

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

SELINA ROBERTS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
UNIVERSITY OF PENNSYLVANIA,	:	
et al.,	:	
Defendants.	:	NO. 00-3377

M E M O R A N D U M

Newcomer, S.J.

December , 2001

Defendants' Motion for Summary Judgment is presently before the Court.

**I.           BACKGROUND**

In her Amended Complaint, pro se plaintiff, Selina Roberts ("Roberts" or "Plaintiff") alleges that the Trustees of the University of Pennsylvania (the "University") violated her rights under 42 U.S.C. § 2000 et seq. Specifically, Plaintiff alleges that the University allowed a sexually hostile work environment to exist in violation of 42 U.S.C. § 2000 e-2(a)(1), that the University discriminated against her on the basis of race in violation of 42 U.S.C. § 2000e-5, and that the University unlawfully retaliated against her for complaints of sexual harassment she made while a University employee. The University has filed a Motion for Summary Judgment alleging that no issue of material fact exists and it is entitled to judgment as a matter of law. Plaintiff has not filed a response to that Motion.

Accordingly, the University presents, and the record supports, the following uncontroverted facts which this Court bases its decision upon today:<sup>1</sup> The University employed Plaintiff as the Assistant Director of its Afro-American Studies Program (the "AASP") from October 1991 until January 1994, when the University of Pennsylvania terminated her employment. During that entire period, Dr. John Roberts served as Director of the AASP and Plaintiff's supervisor. When the University hired Plaintiff, two other full time employees worked with her besides Dr. Roberts: Daniel Butler, an African-American male who was an Office Administrative Assistant, and Claude Thompson, and African-American male secretary. By early 1992, Butler and Thompson no longer worked at the University, and Thompson was replaced by Audrey Smith-Bey in early 1992. In October 1991, Gale Ellison, a graduate student, served as a part-time Program Coordinator of the AASP, and in August 1993, assumed that position full time.

Plaintiff's Amended Complaint alleges that "during the time when Plaintiff worked at the University of Pennsylvania, John Roberts engaged in sexual harassment specifically directed

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<sup>1</sup>See Anchorage Associates v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175-76 (3d Cir. 1990) (finding that a party's failure to respond to a motion for summary judgment "should be construed as effecting a waiver of the opponent's right to controvert the facts asserted by the moving party in the motion for summary judgment or the supporting material accompanying it").

towards the Plaintiff by the use of sexual language which was offensive to the plaintiff." (Amended Complaint at ¶ 21). Plaintiff's Amended Complaint further alleges that Dr. Roberts and two other University employees "conspired to retaliate against the plaintiff for her complaints against John Robert's [sic] irrational hostile behavior and sexual harassment directed to her." (Amended Complaint at ¶ 42). Through discovery, Defendants have better defined Plaintiffs' allegations.

**A. Plaintiff's Allegations of Sexual Harassment**

In her deposition, Plaintiff describes the harassment she faced at the University as a series of "collected little behaviors" including "verbal conduct" and "male based bullying type of behavior on the grounds of gender." (Roberts' Deposition at 53). The Court has fully reviewed that deposition, and finds that Plaintiff recounts several specific incidents, and she cites to approximately 20 instances of allegedly sexually harassing behavior occurring between October 1991 and July 1993. Many of these twenty instances concern statements or conduct, by Dr. Roberts, or Dr. Ralph Smith, another black male faculty member.<sup>2</sup>

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<sup>2</sup>E.g., Roberts' Deposition at p. 14 ("I feel that John Roberts did something which was very inappropriate toward me in terms of creating a hostile environment. What he did was to use my name as a portion of a joke. . . It was concerned with me being a possible mate with another male employee of the University . . . I was offended); Roberts' Deposition at p. 58 (I was offended by Ralph Smith swearing at me. . . [a]nd I was offended by the fact that John Roberts laughed about it. . .); Roberts' Deposition at p. 210 ("Now there is another issue and

In addition to these comments, Plaintiff often found Dr. Roberts' laughter or glaring looks undermining, inappropriate and offensive.

