

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LISA RUZIKA AND :
KAREN LACOMBE :
 :
Plaintiffs : NO. 3:03-CV-1416 (EBB)
 :
v. :
 :
COMMUNITY SYSTEMS ,INC., ET AL :
 :
Defendants :

AMENDED RULING ON THE DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

Plaintiffs Lisa Ruzika ("Ruzika") and Karen Lacombe ("Lacombe") brought this ten-count complaint against Defendants, Community Systems, Inc., (CSI) and Scott Whitaker, David Sokolow and Justin Brockie, employees of CSI, for claims arising out of their alleged treatment while employees of CSI. Counts Eight and Nine are brought under 42 U.S.C. Section 1983 alleging first Amendment retaliation and deprivation of the Fourteenth Amendment right to equal protection and due process, respectively¹

¹/Plaintiffs have, in response to the pending Motion to Dismiss, withdrawn their claims under Title VII, the ADA and CFEPa against the individual defendants. Accordingly, this ruling addresses the motion as to Counts Eight and Nine which are directed to the individual Defendants only. However, the parties have each briefed the claims as to CSI. Even the Plaintiffs barely refer to the individual Defendants in their Memorandum of Law in Opposition to the Motion to Dismiss. Notwithstanding such errors, inasmuch as the Section 1983 analysis is virtually identical as to all parties, the Court will address the liability, if any, of both CSI and the individual Defendants.

STATEMENT OF FACTS

_____The Court sets forth only those facts deemed necessary to an understanding of the issues in, and the decision rendered, on this Motion. The facts are culled from the Amended Complaint ("Complaint").^{2/} _____

_____Plaintiffs Ruzika and Lacombe were employees of the Defendant, CSI. CSI is a corporation that operates Horse Fence Hill Group Home ("HFH"), a home for persons with mental and physical disabilities in Southbury, Connecticut. Complaint ¶ 12. CSI is regulated and funded by the Department of Mental Retardation ("DMR"). Complaint ¶ 9, Ruzika worked as a Residential Manager at HFH beginning in June, 1999. Complaint ¶¶ 10, 12, 13. Lacombe worked as an Assistant Manager at HFH beginning in December, 1998. Complaint ¶¶ 11, 12, 14.

On June 10, 2002, Plaintiffs filed an incident report about the harmful treatment of a patient by two staff members: Tracy King and Georgette Dorsette. Complaint ¶ 20. King and Dorsette were then placed on paid administrative leave while an investigation into the suspected abuse was conducted. Complaint ¶ 21. Thereafter, Plaintiffs were accused of falsifying the incident report and Ruzika was allegedly accused of being a racist. Complaint ¶¶ 22, 23, 24. The Plaintiffs, however, were not put on administrative leave during the time that they were being investigated for allegedly falsifying the report. Complaint ¶ 25.

^{2/} The Statement of Facts for this ruling pertains only to Counts 8 and 9 of the Plaintiffs' Complaint, the subjects at issue in the Motion to Dismiss.

From June, 2002 to August, 2002, the Plaintiffs allege that they were forced to work one hundred to one hundred and twenty hours per week. Complaint ¶ 28. Each Plaintiff claimed that the excessive work exacerbated alleged individual disabilities. Complaint ¶¶ 39, 56, 107(g). Ruzika suffers from an Arnold Chiari I malformation, hypertension, stress, and tachycardia; Lacombe suffers from hypertension and anxiety. Complaint ¶¶ 37, 74. During these months, the Plaintiffs made multiple requests to reduce their hours and hire additional staff, contending that there existed an unsafe level of staffing. Complaint ¶¶ 31, 34, 107(c)(e).

On or about July 25, 2002, Ruzika was placed on medical leave. Complaint ¶ 46. On December 27, 2002, CSI advised Ruzika that her leave had expired and that her employment was terminated as of November 22, 2002. Complaint ¶ 49. Lacombe was placed on medical leave on July, 31, 2002. Complaint ¶ 56.

LEGAL ANALYSIS

I. The Standard of Review

_____ A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) should be granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). "The function of a motion to dismiss is merely to assess the legal feasibility of a complaint, not to assay the weight of evidence which might be offered in support thereof." Ryder Energy Distribution Corp. V. Merrill Lynch Commodities, Inc., 748 F.2d

774, 779 (2d Cir. 1984) (quoting Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980)).

____ Pursuant to a Rule 12(b)(6) analysis, the Court takes all well-pleaded allegations as true, and all reasonable inferences are drawn and viewed in a light most favorable to the Plaintiff. Leeds v Meltz, 85 F.3d 51, 53 (2d Cir. 1996). See also, Conley v. Gibson, 355 U.S. 41, 48, (1957) (Federal Rules reject approach that pleading is a game of skill in which one misstep by counsel may be decisive of case). The proper test is whether the complaint, viewed in this manner, states any valid ground for relief. Id.

II. The Standard as Applied

42 U.S.C. Section 1983 provides, in pertinent part, that

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . .

42 U.S.C. § 1983.

"A plaintiff pressing a claim of violation of his constitutional rights under § 1983 is thus required to show state action. Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982). . . ('In cases under § 1983, "under color" of law has consistently been treated as the same thing as the "state action" required under the Fourteenth Amendment')." Tancredi v. Metropolitan Life Ins. Co., 316 F.3d 308, 312 (2nd Cir. 2003). "[S]tate action requires both an alleged constitutional deprivation 'caused by the exercise of some right or privilege created by the State or by a

rule of conduct imposed by the State or by a person for whom the State is responsible' and ... 'the party charged with the deprivation must be a person who may fairly be said to be a state actor.'" American Mfrs. Mut. Ins. Co., v. Sullivan, 526 U.S. 40, 50 (1999) quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982) (emphasis in original).

In other words, Plaintiffs must show a "sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974); Tancredi, 316 F.3d at 312. ^{3/}

The Plaintiffs allege that CSI is itself a state agency. Thus, due to this designation, it must have been acting under the color of law when it committed the alleged acts against the Plaintiffs. Complaint ¶ 9. This claim is unsubstantiated and factually incorrect. The Connecticut General Statutes clearly identify what entities are "state agencies" and CSI is not enumerated within this statute. Conn. Gen. Stat. § 4-38(c). CSI is not a state agency, but a corporation authorized to do business in Connecticut, with corporate headquarters in Virginia.

^{3/} As noted above, a virtually identical analysis is applicable to the individual Defendants. Although the individual Defendants are not "state actors" within the analysis herein, "each may be liable under § 1983 if they 'jointly engaged with the state officials in the challenged action.'" Scotto v. Alemas, 143 F.3d 105, 114 (2nd Cir. 1998) quoting Dennis v. Sparks, 449 U.S. 24, 27 (1980). Inasmuch as no "joint engagement with any state official" is remotely possible under the facts as alleged in the Complaint, the individual Defendants succeed in demonstrating that, as to each of them, the Plaintiffs have failed to state any claims upon which relief can be granted. See Fed. R. Civ. P 12(b)(6).

Complaint ¶ 7. Since CSI is not a state agency, it does not act under color of law based solely upon that premise.

CSI is, however, alleged to be regulated and funded by the DMR. Accordingly, Plaintiffs argue that, even if CSI is not a state agency, this regulation and funding is evidence of a close enough nexus between the two entities so that CSI and its employees acted under the color of authority of the state and a Section 1983 claim is viable. Furthermore, the Plaintiffs allege that CSI was under the control and direction of the DMR. Opposition at p. 9. The Plaintiffs contend that this relationship between CSI and the DMR also is a sufficiently close nexus and that therefore CSI acted under state authority.

Finally, the Plaintiffs assert in their Opposition that the state exercises "coercive control" over CSI and that, therefore, the nexus requirement is met by said control. The Complaint, however, is devoid of any reference to such coercive power. Rather, Plaintiffs simply claim in their Opposition that "[t]he state exercises coercive power over CSI through the state's regulation of CSI. See Conn. Gen. Stat. Title 17a, Chapter 319b." ^{4/}

^{4/} This Court spent considerable time and effort attempting to locate this alleged authority. When unable to locate the precise authority, as a courtesy this Court contacted Plaintiffs' counsel, in order that she provide the relevant authority from Title 17a, Chapter 319b, which stood for the proposition as cited. In complete disregard of this Court's request, counsel faxed to it three pages of the Table of Contents of Chapter 319b, encompassing fifty-three separate statutes, with no further citation. The incredible expectation that this Court will examine fifty-three separate statutes on Counsel's behalf goes beyond the pale. Counsel has been forewarned several times as to prior work product deficiencies submitted without basis to this Court. This present extraordinary response is a patent violation of Rule 3.1 of the Rules of Professional Conduct (advocate has duty to use legal procedures for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure.)

State action may properly be found where the state exercises "coercive power" over, is "entwined in [the] management or control" of, or provides "significant encouragement either overt or covert" to, a private actor, or where the private actor "operates as a willing participant in joint activity with the State or its agents," is "controlled by an agency of the State," has been delegated a "public function" by the state, or is "entwined with governmental policies."

