

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

JAMES W. SWAYNE,)	
)	Civil Action
Plaintiff)	No. 10-cv-03969
)	
vs.)	
)	
MOUNT JOY WIRE CORPORATION,)	
)	
Defendant)	

* * *

APPEARANCES:

STEPHANIE CARFLEY, ESQUIRE
On behalf of Defendant

MICHELLE E. GOLDSTEIN, ESQUIRE
On behalf of Plaintiff

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on defendant's Motion to Dismiss Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), which motion was filed August 17, 2010. Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure was filed September 15, 2010.

On November 19, 2010, Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss Complaint Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure was filed

with leave of court. For the following reasons, I grant the motion in part, deny it in part, and dismiss it in part as moot.

Specifically, regarding Count I, I grant the motion to the extent it seeks dismissal of plaintiff's defamation claim as untimely, and Count I is dismissed without prejudice for plaintiff to re-plead his defamation claim in accordance with this Opinion. To the extent the motion seeks dismissal of Count I for failure to state a claim for defamation under Pennsylvania law, the motion is dismissed as moot.

I grant the motion to the extent it seeks dismissal of Count II, and Count II is dismissed with prejudice.

Finally, I deny the motion to the extent it seeks dismissal of Count III.

JURISDICTION

Jurisdiction in this case is based upon federal question jurisdiction pursuant to 28 U.S.C. § 1331.

VENUE

Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving rise to plaintiff's claims allegedly occurred in Lancaster County, Pennsylvania, which is within this judicial district.

PROCEDURAL HISTORY

Plaintiff James W. Swayne initiated this action on July 7, 2010 by filing a three-count civil Complaint against his

employer, defendant Mount Joy Wire Corporation, in the Court of Common Pleas of Lancaster County, Pennsylvania. The Complaint arises from the prior termination of plaintiff's employment, and alleges claims for defamation (Count I), misuse of legal procedure (Count II),¹ and breach of contract (Count III).

Defendant timely removed the matter to this court by Notice of Removal filed August 10, 2010, and filed the within motion to dismiss on August 17, 2010. Plaintiff responded in opposition on September 15, 2010. Defendant filed its reply brief on November 19, 2010 with leave of court.

Hence this Opinion.

STANDARD OF REVIEW

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). A 12(b)(6) motion requires the court to examine the sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957) (abrogated in other respects by Bell Atlantic Corporation v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). Generally, in ruling on

¹ Regarding Count II, defendant's motion to dismiss contends that Pennsylvania law does not recognize a cause of action for "misuse of legal procedure" and presumes that plaintiff intends to assert a claim for abuse of process. In his response in opposition, plaintiff "concede[s] to referring to this cause of action under the label of Abuse of Process for the duration of these proceedings." (Plaintiff's response at 2 n.1.) Therefore, in this Opinion I will refer to Count II as a claim for abuse of process.

a motion to dismiss, the court relies on the complaint, attached exhibits, and matters of public record, including other judicial proceedings. Sands v. McCormick, 502 F.3d 263, 268 (3d. Cir. 2008).

Except as provided in Federal Rule of Civil Procedure 9, a complaint is sufficient if it complies with Rule 8(a)(2), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). Rule 8(a)(2) "[does] not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570, 127 S.Ct. at 1974, 167 L.Ed.2d at 949.²

In determining whether a plaintiff's complaint is sufficient, the court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading, the plaintiff may be entitled to relief." Fowler, 578 F.3d

² The Supreme Court's Opinion in Ashcroft v. Iqbal, ___ U.S. ___, ___, 129 S.Ct. 1937, 1953, 173 L.Ed.2d 868, 887 (2009), states clearly that the "facial plausibility" pleading standard set forth in Twombly applies to all civil suits in the federal courts. Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009). This showing of facial plausibility then "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," and that the plaintiff is entitled to relief. Fowler, 578 F.3d at 210 (quoting Iqbal, ___ U.S. at ___, 129 S.Ct. at 1949, 173 L.Ed.2d at 884). As the Supreme Court explained in Iqbal, "[t]he plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that the defendant acted unlawfully." Iqbal, ___ U.S. at ___, 129 S.Ct. at 1949, 173 L.Ed.2d at 884.

at 210 (citing Phillips v. County of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008)).

Although “conclusory or bare-bones allegations will [not] survive a motion to dismiss,” Fowler, 578 F.3d at 210, “a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits.” Phillips, 515 F.3d at 231. Nonetheless, to survive a 12(b)(6) motion, the complaint must provide “enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element[s].” Id. (quoting Twombly, 550 U.S. at 556, 127 S.Ct. at 1965, 167 L.Ed.2d at 940) (internal quotations omitted).

The court is required to conduct a two-part analysis when considering a Rule 12(b)(6) motion. First, the factual matters averred in the complaint, and any attached exhibits, should be separated from legal conclusions asserted therein. Fowler, 578 F.3d at 210. Any facts pled must be taken as true, and any legal conclusions asserted may be disregarded. Id. at 210-211. Second, the court must determine whether those factual matters averred are sufficient to show that the plaintiff has a “plausible claim for relief.” Id. at 211 (quoting Iqbal, ___ U.S. at ___, 129 S.Ct. at 1950, 178 L.Ed.2d at 884).

