

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-00450

Paul Reis v. Windham Northeast Supervisory Union et al

Decision on Motion for Summary Judgment

On March 5, 2021, the plaintiff Paul Reis filed this case alleging that while employed by the defendant he was subjected to humiliation, threats, bullying and hostile workplace conduct, amounting to illegal discrimination. The plaintiff is self-represented. The defendant Windham Northeast Supervisory Union was served on April 7, 2021, by delivery to a staff member at its office in Westminster. The defendant filed a motion for summary judgment on April 27, 2021, in lieu of an answer. The defendant argues that the plaintiff's claims are time-barred, because his employment ended on April 30, 2018, he filed a complaint with the federal Equal Employment Opportunity Commission on January 9, 2019, and was given a right to sue letter by the EEOC on May 5, 2019. The defendant asserts that the plaintiff complained about workplace conditions in October and November 2017, and then in March 2018. The defendant also asserts that it had investigated these claims and determined that they were unfounded. The defendant argues that the federal claims are time-barred because this action was not filed within 90 days of the issuance of the EEOC's right to sue letter.

The defendant also argues that any state law based claims are time barred because he failed to file suit within three years of the allegedly improper discriminatory conduct. Finally, the defendant argues that the plaintiff's claims must be barred because he has failed to allege that the alleged conduct was based on his membership in a protected class under the Vermont Fair Employment Practices Act, 21 V.S.A. § 495 et seq., and has also failed to allege that the defendant purposefully created intolerable working conditions that forced the defendant to resign.

The plaintiff responded by agreeing that he has failed to make a timely complaint under federal law, and that he is waiving any such claims. However, as to his state law-based claims, he argues that in fact the harassing conduct he complained of for the first time in 2017 continued all the way up to the last day of his employment with the defendant, in March 2018. He states that he was essentially forced to resign at that point by his "medical team." He makes specific factual allegations about multiple acts of inappropriate conduct by defendant's staff, mostly apparently directed at other persons, but some also directed at him. He also attached a copy of the complaint he filed with the Vermont Attorney General's civil rights unit in May 2018, in which he clearly alleged that he had been forced to resign due to his disability of PTSD, and that the offensive conduct, based in large part on his disability, had continued up to the date of his resignation.

The defendant restated its arguments that the plaintiff's filings were inadequate in its reply to his response.

Legal Conclusions

Summary judgment is appropriate if the statements of undisputed material facts, citing to particular parts of materials in the record, show that “there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a), (c). The purpose of summary judgment is to “pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (citation omitted). The moving party “has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists.” *Price v. Leland*, 149 Vt. 518, 521 (1988). Summary judgment is appropriate “where, after an adequate time for discovery, a party ‘fails to make a showing sufficient to establish the existence of an element’ essential to his case and on which he has the burden of proof at trial.” *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

In this case there has been no time for discovery, the defendant has not filed an answer, and there has not been any exchange of information about the facts. The defendant is actually, in essence moving for dismissal of the plaintiff’s claims, not for summary judgment. The standard applicable to a motion to dismiss before there has been any discovery is much stricter. A motion to dismiss a party’s claims, alleging that the party has failed to state any valid claims or demands for relief, “should not be granted unless it is beyond doubt ‘that there exist no facts or circumstances that would entitle the plaintiff to relief.’” *Richards v. Town of Norwich*, 169 Vt. 44, 48 (1999) (citation omitted). On review, Vermont courts assume the truth of all the claimant’s factual allegations and reasonable inferences from the claimant’s pleadings and construe the opponent’s contravening allegations as false. See *id.* at 48–49.

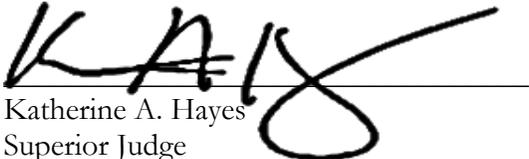
Moreover, the plaintiff is self-represented, while the defendant is represented by counsel. The court is obligated “to insure that there [is] no ‘unfair imposition or unconscionable advantage . . . taken of one who acts as [her] own attorney.’” *Olde and Co., Inc. v. Boudreau*, 150 Vt. 321, 322–323 (1988) (citation omitted). However, the court is not obligated “to offer affirmative help to a pro se litigant.” *Nevitt v. Nevitt*, 155 Vt. 391, 401 (1990). “[S]uch litigants will receive some leeway in the evaluation of their arguments, although they are nonetheless bound to observe the rules of procedure.” *In re Grundstein*, 2020 VT 102, ¶ 7, petition for cert. filed April 9, 2021 (No. 20-1423).

In light of these principles, the court grants, with the plaintiff’s consent, the motion for summary judgment/dismissal of his claims of violation of federal law. However, the court declines to grant summary judgment or dismissal as to the plaintiff’s claims of violation of the Vermont Fair Employment Practices Act. The plaintiff alleged that the discriminatory conduct he experienced was a continuing practice and existed up to the last date of his employment by the defendant. Taking all of his claims as true, his employment ended on April 30, 2018, and he filed this action on March 5, 2021, well within three years. The court therefore cannot find that his claims are untimely. The defendant’s other concerns regarding the specificity and details of the plaintiff’s claims are not properly addressed through a motion to dismiss or for summary judgment. The denial of the motion for summary judgment is without prejudice to the defendant’s right to renew the motion after some discovery is completed.

The parties are requested to file a proposed order stating their agreements for deadlines to complete discovery, and also for mediation of this case, using the court’s usual form, within 30 days of the issuance of this order.

ORDER

To the extent that the plaintiff is making any claims of violation of federal law the motion to dismiss/for summary judgment is granted. The motion for summary judgment is denied as to the plaintiff's claims of violation of Vermont's statutes barring employment discrimination. As stated above, a proposed discovery and alternative dispute resolution stipulation and order should be filed within 30 days.

A handwritten signature in black ink, appearing to read 'K.A.H.', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Katherine A. Hayes
Superior Judge
October 22, 2021