

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

WILLIAM F. DAVIS : CIVIL ACTION
 :
 v. :
 :
 GENERAL ACCIDENT INSURANCE COMPANY :
 OF AMERICA and WILLIAM JENKINS : NO. 98-4736

MEMORANDUM AND ORDER

HUTTON, J.

February 11, 1999

Presently before the Court are Defendants General Accident Insurance Company and William Jenkins' Motion to Dismiss (Docket No. 7), Plaintiff William Davis' reply (Docket No. 9), and Defendants' sur reply thereto (Docket No. 10). For the reasons stated below, the Defendants' Motion is **GRANTED**.

I. BACKGROUND

The Plaintiff, William Davis, alleged the following facts in his complaint. Defendant General Accident Insurance Company of America employed Plaintiff Davis for fifteen years in its Information Services Department. Plaintiff consistently received high performance evaluations.

The Plaintiff, an African-American, reported to John Cousins. Cousins reported to Defendant William Jenkins. In May 1996, General Accident terminated Cousins for complaining to the EEO department that: (1) Jenkins made racist remarks; (2) blocked attempts to promote Davis; and (3) falsely accused Davis of not

being qualified for promotions. Following the termination of Cousins, General Accident instructed Davis to report to the EEO department. Davis told the department what he knew concerning Cousins' allegations. General Accident did not take any action against Jenkins.

Following this meeting with the EEO department, General Accident denied Davis several promotions. Due to the threatening atmosphere and his belief that there was no future for him, Plaintiff terminated his employment with General Accident in September 1997. Subsequently, on December 29, 1997, Plaintiff filed a four-count complaint against General Accident and Jenkins. The four counts are: (1) a claim under 42 U.S.C. § 1981 - Count I; (2) a claim under 42 U.S.C. § 1985 - Count II; (3) a claim under 42 U.S.C. § 1986 - Count III; and (4) a retaliation claim under Title VII - Count IV. On October 5, 1998, the Defendants filed this motion to dismiss.

II. STANDARD

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need

only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),¹ this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The Court will only dismiss the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

III. DISCUSSION

In their motion to dismiss, the Defendants argue that Counts II and III should be dismissed as to both Defendants and Count IV should be dismissed as to Defendant Jenkins. First, Defendants argue that Count II-- a claim under 42 U.S.C. § 1985-- should be dismissed because Plaintiff failed to allege an actionable conspiracy as a corporation and employee cannot conspire

¹ Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

with one another under § 1985. Defendants also argue that Count II should be dismissed because Plaintiff failed to allege an underlying cause of action upon which a § 1985 claim can be based. Second, Defendants contend that Count III-- a claim under 42 U.S.C. § 1986-- should be dismissed because § 1986 claims are based upon an actionable § 1985 claim and Plaintiff failed to allege an actionable § 1985 claim. Third and finally, Defendants argue that Count IV-- a claim under Title VII-- should be dismissed as to Defendant Jenkins because an individual employee is not liable under Title VII.

A. Section 1985 and Section 1986 Claims - Counts II and III

The Plaintiff proceeds against the Defendants under 42 U.S.C. §§ 1985 and 1986, two provisions of the Ku Klux Klan Act of 1871. These provisions establish:

[A] cause of action against any person who enters into a private conspiracy for the purpose of depriving the claimant of the equal protection of the laws . . . [and] against any person who, knowing that a violation of § 1985 is about to be committed and possessing power to prevent its occurrence, fails to take action to frustrate its execution.

Rogin v. Bensalem Township, 616 F.2d 680, 696 (3d Cir. 1980). To make out a valid cause of action under § 1985, a plaintiff must allege each of the following: (i) a conspiracy; (ii) for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws or of the equal privileges and immunities under the laws; (iii) an act in

furtherance of the conspiracy; and (iv) injury to either person or property, or deprivation of any right or privilege of a United States citizen. See Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971) (citing 42 U.S.C. § 1985(3)). Once a plaintiff satisfies the § 1985 requirements, he may also maintain a § 1986 action, if he can prove that the defendants had knowledge of the § 1985 violations and neglected to prevent their occurrence. See 42 U.S.C. § 1986 (1994). If, however, a plaintiff cannot set forth a cause of action under § 1985, he cannot set forth a claim under § 1986. Rogin, 616 F.2d at 696.

