

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

ROBERT W. and MARGARET DeNOFA : CIVIL ACTION
: :
vs. : :
: :
PHILADELPHIA NEWSPAPERS, INC. : No. 97-3320

O R D E R - M E M O R A N D U M

AND NOW, this 25th day of July, 1997 the motion of defendant Philadelphia Newspapers, Inc. to dismiss counts one, three, four, five and six of the amended complaint, Fed. R. Civ. P. 12(b)(6), is ruled on as follows:¹

1. Count I: Americans with Disabilities Act (ADA) Claim - Denied as moot. It appears that the requisite 180-day conciliation period has elapsed inasmuch as plaintiff's charge of discrimination was filed on January 13, 1997. See 42 U.S.C. § 2000e-5(f)(1).

2. Count III: Pennsylvania Human Relations Act (PHRA) Claim - Denied. This count states a claim if equitable tolling can be shown. If equitable tolling is established upon completion of discovery, the PHRA claim would be timely in that plaintiff has cross-filed his EEOC claim with the PHRC. Am. Compl. Ex. A; see Woodson v. Scott Paper Co., 109 F.3d 913, 926 n.12 (3d Cir. 1997).

1. In considering a motion to dismiss for failure to state a claim, Fed. R. Civ. P. 12(b)(6), the allegations in the complaint are accepted as true as are all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). Only the facts alleged in the complaint and its attachments will be considered, without reference to other parts of the record. Id.

3. Counts IV & V: Wrongful Discharge - Denied in part, granted in part. These counts allege that defendant's "Progressive Discipline Policy" created implied covenants "for just cause" and "good faith and fair dealing." Am. Compl. ¶¶ 46-60. Under Pennsylvania law, the presumption of at-will employment is a high burden to overcome.² Paul v. Lanckenau Hosp., 524 Pa. 90, 94, 569 A.2d 346, 348 (1990). Nevertheless, it cannot be said definitively that plaintiff has not pleaded facts that could make out an employment contract. See Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 659 (3d Cir. 1990) (factual uncertainty of whether employer's custom, practice or policy creates contractual "just cause" requirement survives motion to dismiss).

However, the motion to dismiss is granted insofar as plaintiff is asserting an exception to the employee at-will doctrine based on promissory or equitable estoppel. It is well-settled that estoppel is not a recognized exception to employment at-will in Pennsylvania. Paul, 524 Pa. at 94, 569 A.2d at 348.

4. Count VI: Loss of Consortium - Granted. No objection from plaintiff.

Edmund V. Ludwig, S.J.

2. As the Pennsylvania Superior Court recently stated, the presumption of employment at-will can not be overcome unless there is (1) an agreement for a definite duration; (2) a provision limiting discharge to just cause; (3) sufficient additional consideration; or (4) an applicable recognized public policy exception. Luteran v. Loral Fairchild Corp., 455 Pa. Super. 364, ___, 688 A.2d 211, 214 (1997).