

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

PAULA T. KLIMIUK	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 99-CV-3315
ESI LEDERLE, INC.,	:	
a division of WYETH-AYERST	:	
LABORATORIES	:	
Defendant.	:	

MEMORANDUM

GREEN, S.J.

October , 2000

Presently before the court is Defendant's Motion for Summary Judgment, Plaintiff's Response thereto, and Defendant's Reply Memorandum. For the following reasons, Defendant's motion will be granted in part and denied in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Paula T. Klimiuk, was employed by Defendant, ESI Lederle, Inc., as Group Leader, Physical Testing on or about July 6, 1987. Four (4) months later, Plaintiff was promoted to Supervisor, Physical Testing. On November 9, 1987, Plaintiff complained to Dorothy Stubblebine ("Stubblebine") in Defendant's Human Resources Department that she was receiving significantly less in salary than other supervisors. (Pl.'s Ex. 1.) Stubblebine suggested placing Plaintiff on a six (6) month review cycle "until she is up to the level we are comfortable with." (Pl.'s Ex. 1.) Plaintiff also complained to Stubblebine in June 1988 that she had been paid less than Bill Graham, Plaintiff's successor as Group Leader, Physical Testing. (Pl.'s Ex. 2.) Stubblebine concluded that there was no inequity. (Pl.'s Ex. 2.)

Between 1988 and 1995, Plaintiff received three promotions: (1) Supervisor, Pilots Plant

in July, 1988, (2) Supervisor, Pilots Program in June, 1993, and (3) Manager, Pilots in September, 1995. During this period, Plaintiff's performance evaluations rated her performance as "exceeds expectations."¹ (Pl.'s Ex. 4, Ex. 5.) In July and August, 1997, Plaintiff complained to Stubblebine about "hostile and offensive" treatment that she was receiving from her direct supervisor, Dr. Marty Joyce ("Joyce"), and the head of her department, Dr. Ron Warner ("Warner"). (Def.'s Ex. L; Ex. M.) In November, Joyce issued Plaintiff's 1996-1997 Performance Evaluation which rated Plaintiff's performance "at expectations."² (Def.'s Ex. C.) Joyce also rejected Plaintiff's bid for the position of Associate Director of the Pilots Group. (See Klimiuk's Dep. Ex. 29; Pl.'s Ex. 13.) Instead, Joyce hired Eric Brown ("Brown"), a younger male,³ to the position at a higher grade and salary than Plaintiff received as Manager, Pilots. (See Brown's Dep. at 22-23.) Plaintiff alleges that the Associate Director position, as defined, was almost "identical" to Plaintiff's Manager, Pilots position. (See Def.'s Ex. X; Ex. Y.)

After placing her complaint, Plaintiff alleges that Joyce and Warner ridiculed her at project meetings and weekly priority meetings. (See Klimiuk's Dep. at 154; 177-181, 186, 194, 320-324.) In March and April 1998, Plaintiff received "unsatisfactory" performance reviews, which allegedly resulted in her demotion. (See Def.'s Ex. E; Ex. F.) Plaintiff filed a discrimination claim with the Equal Employment Opportunity Commission (EEOC) on July 21,

¹"Exceeds Expectations" is described as "[p]erformance results meet and , often, exceed job requirements. The employee accomplishes what the job was designed to do and frequently achieves more." (Klimiuk's Dep. Ex. 7.)

²"At Expectations" is described as "[a] solid performer in key areas, performance results meet and occasionally exceed job requirements." (Def.'s Ex. C.)

³Brown was born on October 11, 1959. (Def.'s Ex. J, at 6.) Plaintiff was born on March 10, 1949. (Compl. ¶ 10.)

1998. (Def.'s Ex. AA.) Plaintiff subsequently received her 1997-1998 Performance Evaluation rating her performance "below expectations."⁴ (Def.'s Ex. K.) On January 4, 1999, Plaintiff was terminated from Defendant's employment. Plaintiff filed a second charge with the EEOC on February 1, 1999. (Def.'s Ex. BB.)

