

V. Finally, Plaintiff seeks punitive damages against all defendants liable under PHRA for acts of discrimination done “with malice” or in “reckless indifference” to Plaintiff’s federally-protected rights.

Plaintiff was employed by the Department as a clerk typist; Defendants Peck, Six, McDonald, Rever, Williams, Perry, Sprenkle, and Liciardello were at all relevant times employees of the Department. Plaintiff alleges that she was sexually harassed on two separate occasions by Rever, that she was sexually harassed by Peck, that she was treated with hostility by McDonald and Six, and that on or about March 25, 2000, she was transferred in retaliation for filing a complaint with the EEOC and subjected to a hostile work environment.

Defendants now request that the Court find that Plaintiff has failed to state a claim upon which relief can be granted and dismiss Plaintiff’s Amended Complaint in its entirety, pursuant to Federal Rules 12(b)(1), 12(b)(2), and 12(b)(6).¹

LEGAL STANDARD

Specifically, on a Rule 12(b)(6) motion, the court is required to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and to view them in the light most favorable to the non-moving party. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 (3d Cir.1994). The question is whether the plaintiff can prove any set of facts consistent with her allegations that will entitle him to relief, not whether she will ultimately prevail. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). While a court will accept well-pleaded

¹As Defendants have not offered any arguments in support of the dismissal of Plaintiff’s Amended Complaint pursuant to Rules 12(b)(1) or 12(b)(2), this Court will limit its consideration of Defendants’ Motion to relief pursuant to Rule 12(b)(6).

allegations as true for the purposes of the motion, it will not accept legal or unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations. See Miree v. DeKalb County, Ga., 433 U.S. 25, 27 (1977); Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962, 971 (1st Cir. 1993). Moreover, the claimant must set forth sufficient information to outline the elements of her claims or to permit inferences to be drawn that these elements exist. See Fed. R. Civ. P. 8(a)(2); Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (quoting Sadrudin v. City of Newark, 34 F. Supp. 2d 923, 925 (D.N.J.,1999)).

DISCUSSION

A. Plaintiff’s Claims Against Defendant City of Philadelphia Police Department

Defendants argue, and Plaintiff fails to rebut, that Plaintiff’s claims against the Department should be dismissed in their entirety because under Pennsylvania law, city agencies, such as the Police Department, are not subject to suit. Specifically, because municipal agencies of the City of Philadelphia do not maintain a separate corporate existence, “all suits growing out of their transactions . . . shall be in the name of the City of Philadelphia.” 53 PA. STAT. § 16257. Accordingly, all counts of the Plaintiff’s Complaint are dismissed as a matter of law as to Defendant City of Philadelphia Police Department.

B. Individual Liability Under Title VII (Counts I, II, and III)

Next, Defendants argue that Plaintiff’s Title VII claims set forth in Counts I, II, and III of the Amended Complaint should be dismissed as to individual Defendants Peck, Six, McDonald, Rever, Williams, Liciardello, Perry, and Sprenkle because there is no individual liability under Title VII.

This Court agrees. The Third Circuit, in Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1078 (3d Cir. 1996) (en banc), *cert denied*, 521 U.S. 1129 (1997), held that Title VII does not apply to individual employees. Accordingly, Plaintiff may not sue Defendants for unlawful discrimination in their individual capacities under Title VII. Counts I, II, and III for violations of Title VII as to the individual Defendants are dismissed as a matter of law.²

C. Plaintiff’s Assault and Battery Claims (Counts IV and V)

Defendants also move for dismissal of Plaintiff’s Counts IV and V against Defendants Rever and Peck, respectively, for assault and battery. Defendants argue that Pennsylvania’s Political Subdivision Tort Claims Act (“Act”), 42 PA. CONS. STAT. ANN. §§ 8541-8542, entitles the City of Philadelphia and its employees to immunity in tort actions, except those expressly permitted by the Act.³ While the Court agrees that the Act entitles the City and its employees to immunity from tort liability under negligence theories for neglect of official duties, the Act does not shield the City or its employees from intentional torts. Rather, the Act expressly waives the defense of official

²Count III of Plaintiff’s Amended Complaint, which sets forth a claim against the individual Defendants for liability under PHRA, shall remain as to the PHRA violation claim.

³Section 8542 provides that (1) vehicle liability; (2) care, custody or control of personal property; (3) care, custody or control of real property in the possession of the local agency; (4) a dangerous condition of trees, traffic signs, lights or other traffic controls, street lights or street lighting systems under the care, custody or control of the local agency; (5) a dangerous condition of the facilities of steam, sewer, water, gas or electric systems owned by the local agency and located within rights-of-way; (6) a dangerous condition of streets owned by the local agency or under the jurisdiction of Commonwealth agencies; (7) a dangerous condition of sidewalks within the rights-of-way of streets owned by the local agency; or (8) care, custody or control of animals by a local agency or any of its employees may result in the imposition of liability on a local agency.

