

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

GERALD RAMSEY,	:	CIVIL ACTION
Plaintiff,	:	No. 97-CV-1301
	:	
v.	:	
	:	
AT&T CORP.	:	
and	:	
LUCENT TECHNOLOGIES INC.,	:	
Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J.

August 22, 1997

**I. INTRODUCTION**

Plaintiff Gerald Ramsey ("Plaintiff") has brought this action against Defendants AT&T Corp. and Lucent Technologies Inc. ("Defendants") alleging various claims surrounding his employment discharge.

Presently before the Court for disposition are Defendants' motion to dismiss Plaintiff's claims for fraud and misrepresentation, negligent representation, promissory estoppel, defamation and breach of binding policies and procedures (Counts III - VII respectively) and Plaintiff's response thereto. For the following reasons, I will grant Defendants' motion in part and dismiss Count V ( promissory estoppel) and Count VII (breach of binding policies and procedures) of the Amended Complaint.

## II. BACKGROUND<sup>1</sup>

Plaintiff Gerald Ramsey resides in Allentown, Pennsylvania. (Amended Complaint ¶ 3). Defendant AT&T, Plaintiff's employer for almost 30 years, maintains and operates its personnel and employment functions on a centralized basis in New Jersey. (Amended Complaint ¶¶ 7, 11, 14). At all times material, Plaintiff worked for AT&T in New Jersey. (Amended Complaint ¶ 3).

In mid 1995, Plaintiff became aware that his labor relations manager position at AT&T might be subject to elimination. In searching for a new position, Plaintiff met with Dewayne Rideout, Director of Human Relations & Facilities - IC Group, AT&T Microelectronics. (Amended Complaint ¶ 14). This meeting took place at the AT&T facility in Allentown, Pennsylvania in July of 1995. Id.

Plaintiff and Mr. Rideout discussed the possibility of Plaintiff taking a position at the Allentown facility. (Amended Complaint ¶¶ 14-15). In late July 1995, Mr. Rideout offered Plaintiff a position at the Allentown facility. (Amended Complaint ¶ 16). Sometime thereafter, Plaintiff began to perform the duties of his new assignment on a part-time basis from his

---

1. As required when reviewing a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the nonmoving party. See Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985).

New Jersey work location. (Amended Complaint ¶¶ 16, 18-19).

However, in October of 1995, Mr. Rideout disavowed ever extending this job offer to Plaintiff. (Amended Complaint ¶ 20).

In light of Mr. Rideout's disclaimers, members of management informed Plaintiff that they believed that he was engaged in unauthorized activity and that his employment and future placement were in jeopardy. (Amended Complaint ¶¶ 21-23). Following these incidents, Plaintiff unsuccessfully applied for numerous positions throughout the AT&T system. (Amended Complaint ¶¶ 30-31). Because he did not procure further employment with Defendants, Plaintiff was discharged on March 15, 1996. (Amended Complaint ¶ 38).

On or about February 2, 1997, Plaintiff filed a Complaint in the Eastern District of Pennsylvania, challenging his discharge from AT&T as age discrimination and asserting various common law claims related to his failure to obtain a position at AT&T's Allentown, Pennsylvania facility. On April 17, 1997, Defendants moved to dismiss Plaintiff's common law claims. In response, Plaintiff filed an Amended Complaint. Defendants now move to dismiss the common law claims asserted in the Amended Complaint.

### **III. DISCUSSION**

#### **A. Standard for a Motion to Dismiss**

The purpose of a motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed for failure to state a claim upon which relief may be granted if the facts plead and reasonable inferences drawn therefrom are legally insufficient to support the relief requested. Commonwealth ex. rel. Zimmerman v. PepsiCo, Inc., 836 F.2d 173, 179 (3d Cir. 1988). In reviewing a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the nonmoving party. Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985).

**B. Analysis**

**1. Choice of Law**

As a threshold matter, Defendants contend that the Court should apply Pennsylvania law in this case as Pennsylvania has not only the greatest stake in the outcome of this litigation but also has the most significant contacts with this action. Despite Plaintiff's assertions to the contrary, I conclude that Pennsylvania law should apply and adopt Defendants' argument as follows.