Ultimately, this two-part analysis is “context-specific” and requires the court to draw on “its judicial

experience and common sense" to determine if the facts pled in the complaint have "nudged [plaintiff's] claims" over the line from "[merely] conceivable [or possible] to plausible." Iqbal, ___ U.S. at ___, 129 S.Ct. at 1949-1950, 178 L.Ed.2d at 884-885. A well-pleaded complaint may not be dismissed simply because "it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." Twombly, 550 U.S. at 556, 127 S.Ct. at 1965, 167 L.Ed.2d at 940-941.

FACTS

Based upon the averments in plaintiff's Complaint, which I must accept as true under the foregoing standard of review, the pertinent facts are as follows.

Plaintiff is employed by defendant Mount Joy Wire Corporation ("Mount Joy"), and was previously employed by Mount Joy from June 1996 through September 2007. From about October 1, 2005 forward, plaintiff was a member of Local Lodge WW#1, District 98 of the International Association of Machinists and Aerospace Workers ("Union"). The Union and Mount Joy are contractually bound under a collective bargaining agreement ("CBA").

On April 16, 2007, a homemade bomb made of lime, water, and a plastic bottle was set off during the third shift on Mount Joy property ("lime bomb incident"). Shortly after the lime bomb

incident, Anthony Hollingsworth, a Mount Joy employee, allegedly was confronted by plaintiff at Beanie's Bar in Mount Joy, Pennsylvania. During this alleged confrontation, Mr. Hollingsworth claims that plaintiff admitted he was the individual responsible for the lime bomb incident.

On April 17, 2007, defendant Mount Joy contacted local law enforcement officials to investigate the lime bomb incident. During the course of the police investigation (from April 17, 2007 through June 18, 2007), plaintiff was not formally questioned by police, and he did not provide any statements to Mount Joy regarding the lime bomb incident. There are no eye witnesses to plaintiff's alleged involvement with the lime bomb incident.

The police investigation of the lime bomb incident resulted in criminal charges against plaintiff issued on July 5, 2007. On July 16, 2007, Mr. Hollingsworth reported to Mount Joy management that plaintiff had allegedly threatened him at a bar outside of work hours, and off Mount Joy property.

On August 15, 2007, an additional criminal charge against plaintiff was issued in connection with the lime bomb incident. Plaintiff did not plead guilty to any of the criminal charges on September 5, 2007, the date of his preliminary hearing.

On September 7, 2007, defendant issued a written, five-day suspension to plaintiff based on the lime bomb incident. Mount Joy alleged that plaintiff did the following: (a) provided false statements to defendant and the police; (b) threatened and harassed Mr. Hollingsworth; and (c) plead guilty to two misdemeanors and intimidation of a witness.

Mount Joy also accused plaintiff of violating company Rules of Conduct by allegedly doing the following: (a) attempting bodily injury to another employee on company property; (b) making false statements concerning an employee and the employer during the course of an investigation; and (c) violating health and safety rules. On September 11, 2007, defendant issued a letter to plaintiff, indicating that defendant was terminating plaintiff's employment effective September 13, 2007.

At the time of the termination of plaintiff's employment, all evidence against plaintiff originated solely from his alleged confession, without witnesses, to another Mount Joy employee at a bar after work hours. On March 12, 2009, all criminal charges against plaintiff regarding the lime bomb incident were dismissed by a Commonwealth assistant district attorney because of evidentiary issues.

In accordance with the CBA between the Union and Mount Joy, plaintiff filed a grievance contesting his termination from employment. His grievance was fully supported by the Union, and

the Union appealed plaintiff's grievance to arbitration pursuant to the CBA.

Arbitration hearings were conducted before an American Arbitration Association arbitrator on December 14, 2009 and January 6, 2010. The arbitrator heard evidence and testimony from both parties, and received briefs from both sides before making a final disposition.

On March 9, 2010, the arbitrator concluded that defendant's termination of plaintiff's employment was too severe, and ordered that plaintiff be reinstated as a Mount Joy employee as soon as possible. Plaintiff returned to work for defendant on March 21, 2010.

Plaintiff did not receive unemployment compensation or regular wages during his two-and-a-half year suspension from employment with defendant. At all material times, from the time his employment was terminated in September 2007 through his reinstatement in March 2010, plaintiff was ready, willing, and able to work.

The termination of plaintiff's employment caused him to endure severe financial hardship. As a direct result of defendant's conduct, plaintiff suffered financial ruin and mental anguish, and will continue to endure such to his detriment and loss until he is able to rebuild his finances.

CONTENTIONS OF THE PARTIES

Contentions of Defendant

Defendant contends that plaintiff's Complaint should be dismissed in its entirety because Counts I and II have been filed outside the applicable statute of limitations, and because Counts I and III are preempted by federal law and barred by the doctrine of collateral estoppel. Therefore, defendant contends all three counts fail to state a claim upon which relief can be granted. Defendant also contends that the claims have been brought in bad faith.

Defendant asserts that in considering its motion to dismiss, I may consider three documents which are not attached to the Complaint, but which are attached to defendant's motion. Specifically, defendant avers that plaintiff's claims rely on the CBA; the September 7, 2007 letter suspending plaintiff's employment ("suspension letter"); and the arbitrator's award and decision regarding plaintiff's grievance. Defendant contends that because these documents are essential to plaintiff's claims, I may properly review them as part of the motion to dismiss without treating it as a motion for summary judgment.

