

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

RICHARD N. EDIE, M.D.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 04-2749
	:	
	:	
v.	:	
	:	
	:	
THOMAS JEFFERSON UNIVERSITY,	:	
JEFFERSON MEDICAL COLLEGE OF	:	
THOMAS JEFFERSON UNIVERSITY,	:	
THOMAS JEFFERSON UNIVERSITY	:	
HOSPITAL, JEFFERSON UNIVERSITY	:	
PHYSICIANS, and DONALD DAFOE	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, S. J.

November 15, 2004

Presently before the Court is Defendant Donald Dafoe's ("Defendant Dafoe") Motion to Dismiss Counts I, II, III, IV, V, VII, IX and X¹ of Plaintiff's Complaint. Defendants Thomas Jefferson University ("TJU"), Jefferson Medical College of Thomas Jefferson University ("JMC"), and Jefferson University Physicians ("JUP") (collectively referred to as "University Defendants")², joined in Defendant Dafoe's Motion as to Counts II, III, IV, VII, IX and X. In response to Defendants' Motion to Dismiss, Plaintiff submitted a brief in opposition,

1. Defendant Dafoe was not named as a party to Counts VI and VIII.

2. Plaintiff filed a Notice of Dismissal on August 27, 2004, dismissing, without prejudice, Defendant Thomas Jefferson University Hospital as a party to this action.

to which Defendant Dafoe filed a response. For the reasons discussed below, Defendants' Motion to Dismiss is granted in part and denied in part.

I. BACKGROUND

On or around June 22, 2004, Plaintiff filed a complaint in this Court alleging the following ten causes of action: Count I - Age Discrimination under the Federal Age Discrimination in Employment Act; Count II - Age Discrimination under the Pennsylvania Human Relations Act; Count III - Wrongful Termination; Count IV - Defamation; Count V - Breach of Contract Against All Defendants; Count VI - Breach of Contract Against Jefferson Medical College; Count VII - Breach of Covenant of Good Faith and Fair Dealing; Count VIII - Negligent Retention of an Unfit Supervisor; Count IX - Intentional Infliction of Emotional Distress; and Count X - Negligent Infliction of Emotional Distress.

Defendant Dafoe filed a Motion to Dismiss Counts I, II, III, IV, V, VII, IX and X. The University Defendants joined Defendant Dafoe's motion with regard to Counts II, III, IV, VII, IX and X. The University Defendants filed an Answer to Counts I, V, VI and VIII and do not move to dismiss those Counts.

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(6) is granted where the plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). This motion "may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000). While the Court must accept all factual allegations in the

complaint as true, it “need not accept as true ‘unsupported conclusions and unwarranted inferences.’” Doug Grant, Inc. v. Greate Bay Casino Corp., 232 F.3d 173, 183-84 (3d Cir. 2000) (citing City of Pittsburgh v. West Penn Power Co., 147 F.3d 256, 263 n.13 (3d Cir. 1998)). In a 12(b)(6) motion, the defendant bears the burden of persuading the Court that no claim has been stated. Gould Electronics, Inc. v. United States, 220 F.3d 169, 178 (3d Cir. 2000).

III. DISCUSSION

A. Count I - Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*

Defendant Dafoe moved to dismiss this claim arguing that “it is well-settled that the ADEA does not afford an employee a cause of action against other individual employees.” (Def.’s Br. At 6.) In his opposition brief, Plaintiff conceded that Defendant Dafoe’s argument is correct, stating that he “voluntarily withdraws Count I against Dafoe.” (Pl.’s Br. At 5.) The University Defendants did not join in Defendant Dafoe’s Motion to Dismiss this claim. Accordingly, Count I is dismissed, with prejudice, with regard to Defendant Dafoe but remains as to all other Defendants.

B. Count II - Age Discrimination under the Pennsylvania Human Relations Act

Defendant Dafoe, joined by the University Defendants, moved to dismiss this claim arguing that Plaintiff failed to exhaust his administrative remedies. After Plaintiff responded by showing that he had exhausted his administrative remedies, Defendant Dafoe stated in his reply brief, “Plaintiff has remedied the jurisdictional deficiencies cited in Dr. Dafoe’s opening brief pertaining to his failure to exhaust administrative remedies.” (Def.’s Reply Br. at

11.) Since this issue is no longer in dispute, the Motion to Dismiss Count II is denied with regard to all Defendants.³

C. Count III - Wrongful Termination

Defendant Dafoe, joined by the University Defendants, moved to dismiss this claim for the following two reasons: 1) Plaintiff was employed pursuant to an employment contract and, therefore, was not an at-will employee as required to proceed under this theory; and 2) at-will employees can only bring this cause of action if there is a violation of public policy, and Plaintiff had not alleged a public policy violation. In response, Plaintiff admitted that he pled the existence of an employment contract but argued that he pled this cause of action in the alternative, which is permitted by the Federal Rules of Civil Procedure. Plaintiff also argued that he has properly pled a violation of public policy.

While Plaintiff is correct that the Federal Rules of Civil Procedure do permit plaintiffs to plead causes of action in the alternative,⁴ the issue is moot in this case. There is no dispute that Plaintiff had an employment contract and was not an at-will employee. Plaintiff has pled the existence of an employment contract and has attached the contract to his complaint. The terms of the contract (i.e., term, compensation, responsibilities etc.) are clear, and the contract has been properly executed. Furthermore, and most importantly, Defendants do not dispute the existence of the contract; in fact, Defendants fully admit that Plaintiff's employment relationship

3. Defendant Dafoe asks the Court to decline supplemental jurisdiction over this claim. The Court, however, does not agree with Defendant Dafoe's argument. As Count I against the University Defendants will remain before this Court, and the state law claims against Defendant Dafoe incorporate identical facts and will include many of the same questions of law as the claims against the University Defendants, Judicial economy and common sense dictate that this case be litigated as one action.

4. Federal Rule of Civil Procedure 8(e)(2).

was governed by an employment contract. Specifically, Defendants stated, “Defendants do not challenge that Plaintiff in fact had a contract of employment for the definite three-year period as set forth in the contract itself, Plaintiff’s Exhibit B [to the Complaint].” (Def.’s Reply Br. at 8). Given that the University Defendants have joined Defendant Dafoe’s motion to dismiss, every Defendant has admitted the existence the contractual relationship. There is no dispute among the parties that Plaintiff had an employment contract and was not an at-will employee. Accordingly, a cause of action for wrongful termination cannot stand. The Court hereby Grants Defendants’ Motion to Dismiss Count III, without prejudice, noting that Defendants will be held to their admissions that an employment contract existed. Should there be any future challenge to the existence of a employment contract, Plaintiff will be permitted to reinstate this claim.

D. Count IV - Defamation

Defendant Dafoe, joined the University Defendants, moved to dismiss this claim arguing that Plaintiff “fail[ed] to point to even one statement made by Dr. Dafoe, or any Defendant, to any third party that is capable of defamatory meaning.” (Def.’s Br. At 11.) Defendant Dafoe further argued that Plaintiff failed to identify the contents of the allegedly defamatory statements and to whom the allegedly defamatory statements were made. In response, Plaintiff asserted that the Federal Rules of Civil Procedure require only that the pleading supply sufficient specificity to place the defendants on notice of his claims. Plaintiff asserted that he satisfied the pleading requirements by setting forth the subject matter of the statements, the time period in which the statements were allegedly made and the individuals responsible for the defamatory conduct.

Under Pennsylvania Law, it is necessary to set forth the following in a claim of defamation: “(1) the defamatory character of the communication; (2) its publication by the defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding of the recipient of it as intended to be applied to plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion.” 42 Pa.C.S. § 8343. This Court agrees with Defendants’ assertion that Plaintiff failed to satisfy the threshold requirement that the actions/communications by Defendants have a defamatory character. Plaintiff merely asserted that his termination coincided with an investigation to discover who supplied information to the Philadelphia Inquirer.

Pennsylvania courts have held that a determination as to “[w]hether a challenged statement is capable of defamatory meaning is a question of law for the court to determine in the first instance.” Feldman v. Lafayette Green Condo Assn., 806 A.2d 497, 500 (Pa.Commw.Ct 2002)(citations omitted). The statement is to be reviewed within the factual context which it was made and will be deemed defamatory if “it tends to harm the reputation of another so as to lower [them] in the estimation of the community or to deter third persons from associating or dealing with [them].” Id. (citations omitted). The claim shall be properly dismissed if the court determines that the statement is incapable of a defamatory meaning. Id. (citations omitted).

Viewing Plaintiff’s allegation as true and in a light most favorable to Plaintiff, this Court agrees with Defendants’ position that Plaintiff’s assertions regarding his termination by Defendants fail to set forth a communication to the public which would “harm the reputation of [Plaintiff] as to lower him in the estimation of the community or deter third persons from

associating or dealing with him.” (Def.’s Reply Br. at 6). Accordingly, Count IV is dismissed, with prejudice, with regard to all Defendants.

E. Count V - Breach of Contract

Defendant Dafoe moved to dismiss this claim on the basis that he was not a party to the employment contract; rather, the employment contract was entered into by Defendants TJU and JMC with Plaintiff. Defendant Dafoe asserted that he merely acted as an agent of Defendants TJU and JMC in recommending that Defendant Dafoe receive the employment contract. Plaintiff counters this argument by alleging that Defendant Dafoe could be held liable due to the existence of exceptions to the general tenets of agency liability.

As Defendants’ correctly asserted, “[i]t is a basic tenet of agency law that an individual acting as an agent for a disclosed [principal] is not personally liable on the contract between the [principal] and a third party unless the agent specifically agrees to assume liability.” Casey v. GAF Corp., 828 A.2d 362, 369 (Pa.Super. 2003) (citing RESTATEMENT (SECOND) OF AGENCY § 144 (1958)), *cited in* Def.’s Br. At 12. The facts as set forth by the parties clearly establish that Defendants TJU and JMC were the disclosed principals as Plaintiff was aware that he was entering into an employment contract with Defendants TJU and JMC. Plaintiff does not assert the existence of a specific agreement by Defendant Dafoe to assume liability. Furthermore, Plaintiff failed to set forth an exception to the above principle which is applicable to the current matter. The University Defendants did not join in Defendant Dafoe’s Motion to Dismiss this claim. Accordingly, Count V is dismissed, with prejudice, with regard to Dafoe but remains as to all other Defendants.

F. Count VII - Breach of Covenant of Good Faith & Fair Dealing

Defendant Dafoe, joined by the University Defendants, moved to dismiss this claim on the grounds that the Commonwealth of Pennsylvania does not recognize an independent cause of action for breach of the covenant of good faith and fair dealing. In Plaintiff's response brief, Plaintiff conceded that an independent cause of action is not recognized; rather, Plaintiff requested that this claim be permitted to proceed under a breach of contract theory.

For the reasons set forth above regarding Count V, this Court hereby dismisses, with prejudice, Count VII with regard to Defendant Dafoe. Further, this Court denies the University Defendants' Motion to Dismiss and grants Plaintiff's request for this claim to continue under a breach of contract theory.

G. Count IX - Intentional Infliction of Emotional Distress and Count X - Negligent Infliction of Emotional Distress

Defendant Dafoe, joined by the University Defendants, moved for dismissal of both the Intentional Infliction of Emotional Distress and Negligent Infliction of Emotional Distress claims on the basis that both claims are preempted by the Pennsylvania Workmen's Compensation Act (PWCA). In his opposition brief, Plaintiff states that he "voluntarily dismisses his causes of action for intentional infliction of emotional distress and negligent infliction of emotional distress." (Pl.'s Br. At 14.) Accordingly, Counts IX and X are dismissed, with prejudice, with regards to all Defendants.

IV. CONCLUSION

For the foregoing reasons, the Court grants in part and denies in part Defendants' Motion to Dismiss. An appropriate Order follows.

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

RICHARD N. EDIE, M.D.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 04-2749
	:	
	:	
v.	:	
	:	
THOMAS JEFFERSON UNIVERSITY,	:	
JEFFERSON MEDICAL COLLEGE OF	:	
THOMAS JEFFERSON UNIVERSITY,	:	
THOMAS JEFFERSON UNIVERSITY	:	
HOSPITAL, JEFFERSON UNIVERSITY	:	
PHYSICIANS, and DONALD DAFOE	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 15th day of November, 2004, upon consideration of Defendant Dafoe's Motion to Dismiss Counts I, II, III, IV, V, VII, IX and X of Plaintiff's Complaint, Defendants Thomas Jefferson University, Jefferson Medical College of Thomas Jefferson University, and Jefferson University Physicians' joinder thereof, Plaintiff's Opposition, and Defendant Dafoe's Reply to Opposition, it is hereby ORDERED AND DECREED that the Motion to Dismiss is GRANTED in part and DENIED in part.

It is ORDERED that the Motion to Dismiss Count I is Granted with regard to Defendant Dafoe.

It is ORDERED that the Motion to Dismiss Count II is Denied with regard to all defendants.

It is ORDERED that the Motion to Dismiss Count III is Granted with regard to all defendants.

It is ORDERED that the Motion to Dismiss Count IV is Granted with regard to all defendants.

It is ORDERED that the Motion to Dismiss Count V is Granted with regard to Defendant Dafoe and Denied as to the University Defendants.

It is ORDERED that the Motion to Dismiss Count VII is Granted with regard to Defendant Dafoe and Denied as to the University Defendants.

It is ORDERED that the Motion to Dismiss Count IX is Granted with regard to all defendants.

It is ORDERED that the Motion to Dismiss Count X is Granted with regard to all defendants.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.