[Cite as *Hirano v. Ohio State Univ.*, 2014-Ohio-5932.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

TOMOKO HIRANO

Plaintiff

v.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2012-07871

Judge Patrick M. McGrath
Magistrate Holly True Shaver

DECISION

{¶1} On September 27, 2013, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). With leave of court, on November 1, 2013, plaintiff filed her response to the motion and a "notice of voluntary dismissal of Counts IV (wrongful termination in violation of public policy) and V (battery) of complaint."[1] With leave of court, on January 14, 2014, defendant filed its reply. The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as

[1]Plaintiff's November 1, 2013 "notice of voluntary dismissal" shall be construed as a motion for leave to amend her complaint pursuant to Civ.R. 15(A), and is GRANTED, instanter. ("[T]he proper procedure for a plaintiff to dismiss fewer than all claims against a single defendant is to amend the complaint pursuant to Civ.R. 15(A).") *Pattison v. W.W. Grainger, Inc.*, 120 Ohio St.3d 142, 2008-Ohio-5276, ¶ 19. Accordingly, Counts IV and V are STRICKEN from plaintiff's complaint. In addition, plaintiff's November 13, 2013 motion for leave to exceed the page limitation is GRANTED.

stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty.*, 104 Ohio St. 3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} In January 2012, plaintiff, who is a native of Japan, applied for a post-doctoral researcher position in defendant's Department of Molecular Genetics, Center for Applied Plant Sciences. The position was funded through a federal grant from the National Science Foundation, required specialized knowledge in molecular biology, biochemical science, and plant cell biology, and a Ph.D. in a biological science field. After she was selected for the position, plaintiff arrived at the university on or about May 3, 2012. In anticipation of plaintiff's arrival, her supervisor, Dr. Biao Ding, a professor in the Department of Molecular Genetics, asked two associates to assist plaintiff with her transition to living in the United States: Ying Wang, a male post-doctoral researcher who worked in Dr. Ding's laboratory; and Dr. Kengo Morohashi, a male research scientist who worked in a different laboratory that was located on the same floor. Both Dr. Wang and Dr. Ding are natives of China, while Dr. Morohashi is a native of Japan. Plaintiff was also introduced to two female Japanese researchers in different departments: Atsuko Uchida and Waka Omata.

{¶5} The basis of plaintiff's complaint regards Dr. Morohashi's conduct on May 17, 2012. According to plaintiff, on that date, Dr. Morohashi approached her in a stairwell of the building where the laboratory was located, and he engaged plaintiff in a conversation in Japanese that lasted approximately two hours. During the conversation, plaintiff asserts that Dr. Morohashi asked her if she had a boyfriend, inquired about her sexual history, told her that she should buy him dinner because she

needed his help to live in Columbus, propositioned her to have sex with him, and told her that he wanted her to participate in a sexual role play of doctor/patient. Plaintiff asserts that Dr. Morohashi's conduct was unwelcome and that she was uncomfortable during the conversation, but she felt that she would have jeopardized her job if she did not engage in a conversation with him. Plaintiff and Dr. Morohashi then moved to an unoccupied room and the conversation continued until after 11:00 p.m. Plaintiff asserts that Dr. Morohashi insisted in driving her home and that when they arrived at her apartment, Dr. Morohashi forcibly grabbed the back of her head and attempted to kiss her. Plaintiff was able to avoid the kiss, got into her apartment and locked the door. Plaintiff did not have any other unwelcome or inappropriate interaction with Dr. Morohashi after May 17, 2012.

{¶6} After the incident, plaintiff missed approximately one week of work in May, which plaintiff attributes to the stress she endured from Dr. Morohashi's conduct, combined with issues that she was having with her apartment, where she was unable to sleep.

{¶7} Dr. Ding went to China for approximately the entire month of June. During that time, he kept in touch with plaintiff and Dr. Wang via email. In early June, plaintiff was hospitalized for vision problems after she looked into a UV light in the laboratory. Plaintiff was hospitalized from July 12-17, 2012. When Dr. Ding returned from China in early July, he was concerned about the lack of progress plaintiff was making in the laboratory and plaintiff's absences. In addition, plaintiff's sister had contacted Dr. Ding from Japan worried that she could not contact plaintiff.

{¶8} On July 17, 2012, Dr. Ding met with plaintiff and discussed his concerns. At the meeting, plaintiff reported that she had been sexually harassed. Dr. Ding advised her to report the conduct to defendant's human resources department. An investigation was conducted, which resulted in a finding that Dr. Morohashi spoke to

plaintiff and touched her in ways that were inappropriate. Dr. Morohashi was thereafter required to attend a class regarding sexual harassment.