42 PA. CONS. STAT. § 8542.

immunity for acts of willful misconduct.⁴ Plaintiff has plead that Rever and Peck “committed unlawful assaults and batteries on her shoulders, waist, thigh, and buttocks,” (Am. Compl. ¶¶ 59, 64; see also Pl.’s Resp. to Defs.’ Mot. 3), and may, through discovery, prove facts sufficient to sustain this claim. Therefore, Counts IV and V shall remain.

D. Punitive Damages Under Title VII (Count VI)

This Court will also deny Defendant’s motion as it pertains to Count VI for punitive damages. Defendants have moved to strike Plaintiff’s request for punitive damages against Defendants because punitive damages are not recoverable against a municipality under Title VII. While Defendant is correct that the statute, 42 U.S.C. § 1981a(b)(1) expressly exempts “a government, government agency or political subdivision” from punitive damages recoverable in Title VII, Plaintiff has clearly limited her request for punitive damages to any liability Defendants may have for violations of the PHRA, which are allowable. (Am. Compl. ¶ 68.) As such, Count VI of the Complaint shall remain.

E. Plaintiff’s State Law PHRA Claims Against Individual Employees

⁴The Act provides:

In any action against a local agency or employee thereof for damages on account of an injury caused by the act of the employee in which it is judicially determined that the act of the employee caused the injury and that such act constituted a crime, actual fraud, actual malice or willful misconduct, the provisions of sections 8545 (relating to official liability generally), 8546 (relating to defense of official immunity), 8548 (relating to indemnity) and 8549 (relating to limitation on damages) shall not apply.

42 PA. CONS. STAT. § 8550. See also Delate v. Kollé, 667 A.2d 1218 (Pa.1995) (citing Kuzel v. Krause, 658 A.2d 856 (Pa. 1995) and concluding that “[f]or the purposes of the Code, ‘willful misconduct’ has the same meaning as the term ‘intentional tort.’).

Finally, Defendants seek dismissal of Plaintiff's PHRA claim in its entirety against the individual employees under the theory that because Title VII does not impose individual liability on the agents or employees of the employer defendant, the PHRA, which is generally applied in accordance with Title VII, should also be construed to preclude Plaintiff from suing Defendants for unlawful discrimination in their individual capacities under the PHRA. But section 955 (d) of the PHRA makes it illegal "[f]or any person [or] employer . . .discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act" (retaliation under PHRA); and section 955 (e) of the PHRA makes it illegal "[f]or any person [or] employer . . . to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, . . . or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice" (discrimination under PHRA). Defendants cite no authority, and the Court finds no reason, to construe the PHRA against its plain language. Therefore, Plaintiff's PHRA claim against the individual Defendants as set forth in Count III shall remain.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is granted in part and denied in part. All counts against Defendant City of Philadelphia Police Department are dismissed with prejudice. Counts I, II, and III for discrimination, retaliation, and hostile work environment under Title VII against individual Defendants are dismissed with prejudice. Count III for violations of the PHRA against individual Defendants shall remain. Counts IV and V against

Defendants Raymond Rever and Rhonda Peck, respectively, for assault and battery shall remain. Count VI for punitive damages under PHRA shall remain. An appropriate Order follows.

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

JUSTINE DEATON

Plaintiff,

v.

CITY OF PHILADELPHIA,

POLICE DEPARTMENT, ET AL.

Defendants.

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CIVIL ACTION NO. 05-CV-1238

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ORDER

AND NOW, this ____ day of January, 2006, upon consideration of Defendants City of Philadelphia Police Department, Rhonda Peck, Patrice Six, Ronald McDonald, Raymond M. Rever, Shirley Williams, Steven Liciardello, Aisha Perry and William Sprenkle's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2) and 12(b)(6) (Doc. 10) and Plaintiff's Response (Doc. 11), **IT IS HEREBY ORDERED and**

DECREED that the Defendants’ Motion is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. All counts against Defendant City of Philadelphia Police Department are **DISMISSED WITH PREJUDICE**. The Clerk of the Court shall mark Defendant City of Philadelphia Police Department as **TERMINATED**.
2. Counts I, II, and III for discrimination, retaliation, and hostile work environment under Title VII against Defendants Rhonda Peck, Patrice Six, Ronald McDonald, Raymond M. Rever, Shirley Williams, Steven Liciardello, Aisha Perry and William Sprenkle are **DISMISSED WITH PREJUDICE**.
3. Count III for violations of the Pennsylvania Human Relations Act (“PHRA”), 43 PA. CONS. STAT. ANN. § 951, against Defendants Rhonda Peck, Patrice Six, Ronald McDonald, Raymond M. Rever, Shirley Williams, Steven Liciardello, Aisha Perry and William Sprenkle shall remain.
4. Counts IV and V against Defendants Raymond Rever and Rhonda Peck, respectively, for assault and battery shall remain.
5. Count VI for punitive damages under PHRA shall remain.

BY THE COURT:

Hon. Petrese B. Tucker, U.S.D.J.