

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

SUZANNE WAGNER, et al.,	:	CIVIL ACTION
Plaintiffs	:	
	:	
v.	:	NO. 03-6172
	:	
PETER J. KAROLY & ASSOC., et al.,	:	
Defendant	:	

MEMORANDUM

This case involves the disputed circumstances surrounding the 2002 termination of plaintiff Suzanne Wagner from her position as a legal secretary at the offices of defendant Peter J. Karoly & Associates. Defendants moved for summary judgment on all counts.

I. Background¹

Plaintiff Suzanne Wagner filed this Title VII sexual harassment suit against her former employer, Peter J. Karoly & Associates (“PJK”), as well as eRAD, Inc., and eRAD Services, Inc on November 10, 2003.² She also named Mary Eidelman, Esquire, Ed Eidelman, Esquire and Peter Karoly, Esquire personally. Ms. Wagner alleges that from June 13, 2001 until November 5, 2002, she was continuously sexually harassed by Mr. Eidelman, a lawyer employed by Peter J. Karoly & Associates. Specifically, Ms. Wagner alleges that Mr. Eidelman danced with Ms. Wagner in a sexually suggestive

¹ The parties’ accounts of the incidents underlying this case differ substantially. I have enumerated the facts in the light most favorable to the plaintiff.

²Mrs. Wagner alleged that eRAD and Karoly were a single employer and/or joint employer. As discussed in more detail *infra*, the parties agree that this is not, in fact, the case.

manner at an off-site office function in July 2001, asked unsolicited and unwelcome questions about her personal life, complained to her about his personal relationship with his wife, constantly stood uncomfortably close to her, intimately touched her, and suggested that they engage in an intimate relationship. The harassment allegedly continued until November 2002, when Ms. Wagner was fired.

Ms. Wagner complained to Mr. Karoly in July 2001. Mr. Karoly stated that he was of the opinion that nothing happened and that these accusations could hurt Mr. Eidelman and his wife, who was then a Divorce Master in Lehigh County. Later in July 2001, Ms. Wagner alleges that Messrs. Karoly and Eidelman began a series of retaliatory acts against her, screaming at her and telling her to pack up and leave. Ms. Wagner, however, stayed on because she could not afford to leave. Mr. Eidelman's behavior continued, and Mr. Karoly refused to take any action.

In September 2002, Mr. Eidelman learned that Ms. Wagner and her husband were seeking legal custody of their nephew. Mr. Eidelman offered the firm's services. Messrs. Karoly and Eidelman later asked that Mr. Eidelman's wife appear on behalf of Ms. Wagner and her husband. Ms. Wagner and her husband were granted custody.

In November 2002, Ms. Wagner alleges, Mr. Eidelman suggested that her relationship with her nephew was "more than one of aunt-nephew" and demanded that she speak with her marriage counselor about the relationship with her nephew, threatening to fire her if she did not. On November 6, 2002, Mr. Eidelman terminated

Ms. Wagner without explanation. On November 12, 2002, Mr. Karoly and Mr. and Mrs. Eidelman emailed Ms. Wagner, allegedly fabricating charges of child sex abuse. The email stated: “You will agree to make no disparaging remarks about us in the future. Remember that defamation is actionable. If we determine that you are making any defamatory remarks (other than those you already made to staff) we will be free to use any and all information in our possession to prosecute you.” Defendants allegedly fabricated evidence in support of their allegations against Ms. Wagner, and attached that information to a filing in Northampton County notifying the court of their allegations of sex abuse. As a result, Ms. Wagner was investigated by the Department of Children, Youth, and Families. The charges were originally deemed “unfounded,” but Ms. Wagner’s nephew eventually made another complaint and attested to a sexual relationship. The police arrested Ms. Wagner and filed criminal charges against her based upon the allegations allegedly fabricated by defendants and Ms. Wagner’s nephew. Ms. Wagner eventually pleaded guilty to the misdemeanor charge of endangering the welfare of a minor.

II. Standard of Review

The court has subject matter jurisdiction over this case due to a question of federal law, pursuant to 28 U.S.C. § 1331, and due to supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a). Summary judgment is appropriate “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” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. *Id.*

A party seeking summary judgment always bears the initial responsibility for informing the 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 (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. After the moving party has met its initial burden, “the adverse party’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing “sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. Under Rule 56, the court must view the evidence presented on the motion in the light most favorable to the opposing party. *Liberty Lobby*, 477 U.S. at 255. The court must decide not whether the evidence unmistakably favors one side or the other

but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. *Id.* at 252. If the non-moving party has exceeded the mere scintilla of evidence threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992).

III. Discussion

A. eRad, Inc. and eRad Services, Inc.

I find that no evidence has been produced that eRad, Inc. or eRad Services, Inc. was ever an employer of plaintiff. I further find that plaintiff has offered no proof that either eRad, Inc. or eRad Services, Inc. are integrated with Peter J. Karoly & Associates.³ Therefore, I will grant summary judgment in favor of eRad, Inc. and eRad Service, Inc.

B. Title VII Claims Against Edward Eidelman, Peter J. Karoly, PJK & Assoc. and Mary Eidelman

It is essential in a Title VII case that the plaintiff prove that the defendant employed fifteen or more employees. 42 U.S.C.A. §2000e(b). The fifteen-employee threshold is an essential substantive element of a Title VII claim. *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 83 (3d Cir. 2003). Therefore, if the defendant has fewer than fifteen employees, the plaintiff has failed to prove her case. *Id.*

³ Further, plaintiff does not oppose eRad's Motion for Summary Judgment.