1. Actionable Conspiracy

Defendants first argue that, because a corporation cannot conspire with its employees the Plaintiff failed to allege an actionable conspiracy. See Jones v. Arbor, Inc., 820 F. Supp. 205, 208 (E.D. Pa. 1993). Nevertheless, "a section 1985(3) conspiracy between a corporation and one of its officers may be maintained if the officer is acting in a personal, as opposed to official, capacity, or if independent third parties are alleged to have joined the conspiracy." Robinson v. Canterbury Village, Inc., 848 F.2d 424, 431 (3d Cir. 1988). Here, Plaintiff contends that he alleged that Jenkins acted personally in conspiring with General Accident because he sued him in his individual capacity.

This Court agrees with the Plaintiff's analysis. The Defendants correctly note that Plaintiff does not explicitly allege

that Jenkins acted in a personal capacity. However, at this stage of the proceeding, this Court must draw all reasonable inferences in the Plaintiff's favor. Thus, the actions that the Plaintiff "alleges could be construed as going beyond the corporate decision" to prevent Plaintiff promotional opportunities and force him out of his job. See Larmore v. RCP/JAS, Inc., No. CIV.A.97-5330, 1998 WL 372647, at *4 (E.D. Pa. May 19, 1998). Accordingly, the motion to dismiss the § 1985 claim is denied in this respect.

2. Actionable Underlying Cause of Action

Defendants next argue that the Plaintiff failed to identify the underlying law upon which his § 1985 conspiracy claim is based. "Section 1985(3) provides no substantive rights in itself; it merely provides a remedy for violation of the rights it designates." Great Am. Fed. Sav. & Loan Assoc. v. Novotny, 442 U.S. 366, 372 (1979). In order to state a § 1985 claim, therefore, a plaintiff must identify the requisite underlying law, privilege, or immunity which he or she has been deprived. See Williams v. General Motors Acceptance Corp., No. CIV.A.89-6661, 1990 WL 79405, at *2 (E.D. Pa. June 8, 1990).

In his complaint, Plaintiff does not allege any law, privilege, or immunity which he has been deprived. In his response to the Defendants' motion, however, he argues that the alleged conspiracy deprived rights created by 42 U.S.C. § 1981. A § 1985

claim may be based upon the deprivation of § 1981 rights. See Larmore, 1998 WL 372674, at *4.

Despite the Plaintiff's arguments, the Court must dismiss Counts II and III. When deciding a motion to dismiss, the Court will dismiss the complaint if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. See H.J. Inc., 492 U.S. at 249-50. Thus, aside from any arguments that the Plaintiff makes concerning what his complaint alleges, there are no allegations of deprivation of rights under § 1981 in his § 1985 claim. Indeed, in his § 1985 claim, there are no allegations of the deprivation of any rights.

Therefore, the Court must dismiss Count II, Plaintiff's § 1985 claim. The Court must also dismiss Count III, Plaintiff's § 1986 claim, because a § 1986 claim is based upon an actionable § 1985 claim. See Rogin, 616 F.2d at 696 (noting that if a plaintiff cannot set forth a cause of action under § 1985, he or she cannot set forth a claim under § 1986). However, the Court dismisses these counts with leave to amend the complaint to afford the Plaintiff an opportunity to correct the above mentioned deficiencies.

B. Title VII Claim Against Defendant Jenkins - Count IV

Defendants next contend that Count IV of the complaint, Plaintiff's Title VII claim, should be dismissed as to Defendant Jenkins because Title VII does not provide for liability against an

individual employee. See Sheridan v. E. I. du Pont de Nemours & CO., 100 F.3d 1061, 1077 (3d Cir. 1996) (en banc), cert. denied, 117 S. Ct. 2532 (1997). In a letter to the Court dated October 29, 1998, Plaintiff stipulated to the dismissal of Count IV with respect to Defendant Jenkins. Therefore, the Court grants the Defendants' motion in this respect and dismisses Count IV as to Defendant Jenkins.

An appropriate Order follows.

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O R D E R

AND NOW, this 11th day of February, 1999, upon consideration of the Defendants General Accident Insurance Company of America and William Jenkins' Motion to Dismiss (Docket No. 7), IT IS HEREBY ORDERED that the Defendants' motion is **GRANTED**.

IT IS FURTHER ORDERED THAT:

(1) Count II and III of Plaintiff's complaint are **DISMISSED WITH LEAVE TO AMEND THE COMPLAINT**;

(2) Plaintiff **SHALL** have twenty (20) days from the date of this Order to file an amended complaint correcting the above mentioned deficiencies; and

(3) Count IV of Plaintiff's complaint is **DISMISSED WITH PREJUDICE** as to Defendant William Jenkins.

BY THE COURT:

HERBERT J. HUTTON, J.