

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

CHERYL L. DONOHUE,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
STEPHEN M. KLINGHOFFER and	:	
THE HAPPY HUCKSTER CORP.,	:	
	:	
Defendants.	:	NO. 96-8114

MEMORANDUM

Reed, J.

August 19, 1998

Plaintiff Cheryl L. Donohue (“Donohue”) filed this suit against defendants Stephen M. Klinghoffer (“Klinghoffer”) and The Happy Huckster Corp. (“The Happy Huckster”) alleging three counts: violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (Count I); violation of the Pennsylvania Human Relations Act (“the PHRA”), 43 Pa. Stat. Ann. § 951, *et seq.* (Count II); and wrongful discharge in violation of public policy (Count III). This Court has jurisdiction over the federal claim pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

Pending before this Court is the motion of defendants Klinghoffer and The Happy Huckster to strike both plaintiff’s prayer for punitive damages and demand for a jury trial in Count II of the First Amended Complaint (Document No. 22), the supplemental memorandum of the defendants (Document No. 26), and the response of plaintiff Donohue thereto (Document No. 27). Also, currently before this Court is the motion of defendants Klinghoffer and The Happy Huckster for partial summary judgment on plaintiff’s claim of wrongful discharge in Count III of

the First Amended Complaint (Document No. 23).¹ Upon consideration of these motions and the response thereto, and for the following reasons, the motion of defendants Klinghoffer and The Happy Huckster to strike plaintiff's prayer for punitive damages and demand for a jury trial will be denied, and the motion of defendants Klinghoffer and The Happy Huckster for partial summary judgment will be denied as moot and plaintiff's claim in Count III for wrongful discharge will be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2).

I. FACTUAL AND PROCEDURAL BACKGROUND

From approximately March 22, 1995 through April 19, 1995, Donohue was employed by The Happy Huckster, of which Klinghoffer is the sole shareholder, director and officer. Donohue worked primarily at Klinghoffer's Flowers and Flavors and, when needed, at Klinghoffer's Farm Fresh Produce, both of which were located in Ardmore, Pennsylvania. Donohue alleges that she was discharged from The Happy Huckster on April 19, 1995 because of her pregnancy. Defendants contend, however, that Donohue was discharged because she was a poor employee and lacked work ethic.

On September 21, 1995, Donohue filed a charge of discrimination with the Equal Employment Opportunity Commission against The Happy Huckster for the unlawful termination of her employment. Donohue filed the complaint for this action on December 6, 1995, which was subsequently amended on November 5, 1997. On February 25, 1998, Klinghoffer and The

¹ Plaintiff did not file a response to defendants' motion for partial summary judgment on Count III of the First Amended Complaint. In her response to the defendants' motion to strike, however, plaintiff informally sought to withdraw her claim of wrongful discharge in Count III. (See Document No. 27 at n.1). I conclude that plaintiff has conceded she has no valid claim for wrongful discharge and that it would be unfair to allow plaintiff to voluntarily dismiss that claim without prejudice. As a condition of her request for withdrawal, I will dismiss Count III with prejudice.

Happy Huckster filed the pending motion.

II. DISCUSSION

A. PUNITIVE DAMAGES

The defendants argue that punitive damages are not recoverable under the PHRA in light of the decision in Hoy v. Angelone, 691 A.2d 476 (Pa. Super. Ct. 1997), vacating an award of punitive damages and indicating that punitive damages are not recoverable under the PHRA. Plaintiff, however, contends that the PHRA explicitly provides for both legal and equitable relief and thus, punitive damages are available. Although the Pennsylvania Supreme Court has not yet addressed this issue, the district courts in the Third Circuit which have examined this issue have found that punitive damages are recoverable under the PHRA, including cases that were decided after the decision in Hoy. See, e.g., Sarko v. Penn-Del Directory Co., 968 F. Supp. 1026, 1037 (E.D. Pa. 1997) (predicting that the Supreme Court of Pennsylvania would permit an award of punitive damages under the PHRA despite the decision in Hoy); Gould v. Lawyers Title Insurance Corp., 1997 WL 241146 (E.D. Pa.) (same). I find that the reasoning of my fellow judges is both persuasive and accurate and therefore, I concur with their conclusion and conclude that Donohue may pursue a claim for punitive damages under the PHRA.

