

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

| | | |
|---|---|---------------------|
| KATHRYN COOPER-NICHOLAS, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| CITY OF CHESTER, Pennsylvania, et al., | : | |
| | : | |
| Defendants. | : | No. 95-6493 |

MEMORANDUM

Reed, J.

December 29, 1997

Plaintiff Kathryn Cooper-Nicholas (“Cooper-Nicholas”) has claimed various federal and state constitutional deprivations as well as federal statutory violations committed by the City of Chester (“City”), the Chester Economic Development Authority (“CEDA”), Chester Redevelopment Authority (“Redevelopment Authority”),¹ and Thomas Jackson (“Jackson”), arising from her employment at the Redevelopment Authority. Cooper-Nicholas has also claimed breach of contract under state law. This Court has original jurisdiction pursuant to 28 U.S.C.

§ 1331 and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

Currently before the court are two motions for summary judgment: one by the City of Chester (Document No. 27) and the other by the CEDA, Redevelopment Authority, and Jackson (Document No. 28). For the following reasons, I will grant in part and deny in part

¹ The City of Chester, through its mayor, on October 13, 1994, passed a resolution terminating the authority of the Redevelopment Authority to administer funds, namely the Urban Development Action Grant (“UDAG”) and the State Enterprise Zone repayment funds. (Def. Ex. D). In April of 1995, the City of Chester established a new agency, the CEDA, to administer the UDAG funds. (See Mem. of Def. CEDA at unnumbered page 6).

these motions.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case is the companion of another case, Monica J. Washington v. City of Chester, et al. (No. 96-4033), the pending motions for summary judgment of which will also be disposed of in a separate ruling today. The defendants, the incidents, and the factual underpinnings of these cases are striking similar. In fact, the counsel for the parties in both cases are the same and the briefing of the parties is identical in numerous parts.

Cooper-Nicholas was hired as a Deputy Executive Director of the Redevelopment Authority in March of 1993, pursuant to an oral employment agreement. The parties intended to put this agreement into writing but never did so. As part of her duties, Cooper-Nicholas wrote proposals, administered the community development grants, and served as Equal Employment Opportunity (“EEO”) Officer.

During her employment, Cooper-Nicholas claims that Thomas Jackson, the then Executive Director of the Redevelopment Authority, made sexual comments about female employees. These comments were: (1) Jackson told an employee, Karen Spellman, on three occasions, a story about a sorority sister of Cooper-Nicholas who had tried to rape him in college; (2) Jackson made comments about another employee, Monica Elam, that “[s]he’s a CW,”² “she just has to have my body,” and “look how she’s watching me;” (3) Jackson talked about Elam’s hair and clothes and her relationship with her fiancé, Jackson would question Elam’s sleeping arrangement with her fiancé, told her that she was fornicating, and that he would marry them; (4) Jackson stated, at a house warming celebration, that Elam would never have a

² Apparently, the memorandum of Cooper-Nicholas explains that this stands for “crotch-watcher.”

nice place like the guest of honor because Elam had a live-in boyfriend who kept all his assets in his name, and that “whoremongers like you (Elam) will never get things like this;” (5) Jackson told Monica Washington, the Legal Services Specialist at the Redevelopment Authority, that his secretary, Andrea Lee, was “doing the wild thing” at lunch; (6) Jackson commented on Elam having a baby out of wedlock; and (7) Jackson commented about Lee wearing skirts with slits and he also called her a “whoremonger.”

Cooper-Nicholas outlined a host of grievances regarding the conduct of Jackson in a memorandum to the Board of Directors on October 11, 1994. Her grievances included that Jackson assigned unfair salaries to female employees, mismanaged the staff and various projects, did not deliver her employment contract as promised, and made offensive and vulgar comments to female employees. Cooper-Nicholas asked that she be given authority over all staff. Cooper-Nicholas presented her grievances to the Board of Directors on October 27, 1994. The next day, Jackson terminated her employment on the purported grounds that the Redevelopment Authority lost funding monies from the Urban Development Action Grant (“UDAG”). Jackson ordered that Cooper-Nicholas be escorted by police out of the building.