A federal court exercising supplemental jurisdiction over state law claims is required to utilize the choice of law

rules of the forum state. American Contract Bridge League v. Nationwide Mut. Fire Ins. Co., 752 F.2d 71, 74 (3d Cir. 1985). Accordingly, Pennsylvania's choice of law rules apply in the case. Pennsylvania adheres to a "flexible [choice of law] rule which permits analysis of the policies and interests underlying the particular issue before the court." Griffith v. United Air Lines, Inc., 203 A.2d 796, 805 (Pa. 1964).

This hybrid choice of law methodology combines the approaches of the Restatement II (contacts establishing significant relationships with a state) and the interest analysis (a qualitative appraisal of the states' policies governing a particular controversy). Lacey v. Cessna Aircraft Co., 932 F.2d 170, 187 (3d Cir. 1991). This test has evolved into a two part analysis. The court first determines whether a false conflict exists between the states' laws.<sup>2</sup> LeJeune v. Bliss-Salem, Inc., 85 F.3d 1069, 1071 (3d Cir. 1996). If no false conflict exists, the court then determines "which state has the greater interest in the application of its law." Id.

In this instance, a true conflict exists with respect to Plaintiff's common law claims. Pennsylvania, with limited exceptions, does not recognize any common law causes of action for termination of at-will employment. Paul v. Lankenau Hosp.,

---

2. A false conflict exists where "only one jurisdiction's governmental interests would be impaired by the application of the other jurisdiction's law." Lacey, 932 F.2d at 187.

569 A.2d 346, 348 (Pa. 1990). Moreover, Pennsylvania does not recognize a cause of action for breach of an employer's personnel policies. Muscarella v. Milton Shoe Mfg. Co., Inc., 507 A.2d 430, 432 (Pa. Super. Ct. 1986). New Jersey, on the other hand, has more readily found exception to the employment at-will doctrine and has announced its willingness to modify the law to protect employees from termination for any reason. Woolley v. Hoffmann-LaRoche, Inc., 491 A.2d 1257, 1260-61 (N.J. 1985).

Accordingly, as the governmental interests of New Jersey and Pennsylvania are in conflict and would be impaired by the application of the other state's laws, a true conflict exist with respect to Plaintiff's claims. See Ruccolo v. BDP, Int'l, Inc., No. 95-2300, 1996 WL 735575, at \*5 (D.N.J. March 25, 1996) (conflict exists between New Jersey and Pennsylvania employment laws). Because a true conflict exists, the Court must then consider which state has the most significant contacts with Plaintiff's claims and which state's policies would be better served by the application of its laws. An analysis of these factors leads me to conclude that Pennsylvania law is applicable to this case.

First, Pennsylvania has the most significant contacts with Plaintiff's claims. Counts III, IV, V, VI and VII relate to Plaintiff's claim that AT&T revoked its offer of employment for a position at AT&T's Allentown, Pennsylvania facility. Moreover,

Plaintiff, a Pennsylvania resident, allegedly applied for this position in person in a meeting in Pennsylvania. In addition, Mr. Rideout, the person Plaintiff claims offered him the position in Allentown, is employed by AT&T in Pennsylvania.

In short, Plaintiff's common law claims relate to (1) employment in Pennsylvania for (2) a Pennsylvania resident who (3) traveled to Pennsylvania to interview for a position with (4) an AT&T employee for works in Pennsylvania.<sup>3</sup> See McFadden v. Burton, 645 F. Supp. 457, 465 (E.D. Pa. 1986) (the court, applying New Jersey's choice of law rules, determined that Pennsylvania law governed plaintiff's claims because the discussions concerning the job occurred in Pennsylvania and the employer was located in Pennsylvania); Lee v. Kemper Group, No. 88-0945, 1990 WL 94008, at \*7 (E.D. Pa. June 29, 1990), aff'd, 931 F.2d 50 (3d Cir.), cert. denied, 502 U.S. 946 (1991) (the court applied Pennsylvania law where plaintiff was a Pennsylvania

