STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 30, 2013)

DANIA MATEO	:	
	:	
v.	:	
	:	**C.A. No. PC-2010-2433**
DAVIDSON MEDIA GROUP RHODE ISLAND STATIONS, LLC; PETER W. DAVIDSON, individually and in his official capacity as President of Davidson Media Group, LLC; FELIX LOPEZ, individually and in his official capacity; CESAR SALAS, individually and in his official capacity; MAGGIE GIRAUD, individually and in her capacity as Human Resource Manager; JOSEPH RIZZA, individually and in his official capacity as Northeast Regional Manager; QUILVIO PERDOMO, individually and in his official capacity as morning show producer; and JOHN or JANE DOE, individually and in his/her capacity as Davidson employee/employees	:	

DECISION

STERN, J. This matter is before the Court on Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure, by which they seek to dismiss Plaintiff Dania Mateo's Complaint and Jury Demand for failure to state a claim upon which relief can be granted. Arguments were heard before this Court on December 14, 2010. For the reasons set forth in this Decision, this Court grants the Defendants' Motion to Dismiss as to certain Counts of the Complaint but denies the motion as to certain other Counts.

I

Facts and Travel

This case arises out of Plaintiff Dania Mateo's (Plaintiff) employment by Defendant Davidson Media Group, LLC (DMG). DMG owns and operates a local Spanish-language radio station: WKKB Latina 100.3 FM.

Plaintiff was hired on January 20, 2008 as an on-air radio personality for DMG's morning show. Compl. ¶ 13. At the time, the morning show featured a number of scripted characters meant to increase the show's ratings. Id. ¶¶ 13-14. Plaintiff played the role of Anaconda, "a provocative woman" who used "racy language in a flirtatious manner . . . to give the impression [she was] easily seduced." Id. ¶ 13. The other morning show characters were played by Defendant Quilvio Perdomo (Perdomo),[1] the show's producer, and Darvin Garcia (Garcia),[2] Plaintiff's supervisor with whom Plaintiff had previously shared a romantic relationship. Id.

Plaintiff alleges that, soon after she started working at DMG, Defendant Cesar Salas (Salas) began "flirt[ing] and mak[ing] explicit sexual advances" toward her; however, Plaintiff declined these advances and asked Defendant Salas to stop "on numerous occasions." Id. ¶ 15. At the time, Defendant Salas was DMG's Director of Sales. Id. According to Plaintiff, these advances "escalated to actual physical touching" and reports of the incidents were made to Garcia and Defendant Joseph Rizza (Rizza), DMG's Northeast Regional Manager. Id. As a result, DMG required all employees to attend a sexual harassment seminar conducted by Garcia. Id. ¶ 16.

[1] Defendant Perdomo played the role of "DJ Frankie." Compl. ¶ 14.
[2] Darvin Garcia, who is not a party to this case, played the role of "El Baron." Id.

Following this seminar, not only did the harassment continue but Defendant Salas was promoted to General Manager. Id. ¶ 17. Plaintiff alleges that Defendant Salas ultimately realized that Plaintiff would not give in to his advances and, as a result of that realization, Defendant Salas "started to question [Plaintiff's] work performance and her relationship with Garcia." Id. Thereafter, Defendant Salas fired both Plaintiff and Garcia. Id. ¶ 18. In her Complaint, Plaintiff further alleges that Defendants Salas and Perdomo "and possibly others . . . conspired to lie and stated on the . . . broadcast on multiple occasions[] that [Plaintiff] and Garcia had been fired from [DMG] because they had been caught having sex in the office." Id. As a result of these on-air statements, Plaintiff allegedly "underwent mental health counseling, attempted to commit suicide, and suffered great economic hardship and emotional distress." Id. ¶ 19.