Cooper-Nicholas filed a charge with the Equal Employment Opportunity Commission (“EEOC”). After receiving a Notice of Right to Sue from the EEOC, Cooper-Nicholas instituted this lawsuit alleging sex discrimination and sexual harassment in violation of Title VII, 42 U.S.C. §2000e (Count I), and the Pennsylvania Human Relations Act (“PHRA”), 43 Pa. Cons. Stat. Ann. §§ 951-963 (Count II), denial of equal protection and procedural due process in violation of the United States Constitution pursuant to 42 U.S.C. § 1983 (“Section 1983”) (Counts III, IV), and breach of contract in violation of state law (Count V).

Upon the filing of a motion to dismiss by the defendant City of Chester, this Court dismissed the City of Chester from the claims alleged pursuant to Section 1983. (Document No. 18).

II. LEGAL STANDARD

Summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A disputed factual matter is a genuine issue "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 248. The court must make its determination after considering the facts and all reasonable inferences drawn from them in the light most favorable to the nonmoving party. Id. at 255-56. The nonmoving party must produce evidence to support its position, and may not rest upon bare assertions, conclusory allegations, or suspicions. Fireman's Ins. Co. of Newark, N.J. v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982).

III. ANALYSIS

A. Hostile Work Environment Sexual Harassment

Five elements must be proven to support a hostile work environment claim under Title VII: (1) the employee suffered intentional discrimination because of her sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the existence of respondeat superior liability. Andrews v. City of

Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990). My analysis will focus on the second and third elements only.

Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment does not violate Title VII. Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993). The totality of the circumstances must be considered, including the frequency of the discriminatory conduct, its severity, whether its physically threatening or humiliating or a mere offensive utterance, and whether it reasonably interferes with an employee's work performance. Id.

With respect to the regular and pervasive requirement of the second element, the evidence presented involves the following opprobrious statements made by Jackson: (1) Jackson told an employee, Karen Spellman, on three occasions, a story about a sorority sister of Cooper-Nicholas who had tried to rape him in college (Dep. of Spellman at 47-49); (2) Jackson made comments about Monica Elam that "[s]he's a CW," "she just has to have my body," and "look how she's watching me" (Dep. of Cooper-Nicholas at 315); (3) Jackson talked about Elam's hair and clothes and her relationship with her fiancé, Jackson questioned Elam's sleeping arrangement with her fiancé, told her that she was fornicating, and that he would marry them; (4) Jackson stated, at a house warming celebration, that Elam would never have a nice place like the guest of honor because Elam had a live-in boyfriend who kept all his assets in his name, and that "whoremongers like you (Elam) will never get things like this;" (Pl. Exs. 9, 10); (5) Jackson told Monica Washington that his secretary, Andrea Lee, was "doing the wild thing" at lunch; (6) Jackson commented on Elam having a baby out of wedlock; (7) Jackson commented about Lee wearing skirts with slits and referred to her as a "whoremonger" (Dep. of Cooper-Nicholas at

316); and (8) Jackson referred to women in his church who “chased” men as “temple whores.” (Dep. of Cooper-Nicholas at 313-14).³ In an affidavit accompanying her EEOC charge, Cooper-Nicholas wrote that the comments of Jackson “were made in the office, generally at office functions like birthday parties or a housewarming party during office time. He also talked out loud within the earshot of me” (Pl. Ex. 9). In a letter to Jackson announcing her official resignation, Karen Spellman wrote that she “often found [herself] feeling very uncomfortable when [Jackson] made embarrassing, vulgar, and inappropriate comments during business meetings.” (Pl. Ex. 15).

While these comments are unprofessional, offensive, and callow, they, in isolation or collectively, do not rise to the level of unlawfulness within the purview of Title VII. These comments span nineteen months and thus cannot be considered frequent or chronic. Also, these comments are not sufficiently severe to create a hostile work environment. Unlike in other cases involving hostile work environments, there is no evidence here of physical touching by Jackson of himself or others, and no extensive inquiries into the sex life of Cooper-Nicholas or any other employee,⁴ no comments about the physical sexual anatomy of Cooper-Nicholas or any other

³ In her brief, Cooper-Nicholas does not cite to or attach any specific deposition testimony to support her claims that these comments by Jackson were made. Instead, she cites to an affidavit of her counsel, Lanier E. Williams, Esq. who states that he attended the depositions of Kathryn Cooper-Nicholas, Monica Washington, Jennifer Knox, Karen Spellman, and Andrea Lee and that the statements attributed to them in the briefs are “either actual statements or substantially the actual statements made by them.” (Pl. Ex. 3).