The specific incidents Plaintiff discussed in her deposition involve Dr. Roberts, four of them from before November 1993. The first comment occurred in September or October 1992 at a staff meeting where Dr. Roberts told Plaintiff that the entire AASP full time staff, including himself, did not like her. When Plaintiff did not respond to that comment, Dr. Roberts told Plaintiff she was the coldest woman he had ever met, and that she was the type of woman who would come into the office and shoot him and everyone else. (Roberts' Deposition at p. 133).

The second statement occurred in December 1992 when Dr. Roberts reassigned a project with a short deadline from Ms. Ellison to Plaintiff. When Plaintiff's facial expression evidenced confusion, Dr. Roberts stated that Plaintiff's face looked "like that of a virgin who I just asked to go to bed and sleep with you, and I don't even know if you are married or not." (Roberts' Deposition at 23-24).

Dr. Roberts made the third allegedly harassing statement in January 1993 when he said to Plaintiff that she

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that is John Robert's behavior in general when it came to me and male associates or males in general throughout the University . . . he made increasingly vulgar and nasty commentary directed toward me, and one of the things I particularly remembered to this day").

looked really nice and looked just like his ex-wife, that her body was shaped like his ex-wife, and that she and his ex-wife had other things in common besides their appearance.

The last comment that Plaintiff specifically recalls occurring before November 1993 involved one Dr. Roberts made concerning the arrival of Ernest Gaines, a visiting black male lecturer, to the University. When Plaintiff asked Dr. Roberts about the activities Mr. Gaines would become involved with at the University, Dr. Roberts allegedly stated that he did not care what he did when he got to campus and that "he could stand next to the wall and piss on it for all he cared." (Roberts' Deposition at 211-12).

After November 1993, and before the University terminated her employment in January 1994, Plaintiff alleges the harassment continued. Plaintiff alleges that Dr. Roberts continued to make statements and behaved in ways that she found offensive and inappropriate. Some of this conduct again included glares or laughter. Additionally, in December 1993, while at a social function with Ms. Ellison and Ms. Smith-Bey, Dr. Roberts made a toast that he "had been given permission to fire" Plaintiff. Plaintiff was not present at that function, but Ms. Smith-Bey told her about the incident.

Then, on January 25, 1994, one day after the University terminated Plaintiff's employment, Dr. Roberts allegedly choked

Plaintiff's neck, pinned her against the wall, and while holding her off the ground by her neck, raised his right hand in a fist as if to strike her as Plaintiff's feet were dangling and kicking. This incident allegedly occurred in the hallway outside the AASP office at 8:00 a.m.

In her Amended Complaint, Plaintiff specifically refers to one more incident, although when this incident occurred is unclear. Sometime during Plaintiff's University employment, Plaintiff "spoke to John Roberts about possibly resigning from her position because of her perception of a personality conflict." (Amended Complaint at ¶ 23). Roberts alleges that Dr. Roberts threatened to withhold a good reference if she resigned, and when Plaintiff requested he provide annual evaluations, he refused. When Plaintiff reminded Roberts about her idea for an evaluation, Roberts allegedly struck Plaintiff with a door.

**B. Plaintiff's Allegations of Racial Discrimination**

In her deposition, Plaintiff concedes that the University did not racially discriminate against her while it employed her. However, Plaintiff's Amended Complaint asserts that when she complained to Walter Wales, former Deputy Provost at the University, about her claims of sexual harassment, Mr. Wales characterized her claims as a "black thing", and treated

her claims differently that he treated white women's claims.<sup>3</sup>

**C. Plaintiff's Allegations of Retaliation**

Plaintiff's Amended Complaint alleges that Dr. Roberts, Allen Green, and William Holland conspired to retaliate against Plaintiff for Plaintiff's complaints about Dr. Roberts.<sup>4</sup> Specifically, Plaintiff alleges that those three men "agreed to terminate plaintiff on the contrived grounds of poor work performance. . ." (Amended Complaint at ¶ 42(a)).

On August 26, 1994 Plaintiff filed a complaint against the University with the Pennsylvania Human Relations Commission ("PHRC") and filed a similar complaint with the Equal Employment Opportunity Commission ("EEOC") on September 12, 1994. On June 27, 2000, the EEOC issued Plaintiff a right to sue letter.