Tancredi, 316 F.3d at 313, quoting Brentwood Academy v. Tennessee Secondary School Athletic Ass'n., 531 U.S. 288, 296 (2001).

Inasmuch as the Plaintiffs offer nothing but conclusory, unsubstantiated allegations in their Opposition, with no authority (and nothing in their Complaint), their claims of "coercive power" are rejected by this Court.

Finally. the favored contention of the Plaintiffs is that there exists the required nexus between the state and CSI, since the DMR funds and regulates CSI. Complaint ¶ 9, Opposition at p. 9. The Supreme Court has held, however, that substantial funding and a high degree of regulation alone does not make an organization a state actor liable under Section 1983. Blum v. Yaretsky, 457 U.S. 991, 1011 (1982)(no state action where nursing homes were highly regulated by, licensed by, and received significant funding from state).

The state's involvement with the private company must pertain to the challenged action for the state to be held accountable in a Section 1983 case. See Rendell-Baker 457 U.S. at 841 (state not liable under Section 1983 for claims arising from employee discharge at a private school inasmuch as state not involved in discharge decisions); Sherlock v. Montefiore Medical Ctr., 84 F.3d 522, 527 (2nd Cir. 1996) (state not liable under Section 1983 for discrimination in employment since state not

involved in personnel/discharge decisions). In the present case the state was not involved in the constitutional violations allegedly committed by CSI. The Court notes that, although the DMR funds and regulates CSI, it had no participation in the personnel or staffing decisions from which these claims arise. Accord Rendell-Baker, 457 U.S. at 841; Sherlock, 84 F.3d at 527; *cf West v Atkins*, 487 U.S. 42, 54 (1988)(physician hired by state to provide medical services to state prison inmates acted under color of state law).

In Count Eight the Plaintiffs allege that CSI retaliated against them in violation of the First Amendment and can be held liable under Section 1983. Complaint ¶¶ 112-116. Plaintiffs claim that CSI harassed and retaliated against them for making complaints about unsafe levels of staffing; Complaint ¶ 112; and for filing an incident report against two coworkers for causing harmful working conditions. Complaint ¶ 20. Nowhere in the Complaint, however, do the Plaintiffs assert that the DMR was involved in the harassment nor any retaliation allegedly committed by CSI. Without any state involvement in the acts from which these claims arise, there is no sufficiently close nexus for CSI to be liable under Plaintiffs' Section 1983 claim. Rendell-Baker, 457 U.S. at 841.

In Count Nine of the Complaint the Plaintiffs allege that their Fourteenth Amendment rights were abridged in violation of Section 1983. Complaint ¶¶ 118-124. The Plaintiffs claim that they were accused of falsifying an incident report and Ruzika was falsely accused of racism. They specifically say they were not put on leave ¶25, 26 , they were forced to work excessive hours

while under investigation, and that Ruzika was forced to resign or be demoted when she went on medical leave.⁴ Complaint ¶ 118. The Plaintiffs contend that each allegation implicates the Equal Protection and Due Process Clauses.

The Plaintiffs again fail, however, to state any facts in the Complaint that demonstrate that the state or the DMR had any influence or control over these actions. *See supra*. The sufficiently close nexus between DMR and CSI is non-existent. Personnel or management decisions are at the unfettered discretion of CSI. Accordingly, no constitutional right, as pleaded in their Complaint and amplified in their Opposition, has been abridged.

CONCLUSION

Defendants did not act under color of law when the alleged actions in this case occurred. Therefore, there is no "state action" as mandated by Section 1983, and the Plaintiffs fail to state viable claims under this statute. Counts Eight and Nine of the Plaintiffs' Complaint, are insufficient as a matter of law and the Defendants' Motion to Dismiss Counts 8 and 9 is hereby GRANTED.

Further, since the parties' major legal analysis went to the liability of CSI, pursuant to Section 1983, *see* FN.1/; pp.4-8, *infra*, as briefed extensively by the parties, the issue of the liability of any Section 1983 claims against Defendant CSI was, accordingly, decided by this Court. All Section 1983 claims

⁴/ Note in paragraph 49 it is alleged Ruzika was terminated when her earned leave expired.

against that entity also fail to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6).

The Motion to Dismiss [Doc.No.11] is hereby GRANTED as to Counts Eight, Nine, and any Section 1983 claims against CSI.

SO ORDERED

ELLEN BREE BURNS, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Dated at New Haven, Connecticut this _____ day of September, 2004.