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

JAMES GEORGE DOURIS,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 99-3357
COUNTY OF BUCKS, MARIE COSTELLO, and SCOTT BROBST,	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J. JULY 3, 2001

Plaintiff, James George Douris ("Mr. Douris"), brought this action against the County of Bucks ("Bucks County"), Marie Costello ("Ms. Costello")(collectively "Defendants") and Scott Brobst ("Mr. Brobst").[1] The Complaint alleges violations and retaliation under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. section 621, et seq., 42 U.S.C. section 1983 ("Section 1983"), and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951, et seq. The Complaint also alleges violations of the Pennsylvania Constitution, abuse of process, malicious prosecution, and conspiracy. Before this Court is the

[1] Mr. Brobst was dismissed from the action with prejudice by Court Order dated February 14, 2000. See Douris v. Brobst, No. 99-3357, 2000 WL 199358, at *4 (E.D. Pa. Feb. 14, 2000); see also Douris v. County of Bucks, No. 99-3357, 2001 WL 695019, at *4 (E.D. Pa. June 18, 2001).

Motion for Summary Judgment filed by Bucks County and Ms. Costello. For the reasons stated, the Motion is granted in part and denied in part.

I. FACTUAL BACKGROUND

On March 12, 1998, while at the Bucks County Department of Human Services, Mr. Douris asked Ms. Costello, an employee of the Human Resources office, for a job application for the position of Park Maintenance Supervisor. Mr. Douris requested that he be allowed to complete the application at home because of his disability (i.e., Carpal Tunnel Syndrome). Ms. Costello rejected Mr. Douris' request based on a County policy that required job applications to be completed in the office. Mr. Douris returned the application to Costello and left the office.

On December 9, 1998, Mr. Douris filed a charge of age and disability discrimination against Bucks County with the Equal Employment Opportunity Commission ("EEOC"). However, prior to this date, Mr. Douris did not file a complaint with the Pennsylvania Human Relations Commission (“PHRC”). On March 10, 1999, Bucks County filed a response to Mr. Douris’ administrative charge stating that applicants may complete employment applications at home where there is a request for accommodation due to a special need.

On May 6, 1999, Mr. Douris returned to the Bucks County Department of Human Resources seeking an employment application.

On this date, Mr. Douris suffered from an additional disability to his knee which limited his ability to walk, turn, and use steps. Mr. Douris asked Ms. Costello for an application.[2] As Ms. Costello was giving Mr. Douris the application, she again informed Mr. Douris of the policy that applications had to be completed in the Human Resources Office. Mr. Douris took the application, placed it in his briefcase and exited the office.

As Mr. Douris was waiting for an elevator, Ms. Costello pursued him and explained that he could not leave the office with the application. When Mr. Douris tried to enter the elevator, he pushed Ms. Costello out of the way with his left hand. Ms. Costello was pushed into the elevator door frame, and, as a result, went to the Doylestown Hospital for treatment of her arm and shoulder. Specifically, Ms. Costello suffered a bruised and swollen arm and experienced pain in her neck and back for approximately one month. Due to her injuries, Ms. Costello missed approximately one and one-half days of work.

Shortly thereafter, Ms. Costello contacted the Doylestown Borough Police Department and filed criminal charges against Mr. Douris. On May 10, 1999, Detectives Scott Brobst ("Mr. Brobst") and Roberta Kostick ("Ms. Kostick") were assigned to investigate the incident. After an investigation, the

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[2] Mr. Douris sought the application as part of "an investigation with the EEOC," and did not intend to apply for the job. (Defs.' Br. Supp. Mot. Summ. J. at 7).

gathered information was given to Chief of Prosecution Ted Fritsch ("Mr. Fritsch") for review and determination of whether criminal charges were appropriate. After reviewing the information, Mr. Fritsch determined that criminal charges were applicable. Mr. Brobst charged Mr. Douris with disorderly conduct and harassment.

On September 1, 1999, a summary judgment hearing was held before the Honorable District Justice Oliver Groman where Justice Groman found Mr. Douris guilty of harassment and fined him $300.00, plus all court costs. Justice Groman found Mr. Douris not guilty of the charge of disorderly conduct. Mr. Douris appealed the decision. On November 23, 1999, a de novo hearing was held before the Honorable Ward F. Clark of the Bucks County Court of Common Pleas. After testimony from Ms. Costello, Mr. Douris, Jane Lacey (a witness to the incident), the decision that Mr. Douris was guilty of harassment was upheld.

II. PROCEDURAL BACKGROUND

Mr. Douris filed his initial Complaint against Bucks County, Marie Costello and Mr. Brobst on July 1, 1999. On August 16, 1999, Mr. Brobst filed a Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Mr. Douris responded to Mr. Brobst's Motion to Dismiss on August 25, 1999. On February 14, 2000, by Memorandum and Order, the Honorable Herbert J. Hutton granted Mr. Brobst's Motion as to all counts

against him, thereby completely dismissing Mr. Brobst from the action.[3]

On August 3, 2000, Mr. Douris filed his first Amended Complaint. Bucks County and Ms. Costello filed a Motion to Dismiss Certain Counts of the Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) on August 21, 2000. Without receiving a ruling on their Motion to Dismiss, Bucks County and Ms. Costello filed a Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56 on October 30, 2000. On November 14, 2000, this case was reassigned from Judge Hutton to this Court. On February 2, 2001, the Court denied the Motion to Dismiss. The Court now considers the instant Motion for Summary Judgment.

