

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHRISTY PHILLIPS,  
Plaintiff

vs.

DAVID ROBERTS and DANIEL ROBERTS,  
Defendants

: NO. 16 - 0402  
:  
: CIVIL ACTION - LAW  
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:  
:  
: Preliminary Objections

### **OPINION AND ORDER**

Before the court are preliminary objections filed by Defendants on November 1, 2016. Argument on the objections was heard January 24, 2017.

In her Complaint, Plaintiff alleges she was formerly employed by Defendants (operating as DR Well Site Services, LLC) until she was fired on September 11, 2014. Defendant David Roberts is alleged to be the owner of the company, and Defendant Daniel Roberts is alleged to have been Plaintiff's supervisor. Plaintiff alleges that she was subjected by Daniel Roberts to sexual harassment and was then fired by him for reporting such to another employee. She has brought claims for sexual harassment and retaliation under the Pennsylvania Human Relations Act.<sup>1</sup>

In their objections, Defendant David Roberts seeks dismissal of the claims against him on the basis that Plaintiff did not name him in her EEOC charge. Both Defendants object to the retaliation claim (Count IV) based on the assertion that Plaintiff was employed by DR Well Site Services, LLC, and not the named individuals. Finally, Defendants demur to the retaliation claim based on the Unemployment Compensation Review Board's determination that Plaintiff's

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<sup>1</sup> Plaintiff also included identical claims under Title VII, but withdrew those in her response to the preliminary objections.

termination was a valid termination for willful misconduct, arguing that such is res judicata on the issue of the cause for Plaintiff's termination. Each of these issues will be addressed in turn.

Generally, if a plaintiff does not name a defendant in her administrative charge, she is precluded from later bringing an action against that defendant in court. Hills v. Borough of Colwyn, 978 F. Supp. 2d 469 (E.D. Pa. 2013). There is an exception to the general rule, relied on by Plaintiff herein,<sup>2</sup> that allows a case against an unnamed party to proceed "when the unnamed party received notice and when there is a shared commonality of interest with the named party." Schafer v. Board of Public Education, 903 F.2d 243, 252 (3d Cir.1990).

Plaintiff contends that even though David Roberts was not named in the caption of the EEOC charge, he was mentioned in the body of the charge and that is sufficient for bringing the instant suit. David Roberts is mentioned in the following sentence: "I was told by his [Daniel Roberts'] wife that the owner, David Roberts told Daniel Roberts' wife, that he's an adult and what he does is NOT any of his business." See Paragraph 6f of Charge, attached to Complaint as an Exhibit.

Receiving notice, however, means more than being mentioned in the charge and receiving a copy of the charge; it means that a party is made aware that his "personal conduct was being challenged". Hills, supra at 479. In the instant EEOC charge, there is nothing to put David Roberts on notice that his

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<sup>2</sup> Plaintiff's charge before the EEOC was against DR Well Site Services, LLC & Entities. See the Exhibit attached to the Complaint. (There is nothing in the charge or the record before this court to explain the reference to "& Entities".) The charge does not name either David Roberts or Daniel Roberts as Respondents.

personal conduct was being challenged.<sup>3</sup> Therefore, this objection will be sustained and the case will be dismissed as against David Roberts.

With respect to the objection that Plaintiff was employed by the company and thus Daniel Roberts cannot be held responsible for her termination, the court does not agree. In cases of alleged retaliation, the PHRA does permit individual liability. 43 P.S. § 955(d).<sup>4</sup> *See also* Clinkscales v. Children's Hospital of Philadelphia, 2007 U.S. Dist. LEXIS 83930 (E.D. Pa. 2007). Here, Plaintiff alleges that Daniel Roberts was her supervisor and that she was fired by Daniel Roberts because she reported his behavior to another employee although she had been told by him “to not tell anyone, including his wife about his comments and messages towards her.” See Paragraph 12 of Plaintiff’s Complaint. These allegations are sufficient to support the claim for retaliation and this objection will therefore be overruled.

Finally, with respect to the objection that the Unemployment Compensation Review Board’s determination is res judicata on the issue of the cause for Plaintiff’s termination, the Unemployment Compensation Law specifically provides to the contrary,<sup>5</sup> and Defendants conceded this point at argument. This objection will therefore also be overruled.

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<sup>3</sup> Indeed, even in the Complaint in this court, there are no allegations regarding David Roberts, other than that he is the owner of DR Well Site Services, LLC. His conduct is not at issue in either pleading.

<sup>4</sup> “It shall be an unlawful discriminatory practice ... (d) For any *person*, employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, .... 43 P.S. § 955 (emphasis added).

<sup>5</sup> “No finding of fact or law, judgment, conclusion or final order made with respect to a claim for unemployment compensation under this act may be deemed to be conclusive or binding in any separate or subsequent action or proceeding in another forum.” 43 P.S. § 829.

**ORDER**

AND NOW, this        day of February 2017, for the foregoing reasons, the preliminary objections are overruled in part and sustained in part. Based on Plaintiff's representation in her response to the preliminary objections, Counts I and III are deemed withdrawn. Counts II and IV are hereby DISMISSED as against Defendant David Roberts only.

Defendant Daniel Roberts shall file an Answer to Counts II and IV of the Complaint within thirty (30) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Martell Harris, Esq., Kraemer, Manes & Associates  
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Scott T. Williams, Esq.  
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Hon. Dudley Anderson