

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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SANDRA DALLAIRE, :

Plaintiff, :

-against- : NO. 3:00CV01144(GLG)
 : MEMORANDUM DECISION
LITCHFIELD COUNTY ASSOCIATION FOR :
RETARDED CITIZENS, INC., PATANN :
LYON, and MARY ELLEN PESINO, :

Defendant. :
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This is an action for disability discrimination brought under the Americans with Disabilities Act ("ADA") and Connecticut's Fair Employment Practices Act ("CFEPA"). Defendant Patann Lyon¹ has moved to dismiss Count II (retaliation under the ADA), and Counts III, IV, and V (claims under the CFEPA). Defendant LARC, the Litchfield County Association for Retarded Citizens, Inc., has moved to dismiss Count VII (breach of the covenant of good faith and fair dealing).² **[Doc. # 6]**. For the reasons set forth below, defendants' motion will be granted.

A motion to dismiss filed pursuant to Rule 12(b)(6), Fed. R.

¹ Plaintiff has dismissed defendant Larry Casella. As of the date of this ruling, defendant Mary Ellen Pesino has not been served. The same claims have been asserted against defendant Pesino as against defendant Lyon, and our ruling would be the same as to defendant Pesino.

² Although defendants' motion to dismiss indicates that it is challenging Count VI and all claims against defendant Lyon, the memorandum in support of the motion, plaintiff's opposition, and defendants' reply address the counts set forth above. The Court will do likewise.

Civ. P., tests only the sufficiency of the complaint and should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The issue is not whether the plaintiff will prevail but whether she is entitled to offer evidence in support of her claim. Villager Pond, Inc. v. Darien, 56 F.3d 375, 378 (2d Cir. 1995), cert. denied, 519 U.S. 808 (1996). In ruling on a motion to dismiss, we accept as true all allegations of the complaint, and draw all reasonable inferences in favor of the plaintiff. Still v. DeBuono, 101 F.3d 888, 891 (2d Cir. 1996).

Background

The following facts are taken from plaintiff's amended complaint and are presumed to be true for purposes of this motion to dismiss.

Plaintiff, Sandra Dallaire, suffers from Madelungs Disease, which she describes as a genetic condition affecting the joints, causing tremendous pain and limited physical ability in both arms. This condition prevents plaintiff from lifting heavy objects or carrying heavy materials.

In September 1997, plaintiff was hired by Defendant LARC as a Qualified Mental Retardation Professional ("QMRP")/Program Coordinator. She did not have a bachelor's degree at the time she was hired and states that she was told by the Director of

Vocational Services and the Personnel Director that this was not a problem. Defendant was aware of plaintiff's medical condition from the outset and in January, 1998, reduced plaintiff's hours and allowed her to work from home in an effort to accommodate her medical condition.

At various times during her employment, plaintiff was required to undergo surgical procedures to treat her medical condition. In January, 1999, plaintiff left a phone message for Patann Lyon, the new Residential Director, advising her that she would be unable to work for a week due to disabling pain that she was experiencing and that she was going to require another surgery in late February. Defendant Lyon returned plaintiff's call stating that plaintiff could either resign or take medical leave. If she took medical leave, plaintiff would not be returned to her same position since she did not have a bachelor's degree and, therefore, was not qualified for the position according to federal guidelines.

Plaintiff then asked defendant Lyon and defendant Pesino, the Personnel Administrator, to make a reasonable accommodation of her disability. Defendant responded to this request by offering plaintiff a managerial position, which plaintiff viewed as a demotion. Additionally, plaintiff was unsure that she could perform the job due to the physical demands of the position. Plaintiff requested a job description, which defendants Lyons and Pesino refused to give her until such time as plaintiff had

supplied them with documentation from her physician as to her precise physical limitations. On February 10, 1999, defendant Pesino notified plaintiff that the only position they would offer her was that of "Supportive Living Manager," which required the direct physical care of patients, which plaintiff could not perform. It also carried a significant reduction in salary and a change in hours and duties from plaintiff's prior position. Due to her inability to perform the duties of Supportive Living Manager, plaintiff notified defendant of her intention to resign on March 18, 1999.

