UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

MARY LYNCH, TRACY A. MORETTI, PATRICIA LaPIERRE, MARIE DeSANTIS, LUCRETIA GAUDETTE and MARY KATE HARRINGTON Plaintiffs	)	
v.	)	C.A. No. 98-121L
ORTHOPEDIC GROUP, INC and STEVEN FIORE Defendants	)	

MEMORANDUM AND ORDER

Ronald R. Lagueux, Chief Judge.

Mary Lynch, Tracy A. Moretti, Patricia LaPierre, Marie DeSantis, Lucrecia Gaudette and Mary Kate Harrington ("plaintiffs") worked for Orthopedic Group, Inc. ("OGI") in Rhode Island. They allege that their supervisor Steven Fiori created a sexually-oppressive work environment and that OGI knew or should have known about Fiore's actions. Plaintiffs allege that after OGI did nothing to improve the situation, they were constructively terminated and suffered various injuries.

Plaintiffs have pleaded detailed allegations, but at this stage in the litigation, the Amended Complaint can be summarized in five counts: Count I against OGI and Fiore under the Rhode Island Fair Employment Practices Act, R.I.G.L § 28-5-1 *et seq*. ("FEPA"); Count II against OGI and Fiore under the Rhode Island

Civil Rights Act of 1990, § 42-112-1 *et seq*. ("RICRA"); Count III against OGI and Fiore under Title VII, 42 U.S.C. § 2000e *et seq*.; Count IV against Fiore for tortious interference with beneficial relations; Count V against OGI for negligent supervision.[1]

The case is before this Court on two motions to dismiss. Fiore has moved to dismiss all the counts against him based on two arguments: first, that Counts I, II and III set forth no cause of action against him because the statutes involved impose no individual liability and second, that Count IV sets forth a claim preempted by the state workers' compensation statute. OGI has moved to dismiss Count V based on a similar argument - workers' compensation preemption.

As outlined below, Fiore's motion is granted in part and denied in part, and OGI's motion is granted. Fiore's motion on Counts I, II and III is denied because individual liability exists under Title VII, RICRA and FEPA. Fiore's motion on Count IV and OGI's motion on Count V are granted because neither tortious interference or negligent supervision is a sustainable cause of action in this case. Thus, this Court does not reach the workers' compensation issue.

I. <u>Legal Standard for Motion to Dismiss</u>

In ruling on a motion to dismiss, the Court construes the complaint in the light most favorable to the plaintiff, taking

[1] This was Count VI of the original Complaint.

all well-pleaded allegations as true and giving said plaintiff the benefit of all reasonable inferences. See Negron-Gaztambide v. Hernandez-Torres, 35 F.3d 25, 27 (1st Cir. 1994), cert. denied, 513 U.S. 1149 (1995). Dismissal under Rule 12(b)(6) is appropriate only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957).

II. Supervisor Liability Under Title VII, RIRCA and FEPA

Fiore moves that Counts I, II and III be dismissed because he argues that supervisory employees cannot be held individually liable under Title VII, FEPA and RICRA. In doing so, Fiore invites this Court to overrule its contrary holding in Iacampo v. Hasbro Inc., 929 F. Supp. 562 (D.R.I. 1996). Although the case law that has evolved in the last two years makes this a reasonable request, this Court reaffirms Iacampo for the reasons set out at length in Wyss v. General Dynamics, No. 96-0539L, – F. Supp.2d. —, 1998 WL 710442, 1998 U.S. Dist. LEXIS 15830, Lawyers Weekly No. 52-053-98 (D.R.I. 1998). Fiore is correct that some precedent exists that supports his argument. He is wrong that it is “better reasoned.” (Memo. Of Law in Supp. of D. Steven Fiore’s Mot. To Dismiss at 10.) The majority of circuits has lined up like the children of Hamelin behind an unwarranted judicial rewriting of a clear statute. This Court follows the

Supreme Court's and the First Circuit's command to respect the language of congressional enactments.

III. Rhode Island Does Not Recognize Wrongful Discharge

On OGI's motion to dismiss Count V, this Court does not reach the workers' compensation issue. To avoid preemption, plaintiffs allege only economic damages, specifically loss of their jobs. However, Rhode Island law is well-established that in employment-at-will cases, there is no cause of action for wrongful discharge. See Pacheo v. Raytheon Co., 623 A.2d 464, 465 (R.I. 1993). Thus OGI could have fired plaintiffs at any time, and it had no duty to preserve its own relationship with them. Count V merely alleges a claim for negligent wrongful discharge. If employers can intentionally terminate an employee at will, then they can do it negligently as well. Therefore, OGI's motion to dismiss Count V is granted.

IV. Workers' Compensation Preemption of Common Law Torts

The claim against Fiore alleged in Count IV presents a different problem because he was not a party to the employment relationship. Therefore, he could be liable for the tort of interference with advantageous relationships if plaintiffs can prove: (1) the existence of a contract; (2) the defendant's knowledge of the contract; (3) the defendant's intentional interference with the contract, and (4) that plaintiffs have suffered damages as a result of defendant's interference. See

New England Multi-Unit Housing Laundry Assoc. v. Rhode Island Housing & Mortgage Finance Corp., 893 F. Supp. 1180, 1192 (D.R.I. 1995) (citing Smith Dev. Corp. v. Bilow Enters., Inc., 308 A.2d 477, 482 (R.I. 1973)).

Even giving plaintiffs the benefit of all reasonable inferences, nothing in the Amended Complaint and other pleadings could prove the third prong of this test. Fiore may have sexually harassed plaintiffs, but there is no allegation or evidence that he intended to interfere with their contractual relationships with OGI. It would be unreasonable to assume that a supervisor intends to convince employees to quit when he harasses them. Sexual harassment is punished by the well-honed civil rights provisions of Title VII, RICRA and FEPA. To add this common law tort to their quiver, plaintiffs must prove facts that they do not even allege. Therefore, Fiore's motion to dismiss Count IV is granted.

CONCLUSION

For the foregoing reasons, OGI's motion to dismiss Count V is granted, and Fiore's motion to dismiss is denied as to Counts I, II and III and granted as to Count IV.

It is so Ordered.

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Ronald R. Lagueux
Chief Judge
October , 1998