Regarding Count I, defendant contends that plaintiff's defamation claim should be dismissed for three reasons. First, defendant avers that the claim is time-barred. Specifically, defendant contends that Count I arises only from the publication

of the September 7, 2007 suspension letter, and that under Pennsylvania law, the statute of limitations on a defamation action is one year. Therefore, defendant contends that plaintiff's time to bring such a claim expired on September 8, 2008. Because this action was not filed until July 7, 2010, defendant contends that Count I should be dismissed as time-barred.

Second, defendant asserts that Count I is preempted by federal law, and therefore plaintiff cannot state a state-law claim for defamation. Specifically, defendant contends that because the allegedly defamatory statements in the suspension were made in the course of the grievance process, they are governed by the federal Labor Management Relations Act ("LMRA"), which authorizes federal courts to fashion a body of federal law for the enforcement of collective bargaining agreements.

Defendant contends that in this case, the disciplinary process for misconduct is clearly governed by the CBA. Therefore, defendant avers that plaintiff's state-law defamation claim is preempted by the LMRA and must be dismissed.

Third, defendant contends that even if Count I were not time-barred or preempted, it should be dismissed for failure to state a claim because plaintiff has not pled that defendant abused a "conditionally privileged occasion" as required by Pennsylvania law. Specifically, defendant avers that the

suspension letter was a privileged communication, and that an employer has an absolute privilege to publish allegedly defamatory statements in notices of employee termination. Defendant argues that because such a publication communicated to plaintiff and relevant supervisory personnel is not capable of defamatory meaning, Count I fails to state a claim upon which relief can be granted.

Regarding Count II, defendant contends that it, too, is barred by the applicable statute of limitations. Specifically, defendant contends that the abuse of process claim in Count II is subject to a two-year limitations period. The claim arises from defendant's alleged purposeful manipulation of the police investigation of the lime bomb incident. Defendant contends that because that investigation took place from April 17, 2007 through June 18, 2007 and resulted in criminal charges being filed against defendant on July 5, 2007, plaintiff's abuse of process claim is more than a year late and should be dismissed as time-barred.

Defendant also asserts that Count II fails to state a claim for abuse of process because defendant relinquished its investigation of the lime bomb incident to the police, who filed criminal charges against plaintiff as a result of their independent investigation. Therefore, defendant avers that plaintiff cannot establish the first element of a prima facie

case for abuse of process, that is, that defendant used a legal process against plaintiff.

Moreover, defendant asserts that plaintiff cannot establish the second element of an abuse of process claim. Specifically, defendant avers that, to the extent defendant used any legal process against plaintiff, plaintiff has failed to plead any facts which show that defendant had any bad intentions in doing so.

Finally, defendant contends that the breach of contract claim in Count III is preempted by the federal Labor Management Relations Act, and that the dispute is governed by the CBA. Defendant avers that plaintiff is limited to the method of dispute chosen by the parties in the CBA (final and binding arbitration), which plaintiff did not appeal.

Similarly, defendant avers that plaintiff is collaterally estopped from pursuing Count III because he is merely re-litigating the issues which were before the arbitrator, who issued a final judgment on the merits. Defendant contends that plaintiff may not re-litigate those issues because the issues and parties are identical, and because plaintiff had a full and fair opportunity to litigate the issues before the arbitrator.

Accordingly, defendant seeks dismissal of the Complaint in its entirety.

Contentions of Plaintiff

Plaintiff contends that his Complaint should not be dismissed for two reasons. First, he contends that he was contractually required, under the CBA, to exhaust the grievance procedures set forth in the CBA. Plaintiff asserts that, therefore, his claims for relief did not accrue until the arbitration process was complete in March 2010 when the arbitrator issued her final decision, and plaintiff returned to work on March 21, 2010. Thus, plaintiff contends that each of his claims have been brought within the applicable statute of limitations.

Second, plaintiff avers that the arbitration award was not subject to appeal, and therefore he properly filed a civil Complaint. Specifically, plaintiff avers that his arbitration claim was subject to 42 Pa.C.S.A. § 7341, which permits a 30-day appeal period to challenge an arbitration award. However, plaintiff contends that the provision permits only firefighters and police officers to challenge a common-law arbitration award, and that such a challenge is limited to claims that the arbitrator abused her power or violated a constitutional right. Plaintiff avers that because those circumstances did not apply to him, he was not permitted to challenge the arbitrator's decision.

Accordingly, and because plaintiff avers that there is a reasonable expectation that discovery will reveal evidence of

each necessary element of his claims, plaintiff contends that his claims should not be dismissed.

DISCUSSION

Consideration of Extraneous Documents

As noted above, in ruling on a motion to dismiss, the court ordinarily relies only on the complaint, attached exhibits, and matters of public record, including other judicial proceedings. Sands, 502 F.3d at 268. However, the court may also consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss, if plaintiff's claims are based on the document. Pension Benefit Guaranty Corporation v. White Consolidated Industries, Inc., 998 F.2d 1192, 1196 (3d Cir. 1993).

Here, defendant contends that I may consider three documents which were not attached to plaintiff's Complaint, but upon which plaintiff's claims are based. Specifically, defendant avers that the Complaint specifically refers to the CBA, the suspension letter, and the arbitrator's award and decision.³

Plaintiff's brief in opposition to defendant's motion to dismiss states no objection to my consideration of these documents, nor does plaintiff dispute the documents'

³ The CBA is attached to defendant's Motion to Dismiss Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) ("defendant's motion") as Exhibit A; the arbitrator's untitled decision and Award dated March 9, 2010 are attached to the motion as Exhibit B; and the suspension letter is attached to the motion as Exhibit C.

authenticity.⁴ It is clear that Count I, which alleges a claim for defamation based on the publication of the suspension letter, arises from the suspension letter itself. Moreover, Count III, which alleges breach of the CBA, clearly arises from the CBA itself.

None of plaintiff's three claims directly arises from the arbitrator's award and decision. However, the Complaint specifically refers to the arbitration process and decision.⁵ See Arizmendi v. Lawson, 914 F.Supp. 1157, 1161 (E.D.Pa. 1996) (Waldman, J.), which notes that in resolving a Rule 12(b)(6) motion to dismiss, a court may properly look beyond the complaint to "documents referenced in the complaint or essential to a plaintiff's claim" which are attached to the motion. Accordingly, because all three documents are referenced in the Complaint or essential to plaintiff's claims, and because plaintiff neither objects nor disputes their authenticity, I will consider the documents. Pension Benefit, 998 F.2d at 1196.

Count I

Defendant contends that because this dispute arises from the CBA, the defamation claim in Count I is preempted by the

⁴ The relevant pages of the CBA are also attached to Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("plaintiff's response") as Exhibit B.

⁵ Complaint, paragraphs 26-28.

federal Labor Management Relations Act, and therefore should be dismissed.

Section 301(a) of the LMRA provides that

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

Thus, Section 301 of the LMRA creates a federal cause of action for disputes arising out of collective bargaining agreements. Although the provision only explicitly refers to federal jurisdiction, the Supreme Court has held that it is "more than jurisdictional - that it authorizes federal courts to fashion a body of federal law for the enforcement of" collective bargaining agreements. Trans Penn Wax Corporation v. McCandless, 50 F.3d 217, 228 (3d Cir. 1995)(quoting Textile Workers of America v. Lincoln Mills, 353 U.S. 448, 450-451, 77 S.Ct. 912, 914-915, 1 L.Ed.2d 972, 977 (1957)).

This ensures uniform interpretation of collective bargaining agreements, and promotes "peaceable, consistent resolution of labor-management disputes." Trans Penn Wax, 50 F.3d at 228 (quoting Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399, 404, 108 S.Ct. 1877, 1880, 100 L.Ed.2d 410,

417 (1988)).

In Lingle, the United States Supreme Court set forth the principle of preemption under Section 301:

[I]f the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law (which might lead to inconsistent results since there could be as many state-law principles as there are States) is pre-empted and federal labor-law principle - necessarily uniform throughout the Nation - must be employed to resolve the dispute.

Lingle, 486 U.S. at 405-406, 108 S.Ct. at 1881, 100 L.Ed.2d at 418-419. This preemption principle applies to tort as well as contract actions. Trans Penn Wax, 50 F.3d at 228-229 (citing Allis-Chalmers Corporation v. Lueck, 471 U.S. 202, 210-211, 105 S.Ct. 1904, 1911, 85 L.Ed.2d 206, 215 (1985)).

However, "not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is pre-empted by § 301 or other provisions of the federal labor law." Allis-Chalmers, 471 U.S. at 211, 105 S.Ct. at 1904, 85 L.Ed. 2d at 215.

Rather, a state-law claim is preempted only if the claim is "substantially dependent on analysis of a collective-bargaining agreement" or if the claim is based on rights created by the CBA. See Lingle, 486 U.S. at 410 n.10, 108 S.Ct. at 1883, 100 L.Ed. 2d at 421 (internal citations omitted). That is, if the state-law claim "can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement

for § 301 pre-emption purposes.” Lingle, 486 U.S. at 409-410, 108 S.Ct. at 1883, 100 L.Ed.2d at 421.

Here, Count I alleges that the suspension letter included “materially false, unsubstantiated allegations” against plaintiff, and that defendant’s “malicious and unethical conduct throughout the investigation of the Lime Bomb incident resulted in criminal charges being filed” against plaintiff. It further alleges that because the charges are a matter of public record, defendant caused plaintiff’s reputation to be adversely affected.⁶

Although plaintiff’s brief in opposition to defendant’s motion to dismiss avers that plaintiff’s claims satisfy the pleading requirements under Twombly, it does not specifically address defendant’s contention that Count I is preempted by federal law. Therefore, I consider this contention unopposed, and I treat the defamation claim as preempted by federal law. See E.D.Pa.R.Civ.P. 7.1(c). Because Count I is preempted by Section 301, it is a Section 301 claim and therefore properly analyzed under federal common law, rather than under Pennsylvania law. Furillo v. Dana Corporation Parish Division, 866 F.Supp. 842, 852 (E.D.Pa. 1994)(Van Antwerpen, J.).

Defendant contends that Count I is barred by the

⁶ Complaint, paragraphs 37-38.

applicable statute of limitations, which, according to defendant, is Pennsylvania's one-year limitations period on a claim for defamation, set forth in 42 Pa.C.S.A. § 5523(1). Defendant avers that because Count I arises from the suspension period, the issuance of the letter on September 7, 2007 triggered the limitations period. Therefore, defendant avers that plaintiff's one year to file his defamation claim expired on September 8, 2008.

Plaintiff's brief in opposition to the motion to dismiss does not specifically address which statute of limitations applies to Count I. In any event, plaintiff avers that none of his claims accrued until the arbitration process was complete in early March 2010, and that, therefore, "his complaint was filed well within the statute of limitations in July 2010."⁷ Plaintiff cites no authority for this proposition.

