

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

WALID W. BARAKAT	:	CIVIL ACTION
	:	
v.	:	
	:	
DELAWARE COUNTY MEMORIAL	:	
HOSPITAL	:	NO. 97-2012

MEMORANDUM ORDER

AND NOW, TO WIT, this 2nd day of July, 1997, presently before the court is Walid W. Barakat's ("Plaintiff") Motion to Dismiss Counterclaim, and Delaware County Memorial Hospital's ("Defendant") opposition thereto. For the following reasons, the court will grant the motion.

I. BACKGROUND

Plaintiff is an Arab who was born in Jordan, raised in Israel, and has lived in the United States for twenty-one years. This civil action involves his claim that Defendant discriminated against him in his employment. Plaintiff, who worked for Defendant as a maintenance worker between 1992 and 1996, alleges that his three superiors constantly made derogatory comments regarding his ethnic background. (Compl. ¶¶ 13-17.) Plaintiff also asserts that he was denied a pay raise and was treated worse than other employees in his department during his four-year employment, but especially after he returned to work after an on-the-job injury. Id. ¶ 18. He further alleges that Defendant

tolerated the discrimination and took no action in response to his complaints. Id. ¶¶ 19-21.

On March 19, 1997, Plaintiff filed a Complaint for monetary damages under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. § 951 et seq. On May 12, 1997, Defendant filed an Answer, affirmative defenses, and a counterclaim alleging that Plaintiff is liable to him for "abuse of process" because he knowingly and intentionally filed the lawsuit in bad faith and to harass and extort money from Defendant. (Countercl. ¶¶ 7-8.)

On May 30, 1997, Plaintiffs moved to dismiss the counterclaim on the ground that it lacked an essential element of the statutory claim of "Wrongful Use of Civil Proceedings," 42 Pa. Cons. Stat. Ann. § 8351, namely, that the underlying litigation must have terminated favorably to the claimant. On June 11, 1997, Defendant filed an opposing brief stating that its counterclaim was not based on that statute, but rather on the common law intentional tort of abuse of process. (Def.'s Mem. Opp. Dismissal at 3.) On June 13, 1997, Plaintiff filed a reply in which it sought to "amend" its motion to include Defendant's abuse of process claim. On June 25, 1997, Defendant filed a brief in which it argued that the court should reject Plaintiff's

attempt to amend his motion because he had not obtained leave from the court to do so.¹

II. LEGAL STANDARD FOR MOTIONS TO DISMISS

The issue before the court is whether Defendant has stated an abuse of process claim upon which relief can be granted. If it has, the court must allow the counterclaim to stand. If it has not, the court must dismiss the claim under Federal Rule of Civil Procedure 12(b)(6).

In determining whether the court should dismiss a claim under this rule, it must accept as true all of the well-pleaded allegations of fact, construe such allegations in the light most favorable to the claimant, and "determine whether under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989) (citations omitted). A court should not dismiss a claim under Rule 12(b)(6) unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted).

The court will not require Plaintiff to obtain permission from the court to amend his motion. The court interprets Plaintiff's reply brief as requesting the court to apply the facts and relevant legal principles to Defendant's abuse of process claim.

III. DISCUSSION

Defendant's counterclaim alleges that Plaintiff commenced the lawsuit even though he knew the allegations were baseless. (Countercl. ¶ 6.) Defendant asserts that Plaintiff knew they were baseless because the Commonwealth had denied his request for unemployment compensation benefits after determining that he had abandoned the job, and because neither the Equal Employment Opportunity Commission nor the Pennsylvania Human Relations Commission found that Defendant violated any law against discrimination with respect to Plaintiff. Id. ¶¶ 3-5. Defendant alleges that Plaintiff filed the Complaint "for the sole purpose of attempting to force defendant to pay money to simply buy the plaintiff off." Id. ¶ 7.

Courts in Pennsylvania have defined abuse of process as "the use of legal process against another 'primarily to accomplish a purpose for which it is not designed.'" Rosen v. American Bank of Rolla, 627 A.2d 190, 192 (Pa. Super. Ct. 1993) (quoting Restatement (Second) of Torts § 682). A party alleging the tort must prove three elements: "(1) an 'abuse' or 'perversion' of process already initiated (2) with some unlawful or ulterior purpose, and (3) harm to the plaintiff as a result." Kedra v. Nazareth Hosp., 868 F. Supp. 733, 738 (E.D. Pa. 1994) (citing Shaffer v. Stewart, 473 A.2d 1017, 1019 (Pa. Super. Ct. 1984)). Examples of actions that are recoverable under the abuse of process tort are extortion by means of attachment, execution or

garnishment, and blackmail by means of arrest or criminal prosecution. Rosen v. Tesoro Petroleum Corp., 582 A.2d 27, 33 (Pa. Super. Ct. 1990), appeal denied, 592 A.2d 1303 (Pa. 1991).

The court will grant Plaintiff's motion because the counterclaim fails the first prong. Defendant is seeking relief from Plaintiff only for filing this lawsuit, not for abusing or perverting "process already initiated." The Supreme Court of Pennsylvania, as well as lower appellate courts, have held that the abuse of process tort is inapplicable to the improper initiation of a civil proceeding. McGee v. Feege, 535 A.2d 1020, 1024 (Pa. 1987) (distinguishing between cases involving "an improper initiation of a lawsuit as opposed to a perversion of a lawfully entered action," and concluding that only the latter category is appropriate for abuse of process claims); Publix Drug Co. v. Breyer Ice Cream Co., 32 A.2d 413, 415 (Pa. 1943) (stating that, unlike the tort of malicious use of civil process, the tort of abuse of civil process "'is concerned with a perversion of a process after it is issued.'"); see also Rosen v. American Bank of Rolla, 612 A.2d 190, 192 (Pa. Super. Ct. 1993) (noting that the Restatement (Second) of Torts § 682 states that the tort of abuse of process generally is not directed at the wrongful procurement of legal process or the wrongful initiation of criminal or civil proceedings); Tesoro Petroleum, 582 A.2d at 33 (affirming the granting of summary judgment on an abuse of process claim because "the allegations in the[] complaint amount to no more than a charge for the initiation of litigation for a

wrongful purpose, and do not charge appellees with any 'perversion' of properly issued process"); Borough of Philipsburg v. Bloom, 554 A.2d 166, 170 (Pa. Commw. Ct. 1989), aff'd, 574 A.2d 602 (Pa. 1990) (rejecting the plaintiff's contention that "it need not allege any facts other than the 'mere issuance of process for an unlawful purpose'" to state a claim for abuse of process).

Because Defendant alleges only that Plaintiff improperly initiated a baseless lawsuit in an effort to harass and extort money from Defendant, it is evident that Defendant cannot prevail on an abuse of process claim in light of the controlling Pennsylvania law. Accordingly, the court will dismiss the counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(6).

IV. CONCLUSION

For the preceding reasons, upon consideration of Plaintiff's Motion to Dismiss Counterclaim, and Defendant's opposition thereto, IT IS ORDERED that said motion is GRANTED.

LOUIS C. BECHTLE, J.