III. STANDARD

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in dispute and `the moving party is entitled to judgment as a matter of law.'" Hines v. Consol. Rail Corp., 926 F.2d 262, 267 (3d

[3] Although Mr. Brobst was dismissed from the action on February 14, 2000, Mr. Douris sought a default judgment against him on April 6, 2001. See Douris v. County of Bucks, No. 99-3357, 2001 WL 695019, at *4 (E.D. Pa. June 18, 2001). After a hearing and consideration of Mr. Douris' Motion for Default Judgment and the Responses thereto, the Court held that the Mr. Douris was not entitled to a default judgment because the Court's February 14, 2000 dismissal of Mr. Brobst was with prejudice. Id.

Cir. 1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

A. Count I. Discrimination Under the ADA

In Count I, Mr. Douris alleges that Bucks County has discriminated against him because of his disabilities in violation of the Americans with Disabilities Act ("ADA")(Am. Compl. at 10-13). The ADA provides that:

> [n]o covered entity shall discriminate against a qualified individual with a

> disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

42 U.S.C. § 12112(a)(West 2001). In order to establish a prima facie case of discrimination under the ADA, Mr. Douris must show that: (1) he is a disabled person within the meaning of the ADA; (2) he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodation by the employer; and (3) he has suffered an adverse employment decision as a result of discrimination. Deane v. Pocono Med. Ctr., 142 F.3d 138, 142 (3d Cir. 1998)(citing Gaul v. Lucent Techs Inc., 134 F.3d 576, 580 (3d Cir. 1998)).

In their Motion for Summary Judgment, the Defendants argue that Mr. Douris fails to establish his prima facie case of discrimination under the ADA. (Defs.' Br. Supp. Mot. Summ. J. at 12-15). Drawing all reasonable inferences in favor of Mr. Douris, the Court will deny summary judgment because there exist genuine issues of material fact regarding the qualifications for the Park Maintenance Supervisor position.

B. Count II. Use of Facilities Under the ADA

In Count II, Mr. Douris argues that Ms. Costello and Bucks County are liable for their alleged interference of Mr. Douris' use of the public elevators and hallways. (Am. Compl. at 13). Under Title III of the ADA, liability may be imposed on

those who “own” “lease” or “operate” places of public accommodation. 42 U.S.C. § 12182(a). 42 U.S.C. section 12182(a) provides, in pertinent part, as follows:

> [n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a public accommodation.

42 U.S.C. § 12182(a)(West 2001). In order to state a cause of action under this section, Mr. Douris “must prove that he: ‘(1) has a disability; (2) was discriminated against on the basis of that disability; (3) was thereby denied goods or services; (4) by a place of public accommodation by the owner or operator of that facility.’” Lewis v. Sheraton Soc’y Hill, No. 96-7936, 1997 WL 397490, at *3 (E.D. Pa. July 10, 1997)(quoting Sharrow v. Bailey, 910 F. Supp. 187, 191 (M.D. Pa. 1995)). The Court of Appeals for the Third Circuit has stated that “[t]itle III ‘specifically addresses discrimination by owners, lessors, and operators of public accommodations.’” Menkowitz v. Pottstown Mem’l Med. Ctr., 154 F.3d 113, 126 (3d Cir. 1998)(quoting Parker v. Metro. Life Ins. Co., 121 F.3d 1006, 1010 (6th Cir. 1997)). Therefore, “[i]n order to be subject to Title III of the ADA, a potential defendant must be ‘[a] person who owns, leases (or leases to), or operates a place of public accommodation.’” Bowers v. Nat’l Collegiate Athletic Ass’n, 9 F. Supp.2d 460, 480 (D.N.J.

1998)(citing 42 U.S.C. § 12182(a); 28 C.F.R. pt. 36, app. B at 613)).

Ms. Costello argues that she cannot be liable under Title III of the ADA because she is a receptionist for the Human Resources Department of the County and, therefore, does not have the requisite influence or control over the County, its Human Resources Department, or its policies to be held liable under Title III of the ADA. (Defs.' Br. Supp. Mot. Summ. J. at 15). Without any proof, Mr. Douris tries to create an issue of fact regarding Ms. Costello's status by alleging that she is not a receptionist, but is a supervisor. (Pl.'s Resp. Defs.' Mot. Summ. J. at 9). Relying on his own affidavit, which is based solely on his independent review of public records, Mr. Douris alleges that Ms. Costello is a supervisor, and, therefore, has control over the operation of the facility and the County's policies. (Id.).

Drawing all reasonable inferences in favor of Mr. Douris, the Court finds that there is no genuine issue of fact regarding Ms. Costello's employment status as a receptionist. On several occasions, Ms. Costello has testified that she is a receptionist for Bucks County's Human Resources Department. (Defs.' Reply Br. Pl.'s Resp. Mot. Summ. J., Ex. LL (Ms. Costello's deposition); Defs.' Mot. Summ. J., Exs. C (N.T. Ct. Dist. J. Groman 9/1/99 at 4) and D (N.T. Ct. Common Pleas

11/23/99 at 15)). Although Ms. Costello's official job title is Human Resource Specialist I, Defendants have produced a job description which states that such position is a receptionist position within Bucks County's Department of Human Resources. (Defs.' Reply Br. Pl.'s Resp. Mot. Summ. J., Ex. MM). Weighing the aforementioned evidence of Ms. Costello's status as a receptionist against Mr. Douris' bare assumptions, the Court finds that Ms. Costello was a receptionist at the time of this action.

In this case, Ms. Costello's status as a receptionist relieves her of liability under Title III of the ADA. As a receptionist for the Human Resources Department of Bucks County, Ms. Costello did not own, lease, lease to, or operate the premises about which Mr. Douris complains. Therefore, summary judgment will be granted in favor of Ms. Costello regarding Mr. Douris' claim under Title III of the ADA against her. However, Bucks County's Motion for Summary Judgment regarding this claim is denied because, drawing all reasonable inferences in favor of Mr. Douris, the Court finds that there exist genuine issues of material fact.