---

3. Plaintiff, on the other hand, argues that all of the relevant contact between the parties occurred in New Jersey. In support of his contention, Plaintiff alleges the following: (1) the employment relationship was centered in New Jersey as Plaintiff was employed there, AT&T's principal place of business is there and AT&T promulgates policies and procedures in New Jersey for all its locations; (2) all material employment decisions effecting Plaintiff were made in New Jersey; (3) Plaintiff began to perform the duties of his new position in New Jersey; and (4) the conduct (such as Mr. Rideout's disclaimers) which caused Plaintiff's injury and its effects (Plaintiff's inability to locate employment) occurred in New Jersey. See Plaintiff's Opposition to Defendants' Rule 12(b)(6) Motion at 8-9.

While Plaintiff certainly alleges a number of contacts with New Jersey, the Court must consider which state has the most significant relationships with the action, rather than the greatest number. See Lacey, 932 F.2d at 187. In applying Pennsylvania's choice of law analysis, I cannot ignore the facts that the Plaintiff resides in Pennsylvania and the alleged situs of the job at issue is in Pennsylvania.

citizen and the activities in question occurred in defendant's Pennsylvania office).

Second, Pennsylvania has the greatest interest in having its laws applied to the action. If job situs does not govern the application of law to employment actions, Pennsylvania employers may be thrown into uncertainty with respect to the application of laws to their personnel decisions. Such certainty is particularly important because Pennsylvania law provides employers with greater latitude and flexibility than other states with respect to termination of at-will and breach of employment contract claims.<sup>4</sup> Accordingly, given that Pennsylvania has both the most significant contacts with Plaintiff's common law claims and the greatest interest in having its laws applied to these claims, Pennsylvania law should govern Counts III, IV, V, VI and VII of the Amended Complaint.

**2. Counts III and IV - Fraud and  
Misrepresentation and Negligent  
Misrepresentation**

---

4. The Supreme Court recognized this need for certainty regarding the application of laws to employment claims in Oil Workers Int'l Union v. Mobil Oil Corp., 426 U.S. 407 (1976). In that case, the Supreme Court considered whether Texas' right-to-work law invalidated a collective bargaining agreement where employees were hired in Texas but worked predominantly on the high seas. Id. at 410-21. The Court held that the job situs should govern the application of state right-to-work laws under the National Labor Relations Act. Id. at 418-420. In doing so, the Supreme Court noted the inherent predictability of a job situs test, finding that any other result would throw employers into considerable uncertainty regarding their labor decisions. Id. at 419.

Count III of the Amended Complaint is captioned "Fraud and Misrepresentation" and states that as a "direct and proximate result of the defendant's [sic] misrepresentations and Ramsey's reliance upon them, Ramsey suffered injury...." Count IV, titled "Negligent Misrepresentation," essentially reiterates these allegations. Defendants contend these claims should be dismissed for two reasons: (1) Pennsylvania adheres to a strong presumption of at-will employment and (2) these claims are preempted by federal and state statutes.<sup>5</sup>

**a. at-will employment**

Under Pennsylvania law, the presumption of at-will employment is a high burden to overcome. Paul v. Lankenau Hosp., 569 A.2d 346, 348 (Pa. 1990). However, exceptions have developed to soften the harsh impact of this doctrine. As the Pennsylvania Superior Court recently stated, an employee may overcome the presumption of employment at-will if there is (1) an agreement for a definite duration; (2) a provision limiting discharge for just cause; (3) sufficient additional consideration; or (4) an applicable recognized public policy exception. Luteran v. Loral Fairchild Corp., 688 A.2d 211, 214 (Pa. Super. Ct. 1997). Accordingly, as Plaintiff's claims for fraud and negligent

---

5. Plaintiff analyzes all of his claims under New Jersey law and does not offer any support for his allegations under Pennsylvania law.

representation arose in the context of employment negotiation, I must evaluate his contentions in this context.