In light of these facts, the Court now turns to a discussion of Defendants' Motion for Summary Judgment.

**II. DISCUSSION**

**A. Legal Standard**

In this district, when a party fails to respond to a motion for summary judgment, the motion is governed by Federal

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<sup>3</sup>Plaintiff also alleges that Claire Feagan, the University President, failed to undertake action to Plaintiff's satisfaction. However, upon a review of Plaintiff's Amended Complaint, and her deposition, the Court concludes that Plaintiff has not alleged racial discrimination against Ms. Feagan.

<sup>4</sup>At this point, the Court knows nothing more about Allen Green and William Holland than their names.

Rule of Civil Procedure 56(c). Loc. R. Civ. P. 7.1(c). Thus, summary judgment is appropriate "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 a judgment as a matter of law." Fed. R. Civ. P. 56(c) (1994). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324.

A genuine issue is one in which 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). When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-movant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary

judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

Finally, because Plaintiff has failed to respond to Defendants' Motion, and because Defendants do not have the burden of proof on any issues raised in Plaintiff's Amended Complaint, summary judgment is appropriate if this Court "determine[s] that the deficiencies in [Plaintiff's] evidence designated in or in connection with the motion entitle [Defendants'] to judgment as a matter of law." Anchorage Assocs. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).

**B. Allegations of Sexual Harassment**

Defendants argue that Plaintiff's allegations of harassment that occurred before November 15, 1993 are time barred. Under Title VII, a Plaintiff must file a complaint with the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discrimination or within 300 days of the alleged discrimination if the person has initially instituted proceedings with a state or local agency with authority to grant or seek relief from such practice, such as the PHRC. 42 U.S.C. § 2000e-5(e); Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 480 (3d Cir. 1997). Plaintiff filed her discrimination claims with the EEOC on September 12, 1994 meaning that any claims of discrimination arising before November 15, 1993 may be time

barred.

However, “[f]iling a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite [and]. . . is subject to waiver, estoppel, and equitable tolling.” Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982). When there is a “discrete trigger event” or overt discrimination, this time restriction may be more inflexible than when a plaintiff does not know she has been harmed or where there is a continuing violation. Rush, 113 F.3d at 480-81 (citing West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995)).

In their memorandum in support of their Motion, Defendants preemptively argue that Dr. Roberts’ allegedly harassing conduct did not constitute a “continuing violation”. For a plaintiff to show a continuing violation: (1) she must allege at least one act of discrimination that occurred within the 300 days, and (2) she must show a continuing pattern of discrimination, more than just isolated or sporadic acts of intentional discrimination. Rush, 113 F.3d at 481 (citing West v. PECO, 45 F.3d 744, 754-55 (3d Cir. 1995). When determining whether there was a continuing pattern of discrimination, a court should consider the subject matter, frequency, and permanence of the discrimination. Rush, 113 F.3d at 482.

Accordingly, a plaintiff may include events that occurred outside the limitations period in her claim if it “would

have been unreasonable to expect the plaintiff to sue before the statute ran on that conduct" or if the earlier conduct would only have been actionable in light of events that occurred later within the limitations period. Rush, 113 F.3d at 482 (citing Galloway v. General Motors Service Parts Operations, 78 F.3d 1164, 1166 (7th Cir. 1996)). Thus, some courts have held that when a plaintiff knows or should have known that her rights are being violated, but does not sue, the plaintiff may not take advantage of the continuous violation doctrine. E.g., LaRose v. Philadelphia Newspapers, Inc., 21 F. Supp.2d 492, 499 (E.D.Pa. 1998); Galloway v. General Motors Service Parts Operations, 78 F.3d 1164, 1166 (7th Cir. 1996).

Here, Defendants concede that Plaintiff alleges at least one act of discrimination within the 300 days of her EEOC complaint. Further, Plaintiff has shown a continuing pattern of allegedly harassing conduct. Indeed, in addition to the specific incidents of harassment Plaintiff recounted before November 1993, Plaintiff cites to approximately 20 instances of allegedly sexually harassing behavior occurring between October 1991 and July 1993. However, the Court cannot describe any of these incidents as ones that would cause Plaintiff to know that the conduct she faced was unlawful. As Plaintiff describes the harassing conduct, it was not "graphic stuff that people normally

complain about"<sup>5</sup> but a series of "collected little behaviors" that over time through November 1993, made her work environment hostile.