C. Count III. Retaliation under the ADA

In Count III, Mr. Douris alleges that he was retaliated against by Ms. Costello and Bucks County for filing a charge of discrimination with the EEOC and PHRC. (Am. Compl. at 13-15).

Under Title VII of the ADA, in order to establish a claim for retaliation, Mr. Douris must show: (1) protected employee activity; (2) adverse action by the employer either after or contemporaneous with the employee's protected conduct; and (3) a causal connection between the employee's protected activity and the employer's adverse action. Robinson v. City of Pitts., 120 F.3d 1286, 1299 (3d Cir. 1997)(citing Nelson v. Upsala Coll., 51 F.3d 383, 386 (3d Cir. 1995)). If a prima facie case is established, the burden shifts to the Defendants to advance a legitimate, non-retaliatory reason for the adverse employment action. Woodson v. Scott Paper Co., 109 F.3d 913, 920 n.2 (3d Cir. 1997), cert. denied, 522 U.S. 914 (1997)(citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)(citation omitted)). If the Defendants satisfy their burden, Mr. Douris is required to discredit their proffered reason and show that it was pretextual, from which a fact finder may conclude that the true reason was discrimination. Id.

Ms. Costello cannot be subjected to suit for retaliation under the ADA because "[t]he consensus view among district courts in this circuit is that individual liability cannot be imposed under the ADA." Diep v. Southwark Metal Mfg. Co., No. 00-6136, 2001 WL 283146, at *2 (E.D. Pa. Mar. 19, 2001)(citing Douris v. Brobst, 2000 WL 199358, at *6 (citations omitted)). Thus, summary judgment is granted in favor of Ms.

Costello pertaining to Mr. Douris' ADA retaliation claim. Bucks County's Motion for Summary Judgment on this Count is denied because, drawing all reasonable inferences in favor of Mr. Douris, there exist genuine issues of material fact.

D. Count IV. Age Discrimination under the ADEA

In Count IV, Mr. Douris alleges that Bucks County unlawfully discriminated against him because of his age. (Am. Compl. at 15). Without direct evidence, in order for Mr. Douris to establish a prima facie case of age discrimination under the ADEA, he must show that: (1) he is over 40 years old; (2) he was qualified for the position for which he applied; (3) he was denied the position; and (4) the defendant hired someone significantly younger to create an inference of age discrimination. Sadler v. Marriott Int'l, Inc., No. 98-762, 1999 WL 357381, at *2 (E.D. Pa. June 3, 1999)(citing Sosky v. Int'l Mill Serv., Inc., No. 94-2833, 1996 WL 32139, at *5 (E.D. Pa. Jan. 25, 1996), aff'd, 103 F.3d 114 (3d Cir. 1996)). If Mr. Douris proves his prima facie case, the burden shifts to Bucks County to articulate a legitimate, nondiscriminatory reason for the adverse employment decision. Id. (citing St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507 (1993)). Once a legitimate, nondiscriminatory reason has been articulated, Mr. Douris is required to "discredit the employer's proffered reason and show that it was pretextual, from which a fact finder may infer that

the real reason was discrimination." Id. (citing Hicks, 509 U.S. at 508)(citation omitted)).

Bucks County argues that it is entitled to summary judgment because Mr. Douris cannot establish the second and fourth prongs of his prima facie case. (Defs.' Br. Supp. Mot. Summ. J. at 18). The Court denies Bucks County's request for summary judgment on this count because, drawing all reasonable inferences in Mr. Douris' favor, there exist genuine issues of material fact.

E. Count V. Civil Rights Conspiracy

Mr. Douris has abandoned this claim. (Pl.'s Resp. Defs.' Mot. Summ. J. at 25). Therefore, Count V is dismissed with prejudice.

F. Count VI. 42 U.S.C. section 1983

In Count VI, Mr. Douris alleges that Ms. Costello and Bucks County are liable for violation of 42 U.S.C. section 1983. (Am. Compl. at 18-21). Section 1983 "creates a cause of action against '[e]very person who, under color of any [state law] . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution.'" Hindes v. Fed. Deposit Ins. Corp., 137 F.3d 148, 158 (3d Cir. 1998)(citing 42 U.S.C. § 1983). Thus, section 1983 supplies a remedy for federal law violations committed by

people acting under state law. Id. (citing Dist. of Columbia v. Carter, 409 U.S. 418, 425 (1973)(citations omitted)). In order to successfully bring a claim under section 1983, Mr. Douris is required to show: "(1) the conduct complained of must be committed by a person acting under color of law; and (2) the conduct deprived plaintiff of a right or privilege guaranteed by the Constitution or the laws of the United States." Robb v. City of Phila., 733 F.2d 286, 290 (3d Cir. 1984)(citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)).

In his section 1983 claim, Mr. Douris is suing Bucks County and Ms. Costello, in her individual and official capacity. (Am. Compl. at 18-21). Defendants argue that Mr. Douris' claim fails as matter of law because "Mr. Douris has failed to support his allegation that he was deprived of a federally protected right." (Defs.' Br. Supp. Mot. Summ. J. at 19). Mr. Douris argues that he does have viable section 1983 claim because he "has identified several federal rights that have been denied . . . by persons acting under color of state law." (Pl.'s Resp. Defs.' Mot. Summ. J. at 21). The Court will first address the section 1983 claim against Ms. Costello in her individual and official capacities, and then will address the claim against Bucks County.