As a result, Plaintiff filed the instant Complaint on April 23, 2010 in lieu of pursuing claims for her alleged injuries under the Workers' Compensation Act (the "WCA"), codified at G.L. 1956 §§ 28-29-1 et seq. The Complaint alleges twenty-two (22) Counts against the following named Defendants: DMG, Peter Davidson, Felix Lopez (Lopez), Maggie Giraud (Giraud), Salas, Rizza, Perdomo. The Complaint alleges Counts based on violations of the State Fair Employment Practices Act (FEPA), codified at §§ 28-5-1 et seq., the Rhode Island Civil Rights Act of 1990 (RICRA), codified at §§ 42-112-1 et seq., *quid pro quo* sexual harassment, as well as numerous tort law claims ranging from intentional infliction of emotional distress to defamation.

On October 6, 2010, Defendants filed the instant Motion to Dismiss pursuant to Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure, as well as a memorandum in support thereof. This motion seeks to have this Court dismiss nineteen

(19) of the twenty-two (22) Counts alleged in the Complaint. The three Counts for which dismissal is not sought allege FEPA violations against Defendant Salas (Count I), RICRA violations against Defendant Rizza (Count IV), and RICRA violations against Defendant Giraud (Count V). Defendants' arguments in favor of dismissing the relevant Counts are that: (1) the exclusivity of the WCA precludes Plaintiff's tort claims that are derivative of her workplace injury; (2) Plaintiff has pled insufficient facts to support her claims; (3) Plaintiff has failed to plead the legal elements of certain Counts; (4) Plaintiff has failed to plead certain Counts with the requisite specificity; and (5) certain Counts are barred by the exhaustion of remedies doctrine.

II

Standard of Review

In ruling on a motion to dismiss pursuant to Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure, the Court looks to the allegations in the Complaint in the light most favorable to Plaintiff and assumes them to be true. Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (citing Ellis v. Rhode Island Public Transit Authority, 586 A.2d 1055, 1057 (R.I. 1991)). "[T]he sole function of a motion to dismiss is to test the sufficiency of the complaint" and review is, therefore, confined to the four corners of that pleading. Id. (quoting R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)). "The grant of a Rule 12(b)(6) motion to dismiss is appropriate 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'" Palazzo, 944 A.2d at 149-50 (quoting Ellis, 586 A.2d at 1057).

III

Analysis of Individual Counts

A

FEPA Violations

Counts II and III of Plaintiff's Complaint allege FEPA violations by Defendants Rizza and Giraud based on their alleged failure to take actions to prevent Defendant Salas from continuing to sexually harass Plaintiff. The Rhode Island Commission for Human Rights (the "Commission") has jurisdiction to investigate these types of discrimination claims. Sec. 28-5-17 states, in pertinent part:

> (a) Upon the commission's own initiative or whenever an aggrieved individual or an organization chartered for the purpose of combating discrimination, racism, or of safeguarding civil liberties, or of promoting full, free, or equal employment opportunities, that individual or organization being subsequently referred to as the complainant, makes a charge to the commission that any employer, employment agency, labor organization, or person, subsequently referred to as the respondent, has engaged or is engaging in unlawful employment practices and that the unlawful employment practices have occurred, have terminated, or have been applied to affect adversely the person aggrieved, whichever is later, within one year, the commission may initiate a preliminary investigation.
>
> (b) If the commission determines after the investigation that it is probable that unlawful employment practices have been or are being engaged in, it shall endeavor to eliminate the unlawful employment practices by informal methods of conference, conciliation, and persuasion, including a conciliation agreement. The terms of the conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain any further provisions that may be agreed upon by the investigating commissioner and the respondent, including a provision for the entry in superior court of a consent decree embodying the terms of the conciliation agreement. Nothing said or

> done during these endeavors may be used as evidence in any subsequent proceeding.

The Commission may then, at the request of either of the parties, grant a right to sue that terminates the Commission's proceedings and gives the Superior Court jurisdiction to hear the matter. See § 28-5-24.1(a).

In this case, Counts II and III allege that Defendants Rizza and Giraud—through their alleged FEPA violations—created a hostile work environment. A hostile work environment claim allows an employee to recover against his or her employer "[w]hen the workplace is permeated with 'discriminatory intimidation, ridicule, and insult'" that is "'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993) (quoting Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65, 67 (1986)). The existence of a hostile work environment is determined in light of "the totality of circumstances." Meritor Savings Bank, FSB, 477 U.S. at 69.