{¶9} On August 22, 2012, plaintiff's employment was terminated. Plaintiff asserts claims of sexual harassment, retaliation, failure to pay overtime compensation, and intentional infliction of emotional distress. In its motion, defendant asserts that plaintiff cannot prevail on any of her claims.

EMPLOYMENT DISCRIMINATION

{¶10} R.C. 4112.02 provides: "It shall be an unlawful discriminatory practice: (A) For any employer, because of the * * * sex * * * of any person, to discharge without just cause, to refuse to hire, or otherwise discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment." Under R.C. 4112.02(A), an employer is prohibited from engaging in sexual discrimination against an employee. *Peterson v. Buckeye Steel Casings*, 133 Ohio App.3d 715, 722 (1999). The Supreme Court of Ohio has held that "federal case law interpreting Title VII of the Civil Rights Act of 1964, Section 2000(e) et seq., Title 42, U.S. Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112." *Plumbers & Steamfitters Joint Apprenticeship Comm. v. Ohio Civil Rights Comm'n*, 66 Ohio St.2d 192, 196 (1981).

{¶11} Pursuant to R.C. 4112.02(A), there are two types of actionable sexual harassment: "(1) 'quid pro quo' harassment, i.e., harassment that is directly linked to the grant or denial of a tangible economic benefit, or (2) 'hostile environment' harassment, i.e., harassment that, while not affecting economic benefits, has the purpose or effect of creating a hostile or abusive working environment." *Hampel v. Food Ingredients Specialties, Inc.*, 89 Ohio St.3d 169, 2000-Ohio-128, paragraph one of the syllabus.

1. Quid Pro Quo Sexual Harassment

{¶12} "The elements of a claim for quid pro quo sexual harassment include: (1) that the employee was the member of a protected class; (2) the employee was subjected to unwelcome sexual harassment in the form of sexual advances or the request for sexual favors; (3) the harassment complained of was based on sex; (4) the employee's submission to such unwelcome advances was an express or implied condition for advancement or favorable job conditions, or that rejection of the sexual advances resulted in a tangible job detriment; and (5) the existence of respondeat superior liability. *Kauffman v. Allied Signal Inc.* (C.A.6, 1992), 970 F.2d 178, 185-186. In such an action for quid pro quo sexual harassment, the employer will be held strictly liable for the misconduct of its supervisory employees under the theory of respondeat superior. *Id*.

{¶13} Construing the evidence most strongly in favor of plaintiff, she has established that as a female, she was a member of a protected class; that she was subjected to unwelcome sexual harassment in the form of sexual advances from Dr. Morohashi on May 17, 2012; and that the harassment was based on sex. However, with regard to the fourth element, defendant asserts that inasmuch as Dr. Morohashi was not plaintiff's supervisor, plaintiff cannot establish a prima facie claim of quid pro quo sexual harassment.

{¶14} Defendant submitted both the deposition and an affidavit of Dr. Ding, the deposition of Chitra Iyer, Human Resources Director for the College of Arts and Sciences, and plaintiff's deposition to support its assertion that Dr. Morohashi was not plaintiff's supervisor. Dr. Ding testified that Dr. Morohashi did not work in his laboratory, but worked as a research scientist in Professor Grotewold's laboratory. (Ding Deposition, page 11.) Dr. Ding testified that although Professor Grotewold's laboratory was within the Department of Molecular Genetics, Dr. Morohashi did not have supervisory authority over plaintiff. (Ding Affidavit, ¶ 6.) Dr. Ding stated in his

affidavit that he supervises post-doctoral researchers who assist with research in his lab, and that, "[a]s a post-doctoral researcher, Ms. Hirano reported to me directly." (Ding Affidavit, ¶ 2-7.) Dr. Ding was plaintiff's supervisor and was the decision-maker in her hiring and firing. (Ding Deposition, page 57.) Dr. Ding testified that he was plaintiff's sponsor for her work on a National Science Foundation grant, which is how she was paid for her work. Iyer testified that Dr. Ding made the decision to terminate plaintiff and that her role was to make sure that the termination was in accordance with the University policy and practice. (Iyer Depo, pages 31-32.) Iyer's Deposition Exhibit 10 is a letter dated August 22, 2012, to plaintiff from Dr. Ding, informing her of her termination from employment effective August 22, 2012. In addition, plaintiff testified that Dr. Morohashi "had nothing to do with [the federal] grant or [her] work." (Plaintiff's deposition, page 48.)

