

The essence of Plaintiff's allegations is that she was subjected to sexually suggestive advances by James Conner ("Conner"), the President of ProCredit Holdings, Inc. and the LeMans Group during Plaintiff's employ, and when she made it clear that she was not interested in a sexual relationship with Conner, he retaliated against her by belittling and demeaning her at work, and ultimately terminating her employment.

A. Plaintiff's Work History at LeMans

Plaintiff was hired by LeMans as a technical consultant in December 1993. (Defs.' App. to Mot. for Summ. J. ("Defs.' Mot.") Ex. A, Pl.'s Dep. Vol. I, ("Pl.'s Dep. I") at 46-47; Ex. E, Conner Verif. ¶ 2.) LeMans is a software vendor that provides vehicle lease accounting packages to large bank lessors and

654, 655 (1962); Gans v. Mundy, 762 F.2d 338, 341 (3d Cir. 1985). For the purposes of deciding Defendants' Motion, this Court will not only resolve all doubt and draw all inferences in Plaintiff's favor, but will essentially present Plaintiff's version of the factual background as delineated from Plaintiff's deposition testimony. The Court does this in order to give Plaintiff every possible benefit of the doubt, but notes that many of the inferences and conclusions that Plaintiff draws from the underlying events are extremely attenuated. Ultimately, Plaintiff's speculative conclusions are of no moment because, as discussed in Section III B & C, infra, even accepting Plaintiff's version of the facts of this case, Plaintiff's hostile work environment claim must be dismissed because she failed to comply with the statutory filing requirements of Title VII and her quid pro quo claim must be dismissed because she has not presented sufficient evidence to defeat summary judgment under Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994).

captive finance companies of automobile manufacturers. (Id. ¶ 1.) She received a starting salary of \$75,000.00. (Pl.'s Dep. I at 16.)

Some background about the business structure of ProCredit Holdings, LeMans and ProCredit Corporation is necessary before continuing with the factual background. At the time Plaintiff was hired by LeMans, the company was pursuing a new business direction. (Conner Dep. at 38.)² Its intent was to approach its existing customers to discuss the potential for LeMans to develop securitization databases and software and provide securitization services to those customers. (Id.) Securitization involves the pooling of assets such as car leases or loans into securities for sale to institutional vendors. (Conner Verif. ¶ 3.) Three months after Plaintiff was hired by LeMans, Warburg Pincus invested in LeMans and the company shifted its intended direction. (Conner Dep. at 36.) ProCredit Holdings ("Holdings") was formed as a holding company to control both LeMans and a sister corporation formed called ProCredit Corporation ("ProCredit Corp."), which was in the business of providing auto loans to buyers with sub-prime credit. (Conner

²Although Conner's deposition testimony had not yet been transcribed at the time Plaintiff filed her Memorandum in Response to Defendant's Motion, Plaintiff discussed the content of his deposition in her Response by way of her counsel's Certification. (Pl.'s Response Ex. A.) The transcript was later provided to the Court by Defendants and is made part of the record.

Verif. ¶ 4.) Rather than LeMans supplying securitization services to its existing customers, in the course of ProCredit Corp.'s furnishing loans it would create an entity that itself would be securitized, and LeMans would provide securitization services to ProCredit Corp. (Id. at 39.)

Prior to her employment with LeMans, Plaintiff had significant work experience in both computer programming and loan securitization. Sometime in the latter half of 1993, she learned of a position available at LeMans through a professional headhunter. (Pl.'s Dep. I at 46-47.) The position described by the headhunter was a client server development job, a technical position where Plaintiff would be writing computer code. (Id. at 49.)

Plaintiff was initially interviewed by Pierce Brown ("Brown"), a technical consultant at LeMans. (Id. at 50.) Brown advised Plaintiff that there were a few jobs available at LeMans, and indicated that there might be a need for someone with securitization expertise. (Id. at 58-59.) Plaintiff was advised at the end of the interview that she would be interviewing with additional people at LeMans. (Id. at 53-54.)

