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

MARK HART,	)	
	)	
Plaintiff,	)	Civil Action No. 16-1066
	)	
v.	)	Judge Cathy Bissoon
	)	
WEST MIFFLIN AREA SCHOOL DISTRICT, *et al*.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

I. MEMORANDUM

Pending before the Court is Defendants' Motion to Dismiss the Amended Complaint (**Doc. 21**), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons that follow, Defendant's Motion to Dismiss (**Doc. 21**) will be GRANTED IN PART AND DENIED IN PART.

A. BACKGROUND[1]

As the parties are well aware of the factual and procedural events giving rise to the pending motion, the Court will recite only those facts alleged by Plaintiff that are material to the Court's ruling. Plaintiff worked as the Director of Security and Safety for Defendant West Mifflin Area School District ("Defendant School District") from July 1, 2013, to September 24,

[1] The following background facts are taken from Plaintiff's Amended Complaint (Doc. 17). Because the case is presently before this Court on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court accepts as true all allegations in the Amended Complaint and all reasonable inferences that can be drawn therefrom. See Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). In addition, the Court views all well pled factual averments and reasonable inferences in the light most favorable to the non-moving party. Id.

2015. (Amended Complaint (Doc. 17), ¶¶ 10, 11). Plaintiff avers that his tenure as Director of Security and Safety was marked by multiple confrontations with his direct supervisors, Superintendent Daniel Castagna and Assistant Superintendent Mark Hoover (together, the "individual Defendants"). (Id. ¶ 14).

Among other things, Plaintiff alleges that, on or about December 18, 2014, a secretary at the West Mifflin Area High School, Cil King, accused Plaintiff of repeatedly using racially demeaning terms to describe West Mifflin Area School District's High School Principal, Phillip Woods. (Id. ¶ 18). Plaintiff claims this accusation was false. (Id. ¶ 19). Nevertheless, as a result of Ms. King's allegedly false accusation, Defendants Castagna and Hoover suspended Plaintiff from his position as Director of Security and Safety for two days. (Id. ¶ 20). Plaintiff claims that he was suspended from his position prior to any investigation by Defendants Castagna and Hoover into the validity of Ms. King's accusation. (Id. ¶ 21). Plaintiff further alleges that his suspension was immediately discussed on the social media site, Topix. (Id. ¶ 25). Specifically, Plaintiff claims that:

> In a Topix forum dated January 2, 2015, Plaintiff is accused of using the "n-word" by several of the website's anonymous users including, but not limited to the following: In reference to the Plaintiff, one poster wrote, "The midget secret service agent is on the way out the door. He shouldn't bad mouth the administrators." Another user wrote, "I am embarrassed to know that I shared my beloved [Marine] core [sic] with this dis loyal [sic] disrespectful fool. He should be ashamed for the core [sic], himself, and his family. I hope the district gives the shell of the MAN the dishonorable discharge he deserves!!" Another wrote, "He says some very offensive things about minorities? They need to send this outsider back to wherever he came from." Additional posts referencing Plaintiff's alleged use of the "n-word" appeared on January 3, 2015, and January 5, 2015.
>
> (Id. ¶ 26).

Although Plaintiff acknowledges that the communications on Topix were anonymous, he believes that Defendants Hoover and Castagna (as well as possibly others yet to be identified) were responsible for the statements because they were the only individuals with access to

information regarding Plaintiff's suspension. (Id. ¶ 27). Plaintiff claims that he "suffered fear, anxiety and emotional trauma as a result of his unjustified suspension and the resulting vicious public attacks on his reputation." (Id. ¶ 28).

Then, between September and November 2015, Defendants Castagna and Hoover accused Plaintiff of stealing food from West Mifflin Area High School's cafeteria freezer as well as $1,400 from West Mifflin Area High School's vault. (Id. ¶¶ 33-44). Once again, Plaintiff claims that these accusations are false and that there is no evidence to support them. (Id. ¶¶ 37, 44). Nonetheless, based on these allegedly unfounded accusations, Defendants Castagna and Hoover suspended Plaintiff from September 4 to September 24, 2015. (Id. ¶¶ 39, 45). Defendant Castagna also informed Plaintiff that he would be recommending to the Board of School Directors at their meeting on September 24, 2015, that Plaintiff be terminated. (Id. ¶ 45). Plaintiff avers that, as a result of the Defendants' "baseless accusations" and "relentless attacks on his professional reputation," he intentionally crashed his car into a telephone pole in an attempt to kill himself on September 9, 2015. (Id. ¶ 48).

Shortly thereafter, on or about September 11, 2015, Defendant School District's Board member, Michael Price ("Mr. Price"), contacted Plaintiff's brother-in-law, James Dorney ("Mr. Dorney"), to inform him that Plaintiff's job was in jeopardy. (Id. ¶ 51). When Mr. Dorney asked Mr. Price why Plaintiff's job was in jeopardy, Mr. Price responded that there was a past issue regarding the Plaintiff's use of a racial term and that Plaintiff was being accused of stealing food from Defendant School District. (Id. ¶ 52). After Mr. Dorney informed Plaintiff of his conversation with Mr. Price, Plaintiff called Mr. Price. During that conversation, Mr. Price informed the Plaintiff that he was aware that Plaintiff was being accused of stealing $1,400.00 from Defendant School District. (Id. ¶ 53).

On September 24, 2015, the Defendant School District's Board of School Directors met and voted to terminate Plaintiff's employment. (Id. ¶ 55). Plaintiff claims that the Board based its decision on Defendant Castagna's recommendation. (Id.). Plaintiff states that "although Defendant Castagna did not provide the Board with any reasons or evidence to support his recommendation to terminate Plaintiff at the Board meeting, [he] believes, based on his and Mr. Dorney's conversation with Mr. Price, that sometime prior to the board meeting, Defendant Castagna and/or Hoover told other members of Defendant West Mifflin's Board of School Directors that Plaintiff stole food and money from Defendant West Mifflin and that he had used racial slurs in the past." (Id. ¶ 54).

Plaintiff avers that, following his termination, there were additional anonymous communications about Plaintiff posted on the social media site, Topix, which were untrue, painted him in a poor and false light and otherwise defamed his character. (Id. ¶ 61). Specifically, Plaintiff claims that, "In a November 3, 2015 post on Topix, an anonymous user inferred that Plaintiff's September 9, 2015, car crash was the result of Plaintiff having drugs and alcohol in his system. On or about June 14, 2015, the same user stated that the cause of Plaintiff's car crash was a 'cocktail of drugs.'" (Id. ¶ 62). Again, Plaintiff believes that Defendants Hoover and Castagna (as well as possibly others yet to be identified) were responsible for the allegedly defamatory statements posted to Topix following his termination. (Id. ¶ 63). Plaintiff further alleges that "[a]fter Plaintiff's termination, Plaintiff was approached by Defendant School District's Athletic Director, Scott Stevenson, and community member Dave Marshall on separate occasions and informed that they had heard that Plaintiff was terminated for stealing money and food, respectively," thereby demonstrating that "the

defamatory accusations of Defendants Castagna and Hoover were published to the community at large." (Id. ¶ 64).

After his termination, Plaintiff made several attempts at seeking re-employment but was unsuccessful. (Id. ¶ 65). Plaintiff believes that he has not been able to find employment due to the defamatory and stigmatizing accusations of theft and racism. (Id.). Moreover, Plaintiff claims that he has suffered, and continues to suffer, fear, anxiety and emotional trauma as a result of his termination and the public attacks on his reputation. (Id. ¶ 66).

B. ANALYSIS

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). When faced with a motion to dismiss, a court "must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions." Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009).

Plaintiff's Amended Complaint asserts four causes of action against the Defendants: Count I is a stigma-plus substantive due process claim against all Defendants; Count II is a procedural due process claim against all Defendants; Count III is a Section 1983 conspiracy claim against Defendants Hoover and Castagna; and Count IV is a state law claim for breach of contract against the Defendant School District. In their Motion, Defendants seek the dismissal of Count I in full and Count II against the individual Defendants, and ask that Count III be stricken. (Doc. 22). In his brief in opposition to Defendants' motion to dismiss, Plaintiff withdraws his procedural due process claims against the individual Defendants at Count II. (Doc. 25 at 7). In addition, Plaintiff agrees that the Court dismissed with prejudice his civil conspiracy claim

against the individual Defendants at Count III in its December 8, 2016 Order, and therefore withdraws that claim as well. (Doc. 25 at 2 n.1). Thus, the only claim that remains in dispute is Count I.

In Count I, Plaintiff alleges that his "constitutionally protected liberty interest in his reputation was violated when Defendants Hoover and Castagna made substantially and materially false statements accusing Plaintiff of the serious crime of theft to the public and, therefore, stigmatized Plaintiff's reputation." (Doc. 17 ¶ 73). The Supreme Court has held that "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971). When notice and an opportunity to be heard are not provided, a plaintiff may bring "a due process claim for deprivation of a liberty interest in reputation." Hill v. Borough of Kutztown, 455 F.3d 225, 236 (3d Cir.2006) (citation omitted). To prevail, the plaintiff must demonstrate "a stigma to his reputation *plus* deprivation of some additional right or interest." Id. (emphasis in original) (citing Paul v. Davis, 424 U.S. 693, 701 (1976)). This is referred to as the "stigma-plus" test, and in the context of public employment, it "has been applied to mean that when an employer 'creates and disseminates a false and defamatory impression about the employee in connection with his termination,' it deprives the employee of a protected liberty interest." Id. (quoting Codd v. Velger, 429 U.S. 624, 628 (1977)).

"To satisfy the 'stigma' prong, the employee must show: 1) publication of 2) a substantially materially false statement that 3) infringed upon the 'reputation, honor, or integrity' of the employee.'" Brown v. Montgomery Cnty., 2012 WL 942645, at *3 (3d Cir. Mar. 21, 2012) (quoting Ersek v. Springfield, 102 F.3d 79, 83–84 (3d Cir. 1996)). Notably, "no liberty

interest of constitutional significance is implicated when the employer has alleged merely improper or inadequate performance, incompetence, neglect of duty or malfeasance." Fox v. Cheltenham Twp. Auth., 2012 WL 2273424, at *4 (E.D. Pa. June 18, 2012) (citations omitted). The "plus" prong of the "stigma plus" test is typically the termination of employment, but reputational damage that occurs "in the course of or is accompanied by a change or extinguishment of a right or status guaranteed by state law or the Constitution" also may be actionable. D & D Assoc., Inc. v. Bd. of Educ. of N. Plainfield, 552 Fed. Appx. 110, 113 (3d Cir. 2014) (citing Clark v. Twp. of Falls, 890 F.2d 611, 619 (3d Cir. 1989)). Although deprivation of the "liberty to pursue a calling or occupation" or to "earn a living" have been deemed sufficient to satisfy the plus prong, a generalized "possible loss of future employment opportunities" and "financial harm" are insufficient to support a reputation-based due process claim. Simpson v. Nicklas, 500 Fed. Appx. 185, 188 (3d Cir. 2012) (citing Clark, 890 F.2d at 620, and Sturm v. Clark, 835 F.2d 1009, 1013 (3d Cir. 1987)).

The Court finds that Plaintiff has pled sufficient facts in his Amended Complaint to state a claim for relief under the "stigma plus" test. Defendants argue that Plaintiff fails to allege a "publication" of a false statement of fact. (Doc. 22 at 6). The Court disagrees. Plaintiff clearly alleges that Defendants Hoover and/or Castagna published multiple posts on a public website, Topix, claiming, *inter alia*, that Plaintiff made racist comments and abused drugs, both of which he asserts are untrue. (Doc. 17 ¶¶ 26-27, 62-63). While the Court does wonder how Plaintiff will meet his ultimate burden of proof given the anonymity of the website, the allegation is sufficient at this stage to establish a "publication." Furthermore, Plaintiff claims that Defendants Hoover and/or Castagna told several members of the community, including Athletic Director Scott Stevenson and community member Dave Marshall, that Plaintiff stole food and money

from the Defendant School District.[2] (Doc. 17 ¶ 64). Such statements clearly "infringed upon [Plaintiff's] . . . reputation, honor, or integrity" and thus were sufficiently stigmatizing to give rise to an actionable substantive due process claim. See Brown, 2012 WL 942645, at *3; see also Pasour v. Philadelphia Hous. Auth., 67 F. Supp. 3d 683, 698 (E.D. Pa. 2014) ("If an employer fires someone for a legitimate reason but announces to the public a false, defamatory reason, that person may still face lowered standing in the community and unwarranted difficulty in finding new employment"). Moreover, contrary to Defendants' argument (see Doc. 22 at 9), the allegedly stigmatizing statements were not merely statements of opinion; rather, they were either statements of fact (*i.e.*, that Plaintiff stole money) or statements of opinion that imply facts (*i.e.*, that Plaintiff made racist comments and/or abused drugs and alcohol).

