

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

Patricia WRIGHT-KAHN :  
 :  
v. : Civ. No. 3:00cv2314 (JBA)  
 :  
PEOPLE'S BANK, BRIDGEPORT and :  
Cynthia H. PAYNE :

RULING ON PENDING MOTIONS  
[Doc. ## 10, 13, 18, 24, 25, 26, 27]

Pro se plaintiff Patricia Wright-Kahn filed this suit alleging that she was wrongfully terminated and otherwise discriminated against by her former employer, defendant People's Bank, Bridgeport ("the Bank") and the Bank's attorney, Cynthia Payne, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §§ 621, et seq., the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, et seq., and the Rehabilitation Act of 1973, 29 U.S.C. §§ 701, et seq. Plaintiff also alleges that her civil rights were violated under 42 U.S.C. § 1983 because the defendant People's Bank disregarded a signed conciliation agreement. Plaintiff seeks reinstatement, stock options and sixteen billion dollars.

Currently pending are plaintiff's motions to seal records [Docs. ## 10, 18], for filing of discovery materials [Docs. ## 24, 25], for reconsideration of the ruling denying plaintiff's motion for appointment of counsel [Docs. ## 24, 25], to amend

complaint [Docs. ## 24, 25, 26], to join parties [Doc. # 26], and to extend time to respond to pre-conference meeting [Doc. # 27], and defendants' motion to dismiss [Doc. # 13].

**Motion to dismiss [Doc. # 13]**

Defendant Cynthia Payne has moved to dismiss all claims against her on the grounds that as an individual employee of People's Bank she cannot be sued under Title VII, the ADEA, the ADA or the Rehabilitation Act. The Court agrees. Individuals who do not otherwise meet the definition of "employer" within the meaning of those statutes may not be held liable for violations of the statutes. See Tomka v. Seilor Corp., 66 F.3d 1295 (2d Cir. 1995) (no Title VII liability against individual defendants with supervisory control over a plaintiff); Martin v. Chemical Bank, 129 F.3d 114, No. 95-9015, 96-9365, 1997 U.S. App. LEXIS 32022 (2d Cir. Nov. 10, 1997) (Table op.) (no individual liability under ADEA); Wanamaker v. Columbian Rope Co., 108 F.3d 462, 465 (2d Cir. 1997) (ADEA claims analyzed the same way as Title VII claims); Menes v. CUNY Univ. of New York, 92 F. Supp. 2d 294, 306 (S.D.N.Y. 2000) (no personal liability for individual defendants under the Rehabilitation Act or the ADA). Accordingly, plaintiff's claims against defendant Cynthia Payne are dismissed.

Defendants have also moved to dismiss plaintiff's Title VII and ADEA claims for failure to exhaust administrative remedies.

Plaintiff's CHRO complaint, filed October 1, 1999, alleges that she was terminated on April 5, 1999 on the basis of her physical and mental disabilities, in violation of Conn. Gen. Stat. § 46a-60(a)(1) and the ADA. See Def. Ex. 1. Plaintiff's detailed affidavit submitted in connection with that CHRO complaint focuses exclusively on discrimination based on mental and physical disability. See id. Plaintiff received a Notice of Final Agency Action from the CHRO dated March 16, 2000 notifying her that her claim of mental and physical disability discrimination had been denied. See Def. Ex. 2. Plaintiff also received a right to sue letter from the EEOC dated October 27, 2000 adopting the findings of the Connecticut CHRO. There is no mention in either the CHRO or EEOC papers of any Title VII or ADEA claim.

Plaintiff's complaint filed in this action dated December 1, 2000 asserts claims under Title VII, the ADEA, the Rehabilitation Act and the ADA. Plaintiff further alleges that the conduct of defendant was discriminatory because it was based on her race, color, sex, age, national origin and disability. Plaintiff claims that the Bank terminated her, and failed to promote her, transfer her, conduct a performance appraisal for her and increase her salary all in violation of these anti-discrimination laws. According to defendant, because plaintiff failed to exhaust her administrative remedies with respect to the Title VII and ADEA claims, those claims must be dismissed.

Before bringing an employment discrimination claim under either Title VII or the ADEA, plaintiff must file a claim with the EEOC within a specified time period after the alleged violation and obtain a right-to-sue letter. See Cornwell v. Robinson, 23 F.3d 694, 706 (2d Cir. 1994); Miller v. AT & T, 755 F.2d 20, 23-24 (2d Cir. 1985). The Court only has jurisdiction "to hear Title VII claims that either are included in an EEOC charge or are based on conduct subsequent to the EEOC charge which is reasonably related to that alleged in the EEOC charge." Butts v. City of New York Dep't of Housing, 990 F.2d 1397, 1401 (2d Cir. 1992). The events alleged in plaintiff's complaint all occurred at or prior to her termination in April 1999, while her CHRO complaint was filed in October 1999. Plaintiff's sex, race, color, national origin and age claims in her complaint therefore are not based on conduct subsequent to that alleged in the EEOC charge and are not reasonably related to the mental and physical disability discrimination alleged in the EEOC charge.