Relevant factors may include the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating as opposed to a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance. Harris, 510 U.S. at 23. While psychological harm may be taken into account, no single factor is required, and a plaintiff is not required to demonstrate a tangible psychological injury; at the same time, "conduct that is merely offensive" will not rise to the level of a hostile work environment. Id. at 21. There is also no sexual harassment without a showing of adverse effect on the "terms and conditions" of employment. Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998). Furthermore, such determination is a fact-intensive analysis best left to a jury, as it is the jury's role to

determine witness credibility. Aponte-Rivera v. DHL Solutions (USA), Inc., 650 F.3d 803 (1st Cir. 2011).

In their Motion to Dismiss, Defendants argue that Counts II and III should be dismissed based on Plaintiff's failure to exhaust her administrative remedies with the Commission. This argument centers around Plaintiff's alleged failure to file charges with the Commission against Defendants Rizza and Giraud. Rather than rebut this argument, Plaintiff argues that the claims against these two Defendants are under both FEPA and RICRA and that they should not be dismissed because "there is no language requiring, or even suggesting, that a plaintiff must first exhaust any or all administrative remedies before filing a civil action" under RICRA. Ward v. City of Pawtucket Police Dept., 639 A.2d 1379, 1382 (R.I. 1994). While this is true, it overlooks the fact that Counts II and III are FEPA claims under which RICRA standards are irrelevant. Plaintiff's RICRA claims against Defendants Rizza and Giraud are found in Counts IV and V and are not being challenged by Defendants' instant Motion to Dismiss.

As previously stated, "the sole function of a motion to dismiss is to test the sufficiency of the complaint" and review is confined to the four corners of that pleading. Palazzo, 944 A.2d at 149 (quotation omitted). Here, Plaintiff has given no indication that she pursued the requisite charge against Defendants Rizza and Giraud at the Commission. Therefore, upon review of the Complaint pursuant to Rule 12(b)(6), the Court finds that it is clear that Plaintiff has failed to exhaust her administrative remedies relative to her FEPA claims under Counts II and III. Accordingly, Defendants' Motion to Dismiss is granted as to Counts II and III of Plaintiff's Complaint.

B

***Quid Pro Quo* Sexual Harassment**

Counts VI and VII of Plaintiff's Complaint allege *quid pro quo* sexual harassment against Defendants Rizza and Giraud based on their failure to stop the harassment allegedly committed against Plaintiff by Defendant Salas. *Quid pro quo* sexual harassment is "[s]exual harassment in which an employment decision is based on the satisfaction of a sexual demand." Black's Law Dictionary 1499 (9th ed. 2009). Such a claim may be brought either under FEPA or RICRA; however, it is unclear under which of those Acts Plaintiff is alleging these Counts. As discussed in the preceding section of this Decision, FEPA claims alleged against Defendants Rizza and Giraud are barred by the doctrine of failure to exhaust administrative remedies. Thus, Plaintiff's only way to bring the instant *quid pro quo* sexual harassment claims is under RICRA and the Court will, therefore, focus its inquiry on that act.

The Rhode Island Supreme Court has stated that the "Rhode Island Civil Rights Act provides broad protection against all forms of discrimination in all phases of employment." Ward, 639 A.2d at 1381; but see Socha v. Nat'l Ass'n of Letter Carriers, 883 F. Supp. 790, 807 (D.R.I. 1995) (reading RICRA's prohibitions literally). Indeed, "RICRA protects plaintiffs against any discrimination which interferes with the benefits, terms, and conditions of the employment relationship—whether it takes the form of disparate impact, disparate treatment, retaliation, or harassment." Iacampo v. Hasbro, Inc., 929 F. Supp. 562, 573 (D.R.I. 1996) (quotation omitted).

State law claims under RICRA use the same analysis as that used by federal courts in interpreting corresponding federal statutes. Newport Shipyard Inc. v. R.I.