To demonstrate that Plaintiff knew the University violated her rights before November 1993, Defendants make much of a January 1993 memorandum Plaintiff wrote to Carol Speight, a staff relations specialist. In her deposition, Plaintiff says that the memorandum described a single incident "involving Ralph Smith. . .engaging in this sort of rampage, verbal rampage where there was a lot of swearing involved over some issue that John Roberts and I had previously discussed and agreed to." (Roberts Deposition at 52-53).<sup>6</sup> However, that memorandum would fail to demonstrate that Plaintiff knew the University violated her rights before November 1993 because that memorandum allegedly recounted only a single incident. If anything, and examining the evidence in a light most favorable to the Plaintiff as this Court must, that memorandum tends to demonstrate that Plaintiff did not know that the University allegedly violated her rights. Indeed, had Plaintiff known that other conduct she faced was unlawful, she could have also recounted that conduct in the January 1993 memorandum. That she did not include such conduct in her

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<sup>5</sup>Roberts' Deposition at 85.

<sup>6</sup>Neither party has produced that memorandum for the Court to inspect.

memorandum suggests that she may not have known it was unlawful at the time. Thus, the Court finds that none of her claims are time barred, and the Court now examines whether those claims give rise to a Title VII claim.

A plaintiff may establish a Title VII violation if she can show that discrimination based on race or gender created a hostile or abusive working environment. Patterson v. McLean Credit Union, 491 U.S. 164, 180 (1989). The Third Circuit Court of Appeals requires five elements for a successful gender-based discrimination claim against an employer: "(1) the employee suffered intentional discrimination because of [her] sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the existence of respondeat superior liability." Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990).

Defendants concede that Plaintiff may be able to satisfy the first, second, and fifth elements above, but that Plaintiff cannot demonstrate the second or fourth elements.<sup>7</sup>

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<sup>7</sup>Although Defendants memorandum says that Plaintiff is "unable to prove the third and fourth elements", after reviewing Defendants arguments, it is clear to the Court that Defendants meant to write "second and fourth elements." (Defendants' Memorandum of Law in Support of [Their] Motion for Summary Judgment).

When determining whether a work environment is objectively hostile, courts are not to examine the scenario on an incident-by-incident basis, but instead must consider the totality of the circumstances. Andrews, 895 F.2d at 1485; Stair v. Lehigh Valley Carpenters Local Union No. 600, 813 F. Supp. 1116, 1119 (E.D.Pa. 1993).

To be severe or pervasive, the conduct Plaintiff complains about must create an objectively hostile or abusive work environment. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80 (1998); Bishop v. National R.R. Passenger Corp., 66 F. Supp.2d 650, 663 (E.D.Pa. 1999). Here, Plaintiff cites to approximately 20 instances of allegedly sexually harassing behavior occurring between October 1991 and July 1993. These incidents included not only glares and laughter that Plaintiff found inappropriate, but jokes that Plaintiff was intimately involved with another male employee, cursing at Plaintiff, undermining Plaintiff's authority at work, and making vulgar comments to her. Additionally, Plaintiff specifically refers to six incidents.<sup>8</sup> Two of those incidents involved physical force, the choking incident and the door striking incident, and even

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<sup>8</sup>1) Dr. Roberts calling Plaintiff the "coldest woman"; 2) Dr. Roberts making the face of a virgin comment; 3) Dr. Roberts' ex-wife reference; 4) Dr. Roberts piss on the wall comment regarding Mr. Gaines; 5) Dr. Roberts toasting his ability to fire Plaintiff; and 6) the choking incident after the termination of Plaintiff's employment.

mere threats of physical force can be an important factor in determining severity.<sup>9</sup> See Bishop v. National R.R. Passenger Corp., 66 F. Supp.2d 650, 664 (E.D.Pa. 1999). After reviewing Plaintiff's allegations in their totality, the Court cannot say that Defendants did not subject Plaintiff to an objectively hostile or abusive work environment as a matter of law.