This is not a proper manner to defend against a motion for summary judgment under the standards set forth in Federal Rule of Civil Procedure 56(c). There is no way for the Court to properly evaluate these statements without examining the context in which they were said. Even if considering these statements as true and accurate, however, my analysis will show that they do not create a hostile work environment.

⁴ Rufo v. Metropolitan Life Ins. Co., Civ. No. 96-6376, 1997 WL 732859, at *3 (E.D. Pa. Nov. 4, 1997) (denying summary judgment for defendant where unwelcome physical contact included the co-worker touching plaintiff's breast as well as his own genitals).

employee,⁵ no physically threatening conduct, no displaying calendars of nude females or viewing photographs of persons in sexual positions,⁶ no displaying sexual objects on desks,⁷ and no simulating sexual acts in the workplace.⁸

Moreover, as defendants point out, Cooper-Nicholas has submitted no evidence that the comments were made to her directly or that she was the subject of those comments. To the contrary, Cooper-Nicholas admits that Jackson never referred to her in an offensive manner, never made any sexual overtures toward her, and never suggested that they date or have sexual relations of any kind. (Dep. of Cooper-Nicholas at 317). While case law recognizes that offensive statements made to a female other than the plaintiff can contribute to creating a hostile work environment,⁹ the plaintiff in those cases had herself been a target of the discriminatory conduct at some point and the evidence of such conduct toward other female employees was used

⁵ Taylor v. Cameron Coca-Cola Bottling Co., Civ. No. 96-1122, 1997 WL 719106, at *5 (W.D. Pa. Mar. 27, 1997) (finding genuine issue of material fact as to whether the alleged discrimination against plaintiff was pervasive and regular where co-worker commented about size of plaintiff's breast and her sex life with her husband, measured bra strap of another female employee, told of dirty jokes weekly, showed pornographic pictures and calendars containing pictures of the naked, upper body of women, and commented about female employees' legs).

⁶ See Bennett v. Corroon & Black Corp., 845 F.2d 104, 106 (5th Cir. 1988) (finding that cartoons depicting plaintiff engaged in crude sexual activities created hostile work environment).

⁷ Andrews, 895 at 1486 (evidence to be considered in determining whether work environment was hostile includes name calling, pornography, displaying sexual objects on desk, disappearance of plaintiffs' case files and work product, anonymous phone calls, and destruction of other property).

⁸ See Harley v. McCoach, 928 F. Supp. 533, 539 (E.D. Pa. 1996) (evidence that male workers "openly displayed pornographic magazines, wore tee-shirts depicting sexually explicit messages, simulated various sexual acts in the workplace, intentionally passed gas in [plaintiff's] presence, and spread rumors concerning sexual liaisons involving [plaintiff], . . . rubbed his genitals against [plaintiff's] backside, . . . repeatedly put his arm around her and called her "Sweetheart," . . . slid the raffle ticket down the front of his pants, . . . [and] operated the forklifts in such a manner as to place [plaintiff] in harm's way").

⁹ See Andrews, 895 F.2d at 1485 ("The pervasive use of derogatory and insulting terms relating to women generally and addressed to female employees personally may serve as evidence of a hostile environment."); Barbetta v. Chemlawn Servs. Corp., 669 F. Supp. 569, 572 (W.D.N.Y. 1987) ("While some of these incidents were not directed specifically at [plaintiff], and others were not witnessed by her, they are all evidence of a hostile and sexually offensive working environment.").

only to bolster the plaintiff's case. Cooper-Nicholas has disclosed no case, and I have found none, where a plaintiff presents evidence of sexually offensive conduct directed at other female employees as the sole basis for plaintiff's hostile environment claim.

Cooper-Nicholas argues that the comments in this case were similar to those under scrutiny in Farpella-Crosby v. Horizon Health Care, where the Court of Appeals for the Fifth Circuit found that comments of the director of the nursing home were severe and pervasive. 97 F.3d 803, 806 (5th Cir. 1996). In that case, the director inquired about plaintiff's sexual activity frequently, approximately two or three times a week, and made offensive comments to plaintiff, some in front of co-workers. *Id.* Farpella-Crosby can be distinguished from the fact pattern *sub judice*. First, there is no evidence that the comments of Jackson were made with such regularity as was the situation in Farpella-Crosby. Second, unlike in our case, the plaintiff in Farpella-Crosby was the direct target of the sexually discriminatory and offensive conduct.

