



and respondeat superior/ vicarious liability (Count Six). Presently before the Court is the motion of the Defendants to dismiss Counts One and Two for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons that follow, the motion is granted.

When deciding a motion to dismiss for failure to state a claim, the Court must accept as true all well-pleaded allegations in the Complaint and view them in the light most favorable to the Plaintiff.<sup>1</sup> A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be proved by the Plaintiff.<sup>2</sup>

Defendant Dennis Anderson (“Anderson”) is the manager of a Friendly Ice Cream restaurant in Morrisville, Pennsylvania. Plaintiff is not, and has never been, an employee of that restaurant, but her friend and roommate, Nicole Lamoreux, was an employee. Plaintiff claims she was assaulted by Anderson “in retaliation” for complaining to

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1. Angelastro v. Prudential-Bache Sec., Ind., 764 F.2d 939, 944 (3d Cir. 1985).

2. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d. Cir. 1988).

Anderson after he ordered an ill Lamoreux back to work and threatened to fire Lamoreux if she did not comply. Plaintiff alleges that she believed the threat and order by Anderson was “illegal employment discrimination because male employees are not ordered back to work.”<sup>3</sup>

Plaintiff seeks redress under the so-called Opposition Clause found in Section 2000e-3(a) of Title VII. That section provides, in pertinent part:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees—because [the employee] has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this subchapter.<sup>4</sup>

As noted by another court in this Circuit:

It is clear from the literal language of the Opposition Clause that a plaintiff who asserts a claim based upon it must be an employee of an employer who has

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3. Complaint at paragraph 10.

4. 42 U.S.C. section 2000e-3(a)(1994).

retaliated against that employee because the employee has opposed any practice by the employer which is unlawful under Title VII.<sup>5</sup>

In the present case, Plaintiff does not allege anywhere in the Complaint that she was ever employed by either Defendant. Rather, Plaintiff alleges that it was her roommate who was the employee of Defendant. Although retaliation against a close relative of an individual who opposed discrimination can be challenged by both the individual who engaged in protected activity and by the relative, the relative can only do so where **both the individual and the relative are employees.**<sup>6</sup> Since Plaintiff was not an employee of Defendant at the time she allegedly opposed the Defendants' employment practices, her Title VII claim must be dismissed.

Count Two of the Complaint asserts a claim for retaliation under the PHRA. That statute contains a similar, but not identical, provision to the Opposition Clause con-

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5. Clement v. PSE&G, 122 F.Supp.2d 551,553 (D.N.J. 2000).

6. Fair Employment Practices Manual 405:7581, at 8-II-B.3.c

tained in Title VII. Specifically, section 955(d) of the PHRA states:

It shall be an unlawful discriminatory practice...for any ...employer...to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

The difference between the clause in Title VII and the clause in the PHRA is that Title VII prohibits discrimination against any “employee” who opposes unlawful employment practices whereas the PHRA prohibits discrimination against any “individual” who opposes unlawful employment practices.

The Third Circuit has stated with regard to retaliation claims brought under the PHRA that the party opposing the unlawful employment practice under the PHRA must also be the person who suffered the alleged discrimina-

tion.<sup>7</sup> Here, since the Plaintiff was not the person who suffered the alleged discrimination, her claim under the PHRA must be dismissed as well.

The Court notes that the remaining claims comprising Counts Three through Six are state law claims for for assault and battery/ false imprisonment (Count Three), negligence (Count Four), malicious prosecution/malicious use and abuse of process (Count Five) and respondeat superior/ vicarious liability (Count Six). Since the Court has dismissed the federal claim, the Court would ordinarily remand these claims to the appropriate state court. However, Plaintiff's counsel, Brian M. Puricelli, Esq., has filed an affidavit with the Court in which he avers that Defendant Anderson is a citizen of New Jersey, thereby establishing the basis for diversity jurisdiction over the remaining state claims in this matter.

An appropriate order follows.

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7. Fogelman v. Mercy Hospital, 283 F.3d 561, 568 (3d Cir. 2002).



