

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

NORMAN J. REDDEN, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CIVIL ACTION No. 99-4535  
 )  
 CONTIMORTGAGE CORP., et al., )  
 )  
 Defendants. )

**MEMORANDUM**

Padova, J. December , 1999

This matter arises on Defendants ContiMortgage Corporation, John Santangelo and Chuck Senick's Motion to Dismiss, filed November 12, 1999. Plaintiff filed a Response on November 26, 1999. For the reasons that follow, the Court will grant Defendants' Motion, and dismiss Plaintiff's claim for intentional infliction of emotional distress.

**I. BACKGROUND**

Plaintiff was hired as a financial analyst on or about September 2, 1997, by Defendant ContiMortgage Corporation. Plaintiff alleges that during the course of his employment, his co-workers, Defendants Senick, Streko and Bricker, made inappropriate comments to Plaintiff concerning what they perceived as Plaintiff's effeminate behavior. Plaintiff further alleges that his supervisor, Defendant Santangelo, likewise engaged in this harassment.

Generally, Plaintiff alleges that Defendants questioned "his presentation as a male," and labeled him a "misfit." [Complaint ¶13-14]. On a particular occasion, Defendant Senick allegedly remarked that a large number of gay men belong to Plaintiff's health club. Defendant Senick allegedly mimicked the speech patterns and intonations of a "stereotypical gay man," and suggested that Plaintiff could explain "why gay guys talk like that." [Complaint ¶15]. On another occasion,

commenting on Plaintiff's weekend plans, Defendant Streko stated that Plaintiff was having a "sausage party." [Complaint ¶16].

The harassment continued throughout the fall of 1997. In December of that year, Defendant Bricker allegedly asked Plaintiff whether Plaintiff had ever kissed another man, or had sexual relations with another man. [Complaint ¶17]. Later that month, Defendants Senick and Streko commented that Plaintiff "must be a fag" based on the fact that Plaintiff wore a silver ring on his left hand. [Complaint ¶18].

Plaintiff alleges that Defendants' harassment intensified in 1998. Plaintiff alleges that Defendant Senick graphically described a sexual act known as "shrimping" to the other Defendants, and commented that Plaintiff knew what "shrimping" meant. Though Plaintiff was visibly upset by this conversation, Defendant Santangelo allegedly "made no attempt to take corrective action." [Complaint ¶20-21]. On another occasion, Plaintiff alleges that Defendants Senick and Streko physically and verbally described Plaintiff masturbating under his desk. [*Id.* at ¶22]. For several weeks beginning in February, Defendants allegedly parodied the song, "In the Navy," with sexually explicit and derogatory comments concerning homosexual men. [*Id.* ¶25].

In or around February 1998, Plaintiff contacted the human resources personnel, and informed them of the harassment. On May 20, 1998, Plaintiff resigned from ContiMortgage. On or about July 18, 1998, Plaintiff filed a charge with the Pennsylvania Human Relations Commission. The charge was cross-filed with the Equal Employment Opportunity Council ("EEOC"). On June 14, 1999, Plaintiff received a Right to Sue Letter from the EEOC.

Plaintiff filed this Complaint on September 10, 1999, against five defendants: ContiMortgage Corporation, John Santangelo, Brian Streko, Chuck Senick, and Tim Bricker. Plaintiff brings three causes of action: a same-sex sexual harassment claim pursuant to Title VII of the Civil Rights Act

of 1964, 42 U.S.C. §2000e et seq.; a common law intentional infliction of emotional distress claim; and a sexual harassment claim under the Pennsylvania Human Rights Act (“PHRA”), 43 Pa. Const. Stat. §951 et seq. On November 15, 1999, Plaintiff dismissed his Title VII claims and PHRA claims against the four individual defendants.

## **II. STANDARD**

The purpose of a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of the Complaint. Winterberg v. CNA Ins. Co., 868 F. Supp. 713, 718 (E.D. Pa. 1994), aff'd, 72 F.3d 318 (3d Cir. 1995). A claim may be dismissed under Rule 12(b)(6) only if it appears beyond doubt that the plaintiff could prove no set of facts in support of the claim that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957). In considering such a motion, a Court must accept all of the facts alleged in the Complaint as true and must liberally construe the Complaint in the light most favorable to the plaintiff. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994); Robb v. City of Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984); Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686 (1974). The question is not whether the plaintiff will ultimately prevail, but whether he is entitled to present evidence in support of his claims. Scheuer v. Rhodes, 416 U.S. at 236, 94 S. Ct. at 1686.

## **III. ANALYSIS**

Defendants ContiMortgage Corporation, John Santangelo, and Chuck Senick<sup>1</sup> move to dismiss Plaintiff’s intentional infliction of emotional distress claim in its entirety. Defendants argue that this claim is preempted by the Pennsylvania Worker’s Compensation Act (“PWCA”), 77 Pa. Cons. Stat. §1 et seq. Alternatively, Defendants argue that Plaintiff fails to state the necessary level

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<sup>1</sup>The Court notes Defendants’ position that Plaintiff has failed to effectuate proper service upon Defendants Streko and Bricker. (Def. Motion at n.1).

of outrageous conduct required for intentional infliction of emotional distress claims based on sexual harassment in the workplace.

In response, Plaintiff concedes that the PWCA preempts his claim against Defendant ContiMortgage. Accordingly, the Court will grant Defendants' Motion as to Defendant ContiMortgage.

With respect to the individual defendants, Plaintiff argues that personal conflicts are not excluded under the PWCA. Plaintiff further submits that Defendants' repeated harassing behavior was sufficiently “outrageous” to state a claim for intentional infliction of emotional distress.

To establish a claim for intentional infliction of emotional distress, a plaintiff must show that the conduct was “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.” Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998) (citations omitted). Furthermore, such a claim based on sexual harassment in the workplace is exceedingly difficult to maintain. Id. (citing Cox v. Keystone Carbon, 861 F.2d 390, 395 (3d Cir.1988) and Andrews v. City of Philadelphia, 895 F.2d 1469, 1487 (3d Cir.1990)). Nevertheless, such a claim is not barred as a matter of law in the context of a sexual harassment case. In Hoy, the Pennsylvania Supreme Court recognized that in rare cases, where “the victim of sexual harassment is subjected to blatantly abhorrent conduct,” an intentional infliction of emotional distress claim based on sexual harassment is cognizable. Hoy v. Angelone, 720 A.2d at 754.

In Hoy, the sexual harassment included “sexual propositions, physical contact with the back of Appellant's knee, the telling of off-color jokes and the use of profanity on a regular basis, as well as the posting of a sexually suggestive picture.” Id. at 754-55. The Court held that this conduct, while unacceptable, “was not so extremely outrageous” to allow recovery under the limited tort of

intentional infliction of emotional distress. Id. at 755. Furthermore, a review of the case law in this district supports the holding that offensive comments and gestures in the workplace, although sexually explicit, do not constitute the type of extreme and outrageous conduct necessary to sustain a claim for intentional infliction of emotional distress. See Wasserman v. Patamkin Toyota, Inc., Civ. A. No. 98-0792, 1998 WL 744090 (E.D. Pa. Oct. 23, 1998)(holding that sexually offensive gestures and comments did not state a claim for intentional infliction of emotional distress); DiFlorio v. Nabisco Biscuit Co., Civ. A. No. 95-0089, 1995 WL 295367 (E.D.Pa. May 12, 1995)(noting that many district courts have found that allegations of “sexual conversation and conduct” do not rise to the level of outrageous conduct necessary to sustain a claim for intentional infliction of emotional distress due to sexual harassment in the workplace); but see McLaughlin v. Rose Tree Media School District, 1 F.Supp.2d 476 (E.D. Pa. 1998)(upholding intentional infliction of emotional distress claim where alleged harassment included sexual assault, and threats of retaliation for failure to submit to sexual advances).

The Court finds that the conduct at issue in this case falls squarely within the Hoy decision. While the Court does not condone the alleged treatment of Plaintiff by his co-workers, the episodes of harassment alleged by Plaintiff do not rise to the level of intentional infliction of emotional distress. Accordingly, the Court will grant Defendants' Motion to Dismiss.<sup>2</sup>

An appropriate Order follows.

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<sup>2</sup>Defendants first argue that this claim is barred by the exclusivity provisions of the Pennsylvania Workers' Compensation Act. Because this Court agrees with the Defendants' argument that the Complaint fails to allege conduct sufficient to meet the level of outrageousness required, it will not consider the argument that the Pennsylvania Workers' Compensation Act bars this claim.