In reviewing Plaintiff's statements in the Amended Complaint, I conclude that Plaintiff is an at-will employee. First, Plaintiff has not pled any facts to suggest that the offer of employment involved anything other than a position as an at-will employee of AT&T at the Allentown facility. Specifically, Plaintiff has not alleged that the offer involved employment for a definite duration, that the offer included "just cause" protection or that the revocation of the offer violated a clear mandate of public policy.

In view of Plaintiff's at-will employment status, Defendants conclude that Plaintiff could be discharged "at any time, for any reason, or for no reason at all." Darlington v. General Elec., 504 A.2d 306, 309 (Pa. Super. Ct. 1986). In support, Defendants argue that "it would be anomalous ... to allow an employer to fire an at-will employee after one day of employment while subjecting that same employer to liability for [these common law claims] for terminating an offer of at-will employment one day before the employment began." See Defendants' Motion at 12-13.

Although I agree that Defendants' argument has a certain logical force, I am unwilling to conclude that parties who negotiate terminable at-will employment contracts are

unprotected by prohibitions against torturous conduct in business dealings. Browne v. Maxfield, 663 F. Supp. 1193, 1203 (E.D. Pa. 1987). As Judge Pollak held in Browne:

To reject this [above] conclusion is not, as defendants argue, to permit an end run around the terminable at-will doctrine. It is merely to hold that a party negotiating a terminable at-will employment contract has a right to assess the risks inherent in such employment free of the distortions of tortious conduct.

Id. See also Mulgrew v. Sears Roebuck & Co., 868 F. Supp. 98, 104 (E.D. Pa. 1994) (court held that at-will employee stated claim for misrepresentation); Engstrom v. John Nuveen & Co., Inc., 668 F. Supp. 953, 958, 963-64 (E.D. Pa. 1987) (court did not dismiss at-will employee's tort count for fraud although it later did grant summary judgment on this issue); In re Frymire, 96 B.R. 525, 537 (E.D. Pa.), aff'd in part and vacated in part, 107 B.R. 506 (E.D. Pa. 1989) (fraud claim may be invoked in employment at-will context).<sup>6</sup>

Under Pennsylvania law, fraud is defined as "(1) a misrepresentation, (2) a fraudulent utterance thereof, (3) an

---

6. Other courts, however, have reached opposite conclusions. Specifically, in Brethwaite v. Cincinnati Milacron Mktg. Co., the court denied plaintiff's motion for leave to amend the complaint to add a claim for negligent representation. Brethwaite v. Milacron, No. 94-3621, 1995 WL 232519, at \*5 (E.D. Pa. April 10, 1995). The court first cited Paul v. Lankenau Hosp. for the proposition that the law does not prohibit an employer for firing an employee even though the employee has relied on the employer's promise. Id. The court then concluded that the claim of negligent representation must fail as it requires a plaintiff to rely on the employer's misrepresentation and an employer's promise is not something on which the employee can rely. Id.

intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the misrepresentation and (5) damage to the recipient as the proximate result." Scaife Co. v. Rockwell-Standard Corp., 285 A.2d 451, 454 (Pa. 1971), cert. denied, 407 U.S. 920 (1972).<sup>7</sup> In the Amended Complaint, Plaintiff avers that he relied on Mr. Rideout's representations to his detriment. As such, I conclude that Plaintiff, at this stage of the pleading, has, if just barely, asserted causes of action for fraud and misrepresentation and negligent misrepresentation.

**b. preemption**

Defendants next contend that Counts III and IV should be dismissed because they are preempted by Plaintiff's statutory discrimination claims. In particular, Defendants argue that Plaintiff's statutory discrimination claims in Counts I and II encompass the same facts on which he bases his common law claims in Counts III and IV of the Amended Complaint.