I conclude that a factfinder could not reasonably characterize the comments of Jackson as severe, pervasive, or regular. In addition, Cooper-Nicholas has not met the subjective standard of proving that she was detrimentally affected by the alleged comments. There is no evidence that Cooper-Nicholas was upset by the incidents at the time of any occurrence or during her employment period or that her work performance was affected in any way.

Because Cooper-Nicholas has failed to present a triable question of fact on two essential elements of her prima facie case for hostile work environment, summary judgment is mandated. Accordingly, I will grant summary judgment in favor of defendants and against Cooper-Nicholas on the Title VII claim to the extent that it alleges sex discrimination and harassment. Courts have uniformly held that the PHRA should be interpreted consistent with

Title VII. Clark v. Commonwealth of Pennsylvania, 885 F. Supp. 694, 714 (E.D. Pa.1995).

Accordingly, having granted summary judgment on Cooper-Nicholas' Title VII claim for sex discrimination and harassment, I will dismiss her PHRA claim to the extent that it alleges sex discrimination and harassment.

Jackson should not feel vindicated by this Court's decision, however. While the comments made by Jackson may not fall within the purview of Title VII in this instance, his conduct casts a dark shadow on his professional character.

B. Retaliation

Nowhere in the Second Amended Complaint of Cooper-Nicholas is a cause of action for retaliation under Title VII expressly raised.¹⁰ Count I is entitled, "Title VII - Sex Discrimination and Sexual Harassment," and there is no mention of retaliation therein. Under the factual allegation section of the second amended complaint, however, there are detailed allegations that Jackson further retaliated against Cooper-Nicholas when he terminated her employment. (Second Amended Complaint ¶¶ 27, 28, 32, 33, 35). Despite the inartful drafting, if not blatant blunder on the part of plaintiff and her counsel to plead a separately labelled cause of action for retaliation, I am reminded that the purpose of pleadings is to provide proper notice to defendants. See Frazier v. SEPTA, 785 F.2d 65, 68 (3d Cir. 1986). Given that defendants extensively briefed this issue in their memoranda, I can clearly assume that defendants were not prejudiced by the lack of notice. Fortunately for Cooper-Nicholas, I will therefore analyze the retaliation claim on its merits as the parties have.

¹⁰ The original complaint and the first amended complaint of Cooper-Nicholas also do not contain a labelled cause of action for retaliation.

Title VII also makes it unlawful for an employer to discriminate against an employee "because [the employee] has opposed any practice made an unlawful practice by [Title VII], or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]." 42 U.S.C. § 2000e-3(a). To establish a prima facie case of discriminatory retaliation, a plaintiff must demonstrate that (1) she engaged in activity protected by Title VII; (2) the employer took an adverse employment action against her; and (3) there was a causal connection between her participation in the protected activity and the adverse employment action. Nelson v. Upsala College, 51 F.3d 383, 386 (3d Cir. 1995). Once the prima facie case has been established, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employment action in question. Quiroga v. Hasbro, Inc., 934 F.2d 497, 501 (3d Cir.), cert. denied, 502 U.S. 940 (1991). After this, the plaintiff must then demonstrate that the employer's explanation is pretextual. See Waddell v. Small Tube Prods., Inc., 799 F.2d 69, 73 (3d Cir. 1986).