Because plaintiff has failed to comply with the requirement that she exhaust administrative remedies prior to filing her Title VII and ADEA claims, those claims are dismissed without prejudice. See Criales v. American Airlines, Inc., 105 F.3d 93, 95 (2d Cir. 1997); Johnson v. Nyack Hosp., 86 F.3d 8, 10 (2d Cir. 1996); Twitty v. Smith, 614 F.2d 325, 335 n. 16 (2d Cir. 1979).<sup>1</sup>

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<sup>1</sup>Neither defendant nor plaintiff have addressed plaintiff's § 1983 claim based on the alleged violation by defendant People's

**Motions for reconsideration of denial of appointment of  
counsel [Docs. ## 24, 25]**

Plaintiff moves the Court to reconsider the order denying her motion for appointment of counsel, dated February 28, 2001 [Doc. # 22]. Plaintiff's motion was originally denied for failure to allege sufficient facts "to permit the Court to determine whether plaintiff's claims pass the test of being of likely substance." Id. at 1. The Court also noted that in plaintiff's form Complaint, she left blank the section requesting "Supporting Facts." Id. In addition, the Court found that while plaintiff met the indigency standard, she gave no specifics as to which attorneys she contacted and what the terms of their representation were that she could not afford. Id. The Court invited plaintiff to file a renewed motion for appointment of counsel in the event that further development of the record, including an Amended Complaint setting out the facts supporting her claim, indicated that plaintiff's claims were of likely merit and that her financial status precluded her from obtaining counsel on her own. Id. at 2.

Plaintiff's motion for reconsideration addresses the second

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Bank of a 1998 CHRO conciliation agreement entered into by plaintiff and defendant People's Bank. The Court notes, however, that People's Bank does not appear to be a state actor and there are no allegations in the Complaint to support the conclusion that the conduct of People's Bank is fairly attributable to the state. See Leeds v. Meltz, 85 F.3d 51, 54 (2d Cir. 1996) ("It is axiomatic that . . . § 1983, appl[ies] only to state actors.").

deficiency noted in the Court's February 28, 2001 ruling by setting forth in detail several attorneys she contacted who declined to represent her because she could not afford their retainer fee. However, plaintiff does not set forth any factual allegations from which the Court can determine that her claims are of "likely substance." Hodge v. Police Officers, 802 F.2d 58, 61 (2d Cir. 1986). Plaintiff's Amended Complaint, filed April 23, 2001, is identical in all material respects (apart from the identity of the defendants, as discussed below) to the original complaint, and thus does not provide a basis for reconsideration of the Court's original ruling. Plaintiff's motion is therefore denied.

**Motions to seal [Docs. ## 10, 18]**

Plaintiff has moved to seal certain documents, although it cannot be determined from her motions precisely what documents she wishes the Court to seal. It appears that she seeks to have her original CHRO case filed in 1998 sealed. That complaint and other evidence in that case is not, however, part of the public record of this case.

"Many cases have recognized that the public has a "common-law right of access" to judicial records." Geller v. Branich Int'l Realty Corp., 212 F.3d 734, 738 (2d Cir. 2000) (citing Nixon v. Warner Comm., Inc., 435 U.S. 589, 597-99 (1978));

Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 26 (2d Cir. 1994)). Where a party seeks to seal the record, the burden of demonstrating that a document submitted to a court should be sealed rests on the party seeking such action. See id.; United States v. Amodio, 71 F.3d 1044, 1047 (2d Cir. 1995). Such a party must show good cause to overcome the "presumption open access to documents filed in our courts." Geller, 212 F.3d at 738.

Plaintiff has not shown good cause as to why documents not yet part of the record in this case should be sealed. Accordingly, her motions to seal are denied without prejudice to renew if good cause for sealing documents that are part of the record in this case is shown.

**Motions to amend complaint [Docs. ## 24, 25, 26]**

Plaintiff has moved to amend her complaint to add Barbara Phillips, the vice president of People's Bank, Bridgeport, as a defendant. Plaintiff has also filed an amended complaint naming Barbara Phillips as a defendant [Doc. # 28]. For the reasons earlier discussed, plaintiff cannot bring claims under Title VII, the ADA, the ADEA or the Rehabilitation Act against an individual employee or supervisor of her employer. Therefore, amending the complaint would be futile, and plaintiff's motion to amend her complaint to add Barbara Phillips is denied.

Plaintiff also moves to have her power-of-attorney, Francis P. Cipirano, joined as a pro se plaintiff. Plaintiff states that Cipirano is a civil rights attorney and does not represent her in this matter, but must nonetheless be kept abreast of the case as a pro se party. Plaintiff does not cite, and the Court cannot find, any authority permitting the Court to join as a party a person who has no apparent dispute with the defendants, solely for plaintiff's administrative convenience. Plaintiff's motion to join her power-of-attorney is therefore denied.

**Motion for filing of discovery materials [Docs. ## 24, 25]**

Plaintiff's motion for filing of discovery materials is denied because discovery material need not be filed with the Court. See Fed. R. Civ. P. 5(d) and Local Rule 7(g).

**Motion to extend time to respond to meeting [Doc. # 27]**

Plaintiff's motion for extension of time to April 30, 2001 to respond to pre-filing conference meeting is denied as moot. Plaintiff participated in the telephonic conference held February 26, 2001 and the settlement conference held April 30, 2001 before Magistrate Judge Margolis.



**Conclusion**

For the foregoing reasons, defendants' motion to dismiss the Title VII and ADEA claims is GRANTED and defendant Cynthia Payne's motion to dismiss all claims is GRANTED. Plaintiff's § 1983 claims are dismissed as to all defendants. The sole claims remaining in this case are plaintiff's ADA and Rehabilitation Act claims against defendant People's Bank. Plaintiff's motions for reconsideration, to amend pleadings, to join parties, for extension of time and to seal records [Docs. ## 10, 18, 24, 25, 26, 27] are DENIED.

IT IS SO ORDERED.

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Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this \_\_the day of July, 2001.