B. JURY DEMAND

Defendants argue that the plaintiff is not entitled to a jury trial under the PHRA, citing Wertz v. Chapman Township, 709 A.2d 428 (Pa. Commw. Ct. 1998) and Murphy v. Cartex Corp., 546 A.2d 1217 (Pa. Super. Ct. 1998) in support. Plaintiff, however, asserts that

while the Pennsylvania Supreme Court has not definitively answered the question of whether a plaintiff has a right to a jury trial under the PHRA, she is nonetheless entitled to a jury trial under the PHRA and the Seventh Amendment to the United States Constitution. This issue has been fully analyzed in Galeone v. American Packaging Corporation, 764 F. Supp. 349 (E.D. Pa. 1991) (holding that a plaintiff has a right to a jury trial under the PHRA and the Seventh Amendment) and Lubin v. American Packaging Corporation, 760 F. Supp. 450 (E.D. Pa. 1991) (same). See also Renick v. Olan Mills, No. 96-0506, 1996 WL 903711 (W.D. Pa.) (citing cases). In the absence of a decision of the Pennsylvania Supreme Court to the contrary, I conclude that the reasoning of those cases remains sound. An abbreviated version of the detailed analysis in Galeone and Lubin follows.

The United States Court of Appeals for the Third Circuit established a two-part analysis to determine whether a jury trial is provided under a particular statute. See Cox v. Keystone Carbon Co., 861 F.2d 390 (3d Cir. 1988). Under this Cox analysis, the language and legislative history to the statute must initially be examined. Id. at 393. Then, if the statutory analysis does not reveal a legislative intent to provide a jury trial, the Seventh Amendment to the United States Constitution “must be examined to determine if it commands that a jury trial be provided.” Id.

Although the legislative history of the PHRA does not assist with its interpretation, the language of the statute itself indicates the intent of the legislature. This intent is evidenced by the use legislature of the term “legal” in the PHRA by the Pennsylvania legislature. The United States Supreme Court established that:

In cases in which legal relief is available and legal rights are

determined, the Seventh Amendment provides a right to jury trial . . . We can infer, therefore, by providing specifically for “legal” relief, Congress knew the significance of the term “legal,” and intended that there would be a jury trial on demand.

Lorillard, Div. of Loew’s Theaters, Inc. v. Pons, 434 U.S. 575, 583 (1978). Similarly, I conclude that the Pennsylvania legislature knew the significance of the term “legal relief” written into the statute when it enacted the PHRA. Hence, I find that the legislature intended plaintiffs to have a right to a jury trial under the PHRA.

Even if this Court were to determine that the Pennsylvania legislature did not intend for plaintiffs to have a right to a jury trial under the PHRA, this Court’s analysis would not be complete. I must then examine whether a right to a jury trial is provided for by the Seventh Amendment. Under the Seventh Amendment, when a statute provides for a claim for legal relief, the right to a jury trial remains intact. See Tull v. United States, 481 U.S. 412 (1987). Consequently, I find that because the PHRA provides for legal relief and Donohue is seeking legal relief in her claim under the PHRA, she is entitled to a jury trial under the Seventh Amendment to the United States Constitution.

III. CONCLUSION

For the foregoing reasons, I will deny the motion of defendants to strike plaintiff’s prayer for punitive damages in Count II of the First Amended Complaint and plaintiff’s demand for a jury trial in Count II of the First Amended Complaint. I will also deny as moot the motion of defendants for partial summary judgment on plaintiff’s claim of wrongful discharge in Count III of the First Amended Complaint and dismiss that Count.

An appropriate Order follows.

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v.	:	
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THE HAPPY HUCKSTER CORP.,	:	
	:	
Defendants.	:	NO. 96-8114

ORDER

AND NOW, this 19th day of August, 1998, upon consideration of the motion of defendants Stephen M. Klinghoffer and The Happy Huckster Corp. to strike plaintiff Cheryl L. Donohue's prayer for punitive damages and demand for a jury trial in Count II of the complaint (Document No. 22), the supplemental memorandum of the defendants (Document No. 26), and the response of plaintiff Cheryl L. Donohue thereto (Document No. 27), as well as the motion of defendants Stephen M. Klinghoffer and The Happy Huckster Corp. for partial summary judgment on Count III of plaintiff's First Amended Complaint (Document No. 23), and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the motion of defendants to strike plaintiff's prayer for punitive damages and demand for jury trial on Count II of the Complaint is **DENIED**.

IT IS FURTHER ORDERED that the motion of defendants for partial summary judgment on Count III of the complaint is **DENIED AS MOOT** and plaintiff's claim for wrongful discharge in Count III of her complaint is **DISMISSED WITH PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(a)(2).

LOWELL A. REED, JR., J.