

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

KENNETH GILBERT : CIVIL ACTION  
v. :  
CITY OF PHILADELPHIA, et al. : NO. 96-7791

MEMORANDUM AND ORDER

Fullam, Sr. J. May , 1997

Plaintiff, a former employee of the Enforcement Division of the Law Department of the City of Philadelphia, filed a pro se complaint in this action as of December 20, 1996, having previously been denied leave to proceed in forma pauperis. On January 20, 1997, the defendant City of Philadelphia filed a Motion to Dismiss, but, through inadvertence, the motion was apparently not served upon plaintiff. On February 13, 1997, I granted the City's Motion to Dismiss as unopposed. The plaintiff sought reconsideration, which was granted. The previously ordered dismissal was vacated. The defendants then withdrew their Motion to Dismiss, and filed an answer to the complaint. Plaintiff then sought leave to amend the complaint. The defendants objected to the proposed amendment, as futile, but then also filed a Motion for Partial Dismissal of both the original complaint and the amended complaint.

In an attempt to bring order out of chaos, I now rule (1) that plaintiff's complaint has indeed been amended as set forth in the Motion for Leave to Amend; (2) that the defendants' Motion for Partial Dismissal applies to all versions of the complaint now in

the record; and (3) that the pending Motion for Partial Dismissal can properly be treated as a motion for partial judgment on the pleadings. The motion will now be ruled upon, without considering any matters outside of the pleadings.

Plaintiff is asserting claims in two distinct categories: (1) claims of employment discrimination, under Title VII, and (2) for violation of constitutional rights, predicated upon alleged racial and/or gender discrimination, in violation of § 1983, 1981, and 1985. The defendants include the City of Philadelphia, and various individuals who were plaintiff's supervisors and/or fellow employees during his tenure with the Law Department.

Defendant was discharged from employment in April 1994. All of the alleged discrimination preceded, and culminated in, his April 1994 discharge. This action was not commenced until November 1996, well beyond the applicable two-year limitations period for civil rights claims. Accordingly, defendants are correct in contending that all of plaintiff's claims except those arising under Title VII should be dismissed.

Plaintiff's Title VII claims are timely, and he has obtained the requisite right-to-sue letter. But none of the individual defendants can be held liable under Title VII; they were never plaintiff's employer.

Thus, plaintiff will be permitted to proceed only under Title VII, and only with respect to the defendant City of Philadelphia. All other claims and parties are dismissed from the action.

Finally, punitive damages may not be collected from a municipality (or, for that matter, from any party under Title VII). Plaintiff's claims for punitive damages will also be excluded.

An order follows.

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ORDER

AND NOW, this day of May, 1997, IT IS ORDERED:

1. As to all of the individual defendants, this action is DISMISSED WITH PREJUDICE.

2. As to the defendant City of Philadelphia, the only remaining defendant, all of plaintiff's claims except those arising under Title VII are DISMISSED WITH PREJUDICE.

3. Plaintiff's Motion to Compel is DISMISSED WITHOUT PREJUDICE (the motion is incomprehensible and not in conformity with applicable rules of procedure).

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John P. Fullam, Sr. J.