Plaintiff next interviewed with Conner. During the interview, Conner indicated that LeMans was doing administration for a bond series, which involved securitization, for First City Bank. (Id. at 59-60.) Conner explained to Plaintiff that in the

future, he wanted to integrate the loan systems at LeMans and develop the record keeping and the database structures for securitization. (Id. at 61-62.) Conner indicated that Plaintiff was being considered for a position as a computer programmer to perform system architecture, involving record keeping and database management for the securitization of loans; the job was described as a technical consultant position. (Id. at 61, 63, 105; Defs.' Mot. Ex. B, Pl.'s Dep. Vol. II ("Pl.'s Dep. II") at 229-230.) Plaintiff started working for LeMans in December 1993.

During her first year of her employment with LeMans, Plaintiff worked almost exclusively on developing the prototype for a software project called Speedway. (Id. at 118.) Speedway was a credit application system being developed for the Hendrick Auto Group ("HAG"), a large chain of automobile dealerships. (Id. at 117.) The Speedway system allowed members of HAG to complete and approve sub-prime automotive loans online. (Id.; Conner Verif. ¶ 23.) It was Plaintiff's understanding that LeMans' intended to build a portfolio of these sub-prime loans and ultimately securitize the portfolio. (Id. at 118, 203-204, 206.) Plaintiff worked very closely with Conner while developing the prototype. (Id. at 119.)

After completing the prototype for Speedway in the Fall of 1994, Plaintiff spent most of the next few months correcting small errors in Speedway. (Id. at 192-93.) The Speedway project

was then taken over by the LeMans technical group, which was converting and upgrading the prototype program into a more sophisticated computer language called Power Builder. (Id.) Plaintiff had no experience with Power Builder and had little involvement in the upgrade. (Id.)

Plaintiff's next project was the development of a reporting system and historical database for the ProCredit Corp. loans booked through the Speedway system. (Id. at 203-206, 232-233; Pl.'s Dep. II at 68.) The reporting system was designed to establish the number of loans booked through Speedway, and perform geographic and portfolio reporting. (Pl.'s Dep. I at 204-205.) The system was also used by HAG for certain dealership contests. (Id.) The end product of the reporting system and historical database was a portfolio of ProCredit Corp. loans. (Id. at 232.) While developing this reporting system and database, Plaintiff continued to work closely with Conner, although not as closely as before. (Id. at 205.) Plaintiff continued to work on this reporting system through the end of her employment with LeMans.

B. Plaintiff's Allegations of Sexual Harassment

Plaintiff suggests that Conner's harassment began during her interview. For example, during the course of the interview, he suggested numerous times that Plaintiff remove her suit jacket.

(Pl.'s Dep. I at 69, 73.) Plaintiff declined. Also, at one point during the interview, for no apparent reason Conner stood up and adjusted the vent above Plaintiff so that it was directed towards her. (Id. at 73.) She explained that his adjusting of the vent was "bizarre" because he was too close to her and in her personal space while he was adjusting it. (Pl.'s Dep. II at 15.) Plaintiff thought Conner's actions during the interview were weird. (Id. at 73.)

Conner also made strange and unprofessional comments to Plaintiff during the interview. For example, he asked Plaintiff if she would mind working very closely with him, emphasizing the word "very". (Id. at 93.) He discussed his marriage with Plaintiff and "discounted" it, making it sound as if it was not a good relationship. (Id. at 95-98.) Plaintiff believed that the tone of Conner's question regarding her ability to work "very closely" with him was sexually suggestive, and that his discussion of his marital relationship was inappropriate and unprofessional. (Pl.'s Dep. I at 93, 95-98.)

Conner's inappropriate behavior continued during Plaintiff's first year at LeMans. During meetings, Conner would place his leg next to Plaintiff's and nudge her. (Id. at 131.) Plaintiff described the nudging as "footsies under the table." (Id.) Conner would nudge Plaintiff after someone else at the table would make a comment and look at her as if to say, do you agree

with or what do you think about that person's comment, or to share in a joke. (Id. at 132, 135.) Plaintiff found the nudging to be too casual and in retrospect believed it to be "another piece of [the] puzzle," of the sexual harassment she endured. (Id. at 133-134.) Conner's nudging of Plaintiff's leg occurred roughly five or more times during her first year of employment and ceased thereafter. (Id. at 134.)

