

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARY M. CHISHOLM,	:	
	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	NO: 99-3602
	:	
NATIONAL CORPORATION FOR	:	
HOUSING PARTNERSHIPS, et al.,	:	
Defendants.	:	

GREEN, S.J.

March _____, 2000

MEMORANDUM and ORDER

Presently before the Court is a Motion to Dismiss Counts III, IV, and V of the Plaintiff's Amended Complaint filed by Defendants, National Corporation for Housing Partnerships, NHP Management Company, and Apartment Investment Company, and Plaintiff, Mary M. Chisolm's response thereto. For the following reasons, the motion will be granted.

I. FACTUAL AND PROCEDURAL HISTORY

On September 27, 1995, Plaintiff, Mary Chisolm, filed a claim with the Equal Employment Opportunity Commission, (EEOC) following the termination of her employment with Defendant National Corporation for Housing Partnerships (NCHP). The EEOC issued a Letter of Determination on September 30, 1998, concluding that the Plaintiff's discharge was motivated by age and gender discrimination and retaliation. (Pl.'s Compl. at ¶ 5). Thereafter, the parties entered into settlement negotiations. When the negotiations failed to resolve the dispute between the parties, the EEOC issued a "right to sue letter" on April 21, 1999. Ms. Chisolm subsequently filed suit in federal district court on July 16, 1999, asserting federal discrimination,

common law tort, and contract claims.

II LEGAL STANDARD

In considering the presently pending motion to dismiss for failure to state a claim under Rule 12(b)(6), I am required to accept all allegations in the complaint and reasonable inferences that can be drawn therefrom as true and liberally construe the allegations in the light most favorable to the non-movant. Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir.1989).

III. DISCUSSION

Defendants move to dismiss Counts III, IV, and V of the Plaintiff's Amended Complaint, primarily arguing that these claims are barred by the respective statutes of limitations governing the actions. They also set forth alternate grounds for dismissing each of the state common law claims.

A. Whether Counts IV and V of the Plaintiff's Complaint are barred by their applicable statutes of limitation.

A plaintiff asserting claims of intentional infliction of emotional distress must bring a cause of action within two years of the alleged injury. 42 Pa.C.S.A. § 5524. A claim for breach of a duty of good faith, brought pursuant to Pennsylvania contract law, must be asserted within four years of the alleged action. 42 Pa.C.S.A. § 5525. Defendants now argue that the plaintiff's claims for intentional infliction of emotional distress (Count IV) and breach of duty to act in good faith (Count V) are barred by their respective limitations periods because the latest date on which the plaintiff's claims could have accrued is the date of her discharge from NCHP, April 28, 1995. Since the plaintiff did not file this cause of action asserting these claims until July 16, 1999, Defendants argue that the statutes of limitations for both actions bars the plaintiff from

asserting these claims. In opposition to the defendants' motion, the plaintiff asserts that the statutes of limitation for her common law claims should be equitably tolled because she timely filed a complaint with the EEOC, as required under Title VII, and reasonably waited for receipt of a right to sue letter before she filed her complaint in this matter.

Equitable tolling functions to stop the statute of limitations from running where the claim's accrual date has already passed. The Third Circuit has stated that there are three principal, though not exclusive, situations in which equitable tolling may be appropriate: (1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.

Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1387(3rd Cir. 1994). In determining whether equitable tolling of the state statutes of limitation is appropriate, I am primarily concerned with the equities of the parties, specifically the question whether the delay on the plaintiff's part was "excusable." On motion to dismiss, however, I am without sufficient facts to make such a determination. Therefore, I will deny the Defendants' motion to dismiss Counts IV and V of the plaintiff's amended complaint on the statute of limitations issue.

B. Whether Count III of the Plaintiff's Complaint Adequately States a Claim for Defamation.

Defendant moves to dismiss the plaintiff's defamation claim by arguing that the Plaintiff failed to plead the essential elements of the tort within the applicable statute of limitations period. To state a claim for defamation under Pennsylvania law, the plaintiff must plead: (1) the defamatory character of the communication; (2) publication by the defendant; (3)

its application to the plaintiff; (4) understanding by the recipient of its defamatory meaning; (5) understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm to the plaintiff; and (7) abuse of a conditionally privileged occasion. Miketic v. Baron, 450 Pa. Super. 91, 97, 675 A.2d 324, 327 (1996). Moreover, the defamation claim must be brought within one year of the alleged defamatory statement. 42 Pa. C.S.A. § 5523.

In her Amended Complaint, Plaintiff avers that:

Subsequent to her discharge, NCHP stated that the reason for her termination was incompetence and insubordination and NCHP knew or should have known that reason would need to be communicated to prospective employers and has been communicated internally within the company and that the reason was false and motivated by discriminatory animus and an intentional or reckless effort to obscure the truth.

(Pl.'s Compl. at ¶ 29). Even after construing the Plaintiff's allegations in the light most favorable to her, I find that she has failed to state a claim for defamation under Pennsylvania law.

Therefore, I will dismiss Count III of the plaintiff's complaint without prejudice to her filing an Amended Complaint, more particularly setting forth the facts relied upon to support her defamation claim.

C. Whether Plaintiff's Claim for Intentional Infliction of Emotional Distress is Barred by the Pennsylvania Workers Compensation Act.

Defendant argues that the Plaintiff's claim for intentional infliction of emotional distress is barred by the exclusivity provision of the Pennsylvania Workers Compensation Act, 77 P.S. § 481(a).¹ Our Court of Appeals for the Third Circuit has recently held that the Pennsylvania

¹ 77 P.S. § 481(a) states in relevant part:

(a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employe[e]s, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or

Workmen's Compensation Act, 77 Pa. Cons. Stat. Ann. § 1 *et seq.*, "provides the sole remedy for injuries allegedly sustained during the course of employment," and thus, functions as a complete bar to state law tort claims in the employment context. See Matzak v. Frankford Candy & Chocolate Co., 136 F.3d 933, 940 (3d Cir. 1997)(finding that the Pennsylvania's workers' compensation statute bars claims for "intentional and/or negligent infliction of emotional distress [arising] out of [an] employment relationship).

In her fourth cause of action, Ms. Chisolm alleges that through the course of events leading up to and including her discharge, NCHP intentionally subjected her to emotional distress and mental anguish. To the extent that the fourth cause of action seeks remedy for intentional and/or negligent infliction of emotional distress, I must grant the defendants' motion to dismiss Count IV of the plaintiff's complaint because Ms. Chisolm's sole remedy for these claims is found in the exclusivity provision of the Pennsylvania Workers Compensation Act, 77 P.S. § 481(a).

D. Whether Plaintiff's Claim for Breach of the Fundamental Obligation to Deal with an Employee in Good Faith is Cognizable under Pennsylvania law.

In Count V of her complaint, Plaintiff alleges that she was employed by NCHP on or about September 1979 and was discharged without just cause on April 28, 1995. She further avers that NCHP breached the fundamental obligation to deal with its employee in good faith when it wrongfully discharged her. See (Pl.'s Compl. at ¶¶ 14, 38-39). Defendant now moves to dismiss this claim, arguing that Pennsylvania law does not recognize an independent claim for

occupational disease as defined in section 108.
77 P.S. § 481(a).

breach of a duty of good faith and fair dealing in an at-will employment relationship.

As a general rule, there is no common law cause of action against an employer for termination of an at-will employment relationship. Clay v. Advanced Computer Applications, Inc., 522 Pa. 86, 89, 559 A.2d 917, 918 (1989). When an at-will employee seeks remedy for an employer's wrongful discharge resulting from alleged discrimination, the Pennsylvania Human Relations Act provides a statutory remedy that precludes assertion of a common law tort action for the alleged wrongful discharge. Id. If, on the other hand, the plaintiff is employed pursuant to a valid employment contract, Pennsylvania courts require a claim for breach of an implied duty of good faith and fair dealing to be brought as a breach of contract claim. See McGrenaghan v. St. Denis School, 979 F.Supp. 323, 328 (E.D.Pa. 1997)(finding that in the context of employment contracts, Pennsylvania law does not recognize a cause of action for breach of the implied covenant of good faith and fair dealing which is separate from a breach of contract action).

In the instant case, the plaintiff's complaint does not specify whether she was an at-will employee or whether she was employed pursuant to a valid employment contract. However, since Pennsylvania does not recognize an independent tort claim for breach of an implied duty of good faith in an employment context, in either case, she cannot sustain her claim as a matter of law. Therefore, I will dismiss Count V of the plaintiff's complaint.

IV CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss Count III of the plaintiff's complaint will be granted without prejudice to plaintiff filing an Amended Complaint, more particularly setting forth the facts relied upon to support her defamation claim. Defendants'

Motion to Dismiss Count IV of the Plaintiff's Complaint will be granted, and Defendants' Motion to Dismiss Count V of the Complaint will be granted. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARY M. CHISHOLM,	:	
	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	NO: 99-3602
	:	
NATIONAL CORPORATION FOR	:	
HOUSING PARTNERSHIPS, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this ____ day of March 2000, upon consideration of Defendants' Motion to Dismiss, and the Plaintiff's response thereto, **IT IS HEREBY ORDERED** that:

1. Defendants' Motion to Dismiss Count III of the Complaint, alleging defamation, is **GRANTED WITHOUT PREJUDICE** to plaintiff filing an Amended Complaint within ten (10) days of the date of this Order, more particularly setting forth the facts relied upon to support her defamation claim.
2. Defendants' Motion to Dismiss Count IV of the Plaintiff's Complaint, alleging claims for emotional distress, is **GRANTED**; and
3. Defendants' Motion to Dismiss Count V of the Plaintiff's Complaint, alleging breach of implied duty of good faith and fair dealing, is **GRANTED**.

BY THE COURT,

CLIFFORD SCOTT GREEN, S.J.