It is undisputed that Peter J. Karoly & Associates employs fewer than fifteen employees. Indeed, plaintiff concedes this point. Therefore, there is no issue of material fact as to the applicability of Title VII. I will grant summary judgment in favor of all defendants on Counts I, II and III.

C. Section 1985 and section 1986 Claims Against All Parties

Plaintiff has brought a 42 U.S.C. § 1985(2) claim against all defendants.⁴ Plaintiff alleges that Defendants conspired to deprive her of her constitutional rights under § 1985(2), which proscribes, in relevant part, two or more people from conspiring “to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully.” 42 U.S.C. § 1985. To succeed on a § 1985(2) claim, a plaintiff must prove “(1) a conspiracy between two or more persons (2) to deter a witness by force, intimidation or threat from attending court or testifying freely in any pending matter, which (3) results in injury to the plaintiffs.” *Malley-Duff & Assoc., Inc. v. Crown Life Ins. Co.*, 792 F.2d 341 (3d Cir. 1986).

⁴ There appears to be some confusion as to what clause of section 1985 applies to this case. It is clear that § 1985(1), which prohibits interference with civil rights relating to state officials is inapplicable. Defendants believe that the claim is brought under § 1985(3), applicable to deprivation of constitutional rights. It is well established that the facts underlying a Title VII claim does not create a basis for a § 1985(3) claim. *Great American Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 336, 378 (1979) (“deprivation of a right created by Title VII cannot be the basis for a cause of action under § 1985(3).”). Thus, plaintiff has failed to prove a claim under this section as well.

Plaintiff's claim relies entirely on the letter sent to her on November 11, 2002 by the Eidelmans and Peter J. Karoly. The alleged threat made in violation of § 1985(2) is: "You will agree to make no disparaging remarks about us in the future. Remember that defamation is actionable. If we determine that you are making any defamatory remarks (other than those you already made to staff) we will be free to use any and all information in our possession to prosecute you." The letter was signed by defendants Mary Eidelman, Edward Eidelman and Peter Karoly.

Analyzed very broadly, plaintiff has succeeded in proving only one element of a section 1985(2) claim. I find that the letter is sufficient to show an agreement between two or more people - Mary and Edward Eidelman and Peter Karoly - to "prosecute" her. Substantively, however, plaintiff has failed to prove both the second and third factors. Plaintiff alleges only that defendants conspired to prevent her from filing a sexual harassment claim. This, even if proven, is insufficient to sustain a § 1985(2) action. *See Malley-Duff*, 792 F.2d at 355 ("[t]he statute refers to retaliation for giving testimony, not for the filing of complaints."); *DePace v. Jefferson Health System, Inc.*, Civ. No. 04-1886, 2004 WL 2850067, at *2 (E.D. Pa. Dec. 7, 2004) (acknowledging that § 1985(2) requires more than allegations of "retaliation for the mere filing of a complaint"). On that factor alone, then, plaintiff's § 1985 claim fails.

However, even if I were to find that the letter rose to the level of intimidation actionable under §1985(2), plaintiff has failed to show any harm. *Malley-Duff*, 792 F.2d

at 356. Plaintiff has not shown any evidence that her access to the court system, or her ability to testify, was compromised. To the contrary, plaintiff has been an active participant in the instant litigation, and has testified, both in court and out, on multiple occasions. I find that plaintiff has failed to prove any harm under §1985. I will enter summary judgment in favor of defendants on Count IV.⁵

D. Remaining State Court Claims

Plaintiff's remaining claims are state law issues. Because summary judgment will be entered against plaintiff and for defendants on all her federal law claims, no federal issue remains, and this court has no jurisdiction over the remaining claims. 28 U.S.C. § 1367(c)(3). Summary judgment will therefore be entered against plaintiff and in favor of defendants on Counts VI-XII. An appropriate order follows.

⁵ Plaintiff's claims under 42 U.S.C.A. § 1986 is derivative of the § 1985 claim. Summary judgment will therefore be entered in defendants' favor on Count V as well.

ORDER

AND NOW, this day of December, 2005, upon consideration of the Motion for Summary Judgment of Defendants eRad, Inc., and eRad Services, Inc. (Dkt. #44); the Summary Judgment Motion of Defendants Edward Eidelman, Esquire, Peter J. Karoly, Esquire and Peter J. Karoly & Associates (Dkt. #47); and the Motion for Summary Judgment of Defendant Mary Eidelman, Esquire,(Dkt. #48) it is hereby **ORDERED** that the Motions are **GRANTED**.

The clerk of court is directed to close this case for statistical purposes.

BY THE COURT:

LAWRENCE F. STENGEL, J.

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v.	:	NO. 03-6172
	:	
PETER J. KAROLY & ASSOC., et al.,:		
Defendant	:	

ORDER

AND NOW, this day of December, 2005, upon consideration of the Motion for Summary Judgment of Plaintiffs/Counterclaim Defendants Suzanne Wagner's And Charles Wagner's Motion for Summary Judgment as to the Counterclaim of Defendant/Counterclaim Plaintiff Mary Eidelman, Esquire, (Dkt. #45) and the response thereto, it is hereby **ORDERED** that the Motion is **DENIED** as moot.⁶

BY THE COURT:

⁶ Defendant/Counter-plaintiff Mary Eidelman voluntarily withdrew her Counterclaim on November 15, 2005.

LAWRENCE F. STENGEL, J.