Also during Plaintiff's first year at LeMans, Conner would make "goo-goo eyes" at Plaintiff. (Id. at 136.) Conner would look Plaintiff up and down, or look at her legs and then act pleased with what he saw. (Id. at 139-140.) Plaintiff explained that this behavior made her feel uncomfortable. (Id.) Plaintiff gave Conner no encouragement, but rather rebuked him with either a stone face or a click of her tongue. (Id. at 142.)

On one occasion while standing in the board room Conner made "goo-goo eyes" at Plaintiff and looked her up and down. (Id.) Plaintiff explained that she was embarrassed by this behavior and turned her head away, at which point Conner remarked, "Carol, you don't like men, do you?" (Id.) Plaintiff then clicked her tongue at him in response, indicating her disapproval with his actions. (Id.) The "goo-goo eyes" began at the 1993 company Christmas party and occurred roughly fifty times during 1994. (Id. at 143-144.)

Further harassment occurred at a conference sponsored by HAG. In October, 1994, LeMans sent a number of employees including Plaintiff to the auto group's conference in Charlotte, North Carolina. Plaintiff was told by Conner that her attendance at the conference was necessary because she was going to demonstrate the Speedway prototype which she had developed. (Pl.'s Dep. I at 162, 165.) Plaintiff believed that someone else could have demonstrated the program and that her attendance was unnecessary. (Id. at 165.) In fact, while at the conference, Ms. Debra Eklund ("Eklund"), a senior Vice President, gave the demonstration instead of Plaintiff. (Id. at 168-169.) Plaintiff suggests that this is evidence that her presence at the conference was unnecessary and that Conner's true motivation for inviting her to the conference was sexual.

Plaintiff offers the following evidence in support of her conclusion that Conner's intentions were other than professional. While standing in the buffet line, Conner came up from behind Plaintiff, put his arm around her and clasped her shoulder. (Id. at 174.) Plaintiff jumped because Conner had surprised her and she did not know who it was. (Id. at 174-175.) Conner then removed his hand, and Plaintiff said, "Hi, Jim," and returned her attention on the buffet. (Id. at 175.) She explained that he looked angry because she jumped but did not say anything. (Id.

at 176.) Plaintiff found it odd for Conner to do that because he is not a touchy type of person. (Id. at 176, 191.)

Another incident at the conference that made Plaintiff uncomfortable occurred at the sit down dinner event. During dinner, Plaintiff was seated next to and was conversing with Ernie Pomerantz, a senior executive of Warburg Pincus, one of the new owners of LeMans. (Id. at 177.) Plaintiff and Mr. Pomerantz got along well and talked for about two hours during dinner. (Id. at 183.) At some point during the evening Conner joined them. (Id.) Soon after Conner joined the conversation, Plaintiff stated that she was going to get some desert and retire to her room for the evening, to which Conner replied, "I think you better." (Id. at 183-184.) Plaintiff believed that Conner was acting as if she were trying to pick up Mr. Pomerantz that evening, and this implication offended her. (Id.)

After the HAG conference, Plaintiff explained that Conner's behavior toward her changed. (Id. at 251.) Instead of his behavior being sexual in nature, he became nasty and sarcastic, and began to belittle Plaintiff. (Id. at 251, 255-256.) In Plaintiff's words, after the trip, "I think he got the gist that I wasn't interested ... [a]nd from that point on, he was making fun of me." (Id. at 255.)

After they returned from the conference, Conner began referring to Mr. Pomerantz as Plaintiff's boyfriend. (Id. at

185.) At first Plaintiff took this as a joke, but when Conner continued to refer to Mr. Pomerantz as her boyfriend she became offended. (Id. at 187.) Conner made this reference in front of Eklund and she snickered. (Id. at 186.) Conner even asked Plaintiff if she was calling Mr. Pomerantz on the phone, suggesting to Plaintiff that Conner believed she was trying to "butter up to Ernie." (Id. at 188.)

Plaintiff described other incidents of objectionable behavior by Conner which she believes was intended to belittle and demean her. For example, Conner would frequently ask Plaintiff for her opinion, interrupt her during her response, and begin speaking to another person. (Pl.'s Dep. II at 147.) He would then look back at her to see her expression. (Id.) Conner would also act overly excited to see Plaintiff, in a way which demonstrated sarcasm. (Id. at 150.) Furthermore, Conner separated Plaintiff from the technology group, which moved to a different section of the building, even though he had previously asked Plaintiff if she wanted to be moved along with them, and Plaintiff had indicated that she would. (Pl.'s Dep. I at 257-260.)