After her employment was terminated, Plaintiff interviewed for a position with Nanosystems. (Klimiuk's Dep. at 63-67.) One interviewer, Mike Dickens, informed Plaintiff that he previously worked for Joyce and that they were close friends. (Klimiuk's Dep. at 65.) After the interview, Plaintiff was invited to return the following day to meet with Nanosystems' President. (Klimiuk's Dep. at 66.) Plaintiff was also given information about the company's philosophy, working hours, dress code and benefits. (Klimiuk's Dep. at 64.) The following day, Nanosystems informed Plaintiff that they were not interested in employing her. (Klimiuk's Dep. at 68.) Nanosystems refused to discuss the reason for its decision. (Klimiuk's Dep. at 67-68.)

Upon receiving a Right to Sue letter from the EEOC on her first charge, Plaintiff filed the instant action on or about June 29, 1999 bringing claims against Defendant for violations of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621, et seq., the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, et seq., the Equal Pay Act, 29 U.S.C. § 206(d) and Pennsylvania common law. Defendant filed a Motion for Summary Judgment on all counts. Plaintiff filed a Response and Defendant responded with a Reply Memorandum.

⁴"Below Expectations" is described as "[p]erformance results in some key areas fail to meet minimal requirements of the job. Improvement is necessary." (Def.'s Ex. K.)

II. DISCUSSION

Summary judgment shall be awarded “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). 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.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Once the moving party has carried the initial burden of showing that no genuine issue of material fact exists, the non-moving party cannot rely on conclusory allegations in its pleadings or in memoranda and briefs to establish a genuine issue of material fact. Pastore v. Bell Telephone Co. of Pa., 24 F.3d 508, 511 (3d Cir. 1994). The nonmoving party, instead, must establish the existence of every element essential to his case, based on the affidavits or by the depositions and admissions on file. Id. (citing Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992)); see also Fed. R. Civ. P. 56(e). The evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

A. Age and Sex Discrimination Claims (Counts I and II)

To prove a prima facie case of age discrimination, the plaintiff must show that: (1) she was a member of a protected class, i.e., above 40 years of age; (2) she was qualified for the position; (3) she was discharged or suffered an adverse employment action; and (4) she was replaced by a sufficiently younger person to create an inference of age discrimination, or if the discharged employee’s position has been eliminated and the employee is not replaced, that other similarly situated employees not in the protected class were retained. Showalter v. University

of Pittsburgh, 190 F.3d 231 (3d Cir. 1999); Ryder v. Westinghouse Electric Corp., 879 F. Supp. 534 (W.D. Pa. 1995). To make out a prima facie case of sex discrimination, the plaintiff must establish that: (1) she is a member of a protected class; (2) she was qualified for the position from which she was discharged; (3) she was discharged from the position; and (4) she was fired under circumstances creating an inference of unlawful discrimination. Showwalter, 190 F.3d at 231; Ryder, 879 F. Supp. at 534. The plaintiff may introduce direct or circumstantial evidence to meet the prima facie burden. See Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 898 (3d Cir. 1987); Jackson v. University of Pittsburgh, 826 F.2d 230, 236 (3d Cir. 1987).

Once the plaintiff has established a prima facie case, the defendant has the burden to produce a “legitimate, non-discriminatory reason” for its action. Texas Dep’t of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). After the defendant has satisfied its burden, the plaintiff may prove that the reasons offered by the defendant were not its true reasons but, rather, a pretext for discrimination. See id. at 253. The plaintiff’s testimony alone may be sufficient to show discriminatory intent. See Weldon v. Kraft, Inc., 896 F.2d 793, 800 (3d Cir. 1990).

In the present case, Defendant moves for summary judgment on Plaintiff’s age and sex discrimination claims on grounds that Plaintiff is unable to establish the second and fourth elements of either cause of action. Specifically, Defendant asserts that (1) Plaintiff cannot show that she was qualified for the job from which she was discharged or qualified for the job which she did not receive and (2) Plaintiff cannot establish that her salary, the failure to promote her or her termination give rise to an inference of age and/or sex discrimination. Assuming Plaintiff meets her prima facie burdens, Defendant argues that summary judgment is appropriate because Defendant can show legitimate non-discriminatory reasons for its employment decisions. First,

Brown's wages exceeded that of Plaintiff, because Brown had greater ability and level of responsibility. (See Def.'s Ex. X; Ex. Y.) Second, Plaintiff was demoted and subsequently terminated, because she failed to meet Defendant's legitimate expectations. (See Def.'s Ex. C.)

In response, Plaintiff argues that she was objectively qualified for both Manager, Pilots and Assistant Director positions in terms of her background, education and experience. Plaintiff points to her 1996-1997 Performance Evaluation as Manager, Pilots which rates her performance as "at expectations."⁵ (See Def.'s Ex. C.) She asserts that subsequent evaluations rating her performance "below expectations" are not reflective of her qualifications but, rather, a pretext for discrimination in that they occurred after she complained of "hostile treatment" to Defendant's Human Resources Department.⁶ (See Def.'s Ex. E; Ex. F.) Plaintiff also challenges Defendant's assertion that she failed to meet its legitimate expectations by pointing to inaccuracies and assumptions in her performance reviews.⁷ (See Pl.'s Ex. 7.)

In addition, Plaintiff contends that the appointment of Brown, a younger male, to the

⁵Plaintiff asserts that she was also qualified for the Assistant Director position based on the "virtually identical" Job Description Worksheets for the Manager, Pilots and Assistant Director positions. (Pl.'s Resp. at 21, 32.)

⁶Contrary to Defendant's argument, Plaintiff is not asserting a separate hostile work environment claim. Instead, "plaintiff's complaints of a hostile work environment were raised as part of her gender discrimination case to illustrate the less favorable treatment female employees received as compared to male employees." (Pl.'s Resp. at 33, n.15.)

⁷Plaintiff challenges her 1996-1997 Performance Evaluation which rates her performance "below expectations" in the "Organization" portion, because her group had 100% success in the execution of submission lots during that period. (Pl.'s Resp. at 4; Def.'s Ex. D.) In addition, Plaintiff claims that her 1997-1998 Performance Evaluation is inaccurate for criticizing her failure to offer leadership during pre-approval inspections when no pre-approval inspections had been conducted in the past. (Pl.'s Resp. at 4.)

position that Plaintiff was seeking raises an inference of age and sex discrimination,⁸ as do the unwarranted performance evaluations and salary discrepancies between Plaintiff and “similarly situated” male employees. Plaintiff challenges Defendant’s stated reason for the wage disparity between Brown and herself by pointing to evidence that (1) her education and job experience surpassed that of Brown⁹ and (2) she and Brown initially shared the same level of responsibility. (See Def.’s Ex. X; Ex. Y.)

I conclude that Plaintiff offered sufficient direct and circumstantial evidence to satisfy the second and fourth prima facie elements of her age and sex discrimination claims, as well as raise a genuine issue of fact as to whether Defendant’s proffered reasons were a pretext for the challenged employment actions. Plaintiff’s background and experience show that she was objectively qualified for both the Manager, Pilots and Associate Director positions. Moreover, Plaintiff’s 1996-1997 Performance Evaluation rated her overall performance as Manager, Pilots “at expectations.” Plaintiff also raises a genuine issue of fact as to whether Defendant’s stated reasons for its employment decisions were legitimate by presenting evidence that Brown’s education, experience and responsibilities did not surpass hers and that her performance reviews were inconsistent with her actual performance. On summary judgment, viewing the evidence in a light most favorable to Plaintiff, I conclude that a reasonable jury could find that Plaintiff was

⁸Defendant appointed Brown to Associate Director at 37 years old. (See Def.’s Ex. J, at 6; Def.’s Mem. Supp. Summ. J. at 6) Plaintiff was 48 years old. (Compl. ¶ 10.)

⁹When Brown was appointed to Associate Director, he had a Bachelor’s Degree. (See Brown’s Dep., at 7.) Plaintiff had a Bachelor’s Degree in Chemistry and a Masters Degree in Biology. (Klimiuk’s Dep. at 94-95.) In addition, Plaintiff had ten (10) years’ experience in her department. (Klimiuk’s Dep. at 92-95.) Brown had no prior employment experience in the chemical industry. (See Brown’s Dep., at 4-5; 7.)

discriminated against during her tenure with Defendant and was subsequently terminated as a result of that discrimination. Thus, Defendant's Motion for Summary Judgment will be denied on this ground.

B. Retaliatory Discharge Claims (Counts I and II)

To establish discriminatory retaliation under either Title VII¹⁰ or the ADEA,¹¹ a plaintiff must demonstrate that: (1) she engaged in a protected activity; (2) the employer took an adverse employment action against her; and (3) there was a causal connection between her participation in the protected activity and the adverse employment action. See Robinson v. City of Pittsburgh, 120 F.3d 1286, 1299 (3d Cir. 1997); Barber v. CSX Distribution Services, 68 F.3d 694, 701 (3d Cir. 1995). As a preliminary matter, protected conduct includes formal charges of discrimination “as well as informal protests of discriminatory employment practices, including making complaints to management” Barber, 68 F.3d at 702 (citing Summer v. United States Postal Serv., 899 F.2d 203, 209 (2d Cir. 1990). An adverse employment action alters the employee’s “compensation, terms, conditions, or privileges of employment,” deprives her of “employment opportunities,” or adversely affects her “status as an employee.” Robinson, 120 F.3d at 1299. A plaintiff can substantiate a causal connection between protected conduct and adverse

¹⁰Title VII forbids an employer from discriminating against an employee “because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation . . . under this subchapter.” 42 U.S.C. § 2000e-3(a).

¹¹ADEA forbids an employer from discriminating against “any of his employees or applicants for employment . . . because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership had made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.” 29 U.S.C. § 623(d).

employment action through timing and ongoing antagonism, as well as other types of circumstantial evidence that support the inference. Farrell v. Planters Lifesavers Co., 206 F.3d 271, 280-81 (3d Cir. 2000).

Once the plaintiff satisfies a prima facie case, the burden shifts back to the defendant to articulate a legitimate, non-discriminatory reason for its actions. Burdine, 450 U.S. at 254. The burden then shifts to the plaintiff to show that the defendant's proffered reasons were a pretext for retaliation. St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742 (1993). The plaintiff has the ultimate burden of proving, by a preponderance of the evidence, that retaliation played a role in the employer's decision-making process and was a determinative factor in the outcome of that process. Miller v. CIGNA Corp., 47 F.3d 586, 595-599 (3d Cir. 1994).

In the matter at bar, Defendant moves for summary judgment on Plaintiff's retaliatory discharge claims on two grounds. First, Defendant states that Plaintiff cannot prove a causal connection between any protected activity and adverse employment action. Defendant argues that Plaintiff's "substandard work performance"¹² was documented before Plaintiff complained to her supervisor of age and sex discrimination on February 22, 1998.¹³ (See Def.'s Ex. O.) Defendant also states that there is no inference of retaliation because there is neither temporal proximity between Plaintiff's termination and any alleged protected activity, nor proof that Defendant's actions amounted to a pattern of antagonism or retaliation. Second, Defendant states that Plaintiff cannot prove that Defendant's proffered reasons for the challenged actions were a

¹²Defendant refers to Plaintiff's 1996-1997 Performance Evaluation. (See Def.'s Mem. Supp. Summ. J. at 49.)

¹³ Defendant discards Plaintiff's prior complaints because they fail to rise to the level of "protected activity." (See Def.'s Mem. Supp. Summ. J. at 49.)

pretext for unlawful retaliation.

In response, Plaintiff claims that there is a causal nexus between her complaints of wage disparity starting in November, 1987, her “substandard” performance evaluation in October, 1997 and her ultimate termination on January 4, 1999. Plaintiff argues that the apparent lack of proximity between events is not determinative, because she was continuously harassed by her supervisors after she complained to Defendant about “hostile” treatment from her supervisors. Plaintiff challenges Defendant’s stated reasons for its employment decisions as pretextual by once again referring to Brown’s appointment, as well as salary discrepancies between herself and other male counterparts.

Contrary to Defendant’s contention, Plaintiff engaged in protected activity when she complained to Defendant’s Human Resources Department in November, 1987, that her salary was too low for a supervisory position, as well as when she complained in July and August, 1997. (See Pl.’s Ex. 1; Def.’s Ex. L; Ex. M.) Protesting what an employee believes in good faith to be a discriminatory practice is protected conduct. Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1085 (3d Cir. 1996). Although there is an absence of proximity between Plaintiff’s complaints and her termination, the “mere passage of time is not legally conclusive proof against retaliation.” Robinson v. S.E. Pa. Transp. Authority, 982 F.2d 892, 894-95 (3d Cir. 1993). In the absence of temporal proximity, courts may look at the intervening period for other evidence of retaliatory animus. Farrell, 206 F.3d at 281.

Plaintiff was allegedly harassed by her supervisors and denied a bid for the Associate Director position after she complained to Defendant about “hostile” treatment. Plaintiff also received unsatisfactory performance reviews and was ultimately terminated after she complained

to Defendant about age and sex discrimination. Thus, Plaintiff raises a genuine issue of fact as to whether there is a causal nexus between her complaints and termination. As discussed previously, Plaintiff has also presented sufficient evidence to raise a genuine issue of fact as to whether Defendant's proffered reasons were a pretext for the challenged employment action.

For purposes of summary judgment, the issue is whether a reasonable jury could conclude that Plaintiff was discharged because she engaged in protected activity. Plaintiff has provided sufficient evidence so that on summary judgment, viewing the evidence in a light most favorable to the Plaintiff, a reasonable jury could conclude that Plaintiff was retaliatorily discharged. As a result, Defendant's Motion for Summary Judgment will be denied on this ground.

C. Equal Pay Act Claim (Count III)

The Equal Pay Act of 1963 provides in pertinent part that

No employer . . . shall discriminate . . . between employees on the basis of sex by paying wages to employees of the opposite sex . . . at a rate less than the rate at which he pays wages to employees of the opposite sex . . . for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (I) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or a differential based on any other factor other than sex

29 U.S.C. § 206(d).

The plaintiff bears the initial burden of proving that the employer pays different wages to employees of the opposite sex for equal work which requires equal skill, effort and responsibility. Welde v. Tetley, Inc., 864 F. Supp. 440, 442 (M.D. Pa. 1994) (citing Corning Glass Works v. Brennan, 417 U.S. 188, 195 (1974)). Equal work is guided by a "determination of whether the jobs compared have a 'common core' of tasks, i.e., whether a significant portion of the two jobs is identical." Byrnes v. Herion, Inc., 764 F. Supp. 1026, 1030 (W.D. Pa. 1991) (citing Brobst v.

Columbus Servs. Int'l, 761 F.2d 148 (3d Cir. 1985)).

Equal skill, effort, and responsibility are evaluated under separate tests. Welde, 864 F. Supp. at 442 (citing 29 C.F.R. § 1620.14(a)). “Skill” includes an assessment of such factors as experience, training, education and ability. Id. “Effort” refers to the physical or mental exertion needed to perform the job. Id. “Responsibility” concerns the degrees of accountability required in performing a job, with emphasis on the importance of the job obligation. Id. If the plaintiff satisfies her burden, then the employer has the burden of demonstrating a legitimate reason for the discrepancy in pay. Byrnes, 764 F. Supp. at 1030. If the defendant offers a legitimate reason, the burden shifts back to the plaintiff to establish the reason proffered by the defendant is only a pretext. Id.

Defendant seeks summary judgment on Count III on grounds that Plaintiff cannot meet the prima facie burden of establishing that employees of the opposite sex were paid differently than she for performing similar work. In response, Plaintiff contends that she received less in salary for performing similar work to Brown and five male managerial peers.¹⁴ Although their tasks were different, Plaintiff asserts that their duties—to manage their staff, ensure that proper documentation is maintained, and implement the steps necessary to ensure compliance with regulatory requirements—were the same, as were the skill and effort required to perform those duties. (See, e.g., Klimiuk’s Dep. at 307-18.) Plaintiff also compares the job descriptions of her

¹⁴The five males Plaintiff refers to as managerial peers are Barry Ballen, Manager of Regulatory Affairs, William Graham, Manager of Filling Operations, John Iwasyk, Manager of Technical Services, Thomas McDevitt, Manager of Inspection Packaging and Michael Viggiano, Manager of Supply and Prep. (Pl.’s Resp. at 18.) Plaintiff, however, introduced evidence of a wage disparity with only four of the five males. (See Pl.’s Ex. 12.) There is no evidence that Ballen was paid more or less than Plaintiff.

position to those of Brown to illustrate the similarity of their primary duties.¹⁵ (See Def.'s Ex. X; Ex. Y; Pl.'s Resp. at 21-26.)

There is a genuine issue of material fact as to whether Plaintiff's position shared a "common core" with those of other managers. Although the tasks between Plaintiff's position and those of other managers were not identical, Plaintiff produced sufficient evidence to show that the work remained substantially similar. Furthermore, it is undisputed that the salaries of four (4) individuals Plaintiff named as male managerial peers were higher than Plaintiff's salary in both 1997 and 1998. (See Pl.'s Ex. 12.) In view of the foregoing, Plaintiff has met her threshold burden of showing that she was compensated less for performing work that was substantially equal to the primary duties performed by Brown and four of her male managerial peers. Thus, Defendant's Motion for Summary Judgment on Count III will be denied.

D. Tortious Interference with Contract Claim (Count IV)

To establish a cause of action for tortious interference with contractual relations, the plaintiff must prove (1) the existence of a contractual relationship; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of a privilege or justification for such interference; and (4) damages resulting from the defendant's conduct. Triffin v. Janssen, 626 A.2d 571, 574 (Pa. Super. 1993).

Defendant seeks summary judgment on Count IV on grounds Plaintiff is unable to satisfy

¹⁵There is evidence that the decision making, supervision, budget/asset responsibility, interpersonal contacts, ingenuity, planning and total number supervised were similar for both positions. (See Pl.'s Resp. at 23; Def.'s Ex. X; Ex. Y.) Plaintiff asserts that the only major difference between the two jobs is that Brown was responsible for the oversight of the R & D Packaging Engineers while Plaintiff was responsible to coordinate Pilot and Pharmaceutical Development activities to support third-party contract development projects. (Pl.'s Resp. at 24.)

the first and fourth elements of a tortious interference with contract claim. Defendant argues that there is no evidence that Plaintiff had a prospective contractual relationship with Nanosystems. Assuming such a relationship existed, Defendant asserts that there is no evidence that Defendant contacted Nanosystems or engaged in conduct that caused Nanosystems to reject Plaintiff's application for employment.

Plaintiff responds by offering her deposition testimony which states that Plaintiff was invited to meet with the Nanosystems' president after her initial interview. (See Klimiuk's Dep. at 63-67.) In addition, Plaintiff claims that she was given detailed information about the company's benefits, philosophy, working hours and dress code. (See Klimiuk's Dep. at 64-65.) Plaintiff, however, failed to produce any evidence showing that Defendant either contacted Nanosystems or engaged in conduct that resulted in interference with Nanosystems' decision not to hire her. Plaintiff, as the non-moving party, cannot rely on conclusory allegations in her pleadings or in memoranda and briefs to establish a genuine issue of material fact. See Pastore, 24 F.3d at 511. To survive a motion for summary judgment, Plaintiff must establish the elements of her claim. See id. Because Plaintiff failed to introduce any evidence showing that Defendant's conduct interfered with her prospective contract with Nanosystems, Defendant's Motion for Summary Judgment on Count IV will be granted.

E. Exhaustion of Administrative Remedies

It is a basic principle of administrative law that a plaintiff must exhaust all required administrative remedies before bringing a claim for judicial relief. McKart v. United States, 395 U.S. 185, 193 (1969). "A victim of discrimination is not required to exhaust administrative remedies with respect to a claim concerning an incident which falls within the scope of a prior

v.
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ORDER

AND NOW, this day of October, 2000, upon consideration of Defendant's Motion for Summary Judgment, Plaintiff's Response thereto, and Defendant's Reply, **IT IS HEREBY ORDERED**, that Defendant's Motion is **GRANTED** as to Count IV of the Complaint and **DENIED** as to Counts I, II and III of the Complaint.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.