UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

THURMAN HILL, Plaintiff, v. IMPRO SYNERGIES LLC, Defendant.	)	Case No. 1:15-cv-00101-MW-GRJ

RESPONSE IN OPPOSITION TO DEFENDANT, IMPRO SYNERGIES, LLC'S MOTION TO DISMISS THE COMPLAINT

Plaintiff, Thurman Hill, responds to Defendant, Impro Synergies, LLC's Motion to Dismiss [Doc. 9] as follows:

1. "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.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citation omitted). See also Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (an employment discrimination plaintiff need not plead a prima facie case of discrimination to survive [a] motion to dismiss); Bell Atlantic Corp. v. Twombly, ___ U.S. ___, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Ultimately, "ordinary rules," as modified by Iqbal and Twombly, "for assessing the sufficiency of a complaint apply." See Swierkiewicz, 534 U.S. at 511.

2. In this case, the Complaint goes beyond what is required by Iqbal, Twombly and Swierkiewicz. In Paragraphs 4-13, the Complaint pleads significant detail about Plaintiff's

allegations – including citations to three exhibits supporting those allegations (Exhibits A, B and C). For example, Paragraph 6 of the Complaint states that "Plaintiff went to the same City Commissioner with the Resident, supported the Resident's claims of racism to the City and objected to Defendant's conduct on behalf of the Resident." Additionally, supported by the email attached as Exhibit A to the Complaint, Defendant stated it"was just recently informed from one of my contacts at the city commissioners office that Thurman went to the same city commissioner that approached me 2 weeks ago in regards to claims of racism and was accompanied by the same resident who approached the commissioner originally." As further evidenced by Exhibits B and C, Defendant hatched and carried out a plan to terminate Plaintiff as a result of his support for the Resident's claims of racism. See Paragraphs 7 – 10. Although Plaintiff is not required to plead pretext under Swierkiewicz, Paragraph 12 of the Complaint states: "The real reason Defendant terminated Plaintiff was his support and related objections to the Resident's claim of racism against Defendant." See also Paragraph 11. The facts pled in Paragraphs 4-13 of the Complaint, along with supporting exhibits A - C, easily establish "plausible" violations of the statutes referenced in each Count.[1]

3. Accepted as true, the facts included in the Complaint are more than enough to allow the Court to draw an inference that Defendant could be liable to Plaintiff. See e.g. Demers v. Adams Homes of Northwest Florida, Inc., 321 Fed.App'x 847 (11th Cir. 2009) (Employee who requested to speak with a manager after her supervisor made a discriminatory statement was engaging in protected activity, because by asking to speak with a manager she "expressed her

1 The Supreme Court has held that the term "oppose" in this context takes its ordinary meaning: "to resist or antagonize ...; to contend against; to confront; resist; withstand." Crawford v. Metropolitan Government of Nashville and Davidson County, Tenn., --- S.Ct. ----, 2009 WL 160424 at *3 (2009). In Crawford, an employee engaged in protected activity where she disclosed discrimination not on her own initiative, but in response to an internal investigation. Id.

resistance to or antagonism toward the substance of his statement."); Helton v. Southland Racing Corp., 600 F.3d 954 (8th Cir. 2010) (plaintiff alleged that she was constructively discharged by defendant after a conversation with a co-worker in which she stated defendant's supervisor hated white people and gave preferential treatment to black employees. The supervisor plaintiff complained about was standing outside a nearby door and overheard the conversation. The Eighth Circuit held that the overheard conversation amounted to protected "opposition" activity under Title VII.).[2]

4. Defendant's Motion to Dismiss, at page 10, incorrectly claims that "Plaintiff fails to plead even the most basic facts to support his claims for relief." To the contrary, the Complaint goes well beyond Federal Rule of Civil Procedure 8(a)(2)'s requirement of "only a short and plain statement". Twombly, 550 U.S. at 555, 127 S.Ct. 1955. It even includes 3 exhibits supporting Plaintiff's specific factual allegations. Because the Complaint contains sufficient facts to place the Defendant on notice of the allegations against it, Plaintiff respectfully requests that Defendant's Motion be denied.

WHEREFORE, Plaintiff respectfully requests that Defendant's Motion be Denied, with all further relief the Court deems necessary and proper.

Dated: July 6, 2015

---

2 In Thompson v. North American Stainless, LP, 131 S.Ct. 863 (2011), the Supreme Court held that third-party reprisals are actionable under the anti-retaliation provision of Title VII. Id. at 868; See also Kachmar v. Sungard Data Sys., Inc., 109 F.3d 173, 177 (3rd Cir. 1997) (advocating equal treatment was protected activity); Aman v. Cort Furniture, 85 F.3d 1074, 1085 (3d Cir. 1989) ("protesting what an employee believes in good faith to be a discriminatory practice is clearly protected conduct"). The Eleventh Circuit analyzes claims brought under § 1981 "using the burden-shifting scheme established for Title VII claims, since both statutes have the same proof requirements." Jackson v. Geo Grp., Inc., 312 F. App'x 229, 233 (11th Cir. 2009) (per curiam). In applying Title VII's framework to § 1981 retaliation claims, the Eleventh Circuit has analyzed § 1981 claims under Title VII's opposition clause. Id. at 233–34 & n.8 (applying Title VII's anti-retaliation provision to § 1981 retaliation claim and noting that the plaintiff only had an "opposition clause" claim).

By /s/ Michael Massey
Michael Massey
Massey & Duffy
855 E. Univ. Avenue
Gainesville, Florida 32601
FBN 153680

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided via electronic means to counsel for the Defendant on this July 6, 2015.

/s/ Michael Massey
Michael Massey
Fla. Bar. No. 153680
855 E. Univ. Ave.
Gainesville, FL 32601
352.505.8900