

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

GEORGE K. TRAMMELL, III : CIVIL ACTION
vs. :
ASTON CONSTRUCTION COMPANY : NO. 95-5300

ORDER AND MEMORANDUM

AND NOW, to wit, this 30th day of May, 1997, upon consideration of the Motion of Defendant, Aston Construction Company, to Dismiss Plaintiff's Amended Complaint (Document No. 37, filed February 14, 1997),¹ **IT IS ORDERED** that the Motion of Defendant to Dismiss Plaintiff's Amended Complaint is **GRANTED** and Plaintiff's Amended Complaint (Document No. 35, filed January 17, 1997) is **DISMISSED WITH PREJUDICE**.

Defendant's Motion is granted for the following reasons:

1. Plaintiff initiated this lawsuit against his former employer, Aston Construction Company, on August 22, 1995. Plaintiff asserted in that original Complaint that defendant's conduct violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. After a conference on the record on

¹By Order dated February 19, 1997 the Court granted plaintiff until March 19, 1997 to file a response to Defendant's Motion; however, plaintiff did not respond. The Court also notes that by a separate order dated February 19, 1997 the Court denied Plaintiff's Request for Appointment of Counsel because four attorneys had reviewed the file and declined to accept the representation.

December 18, 1996, the Court dismissed plaintiff's original Complaint for lack of subject matter jurisdiction on the ground that defendant did not employ (15) or more employees as defined in 42 U.S.C. § 2000e(b). See Order of December 18, 1996. The dismissal of the Complaint was without prejudice to plaintiff's right to file an amended complaint in which he was granted leave to set forth claims under the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 955 et seq., and claims for slander, defamation, and assault, and any other legally cognizable claims, subject to the right of the defendant to raise any appropriate defenses. See Order of December 18, 1996. On January 17, 1997 plaintiff filed an Amended Complaint.²

2. A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the sufficiency of the allegations contained in the complaint." Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). In evaluating such a motion, the Court must accept the truth of a plaintiff's allegations. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "[T]he complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle

²The January 17, 1997 filing contained a document captioned "Complaint" to which was appended a document captioned as a Motion to Amend and/or Modify Case Number 95-3500. The former presented factual background in a section entitled "Preliminary Statement" and the later contained a list of claims. Because the Court had already granted plaintiff leave to file an amended complaint by Order dated February 19, 1997, the Court denied as moot Plaintiff's Motion to Amend and/or Modify Case Number 95-3500. The Court treats that Motion and the document to which it was appended as Plaintiff's Amended Complaint.

him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The Court should not ask whether the plaintiff will ultimately prevail, but rather whether the plaintiff can prove any set of facts that will entitle her to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Finally, the Court notes that it will liberally construe a pro se plaintiff's complaint. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

3. The second and third numbered paragraphs of Plaintiff's Amended Complaint³ appear to assert that defendant has violated the Thirteenth Amendment. However, by Order dated October 21, 1996, in which the Court denied Plaintiff's Motion to Amend [his original] Complaint, the Court concluded that there exists no private cause of action under the Thirteenth Amendment for employment discrimination. See Matthews v. Freedman, 128 F.R.D. 194, 202 n.2 (E.D. Pa. 1989), aff'd, 919 F.2d 135 (3d Cir. 1990).⁴ Similarly, plaintiff's claims in the sixth, tenth and fourteenth paragraphs of

³The first numbered paragraph of Plaintiff's Amended Complaint invokes the Court's diversity jurisdiction.

⁴The third numbered paragraph also refers to any "Federal, Civil, (Remedial), Action, Arising; under the Constitution of the United States." To the extent that this reference invokes the Fourteenth Amendment or 42 U.S.C. § 1983, the Court has already determined that such authorities are inapplicable because defendant is not a state actor. See Orders of October 21, 1996. Similarly, to the extent that plaintiff may be relying upon 42 U.S.C. § 1985 or 18 U.S.C. §§ 241 or 242, the Court has previously concluded that 42 U.S.C. § 1985 is inapplicable because plaintiff has not alleged a conspiracy between two people as required by that section and that 18 U.S.C. §§ 241 & 242 do not afford plaintiff a private right of action. Id. And, to the extent that plaintiff's claim is based upon 42 U.S.C. § 2000e et seq., the Court has already decided that it does not have jurisdiction over such a claim. See Order of December 18, 1996.

his Amended Complaint in which he states that defendant infringed his "Inalienable Guaranteed Federally Constitutional & Civil Rights," intruded on his civil rights, and intruded upon his "Inalienable Constitutional Rights," respectively, must also fail: to the extent the Court has not already addressed and rejected the possible statutory bases for these claims, the Court concludes that plaintiff has failed to state a claim upon which relief can be granted.