A claim under Section 301 of the LMRA may be characterized as either a "pure claim" or a "hybrid claim". Pure claims are brought by a union against an employer. Service Employee International Union Local 36 v. City Cleaning Company, 982 F.2d 89, 94 n.2 (3d Cir. 1992). "Hybrid claims are brought by an employee alleging that the employer breached the collective bargaining agreement and that the employee's union violated its duty to fairly represent the employee." Carpenter v. Wawa,

⁷ Plaintiff's response, page 4.

2009 WL 4756258, at *4 (E.D.Pa. Dec. 3, 2009)(Pratter, J.)
(citing Service Employee International Union Local 36, 982 F.2d
at 94 n.2).

Because this action is brought by an employee and not
by a union, plaintiff's claims are properly characterized as
hybrid claims even though the Union is not a defendant.⁸
However, although pure claims are subject to state-law statutes
of limitations, see Service Employee International Union Local
36, 982 F.2d at 94-96, hybrid claims ordinarily must be filed
within six months from the date they accrue. DelCostello v.
International Brotherhood of Teamsters, 462 U.S. 151,
103 S.Ct. 2281, 76 L.Ed.2d 476 (1983).

Accordingly, plaintiff's claim in Count I is governed
by a six-month statute of limitations. In a hybrid suit where
plaintiff's grievance has proceeded to a final decision by the
arbitration board, the claim accrues at the time when plaintiff
knows, or should have known, of the final arbitration decision.
See Vadino v. A. Valey Engineers, 903 F.2d 253, 261 n.11 (3d Cir.
1990)(internal citation omitted).

Here, plaintiff alleges that his arbitration was

⁸ An employee can bring a Section 301 claim against his employer
without naming the union as a defendant. However, the employee must still
allege, and eventually prove, that the union breached its duty of fair
representation. Carpenter, 2009 WL 4756258, at *3 (internal citations
omitted).

complete on March 9, 2010, thereby triggering the six-month limitations period.⁹ However, the Complaint does not allege that the grievance process resulting in the March 9, 2010 arbitration award encompassed plaintiff's defamation claim. Moreover, upon review of the arbitrator's award and decision, it appears that the only issue before the arbitrator was the termination of plaintiff's employment.

Accordingly, plaintiff has not alleged facts from which I can determine whether his defamation claim is timely, because I cannot determine when the claim accrued. It is possible, for example, that the defamation claim was the subject of a separate grievance process which is not alleged in the Complaint. Therefore, I grant defendant's motion to dismiss Count I, without prejudice for plaintiff to re-plead the defamation claim in a manner which establishes its timeliness.¹⁰

⁹ Complaint, paragraph 28; arbitrator's award and decision at 1, 36.

¹⁰ Moreover, I note that "[a]n employee protected by a collective bargaining agreement may sue his employer under Section 301 only after he has pursued his contractual grievance remedies and established that his rights of fair representation were violated." Furillo, 866 F.Supp. at 852.

In this case, the CBA includes a mandatory grievance process which provides, in relevant part, that "[a]n employee who believes that the Company has violated a provision or provisions of this Agreement shall discuss the subject with his supervisor...and make an earnest effort to adjust the matter....If the alleged violation is not adjusted in five (5) days after discussions with the supervisor, it must be reduced to writing on forms furnished by the Company...in order to be processed under the Complaint Procedure". (CBA, Article VII, Section 2 (page 7).) Ultimately, if a satisfactory settlement is not reached, the matter must be submitted to

(Footnote 10 continued):

(Continuation of footnote 10):

Finally, regarding defendant's argument that plaintiff's factual allegations fail to state a claim for defamation, I note that defendant's brief in support of its motion to dismiss recites the elements of defamation under Pennsylvania law. Because I agree with defendant that this claim is preempted by the LMRA, and because Count I is therefore governed by federal common law, I dismiss defendant's motion as moot to the extent it argues that Count I does not satisfy the elements of defamation under Pennsylvania law.

Moreover, because defendant does not argue that Count I fails to state a claim for defamation under federal common law, I do not address the merits of whether Count I states a claim upon which relief can be granted.

Count II

arbitration. "The decision of the arbitrator shall be final and binding upon the parties." (CBA, Article VII, Section 2 (pages 7-8).)

Here, the Complaint alleges that plaintiff engaged in the required grievance process regarding his ultimate termination from Mount Joy, and that his grievance regarding the termination was "fully supported by the Union". It further alleges that the Union appealed the grievance to arbitration, ultimately resulting in the reinstatement of plaintiff's employment. Taking these alleged facts as true, and drawing all reasonable inferences therefrom, it appears that plaintiff is not alleging that the Union violated his rights of fair representation, at least vis-à-vis his termination grievance.

Defendant does not contend that plaintiff failed to exhaust contractual grievance remedies regarding his defamation claim, and so I do not address that issue here. Nonetheless, it is the sense of this Opinion that in the event plaintiff re-pleads his defamation claim to establish the timeliness of the claim, his amended pleading should include facts regarding exhaustion of his defamation claim, as well as allegations regarding his rights of fair representation. See Carpenter, 2009 WL 4756258, at *3; Furillo, 866 F.Supp. at 852.

Defendant contends that plaintiff's claim for abuse of process, set forth in Count II, should be dismissed as barred by the applicable statute of limitations, and because it fails to state a claim upon which relief can be granted.

