

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

CAROL DISANTIS, : Civil Action  
Plaintiff, :  
 :  
v. :  
 : No. 97 CV-5434  
KOOLVENT ALUMINUM PRODUCTS, INC., :  
Defendant, :  
 :  
MICHAEL DIDOLCE, :  
Defendant, :  
 :  
JAMES CARPENTER, :  
Defendant. :

**ORDER - MEMORANDUM**

Presently before this Court is Defendant's Partial Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Plaintiff's Answer thereto, and Defendant's Reply Memorandum.

**I. Factual and Procedural Background**

From May 1, 1992 to May 6, 1993, Plaintiff was employed as a secretary by Defendant KoolVent at Defendant KoolVent's King of Prussia, Pennsylvania location. Defendants DiDolce and Carpenter, Employees of Defendant KoolVent, were Plaintiff's supervisors. Plaintiff alleges that Defendant KoolVent, "through its agents, managers, supervisors, and employees, inflicted upon [her] a course of conduct constituting sex discriminations and sexual harassment." (Pl. Answer to Def. Motion at 2.) Plaintiff also alleges that Defendant's DiDolce and Carpenter "participated in, tolerated[, ] and ratified sex discrimination and sexual harassment toward" (Pl. Answer to Def. Motion at 2.) her. As a result of this discrimination, Plaintiff alleges she was

constructively discharged from her employment at KoolVent on May 6, 1993.

Plaintiff filed an administrative complaint with the Equal Employment Opportunity Commission ("EEOC") on March 1, 1994. Plaintiff claims but offers no proof that she also filed an administrative complaint with the Pennsylvania Human Relations Commission ("PHRC").

Plaintiff's Complaint states four claims: Count I) Plaintiff claims unlawful discrimination against Defendant KoolVent under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII") and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. § 951 et seq. ("PHRA"); Count II) Plaintiff claims constructive discharge against Defendant KoolVent under Title VII and the PHRA; Count III) Plaintiff claims unlawful discrimination against Defendant Michael DiDolce under Title VII; and Count IV) Plaintiff claims unlawful discrimination against Defendant James Carpenter under Title VII.

## **II. Discussion**

A motion to dismiss a complaint for failure to state a claim may not be granted unless it appears from the face of the complaint that the plaintiff can establish no set of facts which would entitle plaintiff to relief. Conley v. Gibson, 335 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957). The facts must be taken as true and in the light most favorable to the plaintiff. Id.

Defendant argues that as a matter of law Plaintiff's PHRA claims in Counts I and II should be dismissed on the grounds that Plaintiff neither pled that she filed a charge or complaint with the PHRC nor that she exhausted her administrative remedies under the PHRA. To bring suit under the PHRA, a plaintiff must first file an administrative complaint with the PHRC within 180 days of the alleged act of discrimination. 43 Pa. Cons. Stat. Ann. §§ 959(h), 962. Plaintiff claims that the date on which she was both last harassed and constructively discharged by Defendants was May 6, 1993. (Def. Partial Motion to Dismiss, Ex. A) Plaintiff claims, however, to have filed an administrative complaint with the PHRC on December 9, 1993. (Pl. Answer at 4.) The time between May 6, 1993, the last date of Defendant's alleged harassment of Plaintiff, and December 9, 1993, the day on which Plaintiff allegedly filed a complaint with the PHRC, exceeds 180 days. Hence, because Plaintiff did not file a timely administrative complaint with the PHRC, Plaintiff is precluded from pursuing judicial remedies under the PHRA. 43 Pa. Cons. Stat. Ann. § 959(h). The Third Circuit reached this same result in Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997).

In Woodson, the court considered whether a complainant could initiate PHRC proceedings by only filing a timely EEOC complaint. Id. at 926. The court concluded that "if the PHRC does not receive a complainant's claim, then that complainant cannot bring suit under the PHRA." Id. at 927. Moreover, the court recognized that the PHRA's 180 day filing requirement has been

strictly construed by Pennsylvania state courts. Id. at 925. Thus, in Pennsylvania, a complainant is precluded from seeking judicial remedies under the PHRA unless he or she made a timely filing with the PHRC. As stated above, Plaintiff in the instant matter has not alleged she made a timely filing with the PHRC.

Defendant also argues that as a matter of law Plaintiff's Counts III and IV should be dismissed in their entirety for Title VII does not provide for liability against individual employees. Although the federal courts of appeals are divided on whether employees may be individually liable for unlawful discrimination under Title VII, the Third Circuit, in Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061 (3d Cir. 1996), held that Title VII does not apply to individual employees. Id. at 1078.

Accordingly, Plaintiff may not sue Defendants DiDolce and Carpenter, employees of Defendant KoolVent, for unlawful discrimination in their individual capacities under Title VII.

AND NOW, this 25th day of March, 1998, upon careful consideration of Defendant's Partial Motion to Dismiss, Plaintiff's Answer thereto, and Defendant's Reply Memorandum, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Counts I and II, only as they relate to causes of action under the PHRA, are PARTIALLY DISMISSED without prejudice. Plaintiff may amend her complaint within 20 days to allege timely filing under the PHRC.

2. Plaintiff's Counts III and IV are dismissed with prejudice.

BY THE COURT:

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Clifford Scott Green, S.J.