Furthermore, Plaintiff makes sufficient allegations related to the harm he has suffered as a result of these statements to satisfy the "plus" prong of the "stigma-plus" test. Plaintiff claims that he lost future employment opportunities as a result of the allegedly false statements. Specifically, Plaintiff alleges that he applied for four positions following his termination but was not hired "due to the defamatory and stigmatizing accusations of theft and racism." (Id. ¶ 65). By identifying specific employment opportunities he lost as a result of the allegedly defamatory statements, Plaintiff has done more than allege a generalized "possible loss of future employment

[2] Plaintiff also alleges that Defendants Hoover and/or Castagna told Board Members, including Board member Price, that he had stolen food and money prior to the September 24, 2015 Board meeting, and that, as a result of these false statements, the Board decided to terminate him. (Doc. 17 ¶¶ 54-55). However, as the Court explained in its December 8, 2016 Order, comments made to officials within the same public institution do not qualify as public dissemination and thus cannot give rise to a "stigma-plus" due process claim. Yu v. U.S. Dep't of Veterans Affairs, 528 Fed. Appx. 181, 185 (3d Cir. 2013) (finding evidence that people within the organization were aware of the investigation and results "was not publication to the general public."); see also Knaub v. Tulli, 788 F.Supp.2d 349 (M.D. Pa. 2011) (holding that remarks to a school board intended to induce the firing of a teacher (i.e., for the purpose of termination proceedings) were not public and therefore could not serve as the basis for a "stigma-plus" claim).

opportunities." See Simpson, 500 Fed. Appx. at 188. Additionally, Plaintiff claims that he has "suffered, and continues to suffer, fear, anxiety and emotional trauma as a result of the public attacks on his reputation." (Id. at ¶ 66).

In short, the Court finds that Plaintiff has alleged sufficient facts to state a viable "stigma-plus" claim against Defendants Hoover and Castagna. The Court also rejects the individual Defendants' argument that they should not be held liable under § 1983 because "they were not acting under the color of state law when the [allegedly defamatory] statements were made." (Doc. 22 at 8). Typically, state employment is sufficient to render a person a state actor. Bonenberger v. Plymouth Twp., 132 F.3d 20, 24 (3d Cir. 1997). Moreover, in this case, Plaintiff claims that Defendants "abused a power or position granted by the state" to obtain and disclose false information related to Plaintiff's employment to the public. Id. Accordingly, the Court finds that Plaintiff has pled sufficient facts to show that the individual Defendants acted under the "color of state law" when they allegedly made the stigmatizing statements and, thus, his § 1983 claim against them may proceed.

The Court likewise rejects the individual Defendants' argument that they are entitled to qualified immunity at this stage in the litigation. As the Court noted in its December 8, 2016 Order, the ability of an employee to bring a "stigma plus" claim is "clearly established" law in this Circuit. See Hill v. Kutztown, 455 F.3d 225 (3d Cir. 2006) (holding that when a local government employee's reputation is harmed via the public dissemination of a false statement, and that employee is terminated, his Fourteenth Amendment liberty interest has been violated under the "stigma-plus" doctrine). Because the Court finds that Plaintiff has alleged a viable "stigma-plus" claim against the individual Defendants, it will not dismiss this claim based on qualified immunity.

The Court still finds, however, that Plaintiff has alleged no facts that would support a substantive due process "stigma-plus" claim against the Defendant School District, as he does not allege that the Defendant School District was in any way involved in Defendant Hoover and Castagna's alleged publication of statements on Topix or to the community, or that the municipality has a custom or policy of sanctioning such publications. Thus, the Court will dismiss, with prejudice, Plaintiff's substantive due process claim against Defendant School District.

II. ORDER

For the reasons stated above, Defendants' Motion to Dismiss the Amended Complaint (**Doc. 17**) is GRANTED IN PART and DENIED IN PART.

Consistent with the foregoing, the Court hereby DISMISSES WITH PREJUDICE Count I of the Amended Complaint against the Defendant School District, as well as Count II of the Amended Complaint against the individual Defendants Hoover and Castagna. Furthermore, the Court STRIKES Count III of the Amended Complaint. Defendants shall file an answer to the Amended Complaint on or before April 20, 2017.

IT IS SO ORDERED.

April 6, 2017

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

CC (via ECF email notification):

All Counsel of Record