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

RICHARD CHENNISI, Plaintiff,	:	CIVIL ACTION
v.	:	
COMMUNICATIONS CONSTRUCTION GROUP, LLC and RONALD TOTTEN, Defendants.	:	No. 04-4826

MEMORANDUM AND ORDER

J. M. KELLY, J. **FEBRUARY 17, 2005**

Presently before the Court is a Motion to Dismiss ("Motion") filed by Communications Construction Group, LLC ("CCG"), and Ronald Totten ("Totten") (collectively, "Defendants"). Defendants seek to dismiss Plaintiff Richard Chennisi's ("Plaintiff") complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). In his complaint, Plaintiff claims that Defendants violated § 15(a)(3) of the Fair Labor Standards Act ("FLSA") by discharging him in retaliation for his assertion of rights protected by the FLSA. See 29 U.S.C. § 215(a)(3). Having considered Defendants' Motion and Plaintiff's Opposition thereto, for the following reasons, Defendants' Motion is **DENIED**.

I. BACKGROUND

For the purposes of this motion to dismiss, we accept as true the following facts alleged in Plaintiff's complaint and all reasonable inferences that can be drawn therefrom. See Fed. R.

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

From October 1999 to June 2004, CCG employed Plaintiff as a "splicer". Sometime in late 2003, Plaintiff raised concerns with CCG that it failed to pay him overtime in accordance with the FLSA. Plaintiff and CCG then signed an agreement ("Settlement Agreement") in April 2004 to address CCG's failure to pay Plaintiff overtime.[1] In the Settlement Agreement, CCG agreed to pay Plaintiff $8,552.42 in exchange for the execution of a release from all then-existing claims under federal, state, or local laws relating to Plaintiff's employment with CCG.

On or about June 17, 2004, approximately two months after the Settlement Agreement, CCG terminated Plaintiff's employment. From the time Plaintiff raised his overtime pay concerns in 2003 until CCG terminated him in 2004, Plaintiff did not file a formal complaint or institute any FLSA proceeding.

In response to his termination, Plaintiff initiated a civil action on September 14, 2004, in the Court of Common Pleas located in Chester County, Pennsylvania. Plaintiff claimed that CCG violated the FLSA when it terminated him in retaliation for raising his overtime pay concerns. On October 14, 2004, Defendants removed this case to this Court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, on the basis of federal question

[1] The precise date in April 2004 on which the Settlement Agreement was signed is illegible and irrelevant to the disposition of the present motion.

jurisdiction. On October 20, 2004, Defendants filed their Motion seeking dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. STANDARD OF REVIEW

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed for failure to state a claim upon which relief may be granted if the facts pleaded, and reasonable inferences therefrom, are legally insufficient to support the relief requested. Commonwealth ex. rel. Zimmerman v. Pepsico, Inc., 836 F.2d 173, 179 (3d Cir. 1988). Courts must accept those facts, and all reasonable inferences drawn therefrom, as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, a complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

Plaintiff's complaint brings forth claims under the anti-retaliation provision of the FLSA. See 29 U.S.C. § 215(a)(3). The anti-retaliation provision makes it unlawful to discharge an employee because the employee has "filed any complaint or instituted or caused to be instituted any proceeding" under the FLSA. 29 U.S.C. § 215(a)(3). Plaintiff's complaint asserts that when CCG terminated his employment for internally raising concerns about the lack of overtime pay, CCG violated the anti-retaliation provision of the FLSA.

Defendants' sole argument is that Plaintiff does not state a valid claim because he did not file a formal complaint or institute any proceeding under the FLSA. Defendants argue that raising an internal complaint to an employer is not a protected activity that falls within the meaning of "filed any complaint" as required by § 215(a)(3) of the FLSA. Defendants cite Lambert v. Genesee Hosp., 10 F.3d 46 (2d Cir. 1993), to argue that the language of § 215(a)(3) is unambiguous and that internal complaints to an employer are not protected activity. We believe that this argument conflicts, however, with the view of the FLSA held by the United States Court of Appeals for the Third Circuit.

