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. October 5, 1999

Presently before this Court is the Renewal of Defendants' Motion to Dismiss. For the reasons discussed below, Defendants' Motion is DENIED.

I. BACKGROUND

The Court sufficiently set forth the facts that gave rise to this litigation in its Memorandum and Order dated June 25, 1998. While the Court therefore refers the parties to said Memorandum and Order for a fuller discussion of the facts pertinent to this lawsuit, the Court offers in broad strokes the following factual synopsis. William Marquess ("Plaintiff"), a Hispanic, white male, was terminated from his employment at the Free Library of Philadelphia, a public employer, before he completed his six month probationary employment period. Plaintiff's employment was terminated by Viola Jones ("Jones"), the African-American head librarian at the Free Library branch at which Plaintiff was employed. Plaintiff alleges that he was terminated in violation of

42 U.S.C. § 1981 because of his race and in violation of 42 Pa. Cons. Stat. Ann. § 4563 because he served as a juror although Jones told him not to serve and that he would suffer disciplinary consequences if he continued to serve as a juror.

II. DISCUSSION

Defendants argue that Stumpp v. Stroudsburg Mun. Auth., 658 A.2d 333 (Pa. 1995), is dispositive of the instant matter and, therefore, dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) is appropriate. The Court disagrees with Defendants' argument for the reasons discussed hereafter.

The issue on appeal in Stumpp was whether appellee, a public employee, who was neither protected by civil service regulations nor covered by a collective bargaining agreement, had the right to notice and a hearing as a result of his dismissal. Appellee served as the manager of a waste water treatment plan, a public authority. Appellee was informed by letter that his employer was unhappy with his job performance and that he was to be relieved of his duties as manager. The letter also indicated that his employer would hold open a lesser position for appellee if he was interested in continuing his public employment. Although appellee accepted the lesser position, he was terminated later that same year.

Several months later, appellee petitioned for review of his former employer's decision to terminate his employment, characterizing said decision as a "local agency adjudication." As

such an adjudication, appellee argued that he was denied his Due Process rights. After a trial at which appellee lost, the Commonwealth Court held that the letter to appellee stating the offer of employment in a lesser position constituted an "implied contract" for employment thereby vesting in appellee a protectable property right. The Commonwealth Court also held that appellee's former employer possessed the authority to enter into such a contract.

The Pennsylvania Supreme Court in Stumpp held that the public employer did not have the authority to enter into a contract for employment in the absence of enabling legislation which expressly set forth such authority. Accordingly, the court concluded that appellee was an employee at-will who could be terminated at any time for any reason. In the absence of appellee providing "additional consideration" to his employer, no contract could have been formed. Thus, the Stumpp court considered a narrow issue--a public employer's authority to enter into a contract for employment in a factually distinct circumstance.

Defendants want this Court to interpret the Stumpp holding in a way that precludes a hearing on the merits of Plaintiff's § 1981 claim. Such an interpretation strains logic.

As explained by this Court in its Order and Memorandum of June 25, 1999, the presence or absence of a "contract" is not dispositive of Plaintiff's § 1981 claim. Therefore, that

Defendants could not have possibly entered into an employment contract with Plaintiff is superfluous. A § 1981 claim is cognizable when brought by an at-will employee such as Plaintiff when it is alleged that an employer adversely altered an employee's working conditions because of or in consideration of said employee's race. Plaintiff alleged that his termination was in part due to his race. Under the familiar Rule 12(b)(6) standard, such an allegation is sufficient to sustain Plaintiff's cause of action and to defeat Defendants' Rule 12(b)(6) Motion.

An appropriate Order follows.

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O R D E R

AND NOW, this 5th day of October, 1999, upon consideration of the Renewal of Defendants' Motion to Dismiss, IT IS HEREBY ORDERED that Defendants' Motion is **DENIED.**

BY THE COURT:

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HERBERT J. HUTTON, J.