher, 524 U.S. at 807, 118 S.Ct. 2275. However, the Dollar Tree request is untimely. It has not been able to assert this protection below and cannot do so now. We have refused to consider arguments that had not been submitted to the district court in response to motions for a summary verdict. Cooper vs. Lane, 969 F.2d 368, 371 (7th Cir.1992). Thus, we are only considering whether Mosher is claiming to be a hostile work environment and will find that it does not comply with the law. In order to act under Title VII, sexually undesirable conditions must be both objective and subjectively offensive, which a reasonable person deems hostile or abusive, and one that the victim actually perceives as such. Faragher, 524 U.S. at 787, 118 S.Ct. 2275. In determining whether the environment is sufficiently hostile or offensive, we look at the set of circumstances, including but not limited to, the frequency of discriminatory behaviour; its heaviness; whether it is physically threatening or demeaning, or simply offensive language; and whether this unnecessarily interferes with the employee's work. Id. at 787-88, 118 S.Ct. 2275 (quote Harris vs. Forklift Sys., Inc., 510 U.S. 17, 23, 114 S.Ct., 367, 126 L.Ed.2d 295 (1993)). The most significant and disturbing incident Mosher recalls occurred on her third day of work when she said Limo pulled her to her knees and fondled her breasts. While this can easily be considered a serious incident, Mosher's reaction suggests that she did not perceive it as such. At the time, she reported the incident to none and for several weeks was involved in what could reasonably be described only as a consensual sexual relationship with Limo, which lasted for many months. Cm. The case against Colt Const. and Dev Co., 28 F.3d 1446, 1454 (7th Cir.1994) (I do not subjectively perceive the environment as offensive, the behavior has not actually changed the working conditions of the victim, and there is no violation of Title VII.) (quoted by Harris, 510 U.S. at 20, 114 S.Ct. at 370). Even considering all the facts in the light most favorable to Mosher, no reasonable jury could conclude that she was anything other than a voluntary participant of a long, consensual relationship with her boss. Participation in a relationship like this, for both the employee and the boss, is usually unreasonable. But it happens. As long as men and women work together, the potential for sexual sparks to fly in the workplace will always exist. But after a long-standing sexual relationship like this one goes sour, it will only be an unusual case that can avoid a cumulative judgment. And it's not that unusual. Moscher did not file a motion to dismiss the district judge, but rather appealed, arguing that the judicial bias was based on a letter sent by Judge George M. Marovic to both litigants. The letter to both parties is asked to give the court a frank assessment of their case, including whether the case can be resolved the likelihood of success on the merits, the extent of the damage and what legal costs will be incurred. Incurred. in the case, both sides responded, and Mosher argues that after receiving these ex parte reports, the judge's attitude to the Mosher case changed. First, we note that in disputed areas such as Chicago, federal judges bear a cumbersome burden. Innocuous tactics, such as Judge Marovich's letter, are designed to help judges organize their trial schedules, facilitate settlement and better serve the needs of litigants who are on their side. We do not find anything pre-ish in Judge Marovich's letter or his receipt of answers and find that he acted well on his own. Finally, the court gave Mosher almost a full year to conduct the opening. Thus, we find that the judge did not abuse his discretion when he refused to extend the opening a third time, where Mosher claimed to have failed to obtain all of his own medical records2. On appeal, Mosher is filing new harassment allegations that have not been raised below. We limit our review to the facts that were in the District Court when it made the summary decision. Watch Arendt v. Vetta Sports, Inc., 99 F.3d 231, 237 (7th Cir.1996) (issues not raised in the District Court are considered to have been cancelled).3. Dollar Three Attorney: Did you say in your complaint that you complained about Mr. Limo to an assistant manager named Richard? Mosher: Yes. I told him I was upset, and I don't like working in these conditions and, you know... Lawyer: What did you say to Richard? Mosher: I just said I'm unhappy, you know. I just went there for work. I'm on social security. I'm a cardiologist. I haven't worked in 11 years. I moved to this place. I was paying X-worth more dollars than I used to, so I had to work. That's what it was... Lawyer: So you never trusted Richard. You never said he sexually harassed me, that he made me have sex, nothing like that? Mosher: I never trusted anyone in this store. Lawyer: About anything? Mosher: No. It was pretty embarrassing.4 Mosher provided her medical records to the opposing lawyer to substantiate her claim for emotional damage.5 Dollar Tree Advocate: Do you remember what she said about it? In fact, if I remember correctly, I think she told me that she had no job for a long time and she was happy to get the job... Lawyer: Did she ever tell you that she had some kind of relationship? I asked her if she had talked to her counselor about it, and she said she planned to talk to him... Dollar Tree Prosecutor: What did she say (about Limo)?Dr. Steven De Janes: In general, that relationship was positive and at some point, I believe she planned to move in with him. I think they were going to get an apartment together.6 The Second Circuit concluded that discharge is not a tangible measure of employment, in part because even employees be responsible for constructive discharge, and constructive detente has not been ratified or approved by the leadership. Caridad, 191 F.3d at 294. TERENCE T. EVANS, District Judge. Judge.