

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

SHERYL D. HUNTER, M.D.,	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
TEMPLE UNIVERSITY SCHOOL OF	:	No. 03-1649
MEDICINE,	:	
Defendant.	:	

MEMORANDUM AND ORDER

Schiller, J.

October 29, 2003

Presently before the Court is Defendant’s motion to dismiss Plaintiff’s Amended Complaint and Plaintiff’s motion to remand the action to the Court of Common Pleas of Philadelphia County. For the reasons set forth below, I grant Plaintiff’s motion to remand and deny Defendant’s motion as moot.

I. BACKGROUND

Plaintiff Sheryl D. Hunter, M.D. brought this suit in the Court of Common Pleas of Philadelphia County against Defendant Temple University School of Medicine (“Temple”) for race and gender discrimination and retaliation under 42 U.S.C. § 1981, Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and the Pennsylvania Human Relations Act (“PHRA”), 43 PA. CONS. STAT. ANN. § 955. Plaintiff also brought state law claims of breach of contract, promissory estoppel, equitable estoppel and negligent misrepresentation. On March 18, 2003, Defendant removed the action to this Court on the basis of 28 U.S.C. § 1441 and federal question jurisdiction

under 28 U.S.C. § 1331.

After removal, Defendant answered the Complaint, and on June 26, 2003, the Court held a conference with counsel for the parties pursuant to Federal Rule of Civil Procedure 16. On June 27, 2003, the Court entered a scheduling order. Thereafter, on September 16, 2003, Plaintiff was granted leave to amend her complaint. Plaintiff's Amended Complaint included only the state law claims previously alleged and dropped all federal discrimination claims with prejudice. (Am. Compl.; Pl.'s Mot. for Leave to Amend ¶ 5.) Defendant now moves the Court to dismiss the Amended Complaint under Federal Rule of Civil Procedure 12(b)(6) on the grounds of res judicata. In response to Defendant's motion, Plaintiff moves the Court to remand the action to the Court of Common Pleas of Philadelphia County.

II. DISCUSSION

Where a plaintiff drops all of the federal claims upon which removal jurisdiction was originally based, a district court has wide discretion in deciding whether to retain jurisdiction over the pendent state law claims. *See* 28 U.S.C. § 1367 (2003); *see also Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 357 (1988). A district court's discretion, however, must be guided by "the principles of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine." *Carnegie-Mellon Univ.*, 484 U.S. at 357; *see also Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 233 (3d Cir. 1995).

Defendant asserts, citing *Guillot v. Bellsouth Telecommunications, Inc.*, 923 F. Supp. 112 (W.D. La. 1996), that the Court should retain jurisdiction because Plaintiff attempted to "forum shop" as evidenced by the voluntary dismissal of her federal claims. However, as Defendant notes,

the district court's decision in *Guillot* was based on the fact that the court had already expended considerable judicial resources on the case given that over sixty pleadings were filed in the fifteen month period after removal. *Id.* at 114. In the present case, by contrast, during the brief period between removal and Plaintiff's decision drop her federal claims, the parties did not file motions that required the Court to expend considerable time or judicial resources on this case.

Similarly, forum shopping simply is not present here. *See Trans Penn Wax Corp.*, 50 F.3d at 233 (holding that "the district court can consider whether the plaintiff has engaged in any manipulative tactics" in determining whether to retain jurisdiction). Plaintiff originally filed her Complaint in state court and was only brought into federal court pursuant to Defendant's removal. Furthermore, Plaintiff did not drop her federal claims as a reaction to an unfavorable ruling by this Court. Rather, Plaintiff dropped her federal claims at an early stage of the proceeding, and as such, it best promotes the values of economy, convenience, fairness, and comity to remand the case to the Court of Common Pleas of Philadelphia County. *Carnegie-Mellon Univ.*, 484 U.S. at 351 (noting that where claims under federal law were "eliminated at an early stage of the litigation, the District Court had a powerful reason to choose not to continue to exercise jurisdiction"). Thus, in light of these considerations, I decline to retain jurisdiction over Plaintiff's state law claims.

Finally, in remanding this case to the Court of Common Pleas of Philadelphia County, I do not reach the merits of Defendant's motion to dismiss and thus deny it as moot. *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) ("A final determination of lack of subject-matter jurisdiction of a case in a federal court, of course, precludes further adjudication of it."); *In re Orthopedic "Bone Screw" Prods. Liab. Litig.*, 132 F.3d 152, 155 (3d Cir. 1997) ("If a court then determines that it lacks subject matter jurisdiction, it cannot decide the case on the merits. It has no authority to do so."). An appropriate Order follows.

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

SHERYL D. HUNTER, M.D.,	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
TEMPLE UNIVERSITY SCHOOL OF	:	No. 03-1649
MEDICINE,	:	
Defendant.	:	

ORDER

AND NOW, this **29th** day of **October, 2003**, upon consideration of Plaintiff's Motion to Remand, Defendant's response thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Plaintiff's Motion to Remand (Document No. 15) is **GRANTED**.
2. This matter is **REMANDED** to the Court of Common Pleas of Philadelphia County.
3. Defendant's Motion to Dismiss (Document No. 13) is **DENIED as moot**.
4. The Clerk of Court is directed to close this case for statistical purposes.

BY THE COURT:

Berle M. Schiller, J.