Comm'n for Human Rights, 484 A.2d 893, 897-98 (R.I. 1984); Tardie v. Rehab. Hosp. of R.I., 6 F. Supp. 2d 125, 132-33 (D.R.I 1998), aff'd 168 F.3d 538 (1st Cir. 1999). Here, we look to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964 for guidance in interpreting Plaintiff's claim under RICRA. See DeCamp v. Dollar Tree Stores, Inc., 875 A.2d 13, 21 (R.I. 2005). As such, this Court notes that claims of *quid pro quo* sexual harassment are recognized by federal courts under Title VII of the Civil Rights Act as a subset of disparate treatment harassment. See Smering v. FMC Corp., No. 01-CV-721S, 2004 WL 2191561 (W.D.N.Y. Sept. 24, 2004).

To make out a prima facie case for *quid pro quo* sexual harassment, a plaintiff must show that "'(1) [she] is a member of a protected group; (2) the sexual advances were unwelcome; (3) the harassment was sexually motivated; (4) the employee's reaction to the supervisor's advances affected a tangible aspect of her employment; and (5) respondeat superior liability has been established.'" Iacampo, 929 F. Supp. at 574 (quoting Chamberlin v. 101 Realty, Inc., 915 F.2d 777, 783 (1st Cir. 1990)). Here, there is no dispute as to most of these elements; however, Plaintiff's claims are not alleged against the appropriate parties. For example, the clearest example of this type of claim is where "where a supervisor uses employer processes to punish a subordinate for refusing to comply with sexual demands." Hernandez-Loring v. Universidad Metropolitana, 233 F.3d 49, 52 (citing Wills v. Brown Univ., 184 F.3d 20, 25 (1st Cir. 1999); Lipsett v. University of Puerto Rico, 864 F.2d 881, 897 (1st Cir. 1988)).

There is no allegation in this case that either Defendant Rizza—named in Count VI—or Defendant Giraud—named in Count VII—ever engaged in any type of sexual harassment of Plaintiff. Thus, they certainly did not "use[] employer processes to punish

[Plaintiff] for refusing to comply with [their] sexual demands." Id. Plaintiff does not cite to a single case in defense of Counts VI and VII, much less one that would indicate that this Court should extend the traditional contours of liability for *quid pro quo* sexual harassment to supervisors who are not alleged to have engaged in any harassment. Rather, Plaintiff asserts that these Counts should survive because these supervisors knew of the harassment by Defendant Salas and did not put an end to it. Those acts are better tried under Counts IV and V of Plaintiff's Complaint, which allege RICRA violations against these same two Defendants. As previously stated, those Counts are not subject to the motion presently before this Court.

Thus, this Court finds that Plaintiff is not entitled to relief from Defendants Rizza and Giraud "'under any set of facts that could be proven in support of the plaintiff's claim'" as set forth in Counts VI and VII. Palazzo, 944 A.2d at 149-50 (quoting Ellis, 586 A.2d at 1057). Therefore, Defendants' Motion to Dismiss is granted as to Counts VI and VII of Plaintiff's Complaint.

C

Various Torts

This Court must next address the various tort claims alleged in Counts VIII through XVIII of Plaintiff's Complaint.[3] Those Counts allege a number of claims against nearly all of the named Defendants, including negligent supervision, civil conspiracy, intentional infliction of emotional distress, assault, battery, negligence, and false imprisonment. However, Defendants argue that these claims are barred by the WCA.

[3] Plaintiff has agreed that Counts XIII and XIV—alleging negligent infliction of emotional distress against Defendants Rizza and Giraud—should be dismissed. Therefore, those Counts will not be included in the Court's analysis in this Decision.

The basis of Defendant's argument is that the exclusivity provision of the WCA bars actions at common law for injuries arising in the course of employment. Indeed, the WCA waives employees' rights to common law actions to recover damages for personal injuries, stating in pertinent part:

> Employees . . . shall be held to have waived his or her right of action at common law to recover damages for personal injuries if he or she has not given his or her employer at the time of the contract of hire or appointment notice in writing that he or she claims that right and within ten (10) days after that has filed a copy of the notice with the director.

