

The second supplemental count alleges that after the defendants were served with the complaint in this case, the defendant Johanna Gouak filed an action against the plaintiff in the Bucks County Court of Common Pleas, alleging that in August of 2007 the plaintiff committed battery upon Ms. Gouak by throwing a plate with toast on it at her. The alleged toast-throwing incident occurred nearly 18 months before the plaintiff was fired, and the plaintiff asserts that the suit contains false allegations.

The plaintiff argues that the petitions and the lawsuit violate 29 U.S.C. § 215(a)(3), which prohibits retaliation against an employee for filing a complaint. The case law supports a finding that the retaliation provision extends to former employees. Robinson v. Shell Oil Co., 519 U.S. 337, 346 (1997). The defendants argue that the defendants have a constitutional right to petition and to pursue claims in court, but if the petitions and lawsuit were motivated by a desire for retaliation and without a reasonable basis in fact or law, then the plaintiff may recover. Darveau v. Detecon, Inc., 515 F.3d 334, 343-44 (4th Cir.2008). I am persuaded that the plaintiff should have the opportunity to make her case.

An appropriate order will be entered.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