4. The fourth and fifth numbered paragraphs invoke 18 U.S.C. §§ 1343 (Wire Fraud Act) and 1514(c)(1) (civil action to restrain harassment of a victim or witness). However, neither statute provides for a private cause of action. See Napper v. Anderson, Henley, Shields, Bradford & Pritchard, 500 F.2d 634, 638 (5th Cir. 1974), cert. denied, 423 U.S. 837 (1975) (§ 1343); Krupnick v. Union National Bank, 470 F. Supp. 1037, 1038 (W.D. Pa. 1979) (§ 1343); Boisjoly v. Morton Thiokol, 706 F. Supp. 795, 807 (D. Utah 1988) (§ 1514). Moreover, the Amended Complaint fails to state any facts which could conceivably constitute wire fraud or harassment of a victim or witness.

5. Plaintiff's claims in the seventh and eighth paragraphs of his Amended Complaint, for defamation and slander, respectively, are dismissed because they are barred by Pennsylvania's one-year statute of limitations. See 42 Pa. Con. Stat. Ann. §5523(1). According to plaintiff's original Complaint, he was "forced to constructively discharge [him]self on June 10, 1994." Although the Amended Complaint relates back to the filing of the original

Complaint, the filing of the original Complaint on August 22, 1995 was not timely with respect to the claims for defamation and slander because the statute of limitations had already expired on June 10, 1995.

6. In the ninth numbered paragraph of his Amended Complaint plaintiff asserts that a claim for "Assault (Verbal Degrading) with Malice." However, Pennsylvania law does not recognize a cause of action for verbal assault. See Pino v. Wyeth-Ayerst/AHPC, No. 95-3180, 1995 WL 708551, *4 (E.D. Pa. Nov. 29, 1995). Furthermore, words, without some affirmative action, cannot amount to an assault, and plaintiff has made no allegation of any affirmative action by defendant sufficient to constitute an assault. Id. at *5.

7. In the eleventh, twelfth and thirteenth numbered paragraphs of his Amended Complaint, plaintiff asserts that defendant committed "Willful deliberate, premeditated, personal Torts" and subjected him to "Mental Cruelty with malice," and "Disparate Treatment with malice," respectively. These paragraphs of the Amended Complaint do not state any recognizable claim upon which relief can be granted.

The Court notes that by its Order of December 18, 1996, it granted plaintiff leave to file an amended complaint in which he could plead, inter alia, a claim under the PHRA, subject to any appropriate defenses. However, to the extent that paragraphs eleven, twelve and thirteen of the Amended Complaint may be seeking redress under the PHRA, such an attempt is time-barred under the

facts set forth in the Amended Complaint. Under 43 Pa.C.S.A. § 959(h) a complainant must file his administrative complaint with the Pennsylvania Human Relations Commission ("PHRC") within 180 days of the date of the alleged discriminatory act.

Because plaintiff stated in his Amended Complaint that he was "forced to constructively discharge [him]self on June 10, 1994," any acts of discrimination upon which plaintiff's claim is based ceased on June 10, 1994, plaintiff's last day of employment.⁵ However, it was not until March 2, 1995 that plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") in which he directed that the charge be cross-filed with the PHRC pursuant to the worksharing agreement between the two agencies. This filing is well past early December 1994, when the 180-day period for filing a claim with the PHRC expired. Thus, because the administrative complaint was not timely filed, even had plaintiff asserted a claim under the PHRA, this Court would be without jurisdiction over such an action. See Rudas v. Nationwide Mutual Insurance Co., No. 96-5987, 1997 WL 11302, *2 (E.D. Pa. Jan. 10, 1997) (citing Vincent v. Fuller, 616 A.2d 969,

⁵Plaintiff has not alleged any facts that could amount to a continuing violation, which, in effect, would extend the time for filing. See Rudas v. Nationwide Mutual Insurance Co., No. 96-5987, 1997 WL 11302, *3-*4 (E.D. Pa. Jan. 10, 1997).

974 (Pa. 1992)); Parsons v. City of Philadelphia Coordinating Office of Drug and Alcohol Abuse Programs, 833 F. Supp. 1108, 1114 (E.D. Pa. 1993).⁶

BY THE COURT:

JAN E. DUBOIS, J.

⁶Although 43 P.S. § 962(e) provides for equitable tolling, none of the situations in which equitable tolling may arise is applicable here. See Shaver v. Corry Hiebert Corp., 936 F. Supp. 313, 316 (W.D. Pa. 1996) (explaining that the 180-day period for filing an administrative charge with the PHRC may be equitably tolled if the plaintiff has been misled by defendant, has been prevented from asserting his rights in some extraordinary way, or has timely asserted his rights, but in the wrong forum (citations omitted)).