

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

MONICA J. WASHINGTON,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF CHESTER, Pennsylvania, et al.,	:	
	:	
Defendants.	:	No. 96-4033

MEMORANDUM

Reed, J.

December 29, 1997

Plaintiff Monica Washington (“Washington”) has claimed various federal and state constitutional deprivations as well as federal statutory violations committed by the City of Chester (“City”), the Chester Economic Development Authority (“CEDA”), Chester Redevelopment Authority (“Redevelopment Authority”),¹ and Thomas Jackson (“Jackson”), arising from her employment at the Redevelopment Authority. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.

Currently before the Court are two motions for summary judgment: one by the City of Chester (Document No. 14), and the other by the CEDA, Redevelopment Authority, and Jackson (Document No. 15). The responsive briefing of Washington appears extensive. But a

¹ The City of Chester, through its mayor, on October 13, 1994, passed a resolution terminating the authority of the Redevelopment Authority to administer funds, namely the Urban Development Action Grant (“UDAG”) and the State Enterprise Zone repayment funds. (Def. Ex. D). In April of 1995, the City of Chester established a new agency, the CEDA, to administer the UDAG funds. (See Mem. of Def. CEDA at unnumbered page 6).

closer look at this daunting mass reveals little, if any, evidence to sustain her federal claims beyond the summary judgment stage. For the following reasons, I will grant the motions for summary judgment on all federal claims. With respect to the state law claim, I will exercise my discretion and dismiss it without prejudice to the right of Washington to file it in an appropriate state forum.

I. FACTUAL AND PROCEDURAL BACKGROUND

I note that this case is the companion of another case, Cooper-Nicholas v. City of Chester, et al. (No. 95-6493), the pending motions for summary judgment of which will also be disposed of in a separate ruling today. The defendants, the incidents, and factual underpinnings of these cases are striking similar. In fact, the counsel for the parties in both cases are the same and the briefing of the parties is identical in numerous parts.

Washington filed her complaint in May 1996 alleging the following constitutional and statutory violations against all defendants: Title VII of the Civil Rights Act of 1964 for sex discrimination, sexual harassment, and retaliation (Count I), Pennsylvania Human Relations Act ("PHRA") for sex discrimination, sexual harassment, and retaliation (Count II), denial of equal protection of the laws in contravention of the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983 (Count III), and denial of procedural due process of law in contravention of the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983 (Count IV).

The scope of the lawsuit has gradually diminished. Upon a motion to dismiss brought by the City of Chester, this Court dismissed Counts III and IV as against the City of Chester in a Memorandum and Order dated April 14, 1997. (See Document No. 11). Soon

thereafter, defendants filed their respective motions for summary judgment. In her response in opposition to the motions for summary judgment, Washington concedes that her claim under Title VII was untimely filed and thus she does not oppose granting summary judgment in favor of defendants on this issue. (Document No. 21 - Supp. Mem. of Pl. at 1).² Washington also concedes that the due process claim in Count IV should be dismissed. (Document No. 16 - Pl. Mem. at 1).³ Thus, the only remaining claims to be analyzed today is the denial of equal protection set forth in Count III and the PHRA claim in Count II.

Upon graduation from law school, Jackson approached Washington about employment at the Redevelopment Authority. In February, 1994, Washington was hired by the Redevelopment Authority as a Legal Services Specialist. She had been told by Jackson, the then Executive Director of the Redevelopment Authority, that she would work on a part-time basis (until 12 noon each day) with a salary of \$26,000.00. Jackson also promised her that she would be promoted to a Solicitor position when the current solicitor's contract expired. Instead, upon commencement of her employment, she was informed that she had to work full-time. Eventually, Washington received a slight salary increase in light of her full-time schedule, though she maintained that the increase was inadequate. She also learned that proposals for solicitor

² On October 26, 1995 the Equal Employment Opportunity Commission informed plaintiff that she had a right to institute a civil action against defendants within the statutorily permitted 90 days. Washington did not file her action until May 29, 1996, clearly beyond the statutorily permitted period. See 42 U.S.C. § 2000(e-5)(f)(1). Accordingly, I will grant summary judgment in favor of defendants on the Title VII claim in Count I. See Baldwin County Welcome Ctr. v. Brown, 466 U.S. 147, 149-52 (1984); McClain v. Mac Trucks, Inc., 81 F.R.D. 732, 732 (E.D. Pa. 1979).

