

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

R. Michael Ardis,

Plaintiff,

v.

Sykes Enterprises Inc., a Business Process
Outsourcing Company; Vanessa Cox; Fausto
Salas; Johnny Villalobos; Latoya Walker-Cole;
Jane Does 1-5; and John Does 1-5,

Defendants.

C. A. NO. 2022-CP-43-1781

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SC Court of Appeals

ORDER GRANTING SUMMARY JUDGMENT

This matter comes before the Court on a Motion to Dismiss Plaintiff's Complaint filed by Defendants Sykes Enterprises, Inc. ("Sykes"), Vanessa Cox, Fausto Salas, Johnny Villalobos, and Latoya Walker-Cole (together, "Defendants"). For the reasons provided herein, Defendants' Motion is converted to a motion for summary judgment and is GRANTED.

Defendants' Motion seeks to dismiss all of the claims in Plaintiff's Complaint, which includes: (1) breach of contract (Complaint ¶¶34-44), (2) "money and benefits owed" but referencing an alleged tortious interference with contract (Complaint ¶¶45-47), (3) "fraud" but referencing breach of contract accompanied by an alleged fraudulent act (Complaint ¶¶48-53), (4) intentional infliction of emotional distress (Complaint ¶¶54-61), and (5) wrongful discharge in violation of public policy (Complaint ¶¶62-75). Defendants filed a legal memorandum in support of their Motion on December 5, 2022. Plaintiff filed objections to Defendants' Motion on December 15, 2022, and then filed a Supplemental Memorandum of Law in Opposition to Defendants' Motion on August 4, 2023. Defendants filed a Reply in Support of Defendants' Motion on September 13, 2023.

The Court held a hearing on Defendants' Motion on January 29, 2024. Present at the

hearing were Jeffrey Lehrer, counsel for Defendants, and Plaintiff, appearing *pro se*. During this hearing, both parties submitted additional information for the Court to consider. Relevant to Defendants' Motion, Defendants submitted a copy of Defendant Sykes' Employment-At-Will Policy, Corrective Action Policy, EEO Policy, Plaintiff's Charge of Discrimination filed with the South Carolina Human Affairs Commission (SCHAC) and the Equal Employment Opportunity Commission (EEOC), and the dismissals and notices of right to sue issued by SCHAC and EEOC. Defendants submitted other documents related to other pending motions before the Court. Plaintiff submitted additional information and articles for the Court to consider and answered the Court's questions about his claims. Both parties have been provided a full opportunity to present arguments and provide any additional materials related to Defendants' Motion. Defendants' Motion has been fully and extensively briefed by both parties. The Court has reviewed all the information filed and presented by the parties related to Defendants' Motion.

Both parties have submitted information and facts outside of the Complaint. The Court has considered information outside the Complaint and specifically relied on information and documents related to the dismissal of Plaintiff's Charge of Discrimination with SCHAC and the EEOC, and the statute of limitations deadlines noted therein. Accordingly, the Court has converted Defendants' Motion into a motion summary judgment. In considering a motion for dismissal under Rule 12(b)(6), if "matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Rule 12(b), SCRCF; *see also Crosswell Enterprises, Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992) ("Although the motion to dismiss was made under Rule 12(b), SCRCF, the circuit court appropriately treated the proceeding as one for summary judgment, because the motion was supported by matters outside the pleadings."). Pursuant to Rule 56, SCRCF, the Court

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has viewed Plaintiff's Complaint, Plaintiff's allegations and all inferences reasonably drawn therefrom in the light most favorable to Plaintiff. *Strother v. Lexington Cnty Recreation Comm'n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