§ 28-29-17. Thus, having waived employees' rights to common law remedies, the WCA provides that it is the exclusive remedy for personal injury claims. See § 28-29-20. The WCA's exclusivity provision states, in pertinent part:

> The right to compensation for an injury under . . . this title . . . shall be in lieu of all rights and remedies as to that injury now existing, either at common law or otherwise against an employer, or its directors, officers, agents, or employees.

Id. This type of exclusivity provision—and workers' compensation laws generally—"arose out of conditions produced by modern industrial development, and the inability of common-law remedies to cope with injuries suffered by workers." 82 Am. Jur. 2d Workers' Compensation § 1 (2d ed. 2003).

Today, every state has enacted workers' compensation legislation, "guaranteeing an employee compensation for workplace injuries regardless of fault and free of traditional common-law defenses." 1 Mod. Work. Comp. § 100:1 (1993). The philosophy underlying these acts "is that industrial accidents are inevitable incidents of modern industry and that their burden should not be borne by the victim." 82 Am. Jur. 2d Workers' Compensation § 1 (2d ed. 2003). Indeed, the "application of common-law

negligence principles to modern industrial accidents . . . [typically left] the worker to bear the greater part of the resulting economic loss." Id. Thus, "workers' compensation discards the common-law concept of tort liability in the employer-employee relationship, and substitutes for it a no-fault system of compensation in predetermined amounts based on the employee's wages for loss of earnings resulting from accidental injury arising out of and in the course of employment." 1 Mod. Work. Comp. § 100:1 (1993).

Accordingly, a workers' compensation scheme "is not cumulative or supplemental to the tort system, but is wholly substitutional. An employee does not have the option of suing in tort or recovering compensation." Id. § 102:1. In Rhode Island, this exclusivity of the tort system is shown both in the provision of the WCA that indicates employees automatically waive common law rights and also in the exclusivity provision. See §§ 28-29-17, 28-29-20. Thus, similar to other states' workers' compensation statutes, "[w]here a workers' compensation statute applies, an employer is immune from liability to its employees for negligence causing injury in work-related activities." 1 Mod. Work. Comp. § 102:12 (1993).

This exclusivity is the result of a compromise between the rights of the employer and the rights of the employee, by which each party relinquishes certain rights and benefits. Sorenson v. Colibri Corp., 650 A.2d 125, 129 (R.I. 1994); DiQuinzio v. Panceria Lease Co., 612 A.2d 40, 42 (R.I. 1992). More specifically, the exclusivity of the WCA requires that employers take on widened liability for accidents in exchange for protection from the uncapped damages at common law. DiQuinzio, 612 A.2d at 42. On the other hand, employees sacrifice the right to action at common law in exchange for a timely and certain resolution of claims. Id.; see also Nat'l India Rubber Co. v. Kilroe,

173 A. 86, 87 (R.I. 1934) (explaining that an employee "may receive less compensation under the [WCA] than at common law, but [may also] receive compensation to which at common law they would not be entitled"). Additionally, it is important to note that in Rhode Island—unlike many other states—the exclusivity of the WCA encompasses intentional torts. See Zinno v. Richard Patenaude, 711 A.2d 646, 647 (R.I. 1998); see also Cianci v. Nationwide Ins. Co., 659 A.2d 662, 670 (R.I. 1995) (reiterating that "there is no intentional tort exception to the exclusivity provisions" of the WCA).

Having established that the remedies provided under the WCA are the exclusive means by which an employee may be compensated for personal injuries that occurred within the scope of their employment, this Court finds that a number of Plaintiff's tort claims are barred as having occurred at work during the Plaintiff's employment. Therefore, Defendants' Motion to Dismiss is granted as to the following tort claims found in Plaintiff's Complaint: (VIII) supervisor negligence – Rizza; (IX) supervisor negligence – Giraud; (X) employer negligence – Davidson; (XII) intentional infliction of emotional distress – Salas; (XV) assault and battery – Salas; (XVI) negligence – Rizza; (XVII) negligence – Giraud; and (XVIII) false imprisonment – Salas.

