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

MARGARET WALLACE	:	
	:	CIVIL ACTION
	:	
	:	
GRAPHIC MANAGEMENT ASSOCIATES, INC., STEVE GARZA, and EDWARD OLIVER	:	NO. 04-CV-0819

SURRICK, J. **MARCH 3, 2005**

MEMORANDUM & ORDER

Presently before the Court is Defendant Graphic Management Associates, Inc.'s ("GMA") Motion In Limine To Exclude Evidence of Race/National Origin Discrimination. (Doc. No. 54.) For the following reasons, Defendant's Motion will be granted in part and denied in part.

I. Factual Background

Plaintiff Margaret Wallace alleges that she was sexually harassed by her supervisor, Edward Oliver ("Oliver"), discriminated against on the basis of race and national origin in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e to 2000e-17, and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. §§ 951-963, and retaliated against after complaining to management. (Doc. No. 1 at 8.) Plaintiff is pro se. Summary judgment was denied by the Honorable Charles R. Weiner on December 10, 2004. (Doc. No. 49.) On February 1, 2005, Judge Weiner recused himself. (Doc. No. 58 at 1.) The case was reassigned to this Judge for further proceedings.

Defendant files the instant Motion to exclude evidence that Plaintiff was discriminated

against on the basis of race and national origin. (Doc. No. 54 at 1.) Defendant argues that although Plaintiff included claims of race and national origin discrimination in her Complaint, she never alleged these claims in her filing with the EEOC. (*Id*. Ex. A.) Defendant argues that the introduction of testimony or other evidence related to race or national origin discrimination would be unfairly prejudicial to Defendant. (Doc. No. 54 at 2.)

II. Legal Standard

Federal Rule of Evidence 401 provides that evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Federal Rule of Evidence 402 provides that "all relevant evidence is admissible." Fed. R. Evid. 402. The Third Circuit has noted that "Rule 401 does not raise a high standard." *Hurley v. Atlantic City Police Dep't*, 174 F.3d 95, 109-10 (3d Cir. 1999) (quoting *In re Paoli R.R. Yard PCB Litig*., 35 F.3d 717, 782-83 (3d Cir. 1994)). In *Blancha v. Raymark Industries*, 972 F.2d 507 (3d Cir. 1992), the Third Circuit stated:

> As noted in the Advisory Committee's Note to Rule 401, "relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case." Because the rule makes evidence relevant "if it has any tendency to prove a consequential fact, it follows that evidence is irrelevant only when it has no tendency to prove the fact."

Id. at 514 (quoting Charles A. Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure § 5166, at 74 n.47 (1978)).

Under Federal Rule of Evidence 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or

misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. In *Goodman v. Pennsylvania Turnpike Commission*, 293 F.3d 665 (3d Cir. 2002), the Third Circuit defined "unfair prejudice" as follows:

> "[T]he. . . prejudice against which the law guards [is] unfair prejudice . . . prejudice of the sort which clouds impartial scrutiny and reasoned evaluation of the facts, which inhibits neutral application of principles of law to the facts as found." "Prejudice does not simply mean damage to the opponent's cause." If it did, most relevant evidence would be deemed "prejudicial." However, the fact that probative evidence helps one side prove its case obviously is not ground for excluding it under 403. Excluded evidence must be unfairly prejudicial, not just prejudicial.

Id. at 670 (citations omitted).

III. Discussion

Defendant argues that Plaintiff should be barred from alleging that she was a victim of race or national origin discrimination because she failed to exhaust her administrative remedies. (Doc. No. 54 at 1.) Defendant cites *Robinson v. Dalton*, 107 F.3d 1018 (3d Cir. 1997), for the proposition that a plaintiff is required to exhaust her administrative remedies before bringing a claim for judicial relief. *Id*. at 1021. While Plaintiff has not responded to the instant Motion, in her Complaint, Plaintiff states that:

> [E]lements of racial-color-national origin discrimination may be involved in her Complaint. This is because Edward Oliver subjected a "white" woman and a fair-skinned Hispanic woman to sexual harassment and sexual discrimination of a "quid pro quo" type against both women, while he subjected her, a brown-skinned woman of African origin, having been born and brought up in Africa, to sexual harassment and sexual discrimination of the "hostile work environment" type.

(Doc. No. 1 at 7.) Plaintiff also asserts that:

> The Plaintiff's Case is based on (a) sexual harassment and sexual discrimination

> against women under Title VII, (b) 42 U.S.C. §§ 1983, 1985, 1986 under deprivation of Rights, conspiracy against Rights, and failure to act to prevent further unlawful deprivation of Rights, (c) fraudulent reporting of incidents under the EEOC and corresponding State agencies, (d) wilfully maintaining a work environment hostile to women, (e) racial-color-national origin discrimination, (f) torts, and other issues that will be fully disclosed when Plaintiff has full access to the GMA records that were requested, but denied her (with silence).

(*Id*. at 8.)

