ULEAREY v. PA SERVICES, INC. et al Doc. 12

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

GRACE ULEAREY,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	NO. 16-4871
PA SERVICES, INC. d/b/a STONG PLUMBING and STEVE REED,	: : :	
	:	
Defendants.	:	

MEMORANDUM

STENGEL, J. April 6, 2017

Grace Ulearey brings this employment discrimination case against her former employer, alleging that she experienced sex discrimination in violation of Title VII of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act. The defendants, Stong Plumbing and its president, Steve Reed, filed a motion to dismiss the claims against them for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), as well as a motion for a more definite statement pursuant to Rule 12(e) and a motion to strike Paragraph 13 of the Complaint pursuant to Rule 12(f). For the following reasons, the motion to dismiss is granted in part and denied in part, the motion for a more definite statement is denied, and the motion to strike Paragraph 13 is denied.

I. FACTUAL BACKGROUND

The plaintiff is an adult woman who resides in Lancaster, Pennsylvania. (Compl. ¶ 1.) According to the Complaint, defendant PA Services, Inc., d/b/a Stong Plumbing, is a Pennsylvania corporation with fifteen or more employees. (Id. ¶ 2.) Defendant Steve Reed, the

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owner/operator of Stong Plumbing, was the plaintiff's direct supervisor and the chief decision-maker regarding adverse employment actions against the plaintiff. (Id. ¶¶ 3, 9.)

In August 2011, Reed hired the plaintiff as an Executive/Administrative Assistant. (Id. ¶ 8.) The plaintiff began to assume progressively higher responsibilities, such as managing business finances and performing human resources functions, and, at Reed's request, began to manage his personal finances. (Id. ¶10.) She also began to receive regular "bonus" payments into her bi-weekly pay, based on increasing responsibilities and work performance. (Id. ¶11.)

Beginning in January 2013, Reed began to make derogatory and sexually explicit comments to the plaintiff both verbally and through text messages. (Id. ¶12.) She alleges that the text messages "described in vulgar, graphic detail [Reed's] desire to engage in various sexual activities with [the plaintiff]" which included "his desire to rape [the plaintiff] and urinate on her for his own perverse sexual gratification." (Id. ¶ 13 (citing Compl. Ex. C).) The plaintiff repeatedly refused Reed's advances and demanded that he stop harassing her, but he refused and persisted in harassing her through August 2013. (Id. ¶14.) After the plaintiff did not engage in sexual intercourse with Reed and demanded that he stop harassing her, Reed stopped paying the "bonuses" that had been included in her paychecks prior to January 2013. (Id. ¶15.) The plaintiff alleges that the bonuses stopped because she demanded that he stop sexually harassing her, and not because of work performance issues or any other legitimate reason. (Id. ¶ 16.) She further alleges that the pervasive sexual harassment forced her to resign from her job at Stong Plumbing on or about July 26, 2013. (Id. ¶ 17.)

II. STANDARD OF REVIEW

Under Rule 12(b)(6), a defendant bears the burden of demonstrating that the plaintiff has not stated a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6); see also Hedges v.

United States, 404 F.3d 744, 750 (3d Cir. 2005). In Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), the United States Supreme Court recognized that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. at 555. Following these basic dictates, the Supreme Court, in Ashcroft v. Iqbal, 556 U.S. 662 (2009), subsequently defined a two-pronged approach to a court's review of a motion to dismiss. "First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 678. Thus, although "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era . . . it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." Id. at 678–79.

Second, the Supreme Court emphasized that "only a complaint that states a plausible claim for relief survives a motion to dismiss." Id. at 679. "Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id. A complaint does not show an entitlement to relief when the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct. Id.; see also Phillips v. Cnty. of Allegheny, 515 F.3d 224, 232–34 (3d Cir. 2008) (holding that: (1) factual allegations of complaint must provide notice to defendant; (2) complaint must allege facts suggestive of the proscribed conduct; and (3) the complaint's "'factual allegations must be enough to raise a right to relief above the speculative level.'" (quoting Twombly, 550 U.S. at 555)).

Notwithstanding these new dictates, the basic tenets of the Rule 12(b)(6) standard of

review have remained static. Spence v. Brownsville Area Sch. Dist., No. Civ.A.08-626, 2008 WL 2779079, at *2 (W.D. Pa. July 15, 2008). The general rules of pleading still require only a short and plain statement of the claim showing that the pleader is entitled to relief and need not contain detailed factual allegations. Phillips, 515 F.3d at 233. Further, the court must "accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff." Buck v. Hampton Twp. Sch. Dist., 452 F.3d 256, 260 (3d Cir. 2006). Finally, the court must "determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Pinkerton v. Roche Holdings Ltd., 292 F.3d 361, 374 n.7 (3d Cir. 2002).

III. DISCUSSION

The defendants move to dismiss counts one and three of the Complaint pursuant to Rule 12(b)(6). They also move for a more definite statement pursuant to Rule 12(e). Additionally, the defendants move to strike Paragraph 13 of the Complaint pursuant to Rule 12(f). Having considered the Complaint and the parties' briefs, I will deny the defendants' motion to dismiss count one, and I will grant their motion to dismiss count three. I will deny the motion for a more definite statement, as well as the defendants' motion to strike Paragraph 13 of the Complaint.

A. Count One: Sex Discrimination in Violation of 42 U.S.C. § 2000e

The defendants assert that they do not meet the definition of an employer under 42 U.S.C. § 2000e, and therefore cannot be sued pursuant to that statute, because they did not have fifteen or more employees during the time period at issue. (Defs.' Mem. Supp. Mot. Dismiss 3.) The plaintiff asserts that, while she agrees that Title VII would not apply to the defendants if Stong Plumbing is not an "employer" as defined by the statute, the defendants' "unsubstantiated assertion" that Stong Plumbing did not have fifteen or more employees does not entitle them to a Rule 12(b)(6) dismissal. (Pls.' Resp. Opp'n to Mot. Dismiss 4.) The plaintiff alleged in the

Complaint that Stong Plumbing had fifteen or more employees during the relevant time period. (Compl. ¶ 2.) At the motion to dismiss phase, I must accept the allegations in the Complaint as true, including the plaintiff's allegation as to the number of employees at Stong Plumbing.[1] I will therefore deny the defendants' motion to dismiss count one.

B. Count Three: Wrongful Termination

The plaintiff asserts that she has no objection to the dismissal of count three, in which she alleged a state law wrongful termination claim. (Pl.'s Resp. Opp'n to Mot. Dismiss 5.) I will therefore grant the defendants' motion to dismiss count three.

C. Motion for a More Definite Statement

The defendants argue that the Complaint is overly vague and fails to state with sufficient specificity certain necessary facts of her claim such that they cannot reasonably prepare a response. (Defs.' Mem. Supp. Mot. Dismiss 4.) Specifically, they assert that the plaintiff (1) "failed to aver any temporal reference regarding the alleged demands to 'stop' and/or 'cease' the alleged harassing communications/actions;" and (2) "failed to aver any reference as to the means (whether it be verbal in writing, by email, by text, etc.) by which [she] allegedly demanded [Reed] 'stop' or 'cease' the alleged harassing communications/actions." (Id.) The defendants believe that they cannot properly prepare a defense to the plaintiff's claims without knowing "the temporal reference and methods of the alleged communications to 'stop' or 'cease'" the alleged harassment. (Id.) They nonetheless assert that they believe that the plaintiff was not harassed,

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[1] "The Third Circuit has held that the issue of whether an organization meets this fifteen-employee requirement is a substantive element of a Title VII claim, requiring its adjudication by a motion for summary judgment." Walsh v. Irvin Stern's Costumes, No. Civ.A. 05-2515, 2006 WL 166509, at *11 (E.D. Pa. Jan. 19, 2006) (citing Nesbit v. Gears Unlimited, Inc., 347 F.3d 72, 76, 83 (3d Cir. 2003); see also Scuffle v. Wheaton & Sons, Inc., No. Civ.A. 14-708, 2015 WL 1245831, at *3 (W.D. Pa. Mar. 18, 2015) ("Alleging that defendant is a Title VII employer is an assertion of fact that is sufficient for pleading.").

but rather that she "initiated and/or without excuse fully consented [to], and was a willing participant in," the communications that she now alleges were harassment.[2] (Id.)

Rule 12(e) provides that "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response . . . [t]he motion . . . must point out the defects complained of and the details desired." Fed. R. Civ. P. 12(e). A Rule 12(e) motion is "appropriate when the pleading is 'so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith, without prejudice to [itself].'" Sun Co., Inc. (R&M) v. Badger Design & Constructors, Inc., 939 F. Supp. 365, 368 (E.D. Pa. 1996) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, Civil 2d, § 1376 (1990) (citing Hicks v. Arthur, 843 F. Supp. 949, 954 (E.D. Pa. 1994))). "The class of pleadings that are appropriate subjects for a motion under Rule 12(e) is quite small—the pleading must be sufficiently intelligible for the court to be able to make out one or more potentially viable legal theories on which the claimant might proceed." Id. (quoting 5A Wright & Miller § 1376 at 577). "The basis for granting such a motion is unintelligibility, not lack of detail." Id. (quoting Wood & Locker, Inc. v. Doran and Assocs., 708 F. Supp. 684, 691 (W.D. Pa. 1989)). "[I]f the granting of a Rule 12(e) motion increases the time and effort to refine the pleadings without circumscribing the scope of discovery or defining the issues, then such a motion is not appropriate." Hicks, 843 F. Supp. at 959 (quoting 5A Wright & Miller § 1376 at 578).

The Complaint is not so vague, ambiguous, or unintelligible that the defendants cannot frame a responsive pleading. The time frame at issue, the nature of the alleged violations, and

[2] The defendants argue that they will be unable to properly prepare a defense in the absence of allegations detailing when and how the plaintiff told Reed to stop harassing her, yet they appear to have already begun to form a defense on the basis that the plaintiff was a willing participant in the communications. (See Defs.' Mem. Supp. Mot. Dismiss 4.)

the individual alleged to have committed those violations, are all sufficiently clear. In the Complaint, the plaintiff alleged that she began experiencing harassment in January 2013 that lasted at least until her resignation in July 2013, that the harassment was sexual in nature, and that Reed was the harasser. Accordingly, the defendants' motion for a more definite statement pursuant to Rule 12(e) is denied.