Count II alleges that defendant Mount Joy "conducted a grossly insufficient investigation of the Lime Bomb incident by deliberately choosing to ignore its contractual obligations" under the CBA, and "purposefully manipulated the police investigation of the Lime Bomb incident by incorrectly implicating only Mr. Swayne as the culprit even though there was zero evidence he had anything to do with it."¹¹ It further alleges that defendant "unfairly and without credible basis singled out Mr. Swayne by improperly using the legal system to terminate him from employment", and "did not have the 'cause' necessary under the collective bargaining agreement to terminate Mr. Swayne absent the baseless criminal charges."¹²

Under Pennsylvania law, the tort of "malicious abuse of process" is subject to a two-year statute of limitations. 42 Pa.C.S.A. § 5524(1). Because defendant does not contend that Count II is preempted by Section 301 of the Labor Management Relations Act, I assume, for purposes of this motion, that plaintiff's abuse of process claim is governed by this statute of

¹¹ Complaint, paragraphs 44-45.

¹² Complaint, paragraphs 46-47.

limitations.

Defendant avers that because Count II arises from defendant's allegedly purposeful manipulation of the police investigation of the lime bomb incident, the limitations period for this claim was triggered, at the latest, when criminal charges were filed against defendant on July 5, 2007. Defendant contends that because this action was filed July 7, 2010, Count II is more than a year late.

Plaintiff's response in opposition to the motion to dismiss does not address Count II specifically. Rather, as discussed above regarding Count II, plaintiff contends that all of his claims are timely, and suggests that the March 9, 2010 arbitration award and decision triggered the limitations period for all of his claims.

However, neither party argues that this is a Section 301 claim, and plaintiff does not dispute defendant's characterization of Count II as a state-law claim. Moreover, plaintiff offers no authority for the proposition that the limitations period for Count II is triggered by the arbitration award and decision, rather than by the abuse of process itself, which allegedly occurred during the course of the police investigation of the lime bomb incident. Taking the facts asserted in plaintiff's Complaint as true, that police investigation occurred from April 17, 2007 through

June 18, 2007, and resulted in the filing of criminal charges against plaintiff on July 5, 2007, with an additional charge filed against plaintiff on August 15, 2007.¹³

Plaintiff's Complaint alleges no facts about defendant's involvement in the police investigation after the additional criminal charge was filed on August 15, 2007. However, the criminal case against plaintiff ended on March 12, 2009 when all charges were dropped by the Commonwealth of Pennsylvania.¹⁴

As discussed below, the Complaint makes only conclusory allegations about defendant's allegedly malicious participation in the criminal investigation. Assuming, without deciding, that the limitations period may have been triggered as late as the March 12, 2009 dismissal of the criminal charges, plaintiff may be able to assert facts involving defendant's alleged abuse of process which occurred within the applicable limitations period.

However, because plaintiff does not contest defendant's argument that Count II fails to state a claim upon which relief can be granted apart from the timeliness issue, as discussed below, I do not permit plaintiff to re-plead Count II for either purpose.

Defendant argues that Count II fails to state a claim

¹³ Complaint, paragraphs 10, 13-14.

¹⁴ Complaint, paragraph 23.

upon which relief can be granted because plaintiff does not allege that defendant used a legal process against plaintiff, and because he has made only bald assertions that defendant manipulated the police investigation. Moreover, defendant avers that, even if defendant had bad intentions in participating in the investigation, the police, not defendant, conducted the investigation.

In Pennsylvania, "abuse of process" is a state common-law claim and is defined as "the use of legal process against another primarily to accomplish a purpose for which it is not designed." Werner v. Plater-Zyberk, 799 A.2d 776, 785 (Pa.Super. 2002)(internal citations omitted). It is, essentially, "the use of legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process." Id. (internal citations omitted); McGee v. Feege, 517 Pa. 247, 259, 535 A.2d 1020, 1026 (1987).

To state a claim for abuse of process under Pennsylvania law, plaintiff must show that defendant (1) used a legal process against plaintiff, (2) primarily to accomplish a purpose for which the process was not designed, and (3) harm has been caused to plaintiff. Werner, 799 A.2d at 785 (internal citations omitted).

Plaintiff's response does not address defendant's

contention that the Complaint fails to allege facts which satisfy those elements. The response avers generally that plaintiff "has complied with the sufficiency pleading requirements...amply enough for The Honorable Court to consider his claims and move his case forward", and that his claims satisfy the pleading requirements set forth in Twombly.¹⁵ However, it offers no discussion of the elements of an abuse of process claim, and cites no authority in support of plaintiff's contention that he has pled sufficient facts to support such a claim.¹⁶

Accordingly, I treat defendant's motion as unopposed to the extent it contends that the abuse of process claim in Count II fails to state a claim upon which relief can be granted.

Therefore, I grant the motion as unopposed in that regard, and I

¹⁵ Plaintiff's response at 2-3.

¹⁶ In this respect, plaintiff's response provides no legal authority or analysis in support of his contention that Count II states a claim upon which relief can be granted, as required by Rule 7.1(c) of the Rules of Civil Procedure of the United States District Court for the Eastern District of Pennsylvania. In this district, all litigants are expected to address substantive matters in a meaningful manner.

Fully developed legal argument, citation to legal authority, and discussion of the relevant facts aid this Court in performing its duty, and ultimately in serving the ends of justice. Any brief in opposition or any other memorandum of law that is lacking even a modicum of these elements is woefully insufficient and inexcusable.