FINDINGS OF FACT

Plaintiff worked for Defendant Sykes as a Customer Service Agent from March until November 2019. (Compl. at ¶¶ 3, 27.) Plaintiff's Complaint alleges that Plaintiff was singled out for an "unscheduled" meeting on November 7, 2019, during which he was "coerced" into completing "surveys," and, the next day, he was suspended, without details albeit with pay, and then terminated. (Compl. at ¶¶ 13-20.) Plaintiff's Complaint also alleges Plaintiff asked Defendant Salas for copies of various Defendant Sykes' policies and procedures and was not provided with these policies. (Compl. at ¶ 20.) Plaintiff's Complaint further alleges Defendant Cox "live listened" to Plaintiff's calls with customers "searching for something against him"; that his disciplinary "situation" got escalated to Defendant Sykes' corporate offices in Tampa, Florida, contrary to the normal process; and that his treatment was harsher than the treatment of non-white, non-disabled, female, and younger comparators. (Compl. at ¶¶ 23, 26, 28.) Plaintiff claims Defendants' actions violated either Defendant Sykes' progressive discipline policies and procedures, South Carolina employment law, or public policy. (Compl. at ¶¶ 24, 27.) The allegations in Plaintiff's Complaint concerning Defendant Villalobos are only that he is Latino, a Costa Rican native, was promoted to Sumter from Defendant Sykes' Costa Rica site, and that Plaintiff requested a meeting with Defendant Villalobos. (Compl. at ¶ 10 & Ex. A at ¶ 27(b).) Plaintiff's Complaint does not contain any factual allegations concerning Defendant Walker-Cole.

On August 7, 2023, Plaintiff filed a Supplemental Response in opposition to Defendants' Motion, alleging that his Complaint properly alleges violations of the South Carolina Human

Affairs Law. Plaintiff's primary argument in his Supplemental Response is that he has "alleged race, age, gender and disability discrimination under the South Carolina Human Affairs Law and other statutes." (Plaintiff's Supplemental Response ¶ 1.) Plaintiff then proceeded to cite cases and arguments related to a claim under the South Carolina Human Affairs law. (See Sections III, IV, V, and VI of Plaintiff's Supplemental Response.)

CONCLUSIONS OF LAW

It is clear from a review of Plaintiff's Complaint, Plaintiff's responses to Defendants' Motion, and his arguments that all of Plaintiff's claims are based on the underlying allegations that Defendants discriminated against him because of his race (Caucasian), gender (male), age (over 40), and disability. The Court finds that Plaintiff's exclusive remedy for pursuing such claims of discrimination were the South Carolina Human Affairs law, S.C. Code Ann. § 1-13-10, *et. seq.*, and/or the applicable federal employment law statutes prohibiting such discrimination (Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).

Plaintiff initially pursued these discrimination claims as required under the applicable statutes by filing an administrative Charge of Discrimination with the EEOC and the SCHAC on December 6, 2019. S.C. Code Ann. § 1-13-90(a) ("Any person shall complain in writing under oath or affirmation to the Commission within one hundred eighty days after the alleged discriminatory practice occurred."); 42 U.S.C. § 2000e-5 (stating that "such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred").

SCHAC dismissed Plaintiff's Charge of Discrimination on February 26, 2021. The dismissal notified Plaintiff of the specific statute of limitations for filing any claim under the

Human Affairs Law, which is as follows:

If a charge filed with the commission by a complainant pursuant to this chapter is dismissed by the commission, or if within one hundred eighty days from the filing of the charge the commission has not filed an action under this chapter or entered into a conciliation agreement to which the complainant is a party, the complainant may bring an action in equity against the respondent in circuit court. The action must be brought within one year from the date of the violation alleged, or within one hundred twenty days from the date the complainant's charge is dismissed, whichever occurs earlier, except that this period may be extended by written consent of the respondent.

S.C. Code Ann. § 1-13-90(d)(6). Plaintiff's Charge of Discrimination admitted that the "Latest" date of alleged discrimination was November 22, 2019, which he admitted was the date Defendant Sykes terminated his employment. Thus, Plaintiff's one-year statute of limitations under the Human Affairs law expired on November 22, 2020, one year from the date of the violation alleged. Plaintiff filed the instant lawsuit on November 3, 2022, almost two years after the statute of limitations for any claims under the Human Affairs law expired.

Similarly, the EEOC issued a dismissal and notice of rights to Plaintiff on April 7, 2021, and notified Plaintiff that he only had 90 days to file a lawsuit related to his federal statutory discrimination claims. Plaintiff was required to initiate any federal discrimination claims alleged in his EEOC Charge of Discrimination on or before approximately July 7, 2021. Plaintiff failed to do so, filing this lawsuit on November 3, 2022, over 16 months after his statute of limitations expired.