Additionally, this Court finds Count XI to be similarly barred. That Count alleges that a number of Defendants conspired to commit RICRA violations. While this Court is not dismissing any of the relevant RICRA allegations contained in Counts IV and V, this Count for civil conspiracy must be dismissed. Civil conspiracy requires evidence of an agreement between two or more parties to commit an intentional tort or other unlawful act. Read & Lundy, Inc. v. Washington Trust Co. of Westerly, 840 A.2d 1099, 1102 (R.I. 2004). Furthermore, "civil conspiracy is [itself] an intentional tort requiring specific

intent to accomplish the contemplated wrong." 16 Am. Jur. 2d Conspiracy § 51. However, "civil conspiracy is not an independent basis of liability. It means establishing joint liability for other tortuous conduct; therefore, it 'requires a valid underlying intentional tort theory.'" Read & Lundy, Inc., 840 A.2d at 1102 (quoting Guilbeault v. R.J. Reynolds Tobacco Co., 84 F. Supp. 2d 263, 268 (D.R.I. 2000)).

Thus, having determined that the WCA bars all of Plaintiff's tort claims, including the Counts that allege intentional torts, Plaintiff's civil conspiracy claim must also be dismissed because "civil conspiracy is not an independent basis of liability. It means establishing joint liability for other tortuous conduct; therefore, it 'requires a valid underlying intentional tort theory.'" Read & Lundy, Inc., 840 A.2d at 1102 (quoting Guilbeault, 84 F. Supp. 2d at 268). For this reason, Defendants' Motion to Dismiss is granted, not only as to the tort claims mentioned above, but as to each of the various claims contained in Counts VIII through XVIII of Plaintiff's Complaint.

D

Defamation and Conspiracy to Defame

Finally, this Court must address the defamation claims found in Counts XIX through XXII of Plaintiff's Complaint. As a preliminary matter, this Court notes that the exclusivity of the WCA—as discussed in the preceding section of this Decision—does not bar claims of defamation. See Nassa v. Hook-SupeRx, Inc., 790 A.2d 368, 369 (R.I. 2002) (noting that defamation is not an injury under the WCA because it merely "injures an employee's reputation"). However, the claims found in these Counts would not be barred by the WCA in any event because the alleged injury is not derivative of Plaintiff's employment by DMG.

In support of the instant motion, Defendants argue that Plaintiff has failed to plead these Counts with the requisite specificity. To state a claim for defamation, "a plaintiff must prove: '(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) damages, unless the statement is actionable irrespective of special harm.'" Marcil v. Kells, 936 A.2d 208, 212 (R.I. 2007) (quoting Lyons v. Rhode Island Pub. Emps. Council 94, 516 A.2d 1339, 1342 (R.I. 1986) (quotation omitted)). See also Restatement (Second) of Torts § 558 (1977) (setting forth the requisite elements "[t]o create liability for defamation"). Furthermore, the Rhode Island Supreme Court has ruled that statements that are too imprecise and vague cannot support a plaintiff's defamation claim because such a statement cannot be proven true or false. Leddy v. Narragansett Television, L.P., 843 A.2d 481, (R.I. 2004). Thus, where a complaint does not describe the actual defamatory statements made, the defamation claim must be dismissed. See Feeler v. Miriam Hosp., C.A. No. PB-2007-5603, 2009 WL 3696496 (Super. Ct. Oct. 30, 2009).

Here, Plaintiff alleges that Defendants "intentionally and with malice made statements, via public radio broadcasting, that Plaintiff had been discharged for having been caught having sex at the radio station with a co-worker." Compl. ¶ 132. This Court finds that this allegation is quite specific. Indeed, while Plaintiff does not give specific dates on which these statements are alleged to have been made, she does give a time of day when these statements would have been spoken as well as the medium and persons responsible. See Compl. ¶ 18 (alleging that "Salas and Perdomo . . . stated on the live morning show broadcast on multiple occasions, that Mateo and Garcia had been fired

from [DMG] because they had been caught having sex in the office"). She even goes further to allege that her damages include mental health counseling and economic hardship resulting from the statements' impact on her ability to find work in the radio industry. See id. ¶¶ 18, 132, 133, 148. For these reasons, this Court finds Plaintiff's defamation claims in Counts XIX through XXI to be adequately specific to survive the instant motion.