Similarly, the Court finds Defendants' argument that the alleged conduct would not detrimentally affect a reasonable person of the same sex in Plaintiff's position unpersuasive. To support its argument, Defendants argue that Plaintiff cannot demonstrate that the conduct at issue was "severe and pervasive enough to affect her psychological well being." (Defendants' Memorandum of Law in Support of [Their] Motion for Summary Judgment at 24). However, in so arguing, Defendants invite this Court to err.

Indeed, the Supreme Court has held that "[s]uch an inquiry may needlessly focus the factfinder's attention on

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<sup>9</sup>"[O]ffensive conduct is not necessarily required to include sexual overtones in every instance ... to detrimentally affect a female employee." Andrews, 895 F.2d at 1485. Thus, a court "may not properly discount that part of the total scenario that does not include an explicit sexual component." Harley v. McCoach, 928 F. Supp. 533, 540 (E.D.Pa. 1996).

Although the choking incident occurred after Plaintiff's employment was terminated, it only occurred one day later, and drawing all reasonable inferences in the light most favorable to Plaintiff, one could infer that the choking incident was highly reflective of Plaintiff's hostile employment conditions.

concrete psychological harm, an element Title VII does not require. Harris, 510 U.S. at 22 (finding that the district court erred in relying on whether the conduct "seriously affect[ed] plaintiff's psychological well-being" or led her to "suffe[r] injury"). Instead, the Supreme Court holds that harassing conduct is actionable where the work "environment would reasonably be perceived, and is perceived, as hostile or abusive." Id.; see also Andrews 895 F.2d at 1485 (the district court "should look at all of the incidents to see if they produce a work environment hostile and offensive to women of reasonable sensibilities"). As the Court explained above, when looking at Plaintiff's allegations in their totality, Defendants have failed to demonstrate, and the Court cannot conclude, that Plaintiff's work environment was not hostile and offensive to the reasonable woman. Thus, while plaintiffs case is not a strong one, the Court will not grant summary judgment in favor of the Defendants on Plaintiff's claim of sexual harassment.

**C. Allegations of Racial Discrimination and Retaliation**

Although Plaintiff's Amended Complaint alleges Walter Wales characterized her sexual harassment claims as a "black thing", at her deposition, Plaintiff conceded that Mr. Wales did not say that. (Roberts' Deposition, at 238). Thus, the Court will not consider that claim, and will only consider Plaintiff's claim that Mr. Wales treated her claims differently than he

treated white women's claims of sexual harassment. Upon consideration of that claim, the Court finds that issues of material fact preclude summary judgment on Plaintiff's racial discrimination claim. For example, Defendants question the credibility of Plaintiff's claim that Mr. Wales treated white women differently, specifically a white woman named Susan.<sup>10</sup> Likewise, whether Plaintiff was entitled to a transfer remains a question of fact.<sup>11</sup>

Finally, Defendants do not argue that the Court should grant summary judgment against Plaintiff's claim that Dr. Roberts, Allen Green, and William Holland "agreed to terminate plaintiff on the contrived grounds of poor work performance. . . ." (Amended Complaint at ¶ 42(a)). Thus, the Court will not dismiss that claim either.

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<sup>10</sup>Neither party further identifies this "Susan", but in her deposition, Plaintiff explains that she was a lecturer at the University in the Fine Arts Program who suffered from sexual harassment.

<sup>11</sup>Although Defendants contend that Plaintiff concedes she was ineligible for a transfer, Defendants fail to point to such a concession in the record. Moreover, the Court is unconvinced that "close scrutiny of Plaintiff's allegations reveal[s] that she believes the adverse employment action taken against her was University of Pennsylvania's failure to transfer her to an different unidentified department." (Defendants' Memorandum of Law in Support of [Their] Motion for Summary Judgment at 26).

For the foregoing reasons the Court will deny Defendants' Motion for Summary Judgment. An appropriate Order will follow.

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Clarence C. Newcomer, S.J.