IN THE SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOSEPH R. SLIGHTS, III
ASSOCIATE JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET
WILMINGTON, DELAWARE 19801
(302) 255-0656

Date Submitted: January 22, 2004
Date Decided: February 5, 2004

Keith D. Limehouse
P.O. Box 8134
Wilmington, DE 19803

Raymond W. Cobb, Esq.
Three Mill Road, Suite 206
Wilmington, DE 19806

Re: ***Keith D. Limehouse v. Steak & Ale Restaurant Corp., et al.***
C.A. No. 03C-03-299
On Defendant's Motion to Dismiss Tort Claims. GRANTED.
On Defendant's Motion to Dismiss for Ineffective Process
and ***Ineffective Service of Process. DENIED.***

Dear Mr. Limehouse and Mr. Cobb:

The Court has considered defendant Steak & Ale Restaurant Corporation's motion to dismiss and Mr. Limehouse's response and supplemental brief.[1]

Steak & Ale's motion to dismiss alleges that the so-called "exclusivity provision" in the Workers' Compensation Act precludes Mr. Limehouse from

[1] At oral argument, the Court requested that the parties provide supplemental briefs addressing certain case law identified in the Court's pre-hearing research. Defendants' supplemental brief was not timely filed. Consequently, the Court did not consider it in reaching this decision.

asserting a claim for intentional infliction of emotional distress.[2] Mr. Limehouse responds that the claim is viable because: (i) it is a "private statutory law right of action," thus the Workers' Compensation bar on asserting common law claims is inapplicable;[3] (2) he suffered damages from the conduct of his supervisors rather than from the employment itself; and, (3) it falls under the "personal dispute exception" to the Worker's Compensation exclusivity provision since the conditions giving rise to his termination occurred outside of the workplace.[4]

The Workers' Compensation Act bars the assertion of any tort claim against the employer, regardless of the nature of the personal injury alleged.[5] It is well-established that the exclusivity provision of the Workers' Compensation Act

---

[2] DEL. CODE ANN. tit. 19, § 2304 (2003)("Every employer and employee... shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.").

[3] Mr. Limehouse cites to DEL. CODE ANN. tit. 10, § 3704 (2003) ("section 3704") as the basis for this claim. It provides: "[n]o action brought to recover damages for injuries to the person by negligence or default shall abate by reason of the death of the plaintiff, but the personal representatives of the deceased may be substituted as plaintiff and prosecute the suit to final judgment and satisfaction."

[4] DEL. CODE ANN. tit. 19, § 2301(15)(b)(2003).

[5] *See Kofon v. Amoco Chems. Corp.*, 441 A.2d 226 (Del. 1982).

encompasses intentional infliction of emotional distress claims.[6] Mr. Limehouse's arguments to the contrary are unpersuasive. His reliance on section 3704 is misplaced because that statute deals with the survival of personal injury actions after the original plaintiff is deceased. Obviously, Mr. Limehouse is not bringing this suit on behalf of a deceased plaintiff. Also, the supervisory position(s) of the employee(s) causing the alleged injury is irrelevant; the Workers' Compensation Act defines "employee" as "every person in service of any corporation..."[7]

In order to qualify for the "personal dispute exception," an injury must be caused by conduct originating outside of the workplace.[8] Nothing in the complaint (or anywhere else in the record) points to Mr. Limehouse having contact with his co-workers or supervisors outside of the workplace. In fact, upon reading the complaint and attached documents, the Court is satisfied that the conduct giving rise to this claim occurred wholly within the workplace. The "personal dispute exception" is inapplicable.

---

[6] *See Nelson v. Fleet Nat'l Bank*, 949 F. Supp. 254 (D. Del. 1996); *Konstantopoulos v. Westvaco Corp.*, 690 A.2d 936 (Del. 1996); *Barber v. City of Lewes*, 1997 Del. Super. LEXIS 73; *Allison v. J.C. Bennington Co.*, 1996 Del. Super. LEXIS 418; *Battista v. Chrysler*, 454 A.2d 286 (Del. Super. Ct. 1982).

[7] DEL. CODE ANN. tit. 19, § 2301(9)(2003).

[8] DEL. CODE ANN. tit. 19, § 2301(15)(b)(2003); *Konstantopoulos*, 690 A.2d at 939.

Steak & Ale's motion to dismiss is granted to the extent that Mr. Limehouse's complaint alleges a claim for intentional infliction of emotional distress. The Workers' Compensation Act does not, however, preclude a claim for wrongful termination.[9] Thus, to the extent that a wrongful termination claim is alleged, the complaint remains viable because Steak & Ale's motion addresses only the tort-based claims.

The common-law doctrine of employment at-will recognizes that an employee may be discharged at any time without cause.[10] Four narrow exceptions to this doctrine have been recognized based on the limited implied covenant of good faith and fair dealing: "(i) where the termination violated public policy; (ii) where the employer misrepresented an important fact and the employee relied 'thereon either to accept a new position or remain in a present one'; (iii) where the employer used its superior bargaining power to deprive an employee of clearly identifiable compensation related to the employee's past service; and (iv) where the employer falsified or manipulated employment records to create fictitious grounds for

[9] *See Lord v. Souder*, 748 A.2d 393 (Del. 2000).

[10] *Lord*, 748 A.2d at 400 (citing *Merrill v. Crothall-American, Inc.,* 606 A.2d 96, 103 (Del. 1992)).

termination.' "[11]

A *pro se* pleading is held to a less stringent standard than pleadings drafted by lawyers.[12] It appears that Mr. Limehouse has attempted to plead a wrongful termination claim.[13] Whether this claim is legally and/or factually viable is not before the Court, and will be decided, therefore, on another day.

Because there may be a claim that is still viable in the amended complaint, the Court must address Steak & Ale's second motion to dismiss, which alleges insufficient process and service of process pursuant to Delaware Superior Court Civil Rule 12. According to Steak & Ale, Mr. Limehouse exceeded the 120 day time limit for service of process imposed by Delaware Superior Court Civil Rule 4 ("Rule 4"), and failed to comply with the 30-day time extension granted by the Court.[14] For his

---

[11] *Id.* (citing *Merrill,* 606 A.2d at 103; *E.I. DuPont de Nemours and Co. v. Pressman*, 679 A.2d 436, 442-44 (Del. 1996)).

[12] *Alston v. Hudson, Jones, Jaywork, Williams & Liguori,* 748 A.2d 406 (Del. 2000)(citing *Vick v. Haller*, 522 A.2d 865 (Del. 1987)).

[13] Specifically, Mr. Limehouse alleges that the Bennigan's restaurant in Tampa, Florida arranged for his transfer to the Bennigan's restaurant in Wilmington, Delaware. According to Mr. Limehouse, both employers knew that this job was his only source of income and he moved his residency in reliance upon Bennigan's promise of employment at the new location. (*See* Amended Complaint ¶¶ 22-30); (D.I. 45). He seeks "back pay, front pay with prejudgment interest and/or reinstatement if practical . . . ." (*Id.)*

[14] Steak & Ale claims that the time to serve the summons and complaint expired on or about August 28, 2003 and Mr. Limehouse did not serve them until September 3, 2003. The record reflects

part, Mr. Limehouse contends that he complied with the Court's order.

The Court generally adheres to a policy of judicial lenience towards *pro se* plaintiffs.[15] And, in this context, the Court recognizes that its order of August 11, 2003 extending the time for service was ambiguous. The Court's order provided: "service to be effected by 9/1/03."[16] September 1, 2003 was a holiday. Mr. Limehouse filed his amended summons on September 2, 2003. Service was effected on September 3, 2003. The Court is satisfied that Mr. Limehouse reasonably could have interpreted the Court's order to require him to initiate (as opposed to effect) service by September 1, and the Court will amend its August 11, 2003 order *nunc pro tunc* to so provide. In light of the deference accorded to *pro se* plaintiffs and the ambiguity in the Court's order, the Court concludes that Mr. Limehouse timely served his amended complaint upon defendant, Steak & Ale Restaurant Corporation.[17]

Based on the foregoing, Steak & Ale's motion to dismiss pursuant to the "exclusivity provision" of the Workers' Compensation Act is **GRANTED.** Steak &

---

that the Court extended the deadline to September 1, 2003.

[15] *Wright v. Wilmington Trust Company*, 1993 Del. Super. LEXIS 496, at *6.

[16] D.I. 31.

[17] Since Steak & Ale has presented viable legal arguments in support of its motions, there is no need to consider Mr. Limehouse's allegations regarding violations of Delaware Superior Court Rules 8 and 11.

Ale's motion to dismiss based upon insufficient process and service of process is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

Joseph R. Slights, III

JRS, III/acl
Original to Prothonotary