However, Plaintiff has also claimed in Count XXII that a number of Defendants conspired to defame her on the live radio broadcast. As previously stated, civil conspiracy requires evidence of an agreement between two or more parties to commit an intentional tort or other unlawful act. Read & Lundy, Inc., 840 A.2d at 1102. Furthermore, "civil conspiracy is [itself] an intentional tort requiring specific intent to accomplish the contemplated wrong." 16 Am. Jur. 2d Conspiracy § 51.

Rhode Island requires that a Complaint contain merely "(1) short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks." Super. R. Civ. P. 8(a). Furthermore, this Court should only grant a motion to dismiss if "'it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'" Palazzo, 944 A.2d at 149-50 (quoting Ellis, 586 A.2d at 1057). Here, this Court finds that—based on these standards—Plaintiff has sufficiently pleaded her claim of conspiracy to defame found in Count XXII. Accordingly, Defendants' Motion to Dismiss is denied, not only as to the defamation claims found in Counts XIX through XXI, but also as to the conspiracy to defame claim found in Count XXII of Plaintiff's Complaint.

IV

Defendant Felix Lopez

Having determined the fate of the Counts contained in Plaintiff's Complaint, this Court is left with a single piece of Defendants' motion to consider: dismissal of Defendant Lopez as a named Defendant in this case. While Defendant Lopez is named in the caption of Plaintiff's Complaint, not a single reference is made to Defendant Lopez in the actual paragraphs of the Complaint. The Complaint, however, does make reference to a "Felix Perez" who is allegedly an executive of DMG in New York City. See Compl. ¶ 9. Count XXII also indicates that this "Perez" participated in the alleged conspiracy to defame Plaintiff. See Compl. ¶ 150. These two instances are the only references to this "Felix Perez" found in the entirety of Plaintiff's Complaint.

Rule 8 of the Rhode Island Superior Court Rules of Civil Procedure governs pleadings. The purpose of that rule's requirements is to ensure that an opposing party is given "'fair and adequate notice of the type of claim being asserted.'" Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009) (quoting Gardner v. Baird, 871 A.2d 949, 953 (R.I. 2005)). This is true "even if [the Complaint] does not plead the ultimate facts or precise legal theory upon which the claim is based. Dellefratte v. Estate of Dellefratte, 941 A.2d 797, 798 (R.I. 2007) (citing Berard v. Ryder Student Transportation Services, Inc., 767 A.2d 81, 83 (R.I. 2001) (citations omitted)).

Here, it cannot be said that the Complaint gives "fair and adequate notice of the type of claim being asserted" against Defendant Lopez. Barrette, 966 A.2d at 1234 (quotation omitted). It does seem as though Plaintiff has merely committed a typographical error, equating the name Lopez to Perez; however, this does not change the

fact that there is not a single allegation of any conduct by Defendant Lopez. Rather, a mere conclusion in Count XXII joins him in with the other supervisors at DMG. Thus, because the Complaint does not give adequate notice to Defendant Lopez of any claim against him, Defendant Lopez is dismissed as a named Defendant in this case.

V

Conclusion

For each of the reasons discussed in this Decision, this Court grants Defendants' motion to dismiss as to the following Counts: II- III, VI-VII, and VIII-XVIII.

However, this Court has also determined that Plaintiff's Complaint states sufficient allegations to move forward on certain other Counts. Therefore, this Court denies Defendants' motion to dismiss as to the following Counts: XIX-XXII.

Furthermore, having found that Defendant Lopez is not referenced a single time in the Complaint, he must be dismissed as a named defendant in the further proceedings of this case.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

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CASE NO:	PC 2010-2433
COURT:	Providence Superior Court
DATE DECISION FILED:	April 30, 2013
JUSTICE/MAGISTRATE:	Stern, J.
ATTORNEYS:	
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