The Third Circuit has not directly addressed the issue of whether making an internal complaint to an employer constitutes a protected activity under § 215(a)(3) of the FLSA. However, the

Third Circuit has held that the language of § 215(a)(3) of the FLSA should be interpreted liberally. Brock v. Richardson, 812 F.2d 121, 123 (3d Cir. 1987). The reasoning for this liberal interpretation is clear. The Third Circuit has explained that, "[t]he Fair Labor Standards Act is part of the large body of humanitarian and remedial legislation enacted during the Great Depression, and has been liberally interpreted." Id. To further the humanitarian and remedial purposes of the FLSA, the statute must not be "interpreted or applied in a narrow, grudging manner." Id. at 123-24 (quoting Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123, 321 U.S. 590, 597 (1944)). The "key to interpreting the anti-retaliation provision is the need to prevent employees' 'fear of economic retaliation' for voicing grievances about substandard conditions." Brock, 812 F.2d at 124 (citing Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 292 (1960)). The court in Brock, therefore, concluded that "courts interpreting the anti-retaliation provision have looked to its animating spirit in applying it to activities that might not have been explicitly covered by the language" and held that an employer's mere belief that an employee has engaged in a protected activity was sufficient to trigger application of § 215(a)(3) of the FLSA. Id. at 124-25.

Reading the anti-retaliation provision of the FLSA broadly leads us to conclude that an internal complaint to an employer

regarding a violation of the FLSA is a protected activity under § 215(a)(3). See Lambert v. Ackerley, 180 F.3d 997 (9th Cir. 1999) (en banc) (holding internal complaint to employer is protected activity under § 215 (a)(3)); Valerio v. Putnam Associates, Inc., 173 F.3d 35 (1st Cir. 1999) (same); EEOC v. Romeo Cmty Schools, 976 F.2d 985 (6th Cir. 1992) (same); EEOC v. White & Sons Enters, 881 F.2d 1006 (11th Cir. 1975) (same); Brennan v. Maxey's Yamaha, Inc., 513 F.2d 179 (8th Cir. 1975) (same); Coyle v. Madden, No. CIV.A.03-4433, 2003 WL 22999222 (E.D. Pa. Dec. 17, 2003) (same). Our conclusion that making an internal complaint is a protected activity is necessary to achieve the FLSA's remedial and humanitarian purpose. See Lambert, 180 F.3d at 1004. Holding otherwise would be contrary to the provision's purpose of preventing fear of economic retaliation and encouraging employees to raise concerns about violations of the FLSA. See White, 881 F.2d at 1011; see also Valerio, 173 F.3d at 43 (holding that a narrow interpretation of § 215(a)(3) would defeat its purpose of preventing employees' attempts to secure their rights under the FLSA from taking on the character of a "calculated risk.")

As explained above, Plaintiff asserts that he made an internal complaint in late 2003 to CCG regarding its failure to pay overtime in accordance with the FLSA. CCG subsequently fired Plaintiff on or about June 17, 2004. Plaintiff asserts that he was fired in retaliation for having raised an internal complaint

about the lack of overtime pay. Contrary to Defendants' argument, the filing of a formal complaint is not necessary to invoke the protection of the anti-retaliation provision. Raising an internal complaint to an employer is a protected activity and falls within the meaning of "filed any complaint" as required by § 215(a)(3) of the FLSA. Plaintiff, therefore, states a claim for which relief may be granted because the FLSA's anti-retaliation provision includes in its protection the internal complaint that Plaintiff made in late 2003. Thus, Defendants' Motion seeking dismissal for failure to state a claim is **DENIED**.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is **DENIED**.

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O R D E R

AND NOW, this 17th day of February, 2005, in consideration of the Motion to Dismiss Plaintiff's Complaint ("Motion") (Doc. No. 2) filed by Defendants Communication Construction Group, LLC and Ronald Totten (collectively, "Defendants"), and Plaintiff Richard Chennisi's Opposition thereto (Doc. No. 3), it is **ORDERED** that Defendants' Motion is **DENIED.**

BY THE COURT:

/s/ James McGirr Kelly
JAMES McGIRR KELLY, J.