{¶15} In response, plaintiff cites *Foster v. Ohio Bell Telephone Co.*, 8th Dist. Cuyahoga No. 92828, 2009-Ohio-6465 for the proposition that the harasser does not need to be a supervisor in a claim for quid pro quo harassment. However, in *Foster*, the court stated:

{¶16} "[A] quid pro quo claim of harassment can rest on an alleged harasser's authority to influence an adverse employment decision, if that influence is so significant that the harasser may be deemed the de facto decisionmaker." * * * To prevail on his claim, Foster must establish more than mere 'influence' or 'input' in the decision-making process. 'The supervising employee need not have ultimate authority to hire or fire to qualify as an employer, so long as he or she has significant input into such personnel decisions.' * * * A quid pro quo claim requires 'a demonstrable nexus between the offensive conduct of the supervisor and the adverse employment action.'" (Internal citations omitted.) *Id*. at ¶ 19.

{¶17} Construing the evidence most strongly in favor of plaintiff, the only reasonable conclusion is that Dr. Morohashi was not plaintiff's supervisor, and that he

did not have significant input into personnel decisions. Therefore, plaintiff's claim of quid pro quo sexual harassment fails as a matter of law.

2. Hostile Work Environment

{¶18} In order to establish a claim for hostile work environment sexual harassment, a plaintiff must show: "1) that the harassment was unwelcome, 2) that the harassment was based on sex, 3) that the harassing conduct was sufficiently severe or pervasive to affect the 'terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment'; and, 4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action." *Hampel, supra* at paragraph 2 of the syllabus.

{¶19} As stated above, plaintiff can establish that the harassment was unwelcome and that it was based on sex. Arguably, plaintiff can establish that Dr. Morohashi's conduct was sufficiently severe to affect the conditions of her employment, in that she was hospitalized shortly after May 17, 2012. However, plaintiff has failed to establish that the harassment was committed by a supervisor. Therefore, plaintiff's claim hinges on establishing that defendant knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

{¶20} The evidence submitted shows that plaintiff first contacted Dr. Wang to report that she had been sexually harassed in an email dated July 11, 2012. (Wang Deposition, page 18.) Approximately an hour later, Dr. Wang advised plaintiff that she should report the conduct to Dr. Ding, and he forwarded her some hyperlinks regarding how to report sexual harassment to the university. (Wang Deposition, pages 21-22.) Then, Dr. Wang sent her an email on July 13, 2012, advising her on the university policy about reporting sexual harassment. (Wang Deposition, Exhibit 29.)

{¶21} Atsuko Uchida testified that she overheard plaintiff and Dr. Morohashi talking to each other in the stairwell on May 17, 2012; that she said "hello" to them; that she asked plaintiff if she was okay; that plaintiff responded that everything was okay; and that Uchida then left for home. A few days later, plaintiff called Uchida to tell her that she was ill and she felt she was having a nervous breakdown. (Uchida Deposition, page 15.) During that conversation, plaintiff told Uchida that when she was talking to Dr. Morohashi he "touched her head"; that when people touch her she gets nervous and becomes ill, and asked Uchida not to tell anyone that Dr. Morohashi had touched her head. Although Uchida testified that prior to May 17, 2012, plaintiff had confided in her that she had been sexually harassed in Japan, and that she was uncomfortable being around men alone, Uchida testified that the first time that she learned that plaintiff was claiming that she had been sexually harassed by Dr. Morohashi was when defendant's human resources department contacted her for an interview. In addition, Uchida received an email from Dr. Wang on July 18, 2012, wherein Dr. Wang informed her that plaintiff was "going to" report Dr. Morohashi's conduct to the university.

{¶22} With regard to Dr. Ding, he averred, as follows:

{¶23} "11. In early July 2012, Ms. Hirano's sister contacted me from Japan, expressing concern about Ms. Hirano's behavior and that she was having trouble finding her.

{¶24} "12. After missing an excessive number of days over the course of two months and because Ms. Hirano's sister was concerned about her, I e-mailed Ms. Hirano about her excessive absenteeism and that she should consider taking an unpaid leave of absence so that she could focus on her health or whatever issues were preventing her from being able to work.

{¶25} "13. I then asked to meet with Ms. Hirano on July 17, 2012, to discuss her performance. Prior to that meeting, I had determined that Ms. Hirano's excessive

absenteeism and lack of research progress prevented me from being able to continue to certify her work through the federal grant program.

{¶26} "14. During this meeting, I informed Ms. Hirano that I could no longer certify her work under the federal grant because she had consistently failed to report to work and her research was unsatisfactory. I informed her that if something was preventing her from being able to work, she should consider taking a leave of absence, returning to Japan to get better, and then possibly returning to OSU at a later date so as to avoid having a termination on her record.