The Court of Appeals for the Third Circuit does not require a formal letter of complaint to an employer or the EEOC as the only acceptable indicia of protected conduct. See Barber v. CSX Distrib. Servs., 68 F.3d 694, 702 (3d Cir. 1995) (citing Sumner v. United States Postal Serv., 899 F.2d 203, 209 (2d Cir. 1990) allowing informal protests of discriminatory practices such as complaints to management and expressing support of coworkers who have filed formal charges)). Under this lenient standard, it is clear that Cooper-Nicholas engaged in protected activity. As EEO Officer of the Redevelopment Authority, she took actions on behalf of other employees who were complaining about Jackson's offensive conduct. For example, Cooper-Nicholas on several occasions confronted Jackson that his comments made at the office

violated EEO laws and presented him with complaints of sexual harassment by several female employees. (Cooper-Nicholas EEOC Charge - Pl. Ex. 9). She also submitted a grievance memorandum to the Board of Directors that contained fifteen allegations detailing what Cooper-Nicholas considered incidents of unfair, mismanagement on the part of Jackson. Although the crux of her grievance memorandum dealt with Jackson's management style, one charge in particular can be characterized as protected activity within the meaning of Title VII. Cooper-Nicholas complained therein that "Mr. Jackson often made vulgar remarks to employees of a sexual nature in violation of the [Redevelopment Authority's] Sexual Harassment Policy. Mr. Jackson repeatedly used vulgar language of sexual nature towards Ms. Elam and Ms. Lee, in the presence of other staff members and at staff birthday parties. He often commented on their sexual activities, living arrangements with the opposite sex, and even called them 'whoremongers.'" (Def. Ex. G) (Pl. Ex. 21).

Defendants argue that Cooper-Nicholas did not have a reasonable belief that she was being subjected to sexual harassment by Jackson. The law on this issue, correctly stated, is that "a plaintiff need not prove the merits of the underlying discrimination complaint, but only that she was acting under a good faith, reasonable belief that a violation existed." Griffiths v. CIGNA Corp., 988 F.2d 457, 468 (3d Cir. 1993) (internal quotations omitted). I find, as a matter of law, that Cooper-Nicholas, after receiving complaints from several female employees in her capacity as EEO Officer and after hearing what she perceived to be offensive comments made by Jackson, she acted under a good faith, reasonable belief that Jackson was engaging in unlawful practices.

Proceeding to the next element, it is undisputed that the termination of Cooper-

Nicholas constitutes an adverse action within the meaning of the prima facie case for retaliation.

A causal connection can be demonstrated when adverse action closely follows protected activity, thereby justifying the inference of retaliatory motive. Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989), cert. denied, 493 U.S. 1023 (1990); Woods v. Bentsen, 889 F. Supp. 179, 187 (E.D. Pa. 1995) (“[O]ther courts generally hold that if at least four months pass after the protected action without employer reprisal, no inference of causation is created.”)

The evidence before the Court reveals that Cooper-Nicholas submitted a grievance to the Board of Directors on October 11, 1994 and delivered her grievance at the Board meeting held on October 27, 1994. The next day, October 28, 1994, Jackson terminated her employment. Given the temporal proximity of the allegedly retaliatory action, I find that Cooper-Nicholas has presented sufficient evidence to create a genuine issue of material fact regarding her prima facie case for retaliation.

The only argument defendants make to defeat the retaliation claim pertains to the lack of good faith on the part of Cooper-Nicholas, as discussed above. Defendants do not bring to the attention of this Court any recitation of a legitimate, nondiscriminatory reason for the termination of Cooper-Nicholas. Despite this shortfall, after reviewing the evidence of the record, I find that this burden of the analysis is satisfied by the stated reason of Jackson in his termination letter to Cooper-Nicholas that she was terminated due to loss of UDAG funding.¹¹

¹¹ In the termination of employment letter to Cooper-Nicholas from Jackson on October 28, 1994, he wrote:

As you know, the Chester Redevelopment Authority is experiencing reorganization due to loss of the Urban Development Action Grant (UDAG) miscellaneous proceeds.

As a result of the City Council action involving the UDAG miscellaneous proceeds, a major thrust of this office, economic development - handled by you, must be cutback. Concomitantly, you are

The final part of this burden shifting analysis requires Cooper-Nicholas to present sufficient evidence showing that this explanation is pretextual. To show that the stated reason is pretextual, Cooper-Nicholas submits her letter of appeal to the Board where she claims that her salary was paid primarily out of a different budget from the UDAG, which had an administrative surplus of \$606,000.00. (Pl. Ex. 25). Despite the far from fleshed out nature of Cooper-Nicholas' brief on this issue, and the scant evidence presented, I find that she has presented, albeit scarcely, a material fact in dispute as to her retaliation charge sufficient to survive a motion for summary judgment.

