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

WILLIAM MARQUESS	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	NO. 98-1117

MEMORANDUM AND ORDER

HUTTON, J. June 25, 1998

Presently before this Court is the defendants' Motion to Dismiss (Docket No. 3), and the plaintiff's response thereto. For the reasons set forth below, the defendants' Motion is **DENIED.**

I. BACKGROUND

The plaintiff has alleged the following facts. The plaintiff, William A. Marquess ("Marquess"), "is a white, [H]ispanic male." Pl.'s Compl. ¶ 11. Marquess was hired by defendant Free Library of Philadelphia ("Library") on March 4, 1997, as a "Library Assistant I." Id. ¶¶ 7, 8. During his employment, Viola Jones ("Jones"), "a black female," acted as the plaintiff's supervisor. Id. ¶¶ 10, 12. Shortly after starting his employment at the Library, the plaintiff "received an evaluation of satisfactory performance." Id. ¶ 23.

While employed by the Library, Marquess received a notice ordering him to appear for jury service on July 7, 1997. Id. ¶ 15. "Plaintiff showed up for jury duty on that date, and was selected

to serve on a jury in a medical malpractice case." Id. ¶ 16. Marquess told Jones that he had been selected to serve on a jury, but Jones "instructed plaintiff to report to work . . . the next day because they were short handed." Id. ¶ 18. Moreover, Jones "threatened to terminate plaintiff if he did not [report to work]." Id.

The following day, Marquess appeared for jury service and told the presiding judge about his predicament. Id. ¶ 20. The judge wrote a letter explaining the plaintiff's obligations as a juror, and the plaintiff presented the letter to Jones. Id. ¶ 21. Jones reviewed the letter and responded, "'old white men don't run this library, I do.'" Id. Jones then threw the letter in the trash. Id.

After Marquess completed his jury service, Jones treated him differently. Id. ¶ 22. The "plaintiff was subjected to reprimands and negative comments by Jones," and he "received evaluations of poor or unsatisfactory performance." Id. ¶¶ 22, 24-25. After several weeks of this treatment, the plaintiff was terminated on September 5, 1997. Id. ¶ 26.

The plaintiff filed the instant suit on March 3, 1998. In his Complaint, he names the Library and the City of Philadelphia as defendants. The plaintiff asserts causes of action under 42 U.S.C. § 1981 (Count I) and 42 Pa. Cons. Stat. Ann. § 4563 (Count II). On April 8, 1998, the defendants filed the instant motion to

dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. DISCUSSION

A. Standard for Dismissal under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957) (emphasis added). In other words, the plaintiff need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (emphasis added).

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),\[1] this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under

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4. Rule 12(b)(6) provides that:

> Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6).

any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

B. Analysis of Plaintiff's Claims

1. Section 1981

Section 1981 provides in relevant part that:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981(a) (1994) (emphasis added).

Prior to the enactment of the 1991 Civil Rights Act, Section 1981 did not establish a "general proscription of racial discrimination in all aspects of contract relations." Patterson v. McLean Credit Union, 491 U.S. 164, 176 (1989). Rather, it applied only to the initial formation of the contract. Id. Accordingly, "[t]he Third Circuit . . . specifically held that § 1981 [did] not

apply to claims of racially motivated discharge because job termination [was considered] conduct occurring after formation of the employment contract." Blanding v. Pennsylvania State Police, 811 F. Supp. 1084, 1089 (E.D. Pa. 1992), aff'd, 12 F.3d 1303 (3d Cir. 1993) (citing Hayes v. Community Gen. Osteopathic Hosp., 940 F.2d 54, 56 (3d Cir. 1991), cert. denied, 502 U.S. 1060 (1992)).

This was the law until 1991, when Congress enacted the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991). The Civil Rights Act of 1991 defined the phrase "to make and enforce contracts" under Section 1981 as "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b) (emphasis added). Thus, the Civil Rights Act of 1991 superseded Patterson and made Section 1981 applicable to discriminatory termination claims. See 42 U.S.C. 1981(b); Core v. Guest Quarters Hotel/Beacon Hotel Corp., No. CIV.A.92-2033, 1992 WL 189405, * 3 (E.D. Pa. Jul. 30, 1992).

In the instant suit, the plaintiff alleges that "race was a factor in defendants' termination of plaintiff." Pl.'s Compl. ¶ 28. The defendants do not dispute the plaintiff's assertion, but instead state the following:

> Although Plaintiff alleges he was discriminated against by the Defendants he failed to raise any contractual basis for his claim or facts suggesting racially based interference with a contractual relation between him and the Defendants. The reason

> for the Plaintiff's failure is the fact that there is no individual employment contract between the parties.

Defs.' Mem. at 2. In response, the plaintiff argues that he was an at-will employee, terminated in part because of his race. Pl.'s Mem. in Opp'n at 2-3.

"[T]he termination for racially discriminatory reasons even of an otherwise terminable at-will implied-in-fact contract may be actionable under 42 U.S.C. § 1981." Hudson v. Radnor Valley Country Club, No. CIV.A.95-4777, 1996 WL 172054, * 2 (E.D. Pa. Apr. 11, 1996). As United States Senior District Judge Donald W. Van Artsdalen stated:

> The claim is under section 1981 which concerns the making and enforcing of contracts. Although the term "make and enforce contracts," under the 1991 amendments to the Civil Rights Act of 1964, includes "the making, performance, modification, and termination of all benefits, privileges, terms, and conditions of the contractual relationships," and therefore is, in many respects, functionally similar to Title VII, the nature of the contractual relationship is still relevant. [The plaintiff] was an employee-at-will. His working conditions could therefore be altered at anytime, with or without reason, provided that any such alteration of working conditions was not because he was black and/or the alteration would not have occurred had he been white.

Bolden v. Archdiocese of Philadelphia, No. CIV.A.94-3899, 1995 WL 46694, * 4 (E.D. Pa. Feb. 1, 1995) (emphasis added).

In the instant action, the plaintiff has set forth sufficient facts to make out a valid Section 1981 claim. The

plaintiff alleges that he was hired by the defendants on March 4, 1997, Pl.'s Compl. ¶ 8, as an at-will employee, Pl.'s Mem. in Opp'n at 2-3. Further, the plaintiff asserts that he was discharged on September 5, 1997, and that "race was a factor in defendants'" decision to terminate him. Id. ¶¶ 26, 28. The plaintiff points to a valid contractual relationship between the parties, because Section 1981 protects at-will employees from discriminatory terminations. Bolden, 1995 WL 46694, at * 4. Thus, this Court will not dismiss Count I of the Plaintiff's Complaint.

2. 42 Pa. Cons. Stat. Ann. § 4563

Pennsylvania law protects an employee who is called to jury service, by proclaiming that:

> An employer shall not deprive an employee of his employment, seniority position or benefits, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror or attends court for prospective jury service . . . .
> . . . .
> If an employer penalizes an employee . . . the employee may bring a civil action for recovery of wages and benefits lost as a result of the violation and benefits actually lost. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

42 Pa. Cons. Stat. Ann. § 4563 (West 1998); see Goodson v. Cigna Ins. Co., No. CIV.A.85-0476, 1988 WL 52086, * 12-14 (E.D. Pa. May 20, 1988) (discussing employee's protection under state and federal

law). However, the defendants argue that the plaintiff has failed to set forth a valid claim under this section.

In the instant action, the plaintiff alleges that Jones demanded that he report for work, rather than appear for jury service. Pl.'s Compl. ¶ 18. Moreover, the plaintiff asserts that Jones "threatened to terminate plaintiff if he" served as a juror. Id. After he completed his jury duty, the plaintiff states that Jones began to punish him with poor performance evaluations. Id. ¶¶ 22-25. Finally, the plaintiff contends that his "service on a jury played a role, or was a factor, in defendants' termination of plaintiff." Id. ¶ 27. Taking these allegations as true, the Court finds that the plaintiff has set forth a valid claim under 42 Pa. Cons. Stat. Ann. § 4563. Accordingly, the Court will not dismiss Count II of the Plaintiff's Complaint

An appropriate Order follows.

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O R D E R

AND NOW, this 25th day of June, 1998, upon consideration of the Defendants' Motion to Dismiss (Docket No. 3), IT IS HEREBY ORDERED that the Defendants' Motion is **DENIED.**

BY THE COURT:

_____
HERBERT J. HUTTON, J.