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

ROBERT MCLAUGHLIN	**:**	**CIVIL ACTION**
	:	
v.	**:**	**NO. 04-5559**
	:	
KVAERNER ASA, et al.	**:**	

MEMORANDUM AND ORDER

Kauffman, J. **July 26, 2006**

Plaintiff Robert McLaughlin ("Plaintiff") brings this action against Defendants Kvaerner ASA, Aker ASA, Aker American Shipping Inc., Aker Philadelphia Shipyard, Inc., and Kvaerner Philadelphia Shipyard, Inc. (collectively "Defendants") for violations of Title VII, 42 U.S.C. § 2000e et seq. (Count One), the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. (Count Two), 42 U.S.C. § 1981a (Count Three), the Pennsylvania Human Relations Act, Pa. Stat. Ann., Tit. 43, § 951 et seq. (Purdon 1991) (Count Four), and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq. (Count Five). He also asserts a common law wrongful termination claim (Count Six). Defendants Aker Philadelphia Shipyard, Inc. and Kvaerner Philadelphia Shipyard, Inc. ("Moving Defendants") have filed a motion to dismiss Counts Five and Six pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons that follow, the Motion will be granted.

I. BACKGROUND

Accepting the allegations of the Amended Complaint as true, the facts pertinent to this Motion are as follows. Defendants jointly operate a ship-building venture located on what was formerly a portion of the Philadelphia Naval Shipyard (the "Shipyard"). Amended Complaint ¶ 18. There, Defendants produce container ships for use in the United States domestic freight carriage market. Amended Complaint ¶ 21. In 1999, Plaintiff began working for Defendants at the Shipyard site as a Procurement Manager. He remained at that position until June 13, 2003 when he was terminated. Amended Complaint ¶¶ 34, 35.

During the course of their operations at the Shipyard, Defendants subcontracted various

aspects of the ship construction process. The Amended Complaint alleges that in a number of cases, the bidding process was rigged to insure that the subcontracts would be awarded to European rather than American companies. Amended Complaint ¶¶ 51-57. Many of these European companies were less qualified than their American counterparts and charged substantially higher rates. Amended Complaint ¶¶ 63-63. The result was that the quality of work suffered and costs increased dramatically. Amended Complaint ¶¶ 63-65.

To disguise the bid-rigging scheme, Defendants falsely attributed the rising costs to an increase in the cost of materials. Amended Complaint ¶ 98. Since Plaintiff was in charge of procurement, he bore the brunt of the blame for the rising cost of materials. Amended Complaint ¶ 102. On June 13, 2003, Defendants terminated Plaintiff, citing his inability to control materials costs. Amended Complaint ¶¶ 37-40,104.

Plaintiff filed the instant action on December 1, 2004. He later was granted leave to amend the Complaint. Moving Defendants then filed the instant Motion to Dismiss.

II. LEGAL STANDARD

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. ANALYSIS

A. Count Five

Plaintiff's RICO claim (Count Five) is based on 18 U.S.C. § 1964(c), which authorizes "any person injured in his business or property by reason of a violation of section 1962 of this chapter" to bring a civil suit in a United States District Court, from which he may recover

"threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). Section 1964(c) thus explicitly makes recovery contingent on a violation of 18 U.S.C. § 1962. Section 1962, in turn, consists of four subsections, each of which correspond to a separate RICO violation:

> **(a)** It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt ... to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce ... **(b)** It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. **(c)** It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt. **(d)** It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Here, Plaintiff alleges a violation of § 1962(d). Specifically, he claims that Defendants and "certain foreign subsidiaries or sub-contractors" formed an enterprise and then conspired to "participate, directly or indirectly, in the conduct or affairs of such enterprise of affairs [sic] through a pattern of racketeering activity[.]" Amended Complaint ¶¶ 130, 132.

Citing Beck v. Purpris, 529 U.S. 494 (2000), Moving Defendants contend that Plaintiff lacks standing to bring this RICO conspiracy claim. The facts in Beck are virtually identical to those here. The case involved Southwestern Insurance Group ("SIG"), which, until 1990 when it declared bankruptcy, operated as a Florida insurance holding company. The plaintiff was the former President and CEO of SIG. The defendants were former senior officers and directors. Beck, 529 U.S. at 497-98. Beginning in 1987, the defendants, along with other officers and directors of SIG engaged in various acts of racketeering. In 1988, the plaintiff discovered the unlawful conduct and took steps to expose it. The defendants then "orchestrated a scheme to

remove [the plaintiff] from the company." Id. at 498. The plaintiff was terminated based on his "inability or substantial failure to perform his material duties." Id. Subsequently, he brought suit, claiming, inter alia, that the defendants had conspired to violate § 1962(c) and that his injury was "proximately caused by an overt act – namely the termination of his employment – done in furtherance of [defendants'] conspiracy[.]" Id. at 499.

The Court found that the plaintiff lacked standing to bring his claim. Drawing on precedent from the common law tort of civil conspiracy, the Court held that "injury caused by an overt act [in a conspiracy] that is not an act of racketeering or otherwise wrongful under RICO ... is not sufficient to give rise to a cause of action under § 1964(c) for a violation of § 1962(d)." Id. at 505. While the defendants' scheme to have the plaintiff fired was clearly an overt act in furtherance of the conspiracy, it was not itself a racketeering act. Accordingly, the Court found, the plaintiff lacked a cause of action. Id. at 506.