On June 12, 1995, Conner belittled Plaintiff in front of Andrew Cooney ("Cooney"), ProCredit Corp.'s Chief Financial Officer ("CFO"). While in a meeting with Cooney, Conner called Plaintiff into his office and said "Carol's having trouble

calculating a simple average." (Id. at 296.) Plaintiff believed that this was in retaliation for her denial of Conner's sexual advances. (Id.) She was particularly upset about this comment because Cooney was new to the company and she did not want one of her new supervisors to form a negative opinion about her based on that comment. (Id. at 296-297.)

Plaintiff suggests that Conner's disrespectful attitude toward her filtered down to other employees and indirectly condoned and encouraged their acting disrespectfully towards her. (Pl.'s Dep. II at 96.) Plaintiff stated, "As of August 4, 1995, I think [Conner] was creating indirectly a hostile environment." (Id. at 141.) For example, at some point during her third year of employment Pat Farrell, one of Plaintiff's superiors, said to Plaintiff in front of her co-workers, "You are the lowest priority in the company." (Id. at 96.)

Plaintiff also believes that Conner's attitude encouraged Eklund to treat her badly as well. (Id. at 141.) As evidence of this, Plaintiff explained that Eklund did not include her in a meeting regarding the historical database Plaintiff was working on. (Id. at 141-142.) Eklund also refused to allow Plaintiff to take a training course that she wanted to take, but allowed other employees to take training courses. (Id. at 168-170.) Plaintiff believed Eklund's refusal was indirectly motivated by Conner. (Id.)

Plaintiff explained that the harassment she endured, as described above, caused her a great deal of stress and that that stress affected her work. (Pl.'s Dep. I at 81; Pl.'s Dep. II at 153-154.) Sometime in March, 1995, Plaintiff began to keep a diary of events that occurred at work as a therapeutic tool. (Pl.'s Dep. I at 81.) However, she did not write every event in the diary. (Id.) In a March 12, 1996, entry, Plaintiff noted that although she should write in the journal more often it was "emotionally upsetting" for her to review and write about each event as it occurs. (Pl.'s Dep. II at 202.)

Sometime toward the end of 1995, Conner's most sexually offensive action took place. (Pl.'s Dep. I at 85.) Plaintiff avers that Conner called her into his office for a meeting and while he was speaking to her, he reached his hand into his pants pocket and began to stroke his genitals. (Id. at 265-272.)³ When Plaintiff realized what Conner was doing she was too afraid to say anything to him at the time and instead excused herself from the meeting. (Pl.'s Dep. II at 53-54.) Plaintiff did not report the incident to anyone at LeMans because she was afraid that she would be fired if she did. (Pl.'s Dep. I at 275-276.) Plaintiff had heard rumors of a former employee being fired from

³Plaintiff did not know the exact date of this incident, but estimated that it occurred sometime after March, 1995 and before April, 1996. She believed it most likely occurred in the middle to end of 1995. (Pl.'s Dep. I at 81-85.)

the company after complaining of sexual harassment. (Id. at 276.) She told her mother about the incident but did not write it in her diary. (Id. at 272.)

In April, 1996, David Williams ("Williams") was hired by LeMans as an entry level programmer. (Pl.'s Dep. II at 78-79, 90.) Plaintiff was instructed to train Williams to run reports from the database which Plaintiff was responsible for. (Eklund Aff. at 4-5.) Plaintiff spent about 75% of her time during the Spring of 1996 training Williams. (Pl.'s Dep. II at 225.)

Plaintiff believed that Williams was hired to take over her job and that she was essentially training him to do so. (Id. at 93.) Plaintiff noted several instances that led her to this conclusion. For example, Williams began sitting at Plaintiff's desk in the morning and answering her phones. (Id. at 93.) The technical staff started giving Williams instructions on how to change the system and not her. (Id. at 97.) In addition, before Plaintiff's employment was terminated, Williams began going through her cabinets asking her which books were hers and which were the company's as if, Plaintiff suggests, he knew the company was letting her go. (Id. at 102-103.) Finally, Williams told Plaintiff that the technical department was going to switch the platform of the system that Plaintiff had developed while Plaintiff was on vacation. (Id. at 106.) The system platform

was never changed but Plaintiff explained that if it had been she would have been out a job. (Id. at 107.)