D. Motion to Strike

The final portion of the defendants' motion seeks to strike Paragraph 13 from the Complaint because it contains immaterial, impertinent and scandalous matter that is unfairly prejudicial and was included in the Complaint for the sole purpose to embarrass, annoy, and harass Reed. (Defs.' Mem. Supp. Mot. Dismiss 5.)

Federal Rule of Civil Procedure 12(f) permits a court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Content is immaterial when it "has no essential or important relationship to the claim for relief." Donnelly v. Commonwealth Fin. Sys., No. Civ.A.07-1881, 2008 WL 762085, at *4 (M.D. Pa. March 20, 2008) (citing Delaware Healthcare, Inc. v. MCD Holding Co., 893 F. Supp. 1279, 1291–92 (D. Del.1995)). Content is impertinent when it does not pertain to the issues raised in the complaint. Id. (citing Cech v. Crescent Hills Coal Co., No. Civ.A.96-2185, at *28 (W.D. Pa. July 25, 2002)). Scandalous material "improperly casts a derogatory light on someone, most typically on a party to the action." Id. (citing Carone v. Whalen, 121 F.R.D. 231, 233 (M.D. Pa. 1988)).

"The standard for striking a complaint or a portion of it is strict, and 'only allegations that are so unrelated to the plaintiffs' claims as to be unworthy of any consideration should be stricken.'" Steak Umm Co., LLC v. Steak'Em Up, Inc., No. Civ.A.09-2857, 2009 WL 3540786,

at *2 (E.D. Pa. Oct. 29, 2009) (citing Johnson v. Anhorn, 334 F. Supp. 2d 802, 809 (E.D. Pa. 2004)). "The purpose of a motion to strike is to clean up the pleadings, streamline litigation, and avoid unnecessary forays into immaterial matters." McInerney v. Moyer Lumber and Hardware, Inc., 244 F. Supp. 2d 393, 402 (E.D. Pa. 2002). Although "[a] court possesses considerable discretion in disposing of a motion to strike under Rule 12(f)," such motions are "not favored and usually will be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties, or if the allegations confuse the issues in the case." River Road Dev. Corp. v. Carlson Corp., No. Civ.A. 89-7037, 1990 WL 69085, at *3 (E.D. Pa. May 23, 1990) (citing 5C C. Wright & A. Miller, Federal Practice and Procedure, § 1382, at 809–10, 815 (1969)). Motions to strike are to be decided "on the basis of the pleadings alone." North Penn Transfer, Inc. v. Victaulic Co. of Am., 859 F. Supp. 154, 159 (E.D. Pa. 1994) (citations omitted). Striking a pleading or a portion of a pleading "is a drastic remedy to be resorted to only when required for the purposes of justice." DeLa Cruz v. Piccari Press, 521 F. Supp. 2d 424, 428 (E.D. Pa. 2007) (quotations omitted).

The allegations that the defendants seek to strike from the Complaint state that Reed "desire[d] to rape Ms. Ulearey" and referred to "his own perverse sexual gratification." (Defs.' Mem. Supp. Mot. Dismiss 5 (quoting Compl. ¶ 13).) The allegations in Paragraph 13 refer to text messages, apparently sent between the plaintiff and Reed, attached to the Complaint as Exhibit C.[3] In those text messages Reed apparently made the following statements:

[3] "In deciding motions to dismiss pursuant to Rule 12(b)(6), courts generally consider only the allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Lum v. Bank of Am., 361 F.3d 217, 222 (3d Cir. 2004) (internal citations omitted), abrogated in part on other grounds by Twombly v. Bell Atl. Corp., 550 U.S. 544 (2007), as recognized in In re Ins. Brokerage Antitrust Litig., 618 F.3d 300 (3d Cir. 2010).

a) Don’t be a bitch, if I was satan I would tie you up and rape the fuck out of u
b) U look good enough to golden shower today
c) A pissfest is disgusting, pineapple. Urine running and glistening of ur thigh & calf is a turn on

(Compl. Ex. C.) The allegations in Paragraph 13 are actually a milder characterization of the text messages. Those messages, while potentially “scandalous,” are not immaterial and are not impertinent in a lawsuit in which the plaintiff alleges that she was sexually harassed. It may be the case that Reed feels embarrassed, annoyed, or harassed by the inclusion of this material in the Complaint, but the defendants have not shown that Rule 12(f) requires that the allegations in Paragraph 13 be stricken from the Complaint. The defendants’ motion to strike is therefore denied.

IV. CONCLUSION

In light of the foregoing, the defendants’ motion to dismiss is granted in part and denied in part. The defendants’ motion is denied with respect to the Title VII claim in count one, but is granted with respect to the state law wrongful termination claim in count three. The defendants’ motion for a more definite statement pursuant to Rule 12(e) and the motion to strike pursuant to Rule 12(f) are both denied.

An appropriate Order follows.