³ Similarly, I will grant summary judgment in favor of defendants on Count IV. Washington was an at-will employee and did not have an express or implied contract. Consequently, she did not have a property interest in her employment and thus no right to a hearing under the due process clause of the Fourteenth Amendment. See Bishop v. Wood, 426 U.S. 341, 344, 347 (1976); Cooley v. Pennsylvania Housing Fin. Agency, 830 F.2d 469, 471-73 (3d Cir. 1987); Banks v. Redevelopment Auth. of City of Philadelphia, 416 F. Supp. 72, 73-74 (E.D. Pa. 1976), aff'd, 556 F.2d 564 (3d Cir. 1977), cert. denied, 434 U.S. 929 (1977).

positions were being reviewed and that she would not receive this position, despite the purported promises of Jackson to the contrary. At no time did Washington have any written employment contract with the Redevelopment Authority.

Several conversations between Washington and Jackson took place regarding her salary, promotion, and job description. Washington believed that Jackson would not fulfill the promises he made when he first hired her. In a memorandum dated August 25, 1994 to Kathryn Cooper-Nicholas, the Deputy Executive Director of the Redevelopment Authority, Washington outlined her grievances with respect to her hiring, salary, and promotion. On October 17, 1994, Washington wrote to the Board of Directors asserting her disagreement with the Board of Directors' offer to resolve her grievance. On October 27, 1994 Washington went before the Board of Directors regarding her disagreement with the Board's disposition of her previous complaint. At this meeting, once Washington had left, Jackson informed the Board of Directors that Washington would be laid off the following day purportedly for loss of the Urban Development Action Grant monies, which paid her salary. On October 28, 1994, Washington was discharged from her employment at the Redevelopment Authority.

After her discharge from work, Washington filed a charge of discrimination before the Equal Employment Opportunity Commission ("EEOC"). In that charge, Washington stated, "Throughout my employment, I was forced to listen to Jackson publicly make sexist comments about female subordinates and acquaintances." (EEOC Charge of Discrimination - Def. Ex. H). Washington testified at her deposition to the following sexually offensive comments made by Jackson. First, in April of 1994, Jackson commented that the new employee, Monica Elam, "wants his body" and was a "whoremonger" and a "CW," which apparently means

“crotch watcher.” (Washington Dep. at 118-19). Washington also stated that Jackson said, though not in Washington’s presence, that his secretary was “doing the wild thing during her lunch break.” (Id. at 119). In her affidavit given to the EEOC, she attested that these comments were “made in the office, generally at office functions like birthday parties or a housewarming party during office time.” (Washington Aff. - Pl. Ex. 13).

I will now turn to the summary judgment analysis.

II. LEGAL STANDARD

Summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A disputed factual matter is a genuine issue "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 248. The court must make its determination after considering the facts and all reasonable inferences drawn from them in the light most favorable to the nonmoving party. Id. at 255-56. The nonmoving party must produce evidence to support its position, and may not rest upon bare assertions, conclusory allegations, or suspicions. Fireman's Ins. Co. of Newark, N.J. v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982).

III. ANALYSIS

A. Section 1983 - Denial of Equal Protection

To bring a successful claim under Section 1983 for denial of equal protection, Washington must prove the existence of purposeful discrimination in that she received different

treatment than other similarly-situated employees at the Redevelopment Authority. See Keenan v. City of Philadelphia, 983 F.2d 459, 465 (3d Cir. 1992) (citing Andrews v. Philadelphia, 895 F.2d 1469, 1478 (3d Cir. 1990)). Specifically, Washington must prove that any disparate treatment was based on her gender. Id.

In her complaint, Washington alleges that she complained to Jackson that “she was being paid less than a male employee whose job qualifications were inferior to hers.” (Complaint ¶ 16). She further alleges that Jackson frequently made offensive and unwelcomed sexual comments about female employees in her presence. (Complaint ¶ 19). In Count III of the Complaint, Washington claims she was denied equal protection of the laws based on sex. Other than the scant allegations asserted in the Complaint, the record and docket are void on this issue. The briefs submitted by Washington in defense against the motions for summary judgment do not address this Count. Washington offers no argument on this issue. While it is not the obligation of the Court to search for evidence in support of Washington’s equal protection claim, I will analyze the pertinent evidence anyway.