C. Denial of Equal Protection

To bring a successful claim under Section 1983 for denial of equal protection, Cooper-Nicholas must prove the existence of purposeful discrimination in that she received different treatment than other similarly-situated employees at the Redevelopment Authority. See Keenan v. City of Philadelphia, 983 F.2d 459, 465 (3d Cir. 1992) (citing Andrews v. Philadelphia, 895 F.2d 1469, 1478 (3d Cir. 1990)). Specifically, Cooper-Nicholas must prove that any disparate treatment was based on her gender. Id.

In her Second Amended Complaint, Cooper-Nicholas alleges that she protested to Jackson that “he was hiring men with lesser experience and education than similarly-situated females but was paying the men a higher salary than the females.” (Second Amended Complaint ¶ 21). The brief submitted by Cooper-Nicholas in defense against the motions for summary judgment does not address this issue. Cooper-Nicholas presents no evidence that similarly

laid off from the Redevelopment Authority at the close business [sic] on Friday, October 28, 1994.

.....
(Pl. Ex. 23).

situated employees were treated differently than she.¹² In fact, she was the only employee at the Redevelopment Authority in the position of Deputy Executive Director. Absent any evidence or even argument in support of this claim, I find that summary judgment is mandated in favor of defendants on Count III.

D. Denial of Procedural Due Process

Cooper-Nicholas alleges that defendants violated her rights to procedural due process of the law. Termination of employment requires procedural due process only where the individual has a property interest in continued employment. See Curry v. Pennsylvania Turnpike Comm'n, 843 F. Supp. 988, 990 (E.D. Pa. 1994) (citing Board of Regents v. Roth, 408 U.S. 564 (1972)). To have such an interest, the individual must have a claim of entitlement to continued employment which typically arises from a statute, ordinance or contract. Id. The existence of a property interest in public employment is decided according to state law. Cooley v. Pennsylvania Housing Fin. Agency, 830 F.2d 469, 471 (3d Cir. 1987) (citing Bishop v. Wood, 426 U.S. 341 (1976)).

As a general rule, public employees in Pennsylvania have at-will status. Id. State agencies in Pennsylvania may not limit their ability to discharge employees freely, and thus may not grant a property interest in employments, absent an explicit legislative grant of authority. Scott v. Philadelphia Parking Auth., 166 A.2d 278, 280-83 (Pa. 1960). In Banks v.

¹² Buried in her grievance memorandum to the Board of Directors, Cooper-Nicholas complains of the unfair salary differences among three recently hired staffpersons, Mr. Standback, Mr. DiPietro, and Mrs. Spellman. She concludes, "it is my belief that because she is a woman she received an unfair salary." (Def. Ex. F); (Pl. Ex. 20). Even assuming her denial of equal of protection claim is founded on this belief (she does not argue that it is), the evidence is glaringly insufficient. It is conclusory and, more important, does not pertain to Cooper-Nicholas. Cooper-Nicholas cannot base her claim that *she* was denied equal protection of the law on the treatment received by others.

Redevelopment Authority of the City of Philadelphia, the district court held that the Philadelphia Redevelopment Authority “had no power to create rules which would prevent dismissal at will.” 416 F. Supp. 72, 74 (E.D. Pa. 1976), aff’d, 556 F.2d 564 (3d Cir. 1977), cert. denied, 434 U.S. 929 (1977).

Under the prevailing case law, and in recognition that Cooper-Nicholas never had a written employment contract with any of the defendants, she cannot now claim a property interest in her employment at the Redevelopment Authority. Therefore, there is no evidence from which a reasonable jury could find that Cooper-Nicholas was denied procedural due process of the law. Accordingly, I will enter summary judgment on Count IV in favor of defendants.

E. Breach of Contract

As mentioned above, there is no common law cause of action against an employer for termination of an at-will employment relationship. Krajsa v. Keypunch, Inc., 622 A.2d 355, 358 (Pa. Super. 1993). For the same reasons just outlined above, Cooper-Nicholas cannot show any evidence in support of her breach of contract claim. Summary judgment will be likewise granted here.