{¶27} "15. *During our conversation, Ms. Hirano did not mention anything about sexual harassment until after I told her that she should consider returning to Japan and taking a leave of absence.*

{¶28} "16. When she mentioned that she thought she had been sexually harassed, she did not provide details, nor did she tell me who harassed her and whether it was even an OSU employee.

{¶29} "17. As soon as she told me that she believed that she had been sexually harassed, I informed her of the resources available to her at The Ohio State University's Human Resources Office and suggested that she speak with the trained professionals there.

{¶30} "18. Following my discussion with her, Ms. Hirano notified Human Resources that she believed she had been sexually harassed." (Emphasis added.)

{¶31} Plaintiff states in her affidavit that: "37. In July, 2012, I reported Dr. Morohashi's sexual harassment to Dr. Ding." Plaintiff does not state that she reported the harassment prior to her meeting with Dr. Ding about her performance deficiencies.

{¶32} Kristi Kuhbander, defendant's employee labor relations consultant, averred that on July 20, 2012, plaintiff went to the Human Resources Central Office to report that she had been sexually harassed by Dr. Morohashi. (Affidavit, ¶ 4.) Plaintiff was interviewed and an investigation was initiated the next day. (*Id*., paragraphs 5-6).

{¶33} Construing the evidence most strongly in plaintiff's favor, the only reasonable conclusion is that plaintiff did not report the harassment to defendant until July 2012. Once informed of the allegations, the university started an investigation. Plaintiff points to no issue of fact that would allow a reasonable inference that defendant knew or should have known of the harassment and failed to take immediate and appropriate corrective action. Therefore, plaintiff's hostile work environment cause of action fails as a matter of law.

RETALIATION

{¶34} In order to establish a prima facie case of retaliation under R.C. 4112.02(I), plaintiff is required to prove that: "'(1) plaintiff engaged in a protected activity; (2) the employer knew of plaintiff's participation in the protected activity; (3) the employer engaged in retaliatory conduct; and (4) a causal link exists between the protected activity and the adverse action.'" *Motley v. Ohio Civ. Rights Comm.*, 10th Dist. No. 07AP-923, 2008-Ohio-2306, ¶ 11, quoting *Zacchaeus v. Mt. Carmel Health Sys.*, 10th Dist. No. 01AP-683, 2002-Ohio-444. (Additional citations omitted.)

{¶35} Plaintiff can establish that she reported the harassing conduct in July, and that her employment was terminated in August. For purposes of this motion, assuming that plaintiff states a prima facie claim of retaliation, the burden of production shifts to defendant to articulate a legitimate, nondiscriminatory reason for its action. *Chandler v. Empire Chem., Inc.*, 99 Ohio App.3d 396 (1994). If defendant succeeds in doing so, then the burden shifts back to plaintiff to demonstrate that defendant's proffered reason is mere pretext for unlawful retaliation. *Id*. A reason cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false and that discrimination was the real reason. *Knepper v. Ohio State Univ.*, 10th Dist. Franklin No. 10AP-1155, 2011-Ohio-6054, at ¶ 25.

{¶36} According to Dr. Ding, he was concerned with plaintiff's absences and lack of research progress when he returned from China; he felt he could not continue to represent to the federal grant authorities that plaintiff was performing work expected of a post-doctoral researcher to justify her salary; and he scheduled a meeting with plaintiff specifically to address those concerns. Therefore, defendant has articulated a legitimate, nondiscriminatory reason for terminating plaintiff's employment.

{¶37} Then the burden shifts back to plaintiff to raise an inference that the nondiscriminatory reason for her termination was not the true reason. Plaintiff has alleged that she was hospitalized as a result of Dr. Morohashi's conduct. Indeed, in response to defendant's motion, plaintiff presented medical documentation, dated July 27, 2012, that states that she was "incapacitated secondary to mental health condition from May 17, 2012 until today," and a letter dated August 24, 2012 from Johanna Wilson, M.D., which states that she has been treating plaintiff for PTSD and attributed her hospitalization in July to the alleged sexual harassment in May. Construing the facts most strongly in favor of plaintiff, issues of material fact exist with regard to pretext, specifically, whether plaintiff's employment was terminated based on her performance or in retaliation for reporting harassing conduct. Therefore, defendant is not entitled to summary judgment on plaintiff's retaliation claim.