The only conceivable bases for Washington’s equal protection claim are the difference in wages payed to a male employee at the Redevelopment Authority, Marvin Grasty (“Grasty”), and the comments made by Jackson. However, the evidence for both of these bases falls gravely short of surviving summary judgment.

Washington presents no evidence that similarly situated employees were treated differently. Washington’s title (Legal Services Specialist) as well as the nature and responsibility of her position reveal that there was no other similarly situated employees at the Redevelopment Authority. Grasty’s position entailed inspecting houses, and not performing any

kind of legal services. Also, the comments made by Jackson were not directed to or about Washington. There is no evidence that these comments were made only to Washington based on her gender.

Accordingly, I find that Washington cannot establish a prima facie case that she was denied equal protection of the law. Therefore, I conclude that summary judgment against Washington on this claim is appropriate.

B. PHRA

As discussed above, I will enter summary judgment on the Title VII claim, the denial of due process claim, and the denial of equal protection claim in Counts I, III, and IV. Consequently, the only remaining claim of Washington is the PHRA claim in Count II which is grounded in state law.

Supplemental jurisdiction is a doctrine of discretion, not of plaintiff's right. Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995) (citing United Mine Workers v. Gibbs, 383 U.S. 715, 726-27 (1966)). If the claims over which a district court has original jurisdiction are dismissed, the district court has the option of declining to exercise supplemental jurisdiction over the remaining state law claims. 28 U.S.C. § 1367(c)(3). In determining whether to dismiss the state law claims, the district court should consider judicial economy, convenience and fairness to the parties, the stage of the litigation, whether either party will be prejudiced by the dismissal of the state law claims, and whether state law claims involve issues of federal policy. Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277, 1284 (3d Cir. 1993); Glaziers & Glassworkers Local 252 Annuity Fund, et al. v. Newbridge Sec., Inc., 823 F. Supp. 1191, 1197 (E.D. Pa. 1993). In the instant

action, because the PHRA claim mirrors the Title VII claim, the parties have already completed all necessary discovery on this issue, the product of which will be usable in any state court action. Also, no federal policies are implicated by the remaining state law claim. In addition, because Pennsylvania law provides that matters dismissed by a federal court for lack of subject matter jurisdiction may be refiled in the appropriate state court without regard to the limitations period, Washington will not be prejudiced with respect to the applicable limitations period if she refiles her complaint.⁴ See 42 Pa. Cons. Stat. Ann. § 5103(b); Fulkerson v. City of Lancaster, 801 F. Supp. 1476, 1486 n.3 (E.D. Pa. 1992), aff'd, 993 F.2d 876 (3d Cir. 1993). Accordingly, I will dismiss without prejudice the remaining PHRA claim. See Dici v. Commonwealth of Pa., 91 F.3d 542, 553 (3d Cir. 1996) (stating that there exists no independent jurisdictional basis to maintain PHRA claim against defendant who was not liable under Title VII and remanding to district court to decide whether to exercise its supplemental jurisdiction).

IV. CONCLUSION

For the foregoing reasons, I will enter summary judgment on Counts I, II, and IV in favor of defendants. With the remaining PHRA claim, I will exercise my discretion and dismiss it without prejudice.

An appropriate Order follows.

⁴ In light of the untimeliness of her Title VII claim, see supra footnote 2, whether Washington will ultimately be permitted to pursue her PHRA claim in state court is yet to be determined, but not by this Court.

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CITY OF CHESTER, Pennsylvania, et al.,	:	
	:	
Defendants.	:	No. 96-4033

ORDER

AND NOW, on this 29th day of December, 1997, upon consideration of the motion of the City of Chester for summary judgment (Document No. 14) and the motion of defendant Chester Economic Development Authority, Chester Redevelopment Authority, and Thomas Jackson for summary judgment (Document No. 15), and responses of all parties thereto, as well as the pleadings, depositions, affidavits, and admissions on file, and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the motions of defendants are **GRANTED IN PART AND DENIED IN PART** and **SUMMARY JUDGMENT** is hereby entered on **Counts I, III, and IV** in favor of the City of Philadelphia, Chester Economic Development Authority, Chester Redevelopment Authority, and Thomas Jackson and against Monica J. Washington.

IT IS FURTHER ORDERED that the supplemental state law claim in **Count II** is, in the exercise of this Court's discretion, **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1367(c)(3), recognizing the right of Monica J. Washington to refile this state law claim in the appropriate state court.

This is a final Order.

LOWELL A. REED, JR., J.