Plaintiff, through counsel, then filed a discrimination charge with the EEOC and CCHRO against defendant LARC. No other respondents were listed. After receiving a right-to-sue letter from the EEOC and a waiver of jurisdiction from the CCHRO, this lawsuit ensued. Count I alleges a violation of the ADA by defendant LARC. Count II alleges a violation of the anti-retaliation provisions of the ADA by LARC and the individual defendants. Counts III, IV, and V allege violations of the CFEPA by all defendants. Count VI is against defendant LARC for breach of implied contract, and Count VII is against defendant LARC for violation of the implied covenant of good faith and fair dealing.

Discussion

1. ADA Claims Against Individual Defendants

Plaintiff has withdrawn her claims in Count II under the ADA

against the individual defendants. Therefore, the Court need not address the merits of defendants' motion on this issue. These claims will be dismissed, leaving LARC as the only defendant as to Count II.

2. CFEPA Claims Against the Individual Defendants

Defendants assert that plaintiff's CFEPA claims against defendant Patann Lyon must be dismissed for failure to exhaust administrative remedies because Lyon was not named as a respondent in the administrative complaint. Plaintiff responds that, although she did not directly name Lyon as a respondent, the CCHRO complaint discussed at length Lyon's involvement with the alleged discrimination, thus putting Lyon on notice of plaintiff's discrimination allegations. Thus, she asserts that "for all practical purposes" the administrative remedies against Lyon have been exhausted. (Pl.'s Mem. at 6.) Moreover, plaintiff argues that Lyon is not prejudiced because the allegations in this complaint and the administrative complaint are the same, Lyon is represented by the same counsel as LARC, and both had the same opportunity to resolve this matter at the administrative level.

As the parties recognize, there are limited exceptions to the exhaustion of administrative remedies requirement. See Malasky v. Metal Products Corp., 44 Conn. App. 446, 453, cert. denied, 241 Conn. 906 (1997). Under the "identity of interests" exception, upon which plaintiff relies, a plaintiff may maintain an action against a defendant even if he or she was not specifically named as a respondent in the administrative

complaint under certain conditions.³ Id. Anticipating this argument, defendants state that this exception does not apply because plaintiff was represented by counsel when she filed her CCHRO complaint.

The "identity of interests" exception has been held to apply only when plaintiffs were not represented by counsel at the time they filed their administrative discrimination charges. See Peterson v. City of Hartford, 80 F. Supp. 2d 21, 24 (D. Conn. 1999); Harrington v. Hudson Sheraton Corp., 2 F. Supp. 2d 475, 478 (S.D.N.Y. 1998). Unlike a pro se plaintiff, an attorney is expected to comply with the procedural requirements of the CFEPA. See Natale v. Town of Darien, No. 3:97CV583(AHN), 1998 WL 91073, at *6 (D. Conn. Feb. 26, 1998); DeLoreto v. Ment, 944 F. Supp. 1023, 1035 (D. Conn. 1996) (stating that "a party must follow the administrative procedures established by the legislature" to bring a CFEPA claim). Thus, plaintiff's failure to follow the CFEPA's administrative procedures mandates that this claim be

³ In Malasky, the court excused a pro se plaintiff's failure to name all respondents where the body of her CCHRO complaint identified these individuals. The Court examined five factors in making this exception: 1) whether the unnamed party's role was known at the time the complaint was filed; 2) whether the interests of the named and unnamed party are so similar that compliance could be obtained without the unnamed party; 3) whether the failure to include the unnamed party resulted in actual prejudice; 4) whether the unnamed party has informed the plaintiff that it should bring suit against him through the named party; and 5) whether the complaint was filed pro se. Malasky, 44 Conn. App. at 453-54; see also Natale v. Town of Darien, No. 3:97CV583(AHN), 1998 WL 91073, at *6 (D. Conn. Feb. 26, 1998).

dismissed as to defendant Lyon.