The same principle applies here. Defendants' decision to terminate Plaintiff to conceal their alleged bid-rigging scheme was manifestly an overt act in furtherance of the alleged conspiracy, but it was not "independently wrongful under any substantive provision of the statute. Injury caused by such an act is not, therefore, sufficient to give rise to a cause of action under § 1964(c)."[1] Id. Accordingly, Count Five will be dismissed.

B. Count Six

In Count Six, Plaintiff asserts a state-law claim for wrongful discharge. When adjudicating a claim based on state law, the Court must "apply state law as interpreted by the state's highest court in an effort to predict how that court would decide the precise legal issues [presented]." Gares v. Willingboro Twp., 90 F.3d 720, 725 (3d Cir. 1996). Where state law, as determined by the highest state court is unclear, the Court may "consider decisions of the state's intermediate appellate courts for assistance in predicting how the state's highest court would rule." Id.

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[1] Defendants' termination of Plaintiff is not a racketeering act as defined in § 1961(1).

The Commonwealth of Pennsylvania has adopted the at-will employment doctrine, according to which "an employer may terminate an employee for any reason, unless restrained by contract." McLaughlin v. Gastrointestinal Specialists, Inc., 750 A.2d 283, 286 (Pa. 2000). Accordingly, there is generally "no common law cause of action against an employer for termination of an at-will employment relationship."[2] Id. at 287 (quoting Paul v. Lankenau Hosp., 569 A.2d 346 (Pa. 1990)). The Pennsylvania Supreme Court has, however, recognized exceptions to this rule, but "in only the most limited of circumstances, where discharges of at-will employees would threaten clear mandates of public policy." Paul, 569 A.2d at 348.

Plaintiff contends that his wrongful discharge claim qualifies for the "public policy" exception. Moving Defendants do not deny the existence or validity of the "public policy" exception, but argue that Plaintiff has failed to state a claim under that exception because he has failed to specify which public policy is at stake.

The Court agrees. Under the federal rules, a "short and plain" statement of a claim for relief is all that is required. Fed R. Civ. P. 8(a)(2). The Supreme Court has repeatedly emphasized, however, that a plaintiff's statement of the claim must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002) (emphasis added). Here, Plaintiff has alleged that Defendants' decision to terminate him violated "a clear mandate of public policy," but fails to indicate which public policy. Plaintiff thus has failed to articulate a coherent legal theory for his claim – he has, in other words, failed to provide Defendant notice of the "grounds upon which [his claim] rests." See Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 347 (2005) (finding Plaintiff's statement of claim inadequate because it failed to specify the nature of the economic loss and proximate cause).

Plaintiff also argues that Pennsylvania law allows a claim for wrongful discharge where the employer has acted with a specific intent to harm. While the Supreme Court of Pennsylvania has never squarely addressed whether an at-will employee may maintain a claim for wrongful

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[2] It is undisputed that Plaintiff was an at-will employee.

discharge based on a specific intent to harm theory, it has referred to the "public policy exception" as the sole limitation on an at-will employer's right to terminate an employee. It has also repeatedly emphasized the importance of confining the exception so as to prevent it from swallowing the rule. See McLaughlin, 750 A.2d at 287; Paul, 569 A.2d at 348; Clay v. Advanced Computer Applications, Inc., 559 A.2d 917, 918 (Pa. 1989). Moreover, the most recent Superior Court cases to consider the question support Moving Defendants' position. Donahue v. Federal Express. Corp., 753 A.2d 238, 245 (Pa. Super. Ct. 2000) (holding that Pennsylvania does not recognize a claim for wrongful discharge based on a "specific intent to harm" theory); McLaughlin v. Gastrointestinal Specialists, Inc., 696 A.2d 173, 176 n.4 (Pa. Super. Ct. 1997) ("The supreme court's decision in Paul made it clear that the public policy exception is the only exception to the at-will employment doctrine, in contrast to earlier [Superior Court] cases which had discussed a separate cause of action for wrongful discharge based on a specific intent to harm."); but see Tourville v. Inter-Ocean Ins.Co., 508 A.2d 1263 (Pa. Super. Ct. 1987). On the basis of the foregoing precedent, this Court finds that Plaintiff's allegation that Defendants had a specific intention to harm him would not except his claim from the general rule that an at-will employee lacks a cause of action for wrongful discharge under Pennsylvania law.

Accordingly, the Court finds that Plaintiff has failed to state a claim for wrongful discharge.

III. CONCLUSION

For the foregoing reasons, the Court will dismiss Counts Five and Six.[3] An appropriate Order follows.

[3] Because the deficiencies in Counts Five and Six discussed above are general and not specific to Moving Defendants, the Court will dismiss those counts as to all Defendants. See Roman v. Jeffes, 904 F.2d 192, 196 (3d Cir. 1990).

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ORDER

AND NOW, this 26th day of July, 2006, upon consideration of Moving Defendants' Motion to Dismiss (docket no. 24), and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **GRANTED.** Accordingly, Counts Five and Six are **DISMISSED** as to all Defendants.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.