1. Section 1983 Claim Against Ms. Costello

a. Individual Liability

Personal capacity suits under section 1983 “seek to impose personal liability upon a government official for actions he takes under color of state law.” Kentucky v. Graham, 473 U.S. 159, 165 (1985) (citation omitted). Under section 1983, subject to limited immunity, state officials can be sued in their individual capacity, even when they were acting within their official capacities. Id. In order to impose personal liability under section 1983, a plaintiff is required “to allege, and be prepared to prove, that the defendant has been personally and directly involved in the alleged wrongful conduct or alternatively that the alleged wrongful conduct occurred within the defendants’ actual knowledge and acquiescence.” Johnakin v. City of Phila., No. 95-1588, 1996 WL 18821, at *7 (E.D. Pa. Jan. 18, 1996)(citing Rode v. Dellarciprete, 845 F.2d 1197, 1207 (3d Cir. 1988)).

In addition to her argument that Mr. Douris has failed to prove that he was deprived of a federally protected right, Ms. Costello raises the defense of qualified immunity. Under section 1983, the qualified immunity defense applies to officials who have been sued in their personal capacity. “The purpose of qualified immunity is to protect public officials from liability in situations involving extraordinary circumstances and where they neither knew or objectively should have known the appropriate legal standard.” Id. (citing Harlow v. Fitzgerald,

457 U.S. 800, 819 (1982)). Specifically, qualified immunity shields government officials performing discretionary functions from civil damages liability as long as their actions do not violate clearly established statutory or constitutional rights that a reasonable person would have known. Anderson v. Creighton, 483 U.S. 635, 638 (1987)(citing Malley v. Briggs, 475 U.S. 335, 341 (1986)(stating that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law"); Henry v. Perry, 866 F.2d 657, 659 (3d Cir. 1989)(citations omitted). In order for a right to be clearly established, the contours of that right must be “sufficiently clear so that a reasonable official would realize his actions violated the right.” Lewis v. State of Del. Dep’t of Pub. Instruction, 948 F. Supp. 352, 367 (D. Del. 1996)(citing Anderson, 483 U.S. at 641).

Drawing all reasonable inferences in favor of Mr. Douris, Ms. Costello is entitled to qualified immunity regarding Mr. Douris’ section 1983 individual capacity claim. The Court finds that Ms. Costello’s conduct did not violate any clearly established statutory or constitutional rights that a reasonable person would have known. Ms. Costello pursued Mr. Douris in an attempt to enforce the County policy that applications be completed in the Human Resources Office. Her actions were in relation to her job duties and did not purposefully nor

arbitrarily involve any wrongful conduct to deprive Mr. Douris of any federal right. Mr. Douris' vacuous assertions that Ms. Costello acted both arbitrarily and intentionally to deprive him of several federal rights, are not only contradictory, but disingenuous. (Pl.'s Resp. Defs.' Mot. Summ. J. at 15-25). Mr. Douris provides no evidence which proves that she arbitrarily or purposefully engaged in any wrongful conduct to deprive him of any federal right. Although Mr. Douris tries in vain to assert some culpability on the part of Ms. Costello, it is the facts, record and evidence which proves the contrary. Under the unusual circumstances of the May 6, 1999 incident, Ms. Costello neither knew or objectively should have known that her conduct may have violated any clearly established statutory or constitutional rights. As a result, Ms. Costello is entitled to qualified immunity which shields her discretionary actions from civil damages liability. Thus, summary judgment is granted regarding Mr. Douris' section 1983 against Ms. Costello in her individual capacity.

b. Official Capacity

Mr. Douris also sues Ms. Costello in her official capacity under section 1983. (Am. Compl. at 18-21). Under section 1983, "official capacity suits 'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" Halwani v. Galli, No. 99-1450, 2000 WL

968219, at *3 (E.D. Pa. July 13, 2000)(quoting Graham, 473 U.S. at 169 n.14)(citing Monell v. Dep't of Soc. Servs. of City of N.Y., 436 U.S. 658, 690 (1978))(stating "[t]here is no longer a need to bring official-capacity actions against local government officials, for under Monell, . . . local government units can be sued directly for damages and injunctive or declaratory relief."). Since Mr. Douris has directly sued Bucks County under section 1983, his official capacity suit against Ms. Costello is unnecessary. Thus, summary judgment is granted regarding Mr. Douris' section 1983 official capacity suit against Ms. Costello.

2. Section 1983 Claim Against Bucks County

Drawing all reasonable inferences in Mr. Douris' favor, Defendants' Motion for Summary Judgment regarding Mr. Douris' section 1983 claim against Bucks County is denied because there exist genuine issues of material fact.

G. Count VII. PHRA Claim

In Count VII, Mr. Douris argues that Bucks County unlawfully discriminated against him in violation of the PHRA.[4] (Am. Compl. at 21). Bucks County argues that it is entitled to summary judgment on Mr. Douris' PHRA claim because Mr. Douris filed an untimely claim with the PHRC more than 180 days after the incident alleged in his Complaint. (Defs.' Br. Supp. Mot.

[4] Pursuant to 28 U.S.C. section 1367(a), the Court exercises supplemental jurisdiction over Mr. Douris' state law claims.

Summ. J. at 29). Bucks County relies on the fact that "[Mr.] Douris filed a complaint with the EEOC on December 9, 1998, 267 days after March 12, 1998, the date of the alleged discriminatory actions by the County." (Id. at 7). Although Mr. Douris dual filed his complaint with the EEOC and the PHRC, he did not file a complaint with the PHRC prior to December 9, 1998. (Id.). Mr. Douris argues that in choosing to dual file, "his timely filing with the EEOC became a timely filing with the PAHRC [sic]." (Pl.'s Resp. Defs.' Mot. Summ. J. at 26).