It is clear from Plaintiff's Complaint and his statements and arguments in opposition to Defendants' Motion that he is attempting to now pursue his discrimination claims under state common law claims. However, the Court finds that, because Plaintiff had statutory remedies to pursue his discrimination claims, he was required to pursue those statutory claims instead of the

common law claims he is attempting to assert in this case. The South Carolina Supreme Court has made clear that “[w]hen a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy.” *Dockins v. Ingles Markets, Inc.*, 306 S.C. 496, 413 S.E.2d 18 (1992) (holding the common law claim was not available where the employee had a state or federal statutory remedy); *see also Barron v. Labor Finders of S.C.*, 393 S.C. 609, 615 (2011). In enacting the South Carolina Human Affairs law, the South Carolina General Assembly created a state agency, SCHAC, to handle complaints of employment discrimination, and provided a required procedure for plaintiffs to timely pursue such claims in court. Similarly, the United States Congress established the EEOC and provided required procedures for pursuing federal discrimination claims in court. Plaintiff failed to comply with the statute of limitations periods established by these laws despite being informed of the specific statute of limitations that applied by both the SCHAC and the EEOC.

The Court further finds that Plaintiff has not alleged facts other than the alleged discrimination sufficient to support any of his common law claims. He has not alleged any specific mandatory language in Defendants’ policies that could create a contractual obligation that was breached by his separation. *Hessenthaler v. Tri-Cnty. Sister Help, Inc.*, 365 S.C. 101, 616 S.E.2d 694, 698 (2005) (to establish a contract claim, language must be “definitive in nature, promising specific treatment in specific situations”). In addition, at the hearing on Defendants’ Motion, Plaintiff admitted that he never received or read Defendant Sykes’ policies during his employment with Sykes. Accordingly, he could not have relied on any promises in such policies in a way that could create a contractual obligation. Nevertheless, the Court has reviewed Defendant Sykes’ policies, and they contain no such mandatory language related to discipline or termination of employment that could create a contractual obligation.

Plaintiff cannot maintain a claim for tortious interference with contract because he has only alleged facts of discrimination by supervisory employees of Defendant Sykes and has not asserted facts that support an alleged interference by a third party. *See Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 605, 753 S.E.2d 840, 844 (2012) (“[T]he actions of a principal’s agent are afforded a qualified privilege from liability for tortious interference with the principal’s contract.”); *Threlkeld v. Christoph*, 280 S.C. 225, 312 S.E.2d 14 (Ct. App. 1984) (granting summary judgment where alleged interference was by two supervisors).

Plaintiff cannot maintain a claim for breach of contract accompanied by fraudulent act because he has not alleged a valid breach of contract as discussed above. *See Anthony v. Atl. Group, Inc.*, 909 F. Supp. 2d 455, 472 (D.S.C. 2012) (granting summary judgment to the employer on plaintiffs’ breach of contract accompanied by fraud claim, given that no contract existed altering the employees’ at-will employment status).

Plaintiff cannot maintain a claim for intentional infliction of emotional distress because, other than allegations of discrimination, he has not alleged conduct that could be viewed as so extreme and outrageous as to exceed all possible bounds of decency. *See Johnson v. Dailey*, 318 S.C. 318, 323, 457 S.E.2d 613, 615 (1995) (outrage claim properly dismissed because the employee’s termination could not be “regarded as atrocious and utterly intolerable in a civilized society”).

Plaintiff cannot maintain a claim for wrongful discharge because the only public policy he has identified are the statutory prohibitions against discrimination for which he had a statutory remedy that he failed to timely pursue as discussed above. *See Barron*, 393 S.C. at 614, 713 S.E.2d at 637.

For all the foregoing reasons, the Court hereby GRANTS summary judgment in favor of Defendants and dismisses all of Plaintiff's claims in this case. Because the Court is dismissing this case in its entirety, the remaining pending motions filed by both parties after Defendants' Motion to Dismiss are deemed moot and denied.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.

_____, 2024
Sumter, South Carolina



Sumter Common Pleas

Case Caption: R Michael Ardis VS Sykes Enterprises Inc , defendant, et al

Case Number: 2022CP4301781

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So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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