On November 11, 1996, an e-mail was disbursed to all employees that ProCredit Corp. was to be put up for sale. (Def's.' Mot. Ex. G.) The notice explained that the sale would have no effect on LeMans employees. (Id.) Plaintiff, believing she worked for LeMans, thought that her position was secure. (Pl.'s Dep. III at 85.) However, Plaintiff was informed by Eklund that because her work in developing the database and reporting system had actually been for ProCredit Corp., she would be a part of the sale. (Id.)

In late November, 1996, Plaintiff was called into Eklund's office. (Id. at 129.) Eklund explained that because ProCredit was being sold it was determined that her services were no longer needed and therefore the company was terminating her employment. (Id. at 129.) As Plaintiff walked out of Eklund's office, Conner looked at her and smiled. (Id. at 134.) Plaintiff was then escorted out of the building. (Id. at 133.) Plaintiff asserts that she was the only LeMans employee to be terminated as a result of the impending sale. (Id. at 85, 149.)

Plaintiff filed a complaint with the Equal Employment Opportunity Commission ("EEOC") on September 11, 1997. She then brought action in this Court.

II. STANDARD OF REVIEW

Summary judgment "shall be rendered forthwith if 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). An issue is "genuine" only if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is only "material" if it might affect the outcome of the case. Id. A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325, 106 S. Ct. at 2554. After the moving party has met its initial burden, summary judgment is appropriate if the non-moving party

fails to rebut by making a factual showing "sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322, 106 S. Ct. at 2552.

III. DISCUSSION

All of Plaintiff's claims are based on her allegations that Conner sexually harassed her, retaliated against her and ultimately discharged her because she rebuffed his unwelcome advances.

Defendants have moved for Summary Judgment arguing the following: (1) Plaintiff's allegations of harassment lack sufficient frequency and severity to be actionable under the standards set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17, 114 S. Ct. 367 (1993)⁴; (2) Plaintiff cannot show that she was other than "merely offended" by her superior's behavior towards her; (3) Plaintiff cannot show unreasonable interference with her work performance; (4) Plaintiff's claims are time barred because she cannot establish a continuing violation and failed to file her claim within 300 days of when she knew of the hostile

⁴ Defendants assert that no single incident complained of rises to the level of conduct so severe that a single instance of such conduct would constitute a hostile work environment. Defendants further argue that Plaintiff cannot establish a multiplicity of unwelcome acts that would constitute a hostile environment.

environment;⁵ and, (5) Plaintiff cannot establish quid pro quo sexual harassment because she cannot prove that Defendants' proffered non-discriminatory business reason for her termination was merely pretext for a discriminatory motive.

A. HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Plaintiff claims that Conner's sexual harassment was so pervasive that it had the effect of creating an intimidating, hostile, or offensive work environment. Meritor Sav. Bank v. Vinson, 477 U.S. 57, 66, 106 S. Ct. 2399, 2405 (1986).

"[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris v. Forklift Systems, Inc., 510 U.S. at 23, 114 S. Ct. at 371. An employee's psychological well-being need not be affected in order to maintain an actionable hostile environment claim. Id.

⁵Defendants concede that she filed her EEOC complaint within 300 days of her termination, but argue that her termination was not the triggering event which should have alerted Plaintiff that her rights under Title VII had been violated.

There are five elements of 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).⁶

Defendants argue that Plaintiff cannot establish a hostile work environment claim because: (1) Plaintiff's allegations of harassment lack sufficient frequency and severity to be actionable under the standards set forth in Harris v. Forklift Systems, Inc.; (2) Plaintiff cannot show that she was other than "merely offended" by her superior's behavior towards her; and, (3) Plaintiff cannot show unreasonable interference with her work performance.