As Defendants correctly assert, common law claims that arise from and cover the same facts as discrimination claims are preempted by state and federal discrimination statutes. Paul v. John Hancock Mut. Life Ins. Co., No. 86-2390, 1987 WL 15206, at \*7 (E.D. Pa. Aug. 3, 1987) (federal courts continue to follow the

---

7. The only distinguishing elements between fraud and negligent representation are "the state of mind of the person who supplied the information and the standard of proof that must be met by the plaintiff." Browne, 663 F. Supp. at 1202.

rule that the Pennsylvania Human Relations Act ("PHRA") is the exclusive state remedy for discrimination); Parker v. Chestnut Hill Hosp., No. 96-1292, 1996 WL 334426, at \*3 (E.D. Pa. June 11, 1996) (claims arising "out of the same facts giving rise to plaintiff's discriminatory discharge claim" are preempted).

Nevertheless, the courts have also recognized that where a claim is grounded on actions other than the alleged discriminatory conduct, that claim is not barred by the PHRA. Brennan v. National Tel. Directory Corp., 850 F. Supp. 331, 334-35 (E.D. Pa. 1994). Thus, the general rule that has emerged "is simply that if all or part of the facts that would give rise to a discrimination claim would also independently support a common law claim, the common law claim is not preempted by the PHRA and need not be adjudicated within its framework." Keck v. Commercial Union Ins. Co., 758 F. Supp. 1034, 1039 (M.D. Pa. 1991).

Turning to the case at bar, Plaintiff certainly alleges causes of action which are grounded in violations of anti-discrimination legislation; however, Plaintiff has also filed claims for fraud which may not to be based on age discrimination. As such, it may be possible for Plaintiff to succeed on his fraud and negligent representation claims without proving discrimination. See Deramo v. Consolidated Rail Corp., 607 F. Supp. 100, 102 (E.D. Pa. 1985) (plaintiff may win on breach of

contact claim without proving discrimination); Brieck v. Harbison-Walker Refractories, 624 F. Supp. 363, 366 (W.D. Pa. 1985), aff'd in part and rev'd in part, 822 F.2d 52 (3d Cir. 1987), and cert. granted, 485 U.S. 226, and cert. dismissed, 488 U.S. 226 (1988) (question of contract rights adequately describes a cause of action separate from the statutory claim of age discrimination). Accordingly, I conclude that Plaintiff's claims for fraud and misrepresentation and negligent misrepresentation are not preempted by the PHRA or the Age Discrimination in Employment Act ("ADEA").

### **3. Count V - Promissory Estoppel and Detrimental Reliance**

Count V of the Amended Complaint is titled "Promissory Estoppel and Detrimental Reliance." Defendants also move to dismiss this claim based on the employee at-will doctrine and statutory preemption.

In Paul v. Lankenau Hospital, the Supreme Court of Pennsylvania stated that "our law does not prohibit firing an employee for relying on an employer's promise." 569 A.2d at 348.<sup>8</sup> See also Brethwaite, No. 94-3621, 1995 WL 232519, at \*5 (an at-will employee does not have a claim for promissory or equitable estoppel because of his or her alleged reliance on an

---

8. In Paul, the employee (a doctor at the defendant hospital) argued that his employer was estopped from discharging him for removing five refrigerators as the employer had given him permission over the previous years to take the equipment. 592 A.2d at 347.

employer's promise). Therefore, in light of these decisions, I will dismiss Count V.<sup>9</sup>

#### 4. Count VI - Defamation

In Count VI, Plaintiff claims that Mr. Rideout's "disavowal of his earlier representations" defamed Plaintiff. Specifically, Plaintiff asserts that Defendants' alleged statements are defamatory because they are, "in essence, accusation[s] by [Mr.] Rideout that [Plaintiff] was being untruthful in his assertions and that [Plaintiff], in fact, had been acting without authorization." See Plaintiff's Opposition to Defendant's Motion at 15. Defendants argue that the Court should dismiss this Count because (1) Plaintiffs fail to specify to whom the allegedly defamatory statements were published and (2) that the allegations are incapable of defamatory meaning. See Defendants' Motion at 15-16.<sup>10</sup>

First, a necessary element of a defamation action is publication or communication to a third party.<sup>11</sup> Suppan v.

---

9. As I will dismiss Count V on the basis of the employment at-will doctrine, I will not discuss Defendants' statutory preemption argument.

