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

CARLO MCKINNIE and SONYA SAMS,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
TERESA CONLEY and CHEYNEY UNIVERSITY OF THE STATE SYSTEM OF HIGHER EDUCATION,	:	
	:	
Defendants.	:	NO. 04-932

MEMORANDUM AND ORDER

Gene E.K. Pratter, J. October 6, 2006

BACKGROUND

Presently before the Court is the motion of the Plaintiffs seeking leave to file a second amended complaint. The Defendants oppose the motion. As explained below, the Court denies the motion because of the futility of the pursuit of the claims that Plaintiffs now propose to add.

On March 3, 2004, Carlo McKinnie and Sonya Sams filed a complaint against their former boss at Cheyney University of Pennsylvania ("Cheyney"),[1] Director of Public Safety Teresa Conley. In the Complaint, Plaintiffs alleged violations of the First Amendment and 42 U.S.C. § 1983 arising out of their discharge from their security guard positions at Cheyney. Approximately three months later, on June 8, 2004, Plaintiffs filed their Amended Complaint to

[1]Cheyney University of Pennsylvania is also properly referred to as Cheyney University of the State System of Higher Education. In 1983 the Commonwealth of Pennsylvania created the State System of Higher Education by converting fourteen state colleges, including Cheyney, into member-universities. See 24 P.S. §§ 20-2001 et seq.

add Cheyney as a named defendant, and to add claims of racially discriminatory, retaliatory and harassing activities, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Pennsylvania Human Rights Act, against both Ms. Conley and Cheyney.[2]

Discovery in this case was conducted over a period of approximately eight months, and was completed on August 26, 2005. Plaintiffs now seek leave to file their Second Amended Complaint (Docket No. 40), more than two years after filing their original Complaint and the Amended Complaint, close to one year after the conclusion of discovery, and almost two months after the Court denied Defendants' Motion for Summary Judgment (Docket No. 34). According to their motion, Plaintiffs now also wish to bring a claim of retaliation by Cheyney in violation of 42 U.S.C. § 1981 ("§ 1981").[3] Plaintiffs claim that through discovery they were able to uncover information that Cheyney had knowledge of their allegedly retaliatory termination, supported it, and took steps to conceal it following their termination. (Pl.'s Mot. ¶ 4.) However, Defendants argue that the Constitution's Eleventh Amendment prohibits a federal court from entertaining the § 1981 claim against Cheyney and, therefore, that Plaintiffs' motion to amend their Complaint to

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[2]A full recitation of the factual background of this litigation is included in the Court's June 12, 2006 Memorandum discussing Defendants' Motion for Summary Judgment and need not be repeated here.

[3] In pertinent part, § 1981 states: "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 security of persons and property as is enjoyed by white citizens." 42 U.S.C. § 1981(a). "For the purposes of the section, 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b).

add a futile claim should be denied. (Def.'s Mem. 5.)[4]

LEGAL STANDARD

Rule 15(a) of the Federal Rules of Civil Procedure provides that "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). While a motion to amend a complaint may ordinarily be granted, a court should deny the motion where the amendment would be futile. Lorenz v. CSX Co., 1 F.3d 1406, 1414 (3rd Cir. 1993). An amendment is considered futile "if the amended complaint cannot withstand a motion to dismiss." Sunoco, Inc. v. Praxair, Inc., 2001 WL 438419, at *1 (E.D. Pa. Apr. 30, 2001) (quoting Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 292 (3rd Cir. 1988)). Therefore, in ruling on the motion, the Court will use the same legal standard it employs when deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

When deciding a motion to dismiss, 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 Plaintiffs. 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 Plaintiffs. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

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[4]In the alternative, Defendants argue that Plaintiffs cannot assert a viable claim against Cheyney because the state university is not a "person" within the meaning of § 1981. The Court need not reach the merits of this argument as Defendants' primary argument sets forth sufficient grounds to determine whether to grant leave to amend.

DISCUSSION

The Eleventh Amendment provides, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. The United States Supreme Court has consistently held that the Eleventh Amendment bars a citizen from bringing a suit against his own state in federal court, Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 280, 97 S.Ct. 568, 572, 50 L.Ed.2d 471 (1977), unless the state has waived, or Congress has abrogated, state immunity. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 99, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984), rev'g and remand'g 673 F.2d 647 (3d Cir. 1982). Further, the Eleventh Amendment guarantee of state sovereign immunity extends to "suits against departments or agencies of the state having no existence apart from the state." Seybert v. West Chester Univ., 83 F. Supp. 2d 547, 553 (E.D. Pa. 2000). See also Garden State Electrical Inspection Services Inc. v. Levin, 144 Fed. Appx. 247, 250-251 (3d Cir. 2005) (citing MCI Telecomm. Corp. v. Bell Atlantic-Pa. Serv., 271 F.3d 491, 503 (3d Cir. 2001) (the Eleventh Amendment renders states, including state agencies and state departments, generally immune from suit by private parties in federal court, provided that the state is the real party interest). Neither Commonwealth wavier, Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981) (citing 42 Pa. Cons. Stat. § 8521(b)) nor Congressional abrogation, Boykin v. Bloomsburg Univ. of Pa., 893 F. Supp. 378, 394 (M.D. Pa. 1995), aff'd, 845 F.2d 1195 (3d Cir. 1988), has occurred for suits arising under § 1981.

Cheyney is a part of the Pennsylvania State System of Higher Education, and as such, the Commonwealth of Pennsylvania "is the real, substantial party at interest" in this matter, and the

"relief sought will operate against the state." O'Hara v. Ind. Univ. of Pa., 171 F. Supp. 2d 490, 495-496, 498 (W.D. Pa. 2001) (quoting Pennhurst, 465 U.S. at 101) (State System of Higher Education and its fourteen constituent State Universities are entitled to the protection of the Eleventh Amendment). See also Skehan v. State System of Higher Educ., 815 F.2d 244, 249 (3d Cir. 1987) (state university system, as a government instrumentality, 24 P.S. § 20-2002-A(a), is "entitled to the protection of the Eleventh Amendment"); Seybert, 83 F. Supp. 2d at 553 (as a member institution of the State System of Higher Education, 24 P.S. § 20-2002-A(a)(14), West Chester University is entitled to such immunity). Accordingly, because Plaintiffs' claims under § 1981 would be barred, **there is no set of facts under which relief could be granted to the Plaintiffs consistent with § 1981. Therefore,** since Plaintiffs' proposed putative new claim is futile, it would be pointless to permit the requested amendment at this late date.[5]

ORDER

AND NOW, this 6th day of October, 2006, **IT IS HEREBY ORDERED THAT** Plaintiffs' Motion for Leave to File a Second Amended Complaint to Add a Count for Violations of 42 U.S.C. § 1981 (Docket No. 40) is **DENIED**.

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

[5]Although the grounds for the denial of the Motion are set forth above, the Court also notes that Plaintiffs' Motion does not sufficiently explain, much less justify, the lengthy delay in their attempt to again amend their Complaint.