R.C. 4111 AND THE FAIR LABOR STANDARDS ACT

{¶38} Although plaintiff contends that she was not paid overtime compensation in violation of the Fair Labor Standards Act, defendant asserts that plaintiff's position was subject to the "learned professional" exemption from the FLSA. "[B]oth the FLSA and Chapter 4111 are remedial in nature with the underlying policy of allowing employees to vindicate their rights and receive a fair wage. * * * Consequently, the FLSA exemptions are narrowly construed against the employer, and the employer must demonstrate by clear and affirmative evidence that the employee is covered by the exemption. * * *

There is a presumption of non-exemption. * * * 'Application of the exemption is limited to those circumstances plainly and unmistakably within the exemption's terms and spirit.' * * * The manner in which an employee spends his time is a question of fact, while the determination whether his duties fall within an exemption is a question of law. * * *. (Internal citations omitted.) *White v. Murtis M. Taylor Multi-Service Ctr.*, 188 Ohio App.3d 409, 8th Dist. Cuyahoga No. 93431, 2010-Ohio-2602, paragraph 12.

{¶39} R.C. 4111.03(A) states, in part:

{¶40} "An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended."

{¶41} 29 CFR 541.301 states, in relevant part:

{¶42} "(a) To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring *advanced knowledge in a field of science* or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three elements:

{¶43} "(1) The employee must perform work requiring advanced knowledge;

{¶44} "(2) The advanced knowledge must be in a field of science or learning; and

{¶45} "(3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

{¶46} "(b) The phrase 'work requiring advanced knowledge' means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze,

interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

{¶47} "(c) The phrase 'field of science or learning' includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, *various types of physical, chemical and biological sciences*, pharmacy and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

{¶48} "(d) The phrase 'customarily acquired by a prolonged course of specialized intellectual instruction' restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the *appropriate academic degree*." (Emphasis added.)

{¶49} Construing the evidence most strongly in favor of plaintiff, the only reasonable conclusion is that plaintiff's position as a post-doctoral researcher in the field of molecular biology, biochemical science, and plant cell biology, which required a Ph.D. in a biological science field is subject of the learned professional exemption of the FLSA. Therefore, plaintiff's claim for overtime compensation fails as a matter of law.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

{¶50} The elements of intentional infliction of emotional distress are that "(1) defendant intended to cause emotional distress, or knew or should have known that actions taken would result in serious emotional distress; (2) defendant's conduct was extreme and outrageous; (3) defendant's actions proximately caused plaintiff's psychic injury; and (4) the mental anguish plaintiff suffered was serious." *Hanly v. Riverside Methodist Hosp.*, 78 Ohio App.3d 73, 82 (10th Dist.1991).

{¶51} Termination of employment, even if discriminatory, in and of itself cannot rise to the level of extreme and outrageous conduct required to prove intentional infliction of emotional distress. *Godredson v. Hess & Clark* (6th Cir. 1999), 173 F.3d 365. *See also Kung v. Dept. of Insurance*, Ct. of Cl. No. 2007-02033, 2009-Ohio-5328. Construing the evidence most strongly in favor of plaintiff, the only reasonable conclusion is that any alleged conduct of defendant is not of the extreme and outrageous character required to prevail upon a claim for intentional infliction of emotional distress. *See Yeager v. Local Union 20*, 6 Ohio St.3d 369, 374 (1983).

{¶52} In addition, assuming that Dr. Morohashi's conduct occurred as plaintiff testified, it is not extreme and outrageous, "as to go beyond all possible bounds of decency." *Id*. Accordingly, defendant is entitled to summary judgment as a matter of law on plaintiff's claim for intentional infliction of emotional distress.

{¶53} For the foregoing reasons, the court finds that issues of material fact exist with regard to plaintiff's retaliation claim, but that defendant is entitled to judgment as a matter of law on plaintiff's remaining claims. Accordingly, defendant's motion for summary judgment shall be granted, in part, and denied as to the retaliation claim.

_____

PATRICK M. MCGRATH
Judge

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

TOMOKO HIRANO

Plaintiff

v.

THE OHIO STATE UNIVERSITY

Defendant
Case No. 2012-07871

Judge Patrick M. McGrath
Magistrate Holly True Shaver

{¶54} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED, in part, as to Counts I, II, VI, and VII of plaintiff's complaint but DENIED as to Count III.

_____
PATRICK M. MCGRATH
Judge

cc:

Brian D. Spitz
Fred M. Bean
4568 Mayfield Road, Suite 102

Randall W. Knutti
Assistant Attorney General
150 East Gay Street, 18th Floor

South Euclid, Ohio 44121 Columbus, Ohio 43215-3130

Filed May 28, 2014
Sent To S.C. Reporter 10/23/15