

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

MARIA IACONO,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 01-4486
	:	
TOLL BROTHERS, INC.,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

DECEMBER 19, 2001

Presently before this Court is the Motion to Dismiss and for Summary Judgment filed by the Defendant, Toll Brothers, Inc. (“Toll”). In their Motion, Toll asks this Court to dismiss the following Counts of the Plaintiff Maria Iacono’s (“Iacono”) Complaint: Count II (sex discrimination under Title VII, 42 U.S.C. § 2000e-2), Count III (Violation of the Pennsylvania Constitution Article 1, § 28), Count V (sex discrimination under 43 Pa. Con. Stat. § 955(a)), Count VI (negligent and intentional infliction of emotional distress), and Count VII (defamation). Toll also asks this Court to grant summary judgment on Count I (retaliation under Title VII, 42 U.S.C. § 2000e-3) and Count IV (retaliation under 43 Pa. Con. Stat. § 955(d)) of the Complaint. This Court will deny the Motion to dismiss as to Counts II, III, V and VI, however, for the reasons outlined below, this Court will grant the Motion to dismiss as to Count VI, negligent and intentional infliction of emotional distress. Furthermore, this Court will deny the Motion for Summary Judgment on Counts I and IV.

I. BACKGROUND

Iacono became a Sales Assistant with Toll at its Uwchan Woods community on

February 6, 1999. In June 1999, she was transferred to Toll's Swedesford Chase community. Iacono alleges that while she was employed at the Swedesford Chase community, her Sales Manager, John Bell ("Bell") began to sexually harass her. According to Iacono, Bell repeatedly asked her to socialize with him after work and on weekends and would make fun of her when she would refuse. Bell allegedly asked Iacono if she didn't like sex and called her an ice princess. Iacono alleges that Bell then began to retaliate against her by, *inter alia*, making her look incompetent at her job and embarrassing her in front of her clients. Iacono also states that Bell would accuse her of trying to take his job, would interfere with her work, and would be abusive to her and belittle her.

In December 1999, Iacono complained about Bell's behavior to Loretta Erickson ("Erickson"), a Senior Sales Manager, and asked for a transfer to another Toll site. Erickson allegedly told Iacono that if she complained formally, Bell would have her fired. Iacono then filed a report with Michele Wolfe, Assistant Vice President of Human Resources, and again requested a transfer. After the initial transfer request was refused, Iacono was eventually transferred away from Bell to Toll's Concord Chase community in January 2000. However, after the transfer, Iacono alleges that Bell would call her new manager Lisa Handel ("Handel") and tell her that Iacono was not reliable or dependable and was moody. Iacono also alleges that in retaliation for complaining about Bell, *inter alia*, the Vice President ignored her, her ideas were ridiculed, and she was told that she was no longer on the fast track to management. Iacono alleges that as a result of the discrimination and retaliation she was forced to resign on June 7, 2000.

Iacono filed here charge of discrimination and harassment with the Equal Employment Opportunity Commission and the Pennsylvania Human Relations Commission on

December 5, 2000. Iacono originally initiated this action by Writ of Summons in state court on June 7, 2001. The parties agreed to move the case to this Court and Iacono filed her Complaint with this Court on September 4, 2001.

II. STANDARD

A motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a Motion to Dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

III. DISCUSSION

Because it is appropriate to dismiss Count VI of the Complaint, negligent and intentional emotional distress, this Court will discuss the analysis behind our decision. The remainder of the Counts, which are not being dismissed, will not be discussed. Iacono alleges that as a result of Bell's conduct, she has been intentionally and negligently inflicted with emotional distress. First, the Pennsylvania Workers Compensation Act, 77 Pa. C.S.A. § 481(a) ("WCA"), "provides the sole remedy 'for injuries allegedly sustained during the course of employment.'" Matczak v. Frankford Candy and Chocolate Co., 136 F.3d 933, 940 (3d Cir. 1997) (quoting Dugan v. Bell Tel. of Pa., 876 F. Supp. 713, 723 (W.D. Pa. 1994)). "The exclusivity provision of that statute bars claims for 'intentional and/or negligent infliction of emotional distress [arising] out of

[an] employment relationship.” Id. (quoting Dugan, 876 F. Supp. at 724). Therefore, Iacono’s claim for negligent infliction of emotional distress is pre-empted by the WCA and thus must be dismissed.

However, the WCA does provide one exception to the rule barring claims for intentional infliction of emotional distress if the actor was motivated by personal animus. 77 Pa. Stat. § 411(1); Fugarino v. Univ. Servs., 123 F. Supp.2d 838, 843-44 (E.D. Pa. 2000). The personal animus exception requires conduct ““that is not normally expected to be present in the workplace.”” Hettler v. Zainy Brainy, Inc., No. 99-3879, 2000 WL 1468550, at *5 (E.D. Pa. Sept. 27, 2000)(quoting Snyder v. Specialty Glass Prods., Inc., 658 A.2d 366, 374 (Pa. Super. 1995)). In Durham Life Insurance Co. v. Evans, 166 F.3d 139 (3d. Cir. 1999), the court acknowledged that “[c]ases interpreting Pennsylvania law are split on the propriety of allowing IIED claims for sexual harassment on the job.” Id. at 160. However, the Durham court further explained that it believed that the Pennsylvania Supreme Court would find that the WCA would pre-empt such claims because “[s]exual harassment is a well-recognized workplace problem” and does not fall into the gambit of personal animus. Id. at 160 n. 16. Furthermore, because all of the allegedly offensive conduct occurred at work and arose out of the employment relationship, the personal animus exception is not applicable. See DeWyer v. Temple Univ., No. 00-1665, 2001 WL 115461, at *5 (E.D. Pa. Feb. 5, 2001). Therefore, Iacono’s claim for intentional infliction of emotional distress must also be dismissed as it is pre-empted by the WCA.

An appropriate Order follows.

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ORDER

AND NOW, this 19th day of December, 2001, upon consideration of the Motion to Dismiss and for Summary Judgment (Dkt. No. 3), filed by Toll Brothers, Inc. and any Responses or Replies thereto, it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part. It is hereby further ORDERED that Count VI of the Complaint is DISMISSED with prejudice.

BY THE COURT:

Robert F. Kelly,	Sr. J.
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