As noted, supra, for the purposes of deciding Defendants' Motion, the Court has resolved all disputed facts regarding instances of sexual misconduct in Plaintiff's favor. Therefore, the Court cannot say that the evidence presented does not rise to

⁶In a number of cases following the Supreme Court's decision in Harris, the Third Circuit has reaffirmed the five-part test announced in Andrews. Knabe v. Boury Corp., 114 F.3d 407, 410 (3d Cir. 1997); Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997); Spain v. Gallegos, 26 F.3d 439, 447 (3d Cir. 1994).

the level of harassment as articulated in Harris and its progeny, especially given Plaintiff's testimony regarding the stroking incident. However, as discussed below, the Court finds that Plaintiff's hostile work environment claim must nevertheless be dismissed as it is time barred by the 300-day statutory period provided by Title VII.

B. THE CONTINUING VIOLATION THEORY

Under Title VII the time period for filing a charge of employment discrimination with the EEOC is 300 days after the alleged unlawful employment practice occurred, when the charge is filed first with the appropriate local or state agency. Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 480 (3d Cir. 1997); 42 U.S.C.A. § 2000e-5(e)(3). The filing of a charge by an aggrieved party within the statutory time period is a jurisdictional prerequisite to a civil action under Title VII. Hicks v. ABT Associates, Inc., 572 F.2d 960, 963 (3d Cir. 1978). In situations where there is a "discrete triggering event and the discrimination is overt," the 300 day filing requirement is more exacting and inflexible. West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995). However, determining precisely when the unlawful employment practice has occurred is often difficult, especially in situations in "which the plaintiff does not know [she] has been harmed" or where there is an "ongoing, continuous

violation." Id. "To accommodate these more indeterminate situations, the Supreme Court has recognized that the filing of a timely charge is 'a requirement that, like a statute of limitation, is subject to waiver, estoppel, and equitable tolling.'" Id. (internal citations omitted). The continuing violation doctrine, as it has become known, "is premised on the equitable notion that the statute of limitations should not begin to run until a reasonable person would be aware that his or her rights have been violated." Hicks v. Big Brothers/Big Sisters of America, 944 F. Supp. 405, 407 (E.D. Pa. 1996) (citing Martin v. Nannie and the Newborns, Inc., 3 F.3d 1410, 1415 n. 6 (10th Cir. 1993)). "A plaintiff 'may not base her ... suit on conduct that occurred outside the statute of limitations unless it would have been unreasonable to expect the plaintiff to sue before the statute ran on that conduct.'" Rush, 113 F.3d at 481 (quoting Galloway v. General Motors Serv. Parts Operations, 78 F.3d 1164, 1167 (7th Cir. 1996)). Plaintiff filed her EEOC claim on September 11, 1997. Therefore, claims based on events which occurred prior to November 15, 1996 would be barred unless Plaintiff can establish a continuing violation.

Under the continuing violation theory, "the plaintiff may pursue a Title VII claim for discriminatory conduct that began prior to the filing period if [she] can demonstrate that the act is part of an ongoing practice or pattern of discrimination of

the defendant." West, 45 F.3d at 754. In order to establish that her claim falls within this theory, Plaintiff must: (1) demonstrate that at least one act occurred within the filing period; and, (2) must establish that the harassment is more than the occurrence of isolated or sporadic acts of intentional discrimination. Id. at 754-755. "The relevant distinction is between the occurrence of isolated, intermittent acts of discrimination and a persistent, on-going pattern." Id.

Defendants concede that Plaintiff's termination occurred within the 300 statutory time period. In order for Plaintiff's allegations of harassment which occurred outside of the statutory period to be actionable, she must demonstrate that her termination was part of an ongoing practice or pattern of discrimination of Defendants. Id.

In determining whether the prior incidents of discrimination constitute a continuing course of discrimination or whether they are discrete unrelated acts, the Third Circuit recommends the approach taken by other Courts of Appeals whereby the following non-exhaustive list of factors are considered:

(i) subject matter -- whether the violations constitute the same type of discrimination; (ii) frequency; and (iii) permanence -- whether the nature of the violations should trigger the employee's awareness of the need to assert her rights and whether the consequences of the act would continue even in the absence of a continuing intent to discriminate.