Copenhaver v. Borough of Bernville, 2003 U.S. Dist. LEXIS 1315 (E.D.Pa. Jan. 9, 2003)(Rufe, J.).

dismiss Count II with prejudice.¹⁷

Count III

Count III alleges that defendant breached the Collective Bargaining Agreement by failing to conduct an independent, fair, and responsible investigation of the lime bomb incident, and by terminating plaintiff's employment before the end of his suspension period and before a mandatory company meeting. Defendant contends that Count III should be dismissed because it is preempted by the federal Labor Management Relations Act. Defendant also contends that plaintiff is collaterally estopped from pursuing the claim because he previously litigated the issue in arbitration.

Plaintiff does not respond to defendant's argument that Count III is preempted by Section 301 of the LMRA. Accordingly, I consider that contention unopposed. Moreover, I note that because Count III alleges breach of the CBA, its resolution requires analysis of the CBA itself. Therefore, the claim is

¹⁷ Moreover, I note that plaintiff has alleged no facts to support his bald allegations that defendant "conducted a grossly insufficient investigation" of the lime bomb investigation, that defendant "purposefully manipulated the police investigation...by incorrectly implicating only Mr. Swayne as the culprit even though there was zero evidence he had anything to do with it", or that defendant "unfairly and without credible basis singled out Mr. Swayne by improperly using the legal system to terminate him from employment". (Complaint, paragraphs 44-47.)

Conclusory or bare-bones allegations will not survive a motion to dismiss. Fowler, 578 F.3d at 210. Therefore, taking all of plaintiff's facts alleged as true, as I am required to do for purposes of this motion, I would conclude that plaintiff has not pled sufficient facts to support a conclusion that defendant used a legal process against plaintiff, which use was primarily to accomplish a purpose for which the process was not designed. Werner, 799 A.2d at 785.

governed by Section 301, and is therefore preempted by federal law. See Lingle, 486 U.S. at 405-406, 108 S.Ct. at 1881, 100 L.Ed.2d at 418-419.

As discussed above, because this claim is brought by an employee and not by a union, it is a hybrid Section 301 claim and is therefore subject to a six-month statute of limitations. The claim therefore accrued when plaintiff knew, or should have known, of the arbitrator's final decision. See DelCostello, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed.2d 476; Vadino, 903 F.2d at 261 n.11. Although the Complaint does not allege when plaintiff became aware of the arbitrator's final decision, the Complaint was filed less than four months after the decision, and therefore Count III is not time-barred.

Notwithstanding its timeliness argument, defendant contends that Count III should be dismissed because the CBA provides for final resolution of disputes through arbitration, and the claim was fully prosecuted through arbitration. Defendant further avers that plaintiff has failed to timely appeal the arbitrator's award and decision, which denied plaintiff's claim for lost wages but ordered that he be reinstated as an employee of defendant. Defendant avers that plaintiff's attempt to re-litigate these issues is barred by the doctrine of collateral estoppel.

Plaintiff does not dispute that the arbitration award

and decision are final and binding. He also agrees that under the CBA, he was contractually obligated to follow the grievance procedures outlined there. However, he suggests in his response in opposition to the motion to dismiss that he did exhaust required procedures by filing a grievance and appealing it to arbitration.¹⁸

Defendant argues that plaintiff failed to file an appropriate appeal, and suggests that, therefore, he cannot pursue Count III in this lawsuit. However, plaintiff contends that the decision was not subject to appeal and, therefore, he is permitted to file the lawsuit.

In support of this contention, plaintiff argues that he "understood his claim to be governed by binding, common law arbitration under 42 Pa.C.S. § 7341" which, according to plaintiff, authorizes appeal of an arbitration award only on grounds that the arbitrator abused her powers or violated a constitutional right. Plaintiff argues that such an appeal is limited to firefighters and police officers, he therefore was not permitted to take an appeal of the arbitrator's award and decision in this case.¹⁹

¹⁸ See plaintiff's response at 4.

¹⁹ See plaintiff's response at 4-5. Under the law cited by plaintiff,

(Footnote 19 continued):

(Continuation of footnote 19):

Defendant argues that, on the contrary, the arbitration at issue here was governed by the Federal Arbitration Act ("FAA"), which provides, in relevant part, that "Notice of a motion to vacate, modify or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12. Moreover, defendant contends that the Pennsylvania law relied upon by plaintiff applies only to police officers and firefighters.²⁰

Otherwise, neither party cites legal authority in support of its respective position on whether, and to what extent, plaintiff was permitted to appeal from the arbitrator's award and decision. Although defendant contends that the arbitration was governed by the FAA, it has not established such a contention through a citation to any relevant provision of the CBA or relevant statutory or case law.

Moreover, defendant cites no authority for its apparent

The award of an arbitrator in a nonjudicial arbitration which is not subject to Subchapter A (relating to statutory arbitration) or a similar statute regulating nonjudicial arbitration proceedings is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

42 Pa.C.S.A. § 7341.

²⁰ In support of this contention, defendant cites "Act 111, Section 1". This refers to the Act of June 24, 1968, P.L. 237, No. 111, § 1, as amended, 73 P.S. § 217.1, which provides that police officers and firefighters employed by the Commonwealth of Pennsylvania or a political subdivision of the Commonwealth shall have the right to bargain collectively with their public employers. Defendant argues because Mount Joy is a private employer, Section 7341 does not apply to plaintiff.

contention that plaintiff's failure to appeal the arbitration award and decision precludes him from pursuing Count III.²¹ Accordingly, I deny the motion to the extent it seeks dismissal of Count III for failure to appeal the arbitrator's award and decision. See E.D.Pa.R.Civ.P. 7.1(c).

