

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

2015 APR 14 P 1:51

PAULA TOOHEY

Plaintiff

v.

THE ILLUMINATING COMPANY, et al.

Defendants

PROCESSED

APR 14 2015

CUYAHOGA COUNTY CLERK
OF COURTS
IMAGING DEPARTMENT

CASE NO. CV 15 839016

JUDGE PAMELA A. BARKER

OPINION AND JOURNAL ENTRY
ON DEFENDANTS' MOTION TO DISMISS

CLERK OF COURTS
CUYAHOGA COUNTY

This matter is before the Court on Defendants' Motion To Dismiss Plaintiff's Complaint filed on 2/19/2015 ("Defendants' Motion"), and Plaintiff's Opposition To Defendants Rule 12(B)(6) Motion filed on 3/17/2015 ("Plaintiff's Opposition").

In her Complaint, Plaintiff alleges two causes of action against Defendants: 1.) wrongful discharge in violation of public policy ("the public policy tort claim"); and 2.) breach of contract. Defendants set forth four arguments in support of their Motion, none of which persuade this Court to grant Defendants' Motion.

First, Defendants argue that the public policy exception to the employment-at-will doctrine applies only to at-will employees, and Plaintiff alleges that she was a contract employee. While Plaintiff does allege that she was a contract employee, she also alleges that she was an at-will employee. Paragraph 10 of the Complaint reads in relevant part: "Defendant placed the Plaintiff on a last chance agreement that modified her employment at will status creating a termination for cause employment relationship between the parties." Thus, Plaintiff has alleged that: 1.) she was an employee at-will, making the public policy exception to the employment-at-will doctrine applicable to her so as to support her public policy tort claim; or,

in the alternative 2.) she was a contract employee pursuant to the alleged last chance agreement, so as to support her breach of contract claim. In other words, Plaintiff has pled two causes of action in the alternative, consistent with Civil Rule 8(A).

Second, Defendants argue that Plaintiff has not sufficiently articulated the source of public policy that underlies her public policy tort claim and in support thereof, cite and rely upon the Ohio Supreme Court's holding in *Dohme v. Eurand Am., Inc.*, 130 Ohio St.3d 168, 2011-Ohio-4609, to wit:

To satisfy the clarity element of a claim of wrongful discharge in violation of public policy, a terminated employee must articulate a clear public policy by citation to specific provisions in the federal or state constitution, federal or state statutes, administrative rules and regulations, or common law.

However in opposing this argument, Plaintiff cites and relies upon the Tenth District Court of Appeals' subsequent decision in *Blackburn v. American Dental Centers*, 10th Dist. No. 13AP-13, 2014-Ohio-5329, 22 N.E.3d 1149, interpreting *Dohme* in relevant part as follows:

If not expressed in reference to federal law, the public policy in question must exist at the state rather than local, level, either through statute or common law expressed in a court decision. *Burns v. Ohio State Univ. College of Veterinary Med.*, 10th Dist. No. 13AP-633, 2014-Ohio-1190, ¶13, citing *Dohme* at ¶21. *Dohme* makes clear, however, that beyond general principles of notice pleading, the plaintiff may use summary judgment materials to flesh out the public policy relied upon. *Dohme* at ¶20-21 ("In *Dohme's* materials opposing summary judgment, he recited syllabus language. *** As the nonmovant, *Dohme* *** may not rely merely upon the pleadings or upon unsupported allegations.").

****Dohme* contains no...limitation [that the sources of the public policy] be articulated in the Complaint and clearly provides that the existence of a public policy may be established in summary judgment materials, not just the complaint.

Therefore, *Dohme* does not require the dismissal of Plaintiff's Complaint for failure to articulate the source(s) of public policy she is relying upon. Plaintiff may use summary judgment materials to flesh out the public policy she is relying upon.

Third, Defendants argue that Plaintiff's breach of contract claim is missing elements essential to state a claim; and Fourth, Defendants argue that Plaintiff's assertion that she was afforded greater job protections after she admitted to consuming illegal drugs is simply not plausible. However, these arguments are inconsistent with *Fouty v. Ohio Department of Youth Services*, 167 Ohio App.3d 508 (10th Dist. 2006), where the Court found that a last chance disciplinary agreement between an employer and employee was an implied-in-fact contract that changed the employee's at-will employee status, the breach of which warranted an award of damages.

Accordingly, Defendants' Motion To Dismiss is DENIED. The stay of discovery is now lifted.

Pamela A. Barker 4-14-15
JUDGE PAMELA A. BARKER

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