Id. at 755, n. 9; see also Berry v. Board of Supervisors of Louisiana State Univ., 715 F.2d 971, 981 (5th Cir. 1983); Waltman v. International Paper Co., 875 F.2d 468, 474-75 (5th Cir. 1989).

Even viewing the facts in the light most favorable to Plaintiff and drawing all inferences in her favor, Plaintiff has not alleged sufficient continuing violations such that her allegations of hostile work environment sexual harassment are viable. While Plaintiff's allegations of harassment may have been sufficiently pervasive during 1994, the frequency of the incidents complained of during 1995 and 1996 and the interactions between Conner and Plaintiff were very limited. Plaintiff stated that she believed that Conner was avoiding her at work in late 1995 and 1996, and stated that from May 22, 1996 until she was terminated there were no overt incidents of harassment, but only sarcastic "jabs" from Conner. (Id. at 219.) If there were an ongoing pattern of harassment from Conner, that pattern reached its zenith at the time of the stroking incident. The stroking incident occurred sometime between March 1995 and April 1996. For her claims to be actionable, Plaintiff ought to have filed her complaint within 300 days of the stroking incident. The Court finds that Plaintiff has failed to show a persistent, on-going pattern of discrimination continued from the occurrence of

the stroking incident through the time of her termination such that the statutory time period ought to be tolled.⁷

Although the Court could stop its inquiry there, alternatively Plaintiff's continuing violation argument fails when viewing the permanence factor, or whether the violations should have triggered Plaintiff's awareness of the need to assert her rights under Title VII. Taking Plaintiff's view of the facts, Plaintiff should have been so aware after the stroking incident occurred. According to Plaintiff, Conner's harassment began during her first year of employment, when he was making eyes at her and nudging her under the table. Although this type of sexually charged behavior apparently stopped after the HAG conference in October 1994, Conner continued to harass Plaintiff by being rude and sarcastic towards her because she was not interested in a sexual relationship with him. Then, sometime

⁷The Court notes that most of Plaintiff's allegations of "harassment" in 1995 and 1996 involve persons other than Conner and rest on Plaintiff's conjecture that her co-workers were mistreating her because Conner did not show her respect. First, the incidents Plaintiff describes where her co-workers mistreated her or were disrespectful to her are not within the purview of Title VII, because Plaintiff's sex had nothing to do with their actions. "Title VII does not prohibit all verbal or physical harassment in the workplace; it is directed only at discrimination based on sex." Oncale v. Sundowner Offshore Services, Inc., 118 S. Ct. 998, 1002 (1998) (internal quotation removed). Furthermore, no reasonable jury could infer that Plaintiff's co-workers mistreated her because she refused to have an affair with Conner. Therefore, the Court will not consider those incidents in determining whether a continuing violation of sexual harassment exists in this case.

during the latter part of 1995, the stroking incident occurred. As stated above, viewing the facts in the light most favorable to Plaintiff, the stroking incident was the apex of Conner's harassment, and it was at that time that Plaintiff ought to have known that her rights under Title VII were being violated.

Plaintiff did not file her EEOC complaint until September 1997, almost a full year after she was terminated. However, by her own testimony, Plaintiff stated she felt harassed as early as March 1995 when she began keeping a diary. Furthermore, she stated that in May 1996, she thought that Conner was worried she was going to sue him for sexual harassment, because he started referring to Ernie Pomerantz as her friend rather than her boyfriend. (Pl.'s Dep. II at 217.) Given Plaintiff's recitation of the facts and her impressions of what was occurring at the work place, it is reasonable to conclude that she ought to have known that her rights under Title VII had been violated well before September 1997.

Therefore, because Plaintiff failed to file a claim with the EEOC within 300 days of the stroking incident, her claim of hostile work environment sexual harassment under Title VII must be dismissed as untimely.

C. QUID PRO QUO SEXUAL HARASSMENT

In Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997), the Third Circuit for the first time identified the elements of a sexual harassment claim based on a quid pro quo theory. The Third Circuit agreed with the formulation for a quid pro quo sexual harassment claim set out in 29 C.F.R. § 1604.11(a)(1) and (2), which provides:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment [or] (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual....

Id. at 1296.