Plaintiff has filed her Complaint pro se. Accordingly, we must construe Plaintiff's Complaint liberally. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Construing her Complaint liberally, while Plaintiff does not directly state that she filed her discrimination claim pursuant to 42 U.S.C. § 1981, we will construe her Complaint as such.[1] The Supreme Court stated in *Johnson v. Railway Express Agency, Inc*., 421 U.S. 454 (1975), that "§ 1981 affords a federal remedy against discrimination in private employment on the basis of race." *Id.* at 459-60. The Third Circuit applies the same standard to hostile work environment claims under § 1981 as Title VII. *Lewis v. Univ. of Pittsburgh*, 725 F.2d 910, 915 n. 5 (3d Cir. 1983); *Verdin v. Weeks Marine, Inc*., No. 03-4571, 2005 U.S. App. LEXIS 2649, at *10 (3d Cir. Feb. 16, 2005); *Barbosa v. Tribune Co.*, No. 01-1262, 2003 U.S. Dist. LEXIS 19483, at *12 (E.D. Pa. Sept. 29, 2003).

While the Supreme Court has clearly stated that § 1981 affords a federal remedy against discrimination in private employment on the basis of race, the issue of national origin is less clearly delineated. 42 U.S.C. § 1981 guarantees that:

> All persons within the jurisdiction of the United States shall have the same right in every state and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the

[1]Plaintiff alleges discrimination pursuant 42 U.S.C. §§ 1983, 1985, and 1986. Because Plaintiff is pro se, we read her Complaint as alleging a violation of 42 U.S.C. § 1981 as the aforementioned statutes are not applicable in this case.

> security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981(a) (2000). The Supreme Court has noted that the phrase "as enjoyed by white persons" was included in the act in order to emphasize the "racial character" of the protected rights. *Georgia v. Rachel*, 384 U.S. 780, 791 (1966). However, in *St. Francis College v. Al-Khazraji*, 481 U.S. 604 (1987), after examining the history of § 1981, the Supreme Court concluded that "Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." *Id.* at 613. The Court stated that "§ 1981, 'at a minimum,' reaches discrimination against an individual 'because he or she is genetically part of an ethnically and physiognomically distinctive grouping of homo sapiens.'" *Id.* (citations omitted). In his concurrence, Justice Brennan pointed out that he "read the Court's opinion to state only that discrimination based on birthplace alone is insufficient to state a claim under § 1981." *Id.* at 614.

In the instant case, Plaintiff states that she was discriminated against because she is a "brown-skinned woman of African origin." (Doc. No. 1 at 7.) Although § 1981 does not prohibit discrimination based on national origin, it does prohibit discrimination based on race, ethnicity, and ancestry. Plaintiff's Complaint is ambiguous as to whether she alleges discrimination based on her ethnicity, ancestry, or national origin. Because Plaintiff is pro se, we will read her Complaint as alleging a § 1981 claim based on her race, ethnicity, and ancestry.

Under § 1981, a plaintiff does not have to file an administrative charge with the EEOC before filing a Complaint in this Court. The Third Circuit has stated that "[t]he avenues of relief available under Title VII and § 1981 are independent. The filing of a Title VII charge and resort

to Title VII's administrative machinery are not a prerequisite for maintaining a section 1981 suit." *Gooding v. Warner-Lambert Co.*, 744 F.2d 354, 359 (3d Cir. 1984) (citing *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 460 (1975)). In *Johnson*, 421 U.S. at 460, the Supreme Court stated that "resort to Title VII's administrative machinery [is] not [a] prerequisite . . . for the institution of a § 1981 claim." (citations omitted). The Court went on to indicate that "[w]e generally conclude, therefore, that the remedies available under Title VII and under § 1981, although related, and although directed to most of the same ends, are separate, distinct, and independent." *Id.* at 461. Accordingly, Plaintiff's § 1981 claims based on race, ethnicity, and ancestry are not barred by her failure to file charges with the EEOC on these claims.

For these reasons, Defendant's Motion in Limine is granted in part and denied in part. Plaintiff is barred from claiming § 1981 discrimination based on national origin. She may, however, pursue a § 1981 claim of discrimination based on race, ethnicity, or ancestry.

An appropriate Order follows.

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

MARGARET WALLACE	:	
	:	CIVIL ACTION
	:	
	:	
GRAPHIC MANAGEMENT ASSOCIATES, INC., STEVE GARZA, and EDWARD OLIVER	:	NO. 04-CV-0819
	:	
	:	
	:	

ORDER

AND NOW, this 3rd day of March, 2005, upon consideration of Defendant Graphic Management Associates, Inc.'s Motion In Limine To Exclude Evidence Of Race/National Origin Discrimination (Doc. No. 54, 04-CV-0819), it is ORDERED that Defendant's Motion is GRANTED in part and DENIED in part. Plaintiff may present evidence of discrimination based on race, ethnicity, or ancestry pursuant to her 42 U.S.C. § 1981 claim. She may not present evidence of discrimination based on national origin under § 1981.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge