In the

United States Court of Appeals

For the Seventh Circuit

No. 19-1526

MARIA N. GRACIA,

Plaintiff-Appellant,

v.

SIGMATRON INTERNATIONAL, INC., *et al*.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:16-cv-7297 — **John Z. Lee**, *Judge*.

ARGUED SEPTEMBER 16, 2020 — DECIDED FEBRUARY 3, 2021

Before EASTERBROOK, MANION, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Thirteen years ago, Maria Gracia's former employer SigmaTron International, Inc. fired her after she filed a sexual harassment and hostile work environment complaint with the Equal Employment Opportunity Commission. Gracia's fortunes improved when she prevailed in a 2014 trial against SigmaTron on a Title VII retaliation claim and found new work at a different company.

This appeal stems from SigmaTron's decision in 2015 to describe Gracia's earlier litigation against the company in public filings with the Securities and Exchange Commission. Gracia responded to SigmaTron's SEC disclosures with a second lawsuit advancing a new Title VII retaliation claim, along with claims for retaliation under the Illinois Human Rights Act, defamation, and invasion of privacy. The district court dismissed Gracia's defamation and false light invasion of privacy claims, and later granted SigmaTron's motion for summary judgment on the Title VII and Illinois Human Rights Act claims.

We conclude that Gracia failed at summary judgment to present the district court with specific facts to show any injury in fact. The failure stems from Gracia's express admission that SigmaTron's disclosures in no way have affected her current employment, which she explained she is content with. This admission left the district court without subject matter jurisdiction—without the authority to consider the Title VII claim on the merits. As for Gracia's state law claims, while she pleaded enough to clear the Article III standing hurdle, the district court was right to conclude that the allegations failed to state a claim on which relief could be granted.

I

A

The adversarial relationship between Maria Gracia and her former employer SigmaTron International, Inc. dates to 2008. It was then that Gracia filed complaints with the EEOC and the Illinois Department of Human Rights alleging sexual harassment and a hostile work environment. SigmaTron learned of the complaints on November 19, 2008 and fired

Gracia two weeks later. That action led to Gracia's first Title VII lawsuit, alleging that SigmaTron fired her in retaliation for filing the complaints. The case proceeded to trial and a jury found in Gracia's favor. We affirmed the judgment on appeal. See *Gracia v. SigmaTron Int'l, Inc.*, 842 F.3d 1010 (7th Cir. 2016) ("*Gracia I*"). In the meantime, Gracia found new employment at a company called Imagineering. She continues to work there and testified that she is content with her job and has no interest in leaving the company.

Gracia I is final. This appeal arises from and relates solely to SigmaTron's decision—following the *Gracia I* trial and denial of the company's post-judgment motions—to disclose Gracia's name and provide its own explanation for her termination in its July 24, 2015 Form 10-K filing with the SEC:

> In November 2008, the company received notice of an Equal Employment Opportunity Commission ("EEOC") claim based on allegations of discrimination, sexual harassment, and retaliation filed by Maria Gracia, a former employee. On December 5, 2008, Ms. Gracia's employment as an assembly supervisor was terminated after she knowingly permitted an assembly line to run leaded boards in a lead-free room with lead-free solder, contrary to the customer's specifications and prohibited by Company policy. The use of lead-free solder for leaded components can lead to devices that fail and significant penalties to the Company and its customers from regulatory bodies. The parts were quarantined and were not shipped. Ms. Gracia openly admitted to permitting this to take place.

After learning from her counsel of SigmaTron's disclosure, Gracia filed a second EEOC complaint on September 2,

2015. She alleged that the company's disclosure constituted further retaliation and falsely questioned her competency. What followed was a second lawsuit in which Gracia advanced a new Title VII retaliation claim, a related claim under the Illinois Human Rights Act, and claims for defamation *per se* and false light invasion of privacy. SigmaTron moved to dismiss each claim.

B

Ruling on SigmaTron's motion to dismiss, the district court first observed that Illinois courts assessing retaliation claims under the Illinois Human Rights Act have adopted the framework governing Title VII retaliation claims. See *Volling v. Kurtz Paramedic Servs., Inc.*, 840 F.3d 378, 383 (7th Cir. 2016). Under the Title VII framework, a plaintiff must plausibly allege three elements: a statutorily protected activity, a materially adverse employment action, and a causal connection between the two. See *Cervantes v. Ardagh Grp.*, 914 F.3d 560, 566 (7th Cir. 2019).

SigmaTron contended that Gracia suffered no adverse employment action and alleged no plausible causal link between her first EEOC complaint and the company's SEC disclosures. The district court disagreed, relying on our decision in *Greengrass v. International Monetary Systems Limited*, where we held that listing a plaintiff's name in a public SEC filing can constitute a materially adverse employment action. See 776 F.3d 481, 485 (7th Cir. 2015). As the district court saw the new complaint, Gracia alleged enough to support a causal inference of retaliatory harm because SigmaTron did not name her in its disclosures until after the company lost its post-trial motions in *Gracia I*. So the district court denied the motion to dismiss, and the retaliation claims proceeded to discovery.

But the district court did dismiss Gracia's Illinois defamation and false light invasion of privacy claims. Under Illinois law, a defamatory statement is not actionable if reasonably capable of an innocent construction. See *Chapski v. Copley Press*, 442 N.E.2d 195, 199 (Ill. 1982). The district court determined that SigmaTron's statements in its SEC filings could be understood as ones either on Gracia's job performance or the company's litigating position in *Gracia I*. And when a false light invasion of privacy claim follows an unsuccessful defamation claim, the false light claim must also fail, leading the court to dismiss both claims. See *Madison v. Frazier*, 539 F.3d 646, 659 (7th Cir. 2008).

C

Following discovery, SigmaTron moved for summary judgment on Gracia's Title VII and related state law retaliation claims. This time the district court focused on the presence or absence of any adverse employment action taken against Gracia, turning again to *Greengrass*. See 776 F.3d 481. There we observed that "naming EEOC claimants in publicly available SEC filings could 'dissuade[ ] a reasonable worker from making or supporting a charge of discrimination'—the essence of a materially adverse employment action." *Id.* at 485 (alteration in original). SigmaTron sought to distinguish *Greengrass* on the ground that the statements in its SEC disclosures did nothing to affect Gracia's employment at Imagineering and indeed only notified investors of *Gracia I*'s status—information otherwise publicly available.

The district court agreed and entered summary judgment for SigmaTron. Unlike the plaintiff in *Greengrass*, who offered evidence that she "struggled to find and maintain regular employment" following the challenged SEC disclosure, *id.* at 485,

the record here showed that "Gracia has been steadily employed, that she is happy in her job and has no plans to change jobs, and that her employer is satisfied with her job performance and expects the employment relationship to continue." The district court concluded that no reasonable jury viewing this evidence in the light most favorable to Gracia could conclude that she suffered an adverse employment action.

Gracia now appeals, challenging the district court's entry of summary judgment on her Title VII claim and dismissal of her state law claims.

II

What stood out from our review of the parties' briefs was a substantial question about whether Gracia had demonstrated the requisite Title VII "adverse employment action." See *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67–68 (2006). This question arose because Gracia testified in her deposition that she is pleased with her work at Imagineering and has no plans to change jobs. All the more, Gracia added that she could not think of any damages she could be seeking from SigmaTron as a result of the company's SEC disclosures.

While these admissions may doom Gracia's Title VII claim on the merits, they also raise a threshold question of Article III standing—whether we even have a justiciable controversy before us. We sought supplemental briefing on the question. And we did so knowing the question inhered with the additional layer of complexity that Gracia's state law claims were resolved on the pleadings while the Title VII claim was dismissed on summary judgment. The difference matters because each element of Article III standing "must be supported in the same way as any other matter on which the plaintiff

bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). In short, Gracia's burden to demonstrate standing changes as the procedural posture of the litigation changes.

As for her Title VII claim, which progressed to summary judgment, Gracia was not able to lean on mere allegations of injury; rather, she "must 'set forth' by affidavit or other evidence 'specific facts,' which for purposes of the summary judgment motion will be taken to be true." *Id.* (quoting Fed. R. Civ. P. 56(e)). But as for her state law claims, which the district court dismissed at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice." *Id.*

These observations are not pedantic legalisms. To the contrary, they control whether and how we may proceed on appeal, for the Supreme Court made plain in *Steel Co. v. Citizens for a Better Environment* that we cannot skip the Article III subject matter jurisdiction inquiry to get to what may be any easy answer on the merits of a particular claim. See 523 U.S. 83, 101 (1998).

A

Article III limits a federal court's authority to the resolution of "Cases" or "Controversies." "To enforce this limitation, we demand that litigants demonstrate a 'personal stake' in the suit"—one that exists "not only at the outset of litigation, but throughout its course." *Camreta v. Greene*, 563 U.S. 692, 701 (2011) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)). The familiar "triad of injury in fact, causation,

and redressability constitutes the core of Article III's case-or-controversy requirement." *Steel Co.*, 523 U.S. at 103–04.

Any alleged injury must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical" in nature. *Lujan*, 504 U.S. at 561 (internal quotation marks omitted). A "particularized" injury is one that "affect[s] the plaintiff in a personal and individual way." *Id.* at 560 n.1. And the injury must be "real" rather than "abstract." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan*, 504 U.S. at 561.

B

Turning first to Gracia's Title VII claim, we conclude that Gracia did not meet her burden on summary judgment of demonstrating any injury in fact. None of the injuries that most often accompany employment litigation—suspension, demotion, termination, lost wages, and the like—is present here. In that absence, Gracia posits emotional injury. To be sure, "[w]e have long recognized that humiliation, embarrassment, and like injuries" do indeed "constitute cognizable and compensable harms." *Kyles v. J.K. Guardian Sec. Servs., Inc.*, 222 F.3d 289, 300 (7th Cir. 2000).

Gracia's complaint alleged, and her supplemental briefing reiterated, that the SEC disclosures have caused her mental anguish, emotional distress, humiliation, and other consequential damages. In response to SigmaTron's motion for summary judgment, however, Gracia had to move beyond allegations and point to evidence establishing a concrete and particularized injury. Right to it, "[r]epeating the conclusory allegations of a complaint is not enough." *Tex. Indep. Producers*

& Royalty Owners Ass'n v. EPA, 410 F.3d 964, 973 (7th Cir. 2005).

The summary judgment record contains no showing that the SEC disclosures had any impact on Gracia—emotional or otherwise. Indeed, she testified that she has not looked for another job since joining Imagineering, does not see herself changing jobs, and is pleased with her current role. And there otherwise is no evidence that SigmaTron's SEC disclosures prevented Gracia from obtaining a different job or that any prospective employer denied her an employment opportunity. Nor is there evidence that Gracia's position at Imagineering is at risk. Gracia directs us to no evidence, for example, that the SEC disclosures have caused her to underperform in her current job, invited unrest within her workplace, or brought any chance of progression within Imagineering to a standstill. For that matter, Gracia has not even suggested that anyone at Imagineering has said a word to her about SigmaTron's disclosures. Even if a coworker or supervisor had seen the disclosures, Gracia would only need to point to our 2016 opinion in *Gracia I* to correct any misimpression that she was somehow at fault for what transpired at SigmaTron.

On this record, the only tenable conclusion is that Gracia lacks standing. And the absence of any injury in fact leaves us with no choice but to vacate the district court's ruling on the merits of Gracia's Title VII and to order the claim dismissed.

C

We come in closing to Gracia's state law claims, which the district court dismissed under Rule 12(b)(6). And we begin by addressing subject matter jurisdiction. The analysis entails some complexity on subtle points at the intersection of

supplemental jurisdiction under 28 U.S.C. § 1367 and federal question jurisdiction under 28 U.S.C. § 1331.

Return to the beginning. Gracia brought claims under Title VII and Illinois law. The federal question statute, 28 U.S.C. § 1331, supplied jurisdiction over the Title VII claim, and our decision in *Kyles* confirms that Gracia's allegations that SigmaTron's SEC disclosures caused her emotional harm in the form of distress and humiliation sufficed as a pleading matter to establish the requisite injury in fact for Article III standing. See 222 F.3d at 300. We also know that the district court denied SigmaTron's Rule 12(b)(6) motion to dismiss Gracia's Title VII claim for pleading shortcomings.

These conclusions about the initial jurisdictional footing for the Title VII claim in the district court inform the analysis of the state law claims. The existence of subject matter jurisdiction over the Title VII claim meant that the district court possessed supplemental jurisdictional over Gracia's state law claims. See 28 U.S.C. § 1367(a) ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."). And the existence of supplemental jurisdiction over Gracia's state law claims meant in turn that the district court had the authority to do what it did—to dismiss those claims on the merits under Rule 12(b)(6).

So the question becomes whether Gracia's failure at summary judgment to come forward with facts demonstrating Article III standing on her Title VII claim has any jurisdictional consequence for her *state law claims*. Note the emphasis: the

lack of Article III subject matter jurisdiction at summary judgment over the Title VII claim of course had a consequence for that claim—it requires us to vacate the district court's judgment and to order claim dismissed. But the issue before us now is whether that outcome somehow spills over to Gracia's state law claims.

We think not. The district court's summary judgment ruling on the Title VII claim did not unwind its authority to have considered the Illinois claims under Rule 12(b)(6). The proper analysis works another way. Because the district court possessed subject matter jurisdiction over Gracia's Title VII claim, and because the requirements of 28 U.S.C. § 1367(a) otherwise were satisfied, the court had the authority necessary to consider and ultimately dismiss Gracia's Illinois claims under Rule 12(b)(6)—a merits ruling. As Wright and Miller explain: "There is an important distinction between dismissal of the underlying claim and a finding that the claim failed to invoke subject matter jurisdiction. Section 1367(c)(3) applies only if the underlying claim actually invoked federal subject matter jurisdiction and then is dismissed. If that claim failed to invoke an independent basis of subject matter jurisdiction, then there was nothing to which supplemental jurisdiction could have attached." 13D Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3567.3 (3d ed. 2020).

At the motion to dismiss phase, Gracia's Title VII claim properly invoked federal question jurisdiction, so at that moment the district court properly considered the supplemental state law claims pursuant to § 1367. And nothing about loss at summary judgment of subject matter jurisdiction over Gracia's Title VII claim means that we are now without authority

on appeal to review the district court's judgment for Sigma-Tron on Gracia's state law claims.

In no way, moreover, do we part ways with our prior decision in *Rivera v. Allstate Insurance Co.*, 913 F.3d 603 (7th Cir. 2018). Indeed, *Rivera* presented the opposite circumstance. There—but not here—we faced a scenario in which the district court never had subject matter jurisdiction in the first instance over the plaintiff's federal claim. See *id.* at 606, 617–18. That, in turn, meant that the district court never acquired supplemental jurisdiction over the plaintiff's state law claims. We therefore had no choice on appeal but to adhere to the limitations embodied in § 1367 and order the entire action dismissed, notwithstanding the many resources expended on the trial in the district court. See *id.* at 618.

Here, however, the district court did possess subject matter jurisdiction over Gracia's Title VII claim when it dismissed her state law claims. That distinction marks the difference between supplemental jurisdiction and no supplemental jurisdiction. And it is that difference that allows us on appeal to review the district court's dismissal decision of the state law claims on the merits.

Our logic finds further support in broader precedent. The Supreme Court has counseled that if a once valid federal claim suffers from jurisdictional defects down the road—for example, if the federal claim becomes moot—the loss of subject matter jurisdiction over that claim does not deprive the district court of authority to resolve any remaining supplemental state law claims. See *Rosado v. Wyman*, 397 U.S. 397, 404 (1970) ("We are not willing to defeat the commonsense policy of pendant jurisdiction—the conservation of judicial energy and the avoidance of multiplicity of litigation—by a

conceptual approach that would require jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendant claim."); accord *Capeheart v. Terrell*, 695 F.3d 681, 686 (7th Cir. 2012) (reasoning that the court does not "dismiss the supplemental state-law claims automatically just because our decision [to dismiss the federal claim] is based on unripeness rather than the merits" as "this is different from a case where there was never federal jurisdiction").

From here we can make short work of the remaining analysis. The district court dismissed Gracia's defamation and false light invasion of privacy claims at the pleading stage, as it rightly saw SigmaTron's SEC disclosures as subject to an innocent construction. By their terms, the statements describe SigmaTron's litigation position in *Gracia I*. On this construction, the statements are not actionable. See *Muzikowski v. Paramount Pictures Corp.*, 477 F.3d 899, 907 (7th Cir. 2007) ("Most jurisdictions do not use an innocent construction rule as favorable to defendants as Illinois's rule is. But it is Illinois law that governs …." (citation omitted)). At the time SigmaTron issued the disclosures in 2015 and early 2016, the company's *Gracia I* appeal was pending. SigmaTron did not repeat the statements after we resolved that appeal, and we need not consider whether doing so would have been tortious under Illinois law.

* * *

For these reasons, we VACATE the district court's judgment on Gracia's retaliation claims and REMAND with instructions to dismiss for lack of standing. We AFFIRM the district court's dismissal of Gracia's state law claims.