10. Defendants also contend that the Court should dismiss the defamation claim because Plaintiff cannot overcome the burden of employment at-will and because the defamation claim is statutorily preempted. For the same reasons stated in the above sections, I will also not dismiss this claim on these grounds.

11. To state a cause of action for defamation, a complaint must contain averments of fact, which, if proven, would establish: (1) the defamatory character of the communication; (2) the publication of the communication to a third party; (3) that the communication refers to the plaintiff; (4) the third party's understanding of the communication's defamatory character; and (5)  
(continued...)

Kratzer, 660 A.2d 226, 229 (Pa. Commw. Ct. 1995). An allegation which merely avers that the alleged defamatory statement was published to a third person is defective. Id. Plaintiff, however, has properly identified these third parties -- in this case, various employers and hiring managers -- to whom Defendants made the comments that Plaintiff had not performed his duties in an authorized or proper manner. See Suppan, 660 A.2d at 229 (plaintiff properly alleged identity of third party by naming the Northampton police officers).

Next, under Pennsylvania law, a statement is defamatory if it "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." Gorwara v. AEL Indus., Inc., 784 F. Supp. 239, 248 (E.D. Pa. 1992). The threshold determination of whether a statement is capable of defamatory meaning depends on the general tendency of the words to have such an effect. McFadden v. Burton, 645 F. Supp. 457, 461 (E.D. Pa. 1986). A simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation. Roffman v. Trump, 754 F. Supp. 411, 419 (E.D. Pa. 1990).

In this instance, however, a reasonable recipient of Mr. Rideout's communications could infer that Mr. Rideout based

---

11. (...continued)  
injury. Suppan v. Kratzer, 660 A.2d 226, 229 (Pa. Commw. Ct. 1995).

his assessment of Plaintiff's abilities on some undisclosed additional information; "there can be little doubt that a person who hears someone criticizing another's job performance would presume that the person doling out the disparaging comments possessed knowledge of some facts on which to base the criticism." Roffman, 754 F. Supp. at 419. As Plaintiff alleges that Mr. Rideout criticized his credibility and his work activities, I will deny Defendants' motion to dismiss Plaintiff's defamation claim.

**5. Count VII - Breach of Binding Policies and Procedures**

In Count VII, Plaintiff asserts a claim for breach of the AT&T and Lucent personnel policies. Defendants move to dismiss this Count on the basis that failure to adhere to a company personnel policy does not create a cause of action.

It is established law in Pennsylvania that unless a corporate policy is offered as a binding term of employment, there can be no cause of action for violation of that policy. Smith v. Bell Atl. Network Servs., Inc., No. 94-1605, 1995 WL 389697, at \*5 (E.D. Pa. June 28, 1995), aff'd, 82 F.3d 406 (3d Cir. 1996). See also Muscarella, 507 A.2d at 432 (failure to adhere to a company personnel policy does not create a cause of action for breach of an employment contract). As Plaintiff has not alleged that the Defendants' corporate policy was offered as

a binding term of employment, I will dismiss Count VII of the Amended Complaint.

**IV. CONCLUSION**

For the above reasons, I will dismiss Counts V and VII of the Amended Complaint.

An order follows.

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

GERALD RAMSEY,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	No. 97-CV-1301
	:	
v.	:	
	:	
AT&T CORP.	:	
	:	
and	:	
	:	
LUCENT TECHNOLOGIES INC.,	:	
	:	
Defendants	:	

**O R D E R**

AND NOW, this 22nd day of August, 1997, upon consideration of Defendants AT&T Corp. and Lucent Technologies Inc.s' Motion to Dismiss Counts III, IV, V, VI and VII of the Amended Complaint (Docket No. 10) and Plaintiff's response (Docket No. 11) thereto, it is hereby ORDERED and DECREED that:

1. Defendants' Motion is GRANTED with respect to Counts V and VII. Accordingly, these Counts will be dismissed.
2. Defendants' Motion is DENIED with respect to Counts III, IV and VI.

BY THE COURT:

---

RONALD L. BUCKWALTER, J.