"The PHRA states that '[a]ny complaint filed pursuant to this section must be so filed within one hundred and eighty days after the alleged act of discrimination.'" Fieni v. Pocopson Home, No. 96-5343, 1997 WL 220280, at *7 (E.D. Pa. Apr. 29, 1997)(citing 42 Pa. Stat. § 959(h)). Under the PHRA, "[f]ailure to exhaust administrative remedies . . . precludes this Court from exercising jurisdiction over a claim for violation of the PHRA." Id. (citing Parsons v. Phila. Coordinating Office of Drug & Alcohol Abuse Programs, 833 F. Supp. 1108, 1112 (E.D. Pa. 1993)). "The language of the provision is clear: In order to maintain a action under the PHRA, a plaintiff must file a complaint with the PHRC within 180 days of the alleged discriminatory conduct." Id. In some instances, if the EEOC transmits the complaint to the PHRC, a filing with the EEOC may also qualify as a filing under the PHRA. Id. "Even

though the complaint is filed with the PHRC in this manner, however, it does not act to change the 180 day limitation." Id. In the case where the EEOC has transmitted a complaint to the PHRC, "the 180 day period limitation would remain the same -- it would not miraculously transform into the 300 day limitation merely because the EEOC was involved in its transmittal." Id.

Mr. Douris' claim under the PHRA was untimely filed because it was dual filed with the PHRA 267 days after the date of the alleged discriminatory actions by Bucks County. Thus, Mr. Douris is precluded from bring a claim under the PHRA. As a result, Bucks County is granted summary judgment on this count.

H. Count VIII. State Constitutional Claims

In Count VIII, Mr. Douris alleges that Ms. Costello and Bucks County violated Mr. Douris' rights under the Pennsylvania Constitution. (Am. Compl. at 22-23) Ms. Costello and Bucks County argue that they are immune from liability for all state law claims pursuant to the Political Subdivision Tort Claims Act ("PSTCA").[5] (Defs.' Br. Supp. Mot. Summ. J. at 29)(citing 42 Pa.C.S.A. §§ 8541 et seq.). Section 8541 of the PSTCA states that "except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury

[5] "The governmental immunity granted by PSTCA applies only to state law claims. It has no effect upon plaintiff's federal civil rights claims." Cooper v. City of Chester, 810 F. Supp. 618, 625 (E.D. Pa. 1992)(citing Wade v. Pitts., 765 F.2d 405 (3d Cir. 1985)).

to a person or property caused by the act of the local agency or any employee thereof or any other persons." 42 Pa.C.S.A. § 8541. "The general rule of the Act is that local agencies and their employees are immune from suit."[6] Cooper v. City of Chester, 810 F. Supp. 618, 625 (E.D. Pa. 1992)(citing 42 Pa.C.S.A. §§ 8541 & 8545). However, there are exceptions to this general rule which are found in 42 Pa.C.S.A. §§ 8542 & 8550. Id. Thus, under the Act, "defendants are immune from the pendent state law claims in the instant case unless those claims fall into one of the categories enumerated in § 8542 or § 8550." Id.

Section 8542(b) contains eight exceptions to the general grant of immunity provided by section 8541 of the PSTCA. Id. Under section 8542(b),

> liability may be imposed on a local agency for the negligent acts of the local agency or its employees acting within the scope of their office or duties [involving]: (1) vehicle liability; (2) the care, custody and control of personal property; (3) the care, custody and control of real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) the care, custody and control of animals.

Atkinson v. City of Phila., No. 99-1541, 2000 WL 295106, at *2 (E.D. Pa. Mar. 20, 2000)(citing 42 Pa.C.S.A. § 8542). Since Mr.

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[6] Bucks County is a "local agency" within the meaning of the PSTCA. 42 Pa.C.S.A. § 8501; Damron v. Smith, 616 F. Supp. 424, 426 (E.D. Pa. 1985)(stating, "A local agency includes any government unit other than the Commonwealth government.")

Douris does not complain of any conduct by the Defendants that falls within any of these eight categories, section 8542(b) is not applicable in this case.

Under section 8550 of the PSTCA, the Act's "broad immunity is not granted for intentional torts." Cooper, 810 F. Supp. at 626. Specifically, the blanket of immunity under section 8541 is lifted in cases when a governmental employee caused an injury and that "act constituted a crime, actual fraud, actual malice or wilful misconduct." Id. (citing 42 Pa.C.S. § 8550). However, under section 8550, "it is only the immunity of the governmental employee that caused the injury which is eliminated under this provision." Lumumba v. Phila. Dept. of Human Servs., No. 98-5195, 1999 WL 345501, at *5 (E.D Pa. May 21, 1999). Thus, even if the requirements of section 8550 are met, the immunity of the local government entity remains intact Id. (citing Parsons, 833 F. Supp. at 1118 (citations omitted)). As a result, section 8550 does not provide an exception to Bucks County's immunity because, as a local government entity, Bucks County's immunity remains complete.

The Court also finds that section 8550 does not provide an exception to Ms. Costello's immunity under the PSTCA. Ms. Costello argues that she is entitled to immunity because "[n]one of the claims against [Ms.] Costello constitute willful misconduct and none of the claims asserted fall within the

exceptions to immunity set forth in the Political Subdivision Tort Claims Act." (Defs.' Br. Supp. Mot. Summ. J. at 30). Without addressing Ms. Costello's argument that none of the claims against her constituted willful misconduct, Mr. Douris argues that Ms. Costello is not entitled to immunity because her actions were criminal in nature. (Pl.'s Resp. Defs.' Mot. Summ. J. at 27-30). Since Ms. Costello was never charged with a criminal offense in relation to the May 6, 1999 incident and has been granted summary judgment on all of Mr. Douris' claims, infra, section V., she has demonstrated, as a matter of law, that her conduct did not constitute a crime, actual fraud, actual malice or willful misconduct under section 8550. In re City of Phila. Litig., 849 F. Supp. 331, 364 (E.D. Pa. 1994), aff'd in part, rev'd in part, dismissed in part, 49 F.3d 945 (3d Cir. 1995), cert. denied, 516 U.S. 863 (Oct. 2, 1995); 42 Pa.C.S.A. § 8550. Thus, Ms. Costello is entitled to immunity under the PSTCA regarding Mr. Douris' state constitutional claims. As a result of the immunity provided under the PSTCA, both Bucks County and Ms. Costello are granted summary judgment with respect to Mr. Douris' state constitutional claims.

I. Count IX. Abuse of Process

In Count IX, Mr. Douris alleges that Ms. Costello initiated a criminal proceeding with an improper purpose. (Am. Compl. at 23). In order to state a claim for abuse of process,

Mr. Douris must prove that Defendants: "(1) used a legal process against [the plaintiff]; (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm has been caused to [the plaintiff]." Setchko v. Township of Lower Southampton, No. 00-3659, 2001 WL 229625, at *4 (E.D. Pa. Mar. 8, 2001)(citing Gen. Refractories Co. v. Liberty Mut. Ins. Co., No. CIV.A. 97-7494, 1999 WL 1134530, at *4 (E.D. Pa. Dec. 9, 1999)). A claim for abuse of process requires "some proof of a 'definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process.'"[7] Bristow v. Clevenger, 80 F. Supp.2d 421, 431 (M.D. Pa. 2000)(citing Williams v. Fedor, 69 F. Supp.2d 649, 673 (M.D. Pa. 1999), aff'd, 211 F.3d 1263 (3d Cir. 2000)(citation omitted)). The Supreme Court of Pennsylvania has stated that:

> [t]he gist of an action for abuse of process is the improper use of process after it has been issued, that is, a perversion of it. An abuse is where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it.

Id. at 431 (citing McGee v. Feege, 535 A.2d 1020, 1023 (Pa. 1987)(citations omitted)). Therefore, "a section 1983 claim for

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[7] Some examples of actions "for which recovery may be had under the abuse of process tort include extortion by means of attachment, execution or garnishment, and blackmail by means of arrest or criminal prosecution." Russoli v. Salisbury Township, 126 F. Supp.2d 821, 858 (E.D. Pa. 2000)(citing Bristow v. Clevenger, 80 F. Supp.2d 421, 431 (M.D. Pa. 2000)).

malicious abuse of process lies where 'prosecution is initiated legitimately and thereafter is used for a purpose other than that intended by the law.'" Id. (quoting Rose v. Bartle, 871 F.2d 331, 350 (3d Cir. 1989)(citation omitted)). However, "[t]here is no cause of action for abuse of process if the claimant, even with bad intentions, merely carries out the process to its authorized conclusion." Id.(quoting Cameron v. Graphic Mgmt. Ass'n, Inc., 817 F. Supp. 19, 21 (E.D. Pa. 1992)).

Ms. Costello argues that Mr. Douris is unable to survive summary judgment on this claim because he has not "presented evidence that 'the criminal action against [him] was initiated legitimately and then perverted.'" (Defs.' Br. Supp. Mot. Summ. J. at 32)(quoting Bristow, 80 F. Supp.2d at 431.) According to Ms. Costello, Mr. Douris fails to allege that the charges were legitimately brought and then perverted because he accuses Ms. Costello of conspiring to bring false criminal charges against him. (Id.)(citing Cameron, 817 F. Supp. at 21). Mr. Douris argues that his abuse of process claim has been adequately presented "[s]ince the process initiated against Mr. Douris was commenced days following his protected activities, and because there was deceit used to convict him." (Pl.'s Resp. Defs.' Mot. Summ. J. at 31).

Taking all reasonable inferences in favor of Mr. Douris, the Defendants are entitled to summary judgment on the

abuse of process claim. In his Amended Complaint, Mr. Douris specifically states that his abuse of process claim is based on Ms. Costello's "acts in initiating criminal process for a purpose not designed for that process." (Am. Compl., ¶ 151). Mr. Douris also alleges that Ms. Costello conspired to file false criminal charges against him. (Id., ¶ 110). Seemingly, Mr. Douris confuses his claim of malicious prosecution with his abuse of process claim. As explained by the Pennsylvania Supreme Court, " [m]alicious use of civil process [or malicious prosecution] has to do with the wrongful initiation of such process, while abuse of civil process [or criminal process] is concerned with a perversion of a process after it is issued." Bristow, 80 F. Supp.2d at 431 (citing McGee, 535 A.2d at 1023)(citations omitted)). Since Mr. Douris has filed a malicious prosecution claim and he fails to claim or prove that the criminal process against him was legitimately initiated and then perverted, he cannot maintain a claim for abuse of process.

Defendants are also entitled to summary judgment on Mr. Douris' abuse of process claim because they have proven that probable cause existed for the criminal proceedings they initiated against Mr. Douris. See infra, section IV.J. Through their pleadings and exhibits, Defendants have demonstrated that no perversion of the criminal process took place and that they carried out the criminal proceeding to its authorized conclusion.

Id. The proof provided by the Defendants, and the complete lack of proof offered by Mr. Douris, shows that the criminal proceedings against him were validly brought and tried. Accordingly, Defendants are granted summary judgment in their favor as to Mr. Douris' abuse of process claim.

J. Count X. Malicious Prosecution

In Count X, Mr. Douris alleges that Ms. Costello maliciously initiated criminal charges and prosecuted a case against him "in retaliation of Plaintiff['s] law [sic] and protected activities [sic], and done to punish Plaintiff for law [sic] conduct." (Am. Compl., ¶ 154). Under Pennsylvania law, Mr. Douris must prove that: (1) Defendants instituted proceedings against him (a) without probable cause and (b) with malice, and (2) the proceedings were terminated in his favor. Gilbert v. Feld, 842 F. Supp. 803, 814 (E.D. Pa. 1993)(citing Griffiths v. CIGNA Corp., 988 F.2d 457, 463 (3d Cir. 1993), cert. denied, 510 U.S. 865 (1993); Kelley v. Gen. Teamsters, Local Union 249, 544 A.2d 940, 941 (Pa. 1988)). All of the elements of a malicious prosecution claim are required to be proven, "[i]f any of these elements cannot be proven, the malicious-prosecution plaintiff cannot prevail." Id. at 814.

Defendants argue that Mr. Douris' malicious prosecution claim fails, as a matter of law, because he is unable to prove

his prima facie case.[8] (Defs.' Br. Supp. Mot. Summ. J. at 33). Specifically, Defendants argue that Mr. Douris cannot prove all of the elements of a claim of malicious prosecution because "it is clear that probable cause existed for the charges brought against [Mr.] Douris because there was a conviction."[9] (Defs.' Br. Supp. Mot. Summ. J. at 33). Regarding the element of probable cause, Mr. Douris argues that "the jury can determine that the police did not have probable cause because they had spoken to the independent eyewitnesses, who told them that it was [Ms.] Costello that [sic] pursued Mr. Douris and he was retreating." (Pl.'s Resp. Defs.' Mot. Summ. J. at 32). Defendants are entitled to summary judgment because Mr. Douris has failed to prove the necessary element of absence of probable cause in his malicious prosecution claim.

In a claim for malicious prosecution, probable cause is

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[8] Defendants also argue that "Mr. Douris' malicious prosecution claims fail because liability may not be imposed upon a County for malicious prosecution." (Defs.' Br. Supp. Mot. Summ. J. at 33). The Court chose not to address this defense because it has found that Mr. Douris is unable to prove his prima facie case of malicious prosecution.

[9] Defendants argue that Mr. Douris is unable to prove that the criminal proceedings terminated in his favor because he was found guilty of harassment and not guilty of disorderly conduct. (Defs.' Br. Supp. Mot. Summ. J. at 33). The Court will not address whether the criminal proceedings terminated in Mr. Douris' favor because Mr. Douris has failed to prove that Defendants instituted the proceedings against him without probable cause and, therefore, his claim fails as a matter of law.

an indispensable element. Gilbert, 842 F. Supp. at 814 (quoting Byers v. Ward, 84 A.2d 307, 309 (Pa. 1951)). "A person who institutes a criminal proceeding with clear malicious intent cannot be held liable for the tort of malicious prosecution if, at the time of initiating charges, he or she has probable cause to believe that a crime has been committed." Id. Probable cause has been defined as "proof of facts and circumstances that would convince a reasonable, honest individual that the suspected person is guilty of a criminal offense." Lippay v. Christos, 996 F.2d 1490, 1502 (3d Cir. 1993)(citing Griffiths, 988 F.2d at 464; Bruch v. Clark, 507 A.2d 854, 857 (Pa. Super. 1986)). A finding of "probable cause does not depend on the state of the case in point of fact but upon the honest and reasonable belief of the party prosecuting." Id. (quoting Miller v. Pennsylvania R. Co., 89 A.2d 809, 811 (Pa. 1952)). Specifically, a finding of probable cause depends upon: "(1) whether the defendant honestly believed that the accused committed the crime for which the accused was prosecuted (the subjective component); and (2) whether the defendant reasonably believed that the accused was guilty of the crime charged (the objective component)." Gilbert, 842 F. Supp. at 815(citing Neczypor v. Jacobs, 169 A.2d 528, 530 (Pa. 1961)(citation omitted)).

The heavy burden of demonstrating the absence of probable cause lies with the plaintiff. Id. at 14(citing Simpson

v. Montgomery Ward & Co., 46 A.2d 674, 676 (Pa. 1946)). In a malicious prosecution case, the question of the existence of probable cause generally is a question for the court.[10] Bristow, 80 F. Supp.2d 421, 433 (citing Gilbert, 842 F. Supp. at 815; Simpson, 46 A.2d at 675). However, "when the probable cause determination depends upon disputed issues of fact, the court should submit the factual disputes to the jury, and then make the probable cause determination based upon the jury's findings." Id. at 434 (citing Simpson, 46 A.2d at 678-79; Thomas v. E.J. Korvette, Inc., 476 F.2d 471, 475 (3d Cir. 1973)). In this case, the determination of probable cause does not depend upon disputed

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[10] When applying Pennsylvania law to the issue of probable cause, there is a divergence among district courts regarding whether the existence of probable cause is a question for a judge or jury. See Bristow v. Clevenger, 80 F. Supp.2d 421, 433-34 (M.D. Pa. 2000)(analyzing the split among the courts and deciding that "the question of probable cause is a question for the court and not the jury"); Russoli v. Salisbury Township, 126 F. Supp.2d 821, 871 (E.D. Pa. 2000)(stating "[i]n a malicious prosecution case, the question of probable cause is for the court and not the jury"); Gilbert v. Feld, 842 F. Supp. 803, 815 (E.D. Pa. 1993) (stating that "Pennsylvania courts treat the existence of probable cause as a legal question for the court to decide before trial"); Simpson v. Montgomery Ward & Co., 46 A.2d 674, 676 (Pa. 1946)(stating "[t]here is no principle more firmly imbedded in the law than the principle that in a case of malicious prosecution, the question of want of probable cause for the criminal prosecution which gave rise to the civil action, is a question not for the jury but for the court.") But see, Gatter v. Zappile, 67 F. Supp.2d 515, 519 (E.D. Pa. 1999)(stating that the question of probable cause is generally a jury question); Telepo v. Palmer Township, 40 F. Supp.2d 596, 611 (E.D. Pa. 1999)(same). In this particular case, relying upon the analysis in Bristow and Pennsylvania law, the Court finds that the existence of probable cause is a legal question for the Court to decide. Bristow, 80 F. Supp.2d 803.

issues of fact, therefore, the Court will determine whether probable cause existed.