In Robinson, the Third Circuit explained the test for this type of sexual harassment claim as follows:

Under this test, the consequences attached to an employee's response to the sexual advances must be sufficiently severe as to alter the employee's "compensation, terms, conditions, or privileges of employment," 42 U.S.C. S 2000e-2(a)(1), or to "deprive or tend to deprive [him or her] of employment opportunities or otherwise adversely affect his [or her] status as an employee." 42 U.S.C. S 2000e-2(a)(2). This does not mean that the employee must be threatened with or must experience "'economic' or 'tangible' discrimination." But by the same token, not every insult, slight, or unpleasantness gives rise to a valid Title VII claim.

Id.

Plaintiff's quid pro quo claim is based on subsection (2). To establish a quid pro quo claim under subsection (2), Plaintiff must show that . . . her response to unwelcome advances was subsequently used as a basis for a decision about compensation, etc. Thus, the plaintiff need not show that

submission was linked to compensation, etc. at or before the time when the advances occurred. But the employee must show that . . . her response was in fact used thereafter as a basis for a decision affecting . . . her compensation, etc.

Id. at 1296-97.

Plaintiff asserts that she was discharged in retaliation for her rebuking Conner's sexual advances. As evidence of this, she avers that she never worked for ProCredit Corp., and that although she had experience with securitization, it was not the primary reason she was hired, nor was it the type of work that she was doing for LeMans. She further asserts that during her third year of employment, she spent most of her time at work training David Williams, a new male employee, who she alleges was hired to replace her.

Defendants put forth the following business reasons for their decision to terminate Plaintiff's employment. First, Defendants assert that Plaintiff was hired not only for her skills as a computer programmer, but also for her extensive background in the securitization of loans, an area which LeMans was considering entering into when Plaintiff was hired. Defendants maintain that Plaintiff was terminated because Holdings decided to sell ProCredit Corp., and therefore there was no longer any reason to retain Plaintiff, who was being paid an executive salary, as the company was no longer going to be securitizing the portfolio of ProCredit Corp. loans.

The Court finds that Defendants have met their burden under Fuentes v. Perskie, 32 F.3d 759 (3d Cir. 1994), of articulating a legitimate non-discriminatory business reason for its decision to terminate Plaintiff. In order to defeat summary judgment in a Title VII case where the defendant has articulated a "legitimate, non-discriminatory business reason for its action, the plaintiff must point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determining cause of the employer's action." Fuentes, 32 F.3d at 764.

The Court finds that Plaintiff has failed to carry her burden under Fuentes to defeat summary judgment with regard to her termination. Plaintiff does not come forward with evidence such that a reasonable factfinder could either disbelieve the Defendants' reasons for terminating her or believe that the reason she was terminated was more likely than not because she refused a sexual relationship with Conner. Plaintiff does not come forward with any evidence that links her termination with her denial of Conner's sexual advances or that casts doubt on Defendants' proffered business reasons for her termination. Plaintiff's evidence, when boiled down to its essence, is that she must have been terminated for her denial of Conner's sexual

advances, because there was no other reason for her to have been fired. Even drawing all inferences from Plaintiff's circumstantial evidence in her favor, Plaintiff fails to cast doubt on Defendants' proffered reasons, or to make any connection between the Defendants' decision to terminate her and her response to Conner's advances. Based on the record before the Court, a finding that Defendants' proffered legitimate business reasons for Plaintiff's termination are merely pretext and that the real reason for her termination was her denial of Conner's sexual advances some two years earlier would be pure speculation. Therefore, Plaintiff's quid pro quo claim must also be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court will grant Defendants' Motion for Summary Judgment in its entirety.

An appropriate Order follows.

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

CAROL A. AFRASSIABIAN,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PROCREDIT HOLDINGS, INC.,	:	
AND THE LEMANS GROUP,	:	
	:	
Defendants.	:	NO. 98-4757

O R D E R

AND NOW, this day of August, 1999, upon consideration of Defendants' Motion for Summary Judgment (Doc. No. 10) and all responses and replies thereto, **IT IS HEREBY ORDERED** that Defendants' Motion is **GRANTED** and **JUDGMENT** is entered for **DEFENDANTS** and against **PLAINTIFF**. This matter shall be marked **CLOSED** by the Clerk of the Court.

BY THE COURT:

JOHN R. PADOVA, J.