3. Breach of Implied Covenant of Good Faith and Fair Dealing

Last, defendant LARC moves to dismiss plaintiff's state-law claim for breach of the implied covenant of good faith and fair dealing on the ground that plaintiff has an adequate statutory remedy, citing Atkins v. Bridgeport Hydraulic Co., 5 Conn. App. 643, 648 (1985). Plaintiff responds that the CFEPA was not intended to preempt state common-law tort claims.

Connecticut courts have recognized that "[e]very contract carries an implied covenant of good faith and fair dealing requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement." Habetz v. Condon, 224 Conn. 231, 238 (1992). To establish a claim for breach of an implied covenant of good faith and fair dealing where the employment is terminable at will, plaintiff must establish that her dismissal was for a demonstrably improper reason, the impropriety of which is derived from a violation of some important public policy. Johnson v. Chesebrough-Pond's USA Co., 918 F. Supp. 543, 550 n.4 (D. Conn.), aff'd, 104 F.3d 355 (2d Cir. 1996); Magnan v. Anaconda Industries, Inc., 193 Conn. 558, 565 (1984); Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 474-75 (1980).

The cases which have established a tort or contract remedy for employees discharged for reasons violative of public policy

have relied upon the fact that, in the context of that case, the employee was otherwise without a remedy and that permitting the discharge to go unredressed would leave a valuable social policy to go unvindicated. See Atkins v. Bridgeport Hydraulic, 5 Conn. App. at 648. Therefore, a cause of action in tort for breach of the covenant of good faith and fair dealing exists only when a discharge violates public policy and the employee is otherwise without a remedy. See Veterina v. Cummings & Lockwood, 117 F. Supp. 2d 114, 119 (D. Conn. 1999); Atkins v. Bridgeport Hydraulic, 5 Conn. App. at 648; Trombley v. Convalescent Center of Norwich, No. 543772, 1999 WL 492577, at *5 (Conn. Super. June 30, 1999); Dunn v. Actmedia, Inc., No. CV 980163913, 1998 WL 892729, at *3 (Conn. Super. Dec. 14, 1998), Cowan v. Warner-Lambert Co., CV 90-03-25-645, 1994 WL 645965 (Conn. Super. Nov. 4, 1994); Pucci v. American Republican, No. 118491, 1994 WL 235316 (Conn. Super. May 23, 1994).

In this case, plaintiff has alleged that she was constructively discharged because of her disability, which, if true, would violate important public policies embodied in the ADA and the CFEPFA. However, as defendant LARC correctly asserts, because plaintiff already has an adequate statutory remedy, this Court will not recognize a separate claim for breach of an implied covenant of good faith and fair dealing. See Cameron v. St. Francis Hospital, 56 F. Supp. 2d 235, 242 (D. Conn. 1999); Bennett v. Beiersdorf, Inc., 889 F. Supp. 46, 49 (D. Conn. 1995).

Plaintiff has asserted the same claims against LARC under the ADA and the CFEPFA. The public policy against disability discrimination is adequately vindicated through these statutory schemes and remedies. Therefore, we grant defendant's motion for summary judgment as to the Count VII of plaintiff's amended complaint.

Conclusion

For the reasons set forth above, Count II is dismissed as to the individual defendants, thus leaving LARC as the only defendant in Count II; Counts III, IV, and V are dismissed as to defendant Lyon; and Count VII, which was only asserted against defendant LARC, is dismissed in its entirety. Thus, defendants' motion to dismiss [Doc. # 6] is GRANTED in all respects.

SO ORDERED.

Date: February 12, 2001.
Waterbury, Connecticut.

_____/s/_____
GERARD L. GOETTEL,
United States District Judge