Based on the facts of this case, and drawing all reasonable inferences in favor of Mr. Douris, the Court finds that he has failed to show that the Defendants initiated the criminal proceeding against him without probable cause. The Court makes this finding of probable cause based on review of the following: (1) the facts and pleadings of this case; (2) notes of testimony in both the Court of District Justice Oliver Groman and the Common Pleas Court of Bucks County Pennsylvania (Defs.' Mot. Summ. J., Exs. C and D); (3) investigation notes of the incident by Detective Kostick (Id., Ex. L); (4) the Commonwealth of Pennsylvania Non-Traffic Citation Summons for harassment and disorderly conduct (Id., Ex. N); and (5) deposition transcripts of the parties and people involved in the incident (Id., Exs. B, E, K, M; Defs.' Reply Br. Pl.'s Resp. Mot. Summ. J., Ex. LL). The aforementioned evidence shows that, at the time of instituting the criminal charges against Mr. Douris, the Defendants honestly and reasonably believed that Mr. Douris was guilty of the crime of disorderly conduct. However, it is not the Defendants who shoulder the burden of proving probable cause, but it is Mr. Douris' burden to prove a lack of probable cause. Based on the significant evidence showing the existence of probable cause and the complete lack of evidence to the contrary,

Mr. Douris has failed to show that Defendants instituted the criminal proceedings against him without probable cause. This failure proves to be fatal to Mr. Douris' malicious prosecution claim, therefore, Defendants are entitled to summary judgment on Count X.

K. Count XI. Civil Conspiracy

Mr. Douris has abandoned this claim. (Pl.'s Resp. Defs.' Mot. Summ. J. at 25). Therefore, Count XI is dismissed with prejudice.

V. CONCLUSION

Summary judgment is denied regarding Mr. Douris' claim of discrimination under the ADA (Count I) because genuine issues of material fact exist. Summary judgment is granted in Ms. Costello's favor regarding Mr. Douris' Title III claim under the ADA (Count II), however, the Court denies Bucks County's Motion for Summary Judgment on this Count. Likewise, summary judgment is granted in Ms. Costello favor regarding Mr. Douris' claim of retaliation under the ADA (Count III), but denied as to Bucks County. Bucks County's Motion for Summary Judgment is denied regarding Mr. Douris' age discrimination claim under the ADEA (Count IV). Mr. Douris' civil rights conspiracy claim (Count V) is dismissed with prejudice because Mr. Douris has abandoned this claim. Ms. Costello is granted summary judgment, in her individual and official capacity, regarding Mr. Douris' section

1983 claim (Count VI). However, Bucks County's Motion for summary judgment pertaining to Mr. Douris' Count VI is denied. Defendants are granted summary judgment regarding Mr. Douris' PHRA claim (Count VII). As a result of the immunity provided under the PSTCA, both Defendants are granted summary judgment on Mr. Douris' state constitutional claims (Count VIII). Defendants are also granted summary judgment regarding both Mr. Douris' abuse of process claim (Count IX) and malicious prosecution claim (Count X). Mr. Douris' civil conspiracy claim (Count XI) is dismissed with prejudice because Mr. Douris has chosen to abandon this claim.

An appropriate Order follows.

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

JAMES GEORGE DOURIS, Plaintiff, v. COUNTY OF BUCKS, MARIE COSTELLO, and SCOTT BROBST, Defendants.	CIVIL ACTION No. 99-3357

ORDER

AND NOW, this 3rd day of July, 2001, after consideration of Defendants' Motion for Summary Judgment (Dkt. No. 37), and the Responses and Replies thereto, it is hereby ORDERED that:

1. Summary judgment is denied regarding Mr. Douris' claim of discrimination under the ADA (Count I) because genuine issues of material fact exist.
2. Summary judgment is granted in Ms. Costello's favor regarding Mr. Douris' Title III claim under the ADA (Count II), however, the Court denies Bucks County's Motion for Summary Judgment on this Count.
3. Likewise, summary judgment is granted in Ms. Costello's favor regarding Mr. Douris' claim of retaliation under the ADA (Count III), but denied as to Bucks County.
4. Bucks County's Motion for Summary Judgment is denied regarding Mr. Douris' age discrimination claim under the ADEA (Count IV).
5. Mr. Douris' civil rights conspiracy claim (Count V) is dismissed with prejudice because Mr. Douris has abandoned this claim.
6. Ms. Costello is granted summary judgment, in her individual and official capacity, regarding Mr. Douris' section 1983 claim (Count VI). However, Bucks County's Motion for summary judgment pertaining to Mr. Douris' Count VI is denied.
7. Defendants are granted summary judgment regarding Mr. Douris' PHRA claim (Count VII).

8. As a result of the immunity provided under the PSTCA, both Defendants are granted summary judgment on Mr. Douris' state constitutional claims (Count VIII).

9. Defendants are also granted summary judgment regarding both Mr. Douris' abuse of process claim (Count IX) and malicious prosecution claim (Count X).

10. Mr. Douris' civil conspiracy claim (Count XI) is dismissed with prejudice because Mr. Douris has chosen to abandon this claim.

11. Since summary judgment has been granted in Ms. Costello's favor regarding all claims against her, Ms. Costello is dismissed from this action with prejudice.

12. As a result of the Court's disposition of Defendants' Motion for Summary Judgment, the parties shall file their Joint Pretrial Order on or before July 13, 2001. This case shall be immediately placed in the Court's trial pool, subject to the rules of the Legal Intelligencer, on the date of the filing of the Joint Pretrial Order.

BY THE COURT:

Robert F. Kelly, J.