F. CEDA / City of Chester

The CEDA and City of Chester make last ditch arguments that they are not proper defendants. I reject both of these arguments. The City of Chester argues that it was never made aware of any alleged sexual harassment by Jackson and thus there was nothing it could have done to prevent such conduct from continuing. The City of Chester cites to no case law in support of the proposition that it should be excused from liability on this basis. The CEDA argues that it did not exist as an entity at the time of the events giving rise to this lawsuit, that it did not employ the

Cooper-Nicholas or Jackson, and that it was established under a separate law than the law establishing the Redevelopment Authority.

“Failure to hold a successor employer liable for the discriminatory practices of its predecessor could emasculate the relief provisions of Title VII by leaving the discriminatee without a remedy or with an incomplete remedy.” EEOC v. MacMillan Bloedel Containers, Inc., 503 F.2d 1086, 1091 (6th Cir. 1974); Milner v. National Sch. of Health Tech., 73 F.R.D. 628, 631 (E.D. Pa. 1977). There are several factors to consider in determining the successorship of two entities that would render the successor liable for the acts done by its predecessor.¹³

The factors of “sameness” between entities, as enumerated in MacMillan and Milner, are present here. Cooper-Nicholas presents evidence that the CEDA had notice of the alleged discriminatory practices of Jackson and that Cooper-Nicholas had filed a charge with the EEOC. (Pl. Exs. 39, 40). Having reviewed the resolution passed by the City of Chester creating the CEDA and designating its responsibilities, I find that both the CEDA and the Redevelopment Authority had similar obligations to administer funding, including the UDAG monies. (Pl. Exs. 2, 43).

Furthermore, evidence has been presented, and CEDA does not contest, that CEDA employed eight individuals who had worked at the Redevelopment Authority. (Pl. Ex. 43). Accordingly, I conclude that, as a matter of law, CEDA is the successor entity of the Redevelopment Authority for the purpose of this case.

¹³ These factors include “1) whether the successor company had notice of the charge, 2) the ability of the predecessor to provide relief, 3) whether there has been a substantial continuity of business operations, 4) whether the new employer uses the same plant, 5) whether he uses the same or substantially the same work force, 6) whether he uses the same or substantially the same supervisor personnel, 7) whether the same jobs exist under substantially the same working conditions, 8) whether he uses the same machinery, equipment and methods of production and 9) whether he produces the same product.” MacMillan, 503 F.2d at 1094.

IV. CONCLUSION

In light of the foregoing, I will enter summary judgment in favor of defendants on Counts III, IV, and V. I will enter summary judgment in favor of defendants on Counts I and II to the extent that these Counts allege sex discrimination and harassment. However, I will allow the claim of retaliation in Counts I and II to go forward.

An appropriate Order will follow.

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

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|---|---|---------------------|
| KATHRYN COOPER-NICHOLAS, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| CITY OF CHESTER, Pennsylvania, et al., | : | |
| | : | |
| Defendants. | : | No. 96-6493 |

ORDER

AND NOW, on this 29th day of December, 1997, upon consideration of the motion of the City of Chester for summary judgment (Document No. 27) and the motion of defendants Chester Economic Development Authority, Chester Redevelopment Authority, and Thomas Jackson for summary judgment (Document No. 28), and responses of all parties thereto, as well as the pleadings, depositions, affidavits, and admissions on file, and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the motions of defendants are **GRANTED IN PART AND DENIED IN PART** in accordance with the following:

1. **SUMMARY JUDGMENT** is hereby **ENTERED** on **Counts I and II** in favor of the City of Chester, Chester Economic Development Authority, Chester Redevelopment Authority, and Thomas Jackson and against Kathryn Cooper-Nicholas to the extent that sex discrimination and sexual harassment under Title VII is alleged.
2. **SUMMARY JUDGMENT** is hereby **DENIED** on **Counts I and II** to the extent that retaliation under Title VII is claimed.
3. **SUMMARY JUDGMENT** is hereby **ENTERED** on **Counts III, IV, and V** in favor of the City of Chester, Chester Economic Development Authority, Chester Redevelopment Authority, and Thomas Jackson and against Kathryn Cooper-Nicholas.

IT IS FURTHER ORDERED that the parties shall submit a joint report to the Court no later than **January 20, 1998** as to the status of settlement. If the parties need the assistance of the Court in facilitating settlement negotiations, the report should so indicate. Otherwise, the parties should be prepared to have the case listed for trial.

LOWELL A. REED, JR., J.