Finally, defendant contends that plaintiff is collaterally estopped from pursuing the breach of contract claim set forth in Count III. Collateral estoppel, also known as issue preclusion, "protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy" and promotes judicial economy by "preventing needless litigation". Parklane Hosiery Company, Inc. v. Shore, 439 U.S. 322, 326, 99 S.Ct. 645, 649, 58 L.Ed.2d 552, 559 (1979).

Here, defendant avers that plaintiff is attempting to re-litigate the same issues which were presented to the arbitrator. However, defendant's legal analysis is based on its recitation of the doctrine of collateral estoppel under Pennsylvania law.

As noted above, I agree with defendant that Count III

²¹ Even assuming that defendant is correct that the arbitration is governed by the FAA, I would deny the motion in this regard because I cannot fully evaluate defendant's contention. Specifically, it is unclear whether defendant contends that plaintiff's failure to appeal bars recovery on Count III because it amounts to a failure to exhaust remedies under the CBA before proceeding under Section 301 of the LMRA, or because any such appeal would be plaintiff's exclusive avenue for recovery after the arbitration award and appeal. In any event, defendant cites no authority for either proposition.

is preempted and therefore properly treated as a Section 301 claim. Therefore, it is governed by federal common law, not state law. See Lingle, 486 U.S. at 405-406, 108 S.Ct. at 1881, 100 L.Ed.2d at 418-419.²²

Because I have determined that Count III is preempted, I do not address defendant's contention that Count III is subject to collateral estoppel under Pennsylvania law. Moreover, because defendant does not argue that the breach-of-contract claim is subject to collateral estoppel under federal common law, I do not analyze such a doctrine here. Therefore, I deny the motion to the extent it seeks dismissal of Count III.²³

CONCLUSION

For all the foregoing reasons, I grant defendant's motion to dismiss in part, deny it in part, and dismiss it in part as moot.

Regarding Count I, the motion is granted to the extent

²² Defendant has cited Pennsylvania state-court cases as well as federal cases in support of its collateral estoppel argument. However, defendant has not established the elements of collateral estoppel under federal common law for purposes of this LMRA claim, and therefore I am unable to evaluate the merits of its contention.

²³ However, as noted above, in the context of a hybrid LMRA claim such as Count III, plaintiff must plead and prove that the Union breached its duty of fair representation. Carpenter, 2009 WL 4756258, at *3 (internal citations omitted). As discussed above in footnote 10, the allegations in the Complaint appear to support the inference that plaintiff is satisfied with his Union's representation in the grievance and arbitration process arising from the termination of his employment.

Thus, although I do not dismiss Count III from the Complaint, it is the sense of this Opinion that in the event plaintiff files an Amended Complaint to re-plead the claims set forth in Counts I and/or II, he should also clarify his allegations regarding the Union.

it seeks dismissal of plaintiff's defamation claim as untimely, and Count I is dismissed without prejudice for plaintiff to replead his defamation claim in accordance with this Opinion. To the extent the motion seeks dismissal of Count I for failure to state a claim for defamation under Pennsylvania law, the motion is dismissed as moot.

The motion is granted to the extent it seeks dismissal of Count II, and Count II is dismissed with prejudice.

Finally, the motion is denied to the extent it seeks dismissal of Count III.

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

JAMES W. SWAYNE,)	
)	Civil Action
Plaintiff)	No. 10-cv-03969
)	
vs.)	
)	
MOUNT JOY WIRE CORPORATION,)	
)	
Defendant)	

O R D E R

NOW, this 21st day of March, 2011, upon consideration of the following documents:

- (1) Motion to Dismiss Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), which motion was filed August 17, 2010 by defendant;
- (2) Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, which brief in opposition was filed September 15, 2010; and
- (3) Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss Complaint Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, which reply was filed November 19, 2010;

and for the reasons articulated in the accompanying Opinion,

IT IS ORDERED that motion is granted in part, dismissed in part as moot, and denied in part.

IT IS FURTHER ORDERED that the motion is granted to the extent it seeks dismissal of the defamation claim set forth in Count I as untimely.

IT IS FURTHER ORDERED that Count I of plaintiff's Complaint is dismissed without prejudice for plaintiff to re-plead his defamation claim in accordance with the accompanying Opinion.

IT IS FURTHER ORDERED that to the extent the motion seeks dismissal of Count I for failure to state a claim for defamation under Pennsylvania law, the motion is dismissed as moot.

IT IS FURTHER ORDERED that the motion is granted to the extent it seeks dismissal of Count II.

IT IS FURTHER ORDERED that Count II of plaintiff's Complaint is dismissed with prejudice.

IT IS FURTHER ORDERED that the motion is denied to the extent it seeks dismissal of Count III.

IT IS FURTHER ORDERED that plaintiff shall have until April 20, 2011 to file an amended complaint consistent with the accompanying Opinion. In the event plaintiff does not file an amended complaint by April 20, 2011, defendant shall have until May 2, 2011 to answer Count III of plaintiff's Complaint.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge