

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

Felicia Nix,
PLAINTIFF

v.

Nationwide Insurance Company,
DEFENDANT

CIVIL ACTION
No. 05-503

Memorandum and Order

Yohn, J.

April _____, 2005

Pending before the court is a motion by defendant Nationwide Insurance Company to dismiss Count Three of plaintiff's complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6). Having considered defendant's brief in support of its motion, plaintiff's brief in opposition, and defendant's reply brief, I will grant defendant's motion for the reasons stated herein.

I. Factual Background and Procedural History

Plaintiff Felicia Nix alleges the following facts in connection with the employment discrimination claim she has brought against her former employer, defendant Nationwide Insurance Company ("Nationwide"): Nix, who is African American, was hired by Nationwide to work as a senior claims representative in September 2001. She began experiencing racial discrimination at the hands of her manager, Sue Ritter, in July 2002. This discrimination was in the form of racial harassment and racially motivated differential treatment prompted by Nix's

effort to obtain a flexible work schedule so that she could attend graduate school. A number of Nix's white co-workers were already enjoying this benefit at the time Nix attempted to take advantage of it.

Nix further alleges that when she requested the flexible scheduling option, Ritter began to harass her, scheduled her to work an undesirable shift, and told her that she would have to drop her classes. Ritter also required Nix to work more hours than were required by the shift schedule. Nix complained to her supervisors about the racially motivated differential treatment to which she was being subjected, but the supervisors were indifferent to her complaints. She then complained to the company's human resources officers. In spite of her complaints, the harassment continued. On June 23, 2003, Nix's supervisors placed her on a work improvement plan in retaliation for her having complained about being subjected to racial discrimination. On August 22, 2003, she was fired.

Nix filed suit on February 4, 2005. Her complaint contains three counts: Counts One and Two are federal claims for racial discrimination and unlawful retaliation in violation of 42 U.S.C. § 1981. Count Three is a state law claim for wrongful termination in violation of Pennsylvania public policy.

On March 7, 2005, Nationwide filed a motion to dismiss Count Three, pursuant to Rule 12(b)(6), on the ground that the Pennsylvania Human Relations Act ("PHRA") provides the exclusive state law remedy for a charge of discriminatory termination and, therefore, preempts any common law claim for wrongful termination. On March 17, 2005, Nix submitted a brief in opposition to the motion. On March 25, 2005, Nationwide filed a motion for leave to file a reply brief instantaneously and a reply brief. The motion was granted on March 28.

II. Discussion

The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *Johnsrud v. Carter*, 620 F.2d 29, 33 (3d Cir. 1980) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In deciding a motion to dismiss under Rule 12(b)(6), the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994) (citing *Rocks v. Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989)). Dismissal is not appropriate unless it "is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Jordan*, 20 F.3d at 1261.

Nationwide argues that Nix's state law claim in Count Three is foreclosed as a matter of law by the Pennsylvania Supreme Court's decision *Clay v. Advanced Computer Applications, Inc.*, 559 A.2d 917 (Pa. 1988). See Defendant's Reply Brief in Support of Motion to Dismiss Count III at 4. In *Clay*, the Supreme Court held that "the PHRA provides a statutory remedy that precludes assertion of a common law tort action for wrongful discharge based upon discrimination." *Clay*, 559 A.2d at 918.

Nix, citing the decision of the Superior Court in the same case, *Clay v. Advanced Computer Applications, Inc.*, 536 A.2d 1375 (Pa. Super. 1988), argues that the PHRA permits an election of remedies, giving an aggrieved party the option of commencing administrative proceedings through the Pennsylvania Human Relations Commission ("PHRC") or bringing suit in court. See Plaintiff's Opposition Brief at 6.

Nix's reliance on the Superior Court's reasoning in *Clay* is patently misplaced. In

reversing the Superior Court's decision in that case, the Supreme Court expressly rejected the proposition that the PHRA allows a complainant to choose between administrative and judicial remedies. *Clay*, 559 A.2d at 921 (rejecting the Superior Court's reading of relevant precedent and holding that, under Pennsylvania law, a plaintiff may not opt out of the PHRA's remedial scheme and elect instead to bring a civil action for discriminatory termination). The Supreme Court held that the only non-administrative remedies contemplated by the PHRA are those provided by municipal ordinances or by state anti-discrimination statutes other than the PHRA. *Id.*

Emphasizing that the intent of the Pennsylvania legislature in enacting the PHRA was to create a mechanism for channeling employment discrimination cases to a body with the special expertise to investigate and decide them, *id.* at 919, the Supreme Court in *Clay* rejected the argument that the PHRA should be read to allow "broad and unrestricted access to civil actions...alleging discriminatory termination of at-will employment." *Id.* at 921. On the contrary, the court held, the law must be read to preempt common law causes of action and to require exhaustion of administrative remedies through the PHRA before any resort to the courts is allowed. *Id.* at 919; *see also Mason v. Super Fresh*, 94 F. Supp. 2d 626, 632 (E.D. Pa. 2000) (holding that the PHRA covers retaliation claims and therefore preempts common law causes of action for retaliation); *Brown v. St. Luke's Hospital*, 816 F. Supp. 342, 344-345 (E.D. Pa. 1993) (holding that "plaintiff cannot maintain a common law cause of action for wrongful discharge based upon her termination for allegedly racial reasons, but must instead pursue the PHRA's specific statutory remedy"); *Jacques v. Akzo Int'l Salt, Inc.*, 619 A.2d 748, 753 (Pa. Super. 1993) (stating that "it is well-settled that the courts will not entertain a separate common law action for wrongful discharge where specific statutory remedies are available").

In opposing Nationwide's motion to dismiss Count Three, Nix advances an interpretation of the PHRA that has been repudiated in clear terms by Pennsylvania's highest court. Even if this court were to accept all of the allegations in Nix's complaint as true and draw all of the reasonable factual inferences in her favor, Nix would not be entitled to relief on Count Three as a matter of law, because the PHRA has been held by the Pennsylvania Supreme Court to preempt tort claims for discriminatory termination.

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AND NOW, this _____ day of April, 2005, upon consideration of defendant's motion, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Count Three of the complaint, plaintiff's brief in opposition to the motion, and defendant's brief in reply to plaintiff's brief in opposition, it is hereby ORDERED that the motion is GRANTED and Count Three of the complaint is DISMISSED with prejudice.

William H. Yohn, Jr., J.