

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: DECEMBER 30, 2011)

<b>REBECCA A. BRINGHURST</b>	:	
	:	
<b>v.</b>	:	<b>C.A. No. KC-2010-1025</b>
	:	
<b>CARDI’S DEPARTMENT STORE, INC.</b>	:	
<b>d/b/a CARDI’S FURNITURE; NICHOLAS</b>	:	
<b>CARDI, JR.; ROLAND CARDI; PETER</b>	:	
<b>CARDI; LYNN HOLSTON; SCOTT</b>	:	
<b>MAURICE; MARIA PACHECO; PAMELA</b>	:	
<b>FERREIRA; RON SPAZIANO</b>	:	

**DECISION**

**K. RODGERS, J.** This case arises out of Plaintiff’s, Rebecca A. Bringhurst (Bringhurst), employment with and termination from Defendant Cardi’s Department Store, Inc. d/b/a Cardi’s Furniture (Cardi’s Furniture). Before this Court is a Motion to Dismiss Plaintiff’s Amended Complaint, pursuant to Super. R. Civ. P. 12(b)(6), filed by Defendants Nicholas Cardi, Roland Cardi, Peter Cardi, Lynn Holston, Scott Maurice, Maria Pacheco, Pamela Ferreira and Ron Spaziano (collectively Individual Defendants), each in their individual capacity. Bringhurst’s Amended Complaint against each of the Individual Defendants alleges violations of the Rhode Island Fair Employment Practices Act (RIFEPA), the Rhode Island Civil Rights Act (RICRA), and the Rhode Island Parental Family Medical Leave Act (RIPFMLA).

After hearing and argument of counsel on November 14, 2011, and for the reasons set forth herein, Individual Defendants’ Motion to Dismiss is granted in part and denied in part.

## I

### Facts and Travel

The facts as set forth below are gleaned from Plaintiff's Complaint dated June 25, 2010 and Amended Complaint dated February 11, 2011.

Plaintiff alleges that on October 11, 2008, in the master bedrooms section of Cardi's Furniture store in West Warwick, she was assaulted by a male co-worker at the store, Defendant Lynn Holston (Holston). (Compl. ¶¶ 14-15; Am. Compl. ¶ 20.) According to Plaintiff, Holston grabbed and restrained Plaintiff and asked her what she would do if he raped her. (Compl. ¶ 15; Am. Compl. ¶ 21.) Prior to being hired at Cardi's Furniture, Holston had pled and been sentenced to a 30-year sentence for assault with intent to murder, 15 years to be served at the Adult Correctional Institution and the balance of the sentence to be suspended with probation; he remained on probation in October 2008. (Compl. ¶16; Am. Compl. ¶ 17.) The victim of that earlier assault was Holston's wife. (Am. Compl. ¶ 14.) Plaintiff alleges that Holston's inappropriate behavior directed toward females was common knowledge at Cardi's Furniture. (Compl. ¶ 19; Am. Compl. ¶¶ 15, 18.)

Plaintiff reported the October 11, 2008 incident to her supervisors. (Compl. ¶ 20; Am. Compl. ¶ 22.) Defendant Pamela Ferreira, a manager at Cardi's Furniture, responded that Plaintiff would be required to make a statement regarding the assault in the presence of Holston. (Am. Compl. ¶¶ 7, 22.) Plaintiff expressed concern to Defendant Nicholas Cardi about making this statement in Holston's presence; according to Plaintiff, Defendant Nicholas Cardi laughed in response to the assault allegation and asked if Holston had been joking. (Id. at ¶ 23.) Defendants then informed Plaintiff that

Holston had been terminated. (Id. at ¶ 24.) Plaintiff ultimately did not make any statement concerning the alleged assault because she believed Holston was no longer employed at Cardi's Furniture. (Id.)

On or about October 20, 2008, Plaintiff requested medical leave from Cardi's Furniture, citing an anxiety-related illness related to the assault she had endured at work and providing medical documentation regarding the same. (Id. at ¶¶ 26-27.) At that time, Plaintiff also advised Defendants that she intended to return to work when she recovered. (Id. at ¶ 27.) Defendants granted her request for medical leave. (Compl. ¶ 22.) On or about December 19, 2008, Plaintiff was hospitalized. (Am. Compl. ¶ 28.) On December 26, 2008, Plaintiff received a notice from Defendants, signed by Defendant Maria Pacheco, stating that she had "voluntarily resigned" from her position at Cardi's Furniture. (Id. at ¶ 28; see also Compl. ¶ 22.) Plaintiff thereafter spoke to Defendant Nicholas Cardi by phone to explain that she had no desire to resign from her position. Plaintiff was never reinstated to her position at Cardi's Furniture. (Compl. ¶ 24; Am. Compl. ¶ 30.) Holston, on the other hand, remains employed with Cardi's Furniture in the same position he was in in October 2008, at a different branch. (Compl. ¶¶ 23, 25; Am. Compl. ¶¶ 31-32.)

On October 9, 2009, Plaintiff filed a Charge of Discrimination against Defendant Cardi's Furniture with the Rhode Island Commission for Human Rights (RICHR); an amended Charge was filed on October 15, 2009. (Compl. ¶ 26; Am. Compl. ¶ 33.) None of the Individual Defendants named in the Complaint or Amended Complaint were identified as respondents in the RICHR Charge. (Compl., Ex. A; Am. Compl., Ex. A.) In March 2009, Plaintiff received an obscene text message from Defendant Scott Maurice

(Maurice), one of Plaintiff's former supervisors at Cardi's Furniture. (Compl. ¶¶ 29-30; Am. Compl. ¶ 34.) Plaintiff contends that Maurice's conduct was disturbing and threatening, and retaliation for describing her experiences and filing a harassment complaint against Cardi's Furniture in her RICHR Charge. (Compl. ¶ 32; Am. Compl. ¶ 35.) The Commission granted Plaintiff a Right to Sue letter on or about March 31, 2010. (Compl. ¶ 33; Am. Compl. ¶ 36.)

Plaintiff filed her original Complaint on June 25, 2010, alleging that Cardi's Furniture and Defendants Nicholas Cardi, Roland Cardi, Peter Cardi, Holston and Maurice violated the RIFEPA, RICRA, and RIPFMLA.<sup>1</sup> Those Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure. A hearing on that Motion to Dismiss was scheduled for February 14, 2011. On February 11, 2011, Plaintiff filed an Amended Complaint, adding Maria Pacheco, Pamela Ferreira and Ron Spaziano, all in their individual capacities, to the same counts of violating RIFEPA, RICRA and RIPFMLA. Prior to filing her Amended Complaint, there was no corresponding Motion to Amend Complaint as required by Rule 15 of the Superior Court Rules of Procedure.<sup>2</sup> Accordingly, the Court never granted permission to Plaintiff to amend her Complaint.

Unaware that Plaintiff had improperly filed her Amended Complaint days earlier, the Court issued a written decision on February 14, 2011, granting in part and denying in part the Motion to Dismiss Plaintiff's original Complaint. Specifically, the Court

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<sup>1</sup> Plaintiff also alleged in Counts V and VI of her original Complaint that Holston was liable for assault and battery. These counts were excluded from the Amended Complaint.

<sup>2</sup> Defendants waived any claim they may have had regarding this improper filing when they themselves filed pleadings responsive to the Amended Complaint. Cardi's Furniture, the only corporate defendant, filed an answer to the Amended Complaint on June 9, 2011, and Individual Defendants filed the within Motion to Dismiss the Amended Complaint on June 10, 2011.

dismissed Counts I, II and III, all alleging RIFEPA violations, and Count VII, alleging RIFFMLA violations, as against the named Individual Defendants. Bringhurst v. Cardi's Department Store, et al., No. KC 10-1025, slip op. at 6, 8 (R.I. Super. Ct. Feb.14, 2011) (Procaccini, J) (the February 14, 2011 Decision). The Court denied Defendants' Motion to Dismiss the RICRA charges in Count IV as against all Defendants, and denied the Motion to Dismiss the RIFFMLA count in Count VII as against Defendant Cardi's Furniture. Id. at 4, 7-8.

The differences between the Complaint and the Amended Complaint are minimal. Three additional individual defendants are named in the Amended Complaint – Maria Pacheco, Pamela Ferreira, and Ron Spaziano. Plaintiff presents additional facts in the Amended Complaint related to her RIFFMLA allegations. (See Am. Compl. ¶¶ 26-30, 57; cf. Compl. ¶ 22, Count VIII (sic) Damages, at p. 9.) Finally, while the assault and battery counts have been excluded, Plaintiff now includes Count V against Cardi's Furniture for violation of the Rhode Island Whistleblower's Protection Act. Thus, with respect to the Individual Defendants, this Court is faced with essentially identical issues as those addressed on February 14, 2011, namely, whether counts alleging violation of the RIFEPA, the RICRA, and the RIFFMLA should be dismissed against the Individual Defendants as a matter of law.

## II

### Standard of Review

This Court may grant a Motion to Dismiss pursuant to Super. R. Civ. P. 12(b)(6) only 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. Siena v. Microsoft Corp., 796 A.2d 461,

463 (R.I. 2002); Ellis v. Rhode Island Pub. Transit Auth., 586 A.2d 1055, 1057 (R.I. 1991). This Court must examine the allegations contained in the plaintiff's complaint, assume them to be true, and resolve any doubts in plaintiff's favor. Thompson v. Thompson, 495 A. 2d 678, 680 (R.I. 1985). The function of a Rule 12(b)(6) motion is to test the sufficiency of the complaint. Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008); McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005). The Court's review is confined to the four corners of the complaint. Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009).

### III

#### Analysis

#### A

##### Law of the Case Doctrine

The Court considers the present Motion to Dismiss in light of the February 14, 2011 Decision on Defendants' Motion to Dismiss the original Complaint. The law-of-the-case doctrine requires that "after a judge has decided an interlocutory matter in a pending suit, a second judge confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling." Paolella v. Radiologic Leasing Assoc., 769 A.2d 596, 599 (R.I. 2001). This Court reviews the February 14, 2011 Decision for clear error. Id. Applying the clear-error standard in the context of law-of-the-case principles, and for the reasons set forth herein, this Court will refrain from disturbing the February 14, 2011 Decision.

Plaintiff maintains that this Court cannot rely upon the February 14, 2011 Decision as law of the case because as of February 11, 2011, the Complaint upon which

the Court was adjudicating the Motion to Dismiss was withdrawn and the Amended Complaint served as the governing pleading. However, Plaintiff clearly fails to take into account that she had improperly filed the Amended Complaint. Without notice that the Complaint was sought to be amended, the Court properly issued its Decision on Defendants' Motion to Dismiss the original and existing Complaint on the date of the Decision. Not until the Defendants waived any impropriety in the filing of the Amended Complaint did that Amended Complaint serve as the governing pleading – namely, when Defendants answered the Amended Complaint or moved to dismiss the Amended Complaint, both of which occurred in June 2011. Accordingly, this Court considers the February 14, 2011 Decision to be law of the case.

## **B**

### **RIFEPA Claims**

The February 14, 2011 Decision dismissed the RIFEPA charges against the Individual Defendants based on recent jurisprudence from the First Circuit and the United States District Court for the District of Rhode Island. In 2009, the First Circuit determined that “there is no individual liability under Title VII” of the Civil Rights Act of 1964. Fantini v. Salem State Coll., 557 F.3d 22, 30 (1st Cir. 2009). Following Fantini, the Rhode Island District Court concluded that Title VII’s Rhode Island counterpart, RIFEPA, also does not provide a basis for individual employee liability. Johnston v. Urban League of Rhode Island, Inc., 2009 WL 3834129, \*2 (D.R.I. Nov. 13, 2009). The District Court based its decision on the statutory parallels between Title VII and RIFEPA. Id. The February 14, 2011 Decision properly noted that Rhode Island courts “will continue to turn to federal courts’ interpretation of Title VII for guidance in interpreting

RIFEPA.” Bringhurst, slip op. at 6. Thus, the February 14, 2011 Decision soundly relied upon the First Circuit and United States District Court for the District of Rhode Island decisions holding that the definition of “employer” under RIFEPA precludes a basis for individual liability. Id. at 5-6. Reliance on these cases was not clearly erroneous. This Court will not disturb that February 14, 2011 Decision, and for the same reasons as set forth therein, Counts I, II and III are dismissed as to the Individual Defendants.

In addition to the sound reasons set forth in the February 14, 2011 Decision, Plaintiff would not be entitled to any relief against the Individual Defendants for RIFEPA violations because Plaintiff failed to exhaust her administrative remedies prior to suing them individually for RIFEPA violations.<sup>3</sup> See Horn v. Southern Union Co., 927 A.2d 292, 295 & nn.6, 10 (R.I. 2007); see also Richardson v. Whitmarsh Corp., US. Dist. LEXIS 120620, at \*42-43 (D.R.I. Dec. 8, 2009) (Martin, U.S.M.J.), adopted and summary judgment granted 2009 U.S. Dist. LEXIS 120692 (D.R.I. Dec. 29, 2009) (Lisi, J.); Barber v. Verizon New England, Inc., 2005 U.S. Dist. LEXIS 38373, at \*6 (D.R.I. Dec. 20, 2005); Paulo v. Cooley, Inc., 686 F. Supp. 377, 382 (D.R.I. 1988). Before alleging a violation of RIFEPA, a plaintiff must first file a Charge of Discrimination against defendant(s) with the Rhode Island Commission for Human Rights. Horn, 927 A.2d at n.10. While Plaintiff did file a Charge of Discrimination against the corporate Defendant Cardi’s Furniture, she neglected to include any of the Individual Defendants in the RICHHR charge. (See Amended Compl., Ex. A.) The Commission issued Plaintiff a Notice of Right to Sue Cardi’s Furniture, as the only named respondent. Consequently,

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<sup>3</sup> While this argument previously had been raised by the parties in written memoranda prior to the February 14, 2011 Decision, it was not expressly ruled upon by the Court.

Plaintiff's failure to name the Individual Defendants in her RICHR Charge precludes her from bringing RIFEPA charges against the Individual Defendants.

## C

### **RICRA Claims**

Count IV of the Amended Complaint alleges that Defendant Cardi's Furniture and each of the Individual Defendants violated RICRA. In the February 14, 2011 Decision, the Court declined to dismiss the RICRA charges against any Defendant. Presenting the same reasoning to the Court as they did in February, the Individual Defendants contend that the February 14, 2011 Decision was clearly erroneous as to the Motion to Dismiss the RICRA claims against Nicholas Cardi, Peter Cardi, Roland Cardi, Holston and Maurice because RICRA should be interpreted in the same way as RIFEPA, namely, to exclude individual liability just as Title VII does.

In the February 14, 2011 Decision, the Court declined to dismiss the RICRA counts against the Defendants sued in their individual capacities based upon a recent decision of the United States District Court for the District of Rhode Island which concluded that RICRA allows for individual liability. Bringhurst, slip op. at 5-7 (citing Mayale-eke v. Merrill Lynch, 754 F. Supp. 2d 372, 385 (D.R.I. 2010)). In Mayale-eke, the federal court revisited the issue of individual liability under RICRA in light of the First Circuit's holding in Fantini that Title VII excludes individual liability claims. Mayale-eke, 754 F. Supp. 2d at 384-85. The Mayale-eke Court noted that because RICRA has been found to provide "broad protection against all forms of discrimination in all phases of employment," it would be consistent with that view that individual

liability exists under RICRA, notwithstanding the holding in Fantini. Id. at 385 (citing Ward v. City of Pawtucket Police Dep't, 639 A.2d 1379, 1381 (R.I. 1994)).

The Individual Defendants argue that Mayale-eke is contrary to Rhode Island Supreme Court jurisprudence inasmuch as RIFEPA and RICRA should be read “in relation to each other.” See Horn, 927 A.2d at 295-6. While RIFEPA and RICRA should be read *in pari materia*, this does not render these acts identical twins. Id. at 294. Furthermore, the rationale in Mayale-eke remains persuasive and the Court’s reliance thereon in the February 14, 2011 Decision is not clearly erroneous. Accordingly, and for the same reasons set forth in the February 14, 2011 Decision, the RICRA count against the Individual Defendants shall not be dismissed.

## **D**

### **RIPFMLA Claim**

Finally, Plaintiff alleges that Defendants Cardi’s Furniture, Nicholas Cardi, Peter Cardi, Roland Cardi and Maria Pacheco are liable for violating the RIPFMLA. (See Am. Compl, ¶ 57.) The Court previously dismissed the RIPFMLA count against Nicholas Cardi, Peter Cardi and Roland Cardi in its February 14, 2011 Decision based upon Plaintiff’s alleged damages in which she sought “lost wages, benefits, and other monetary losses” “caused by Defendant Department Store’s unlawful termination of plaintiff’s employment.” Bringhurst, slip op. at 7 (citing Compl. ¶¶ 75, 76.) In other words, because it was evident that the damages sought in the RIPFMLA count could only be awarded against the corporate Defendant Cardi’s Furniture, the Court dismissed the RIPFMLA count as against the named Individual Defendants. The February 14, 2011

Decision did not explicitly determine whether RIPFMLA allows for claims of individual liability.

Plaintiff now alleges that Cardi's Furniture, Nicholas Cardi, Peter Cardi, Roland Cardi and Pacheco "are in violation of directly or indirectly aiding and abetting a violation of" the RIPFMLA. (Am. Compl. ¶ 57.) The only allegations in Plaintiff's Amended Complaint as against Pacheco, a human resources supervisor at Cardi's Furniture, are that she signed the notice stating that Plaintiff had voluntarily resigned and informed Plaintiff by phone that she no longer held her position at Cardi's Furniture. (Am. Compl. ¶ 30.)

The RIPFMLA allows employees to bring civil actions in Superior Court against "employers." "Employer" is defined in the RIPFMLA to include "any person who acts directly or indirectly in the interest of any employer." G.L. 1956 § 28-48-1(3)(iv). Notably, "employer" is defined in a similar manner in the RIFEPA. Cf. § 28-5-6(7)(i). Like the RIFEPA issue of individual liability, the Rhode Island Supreme Court has yet to decide whether individual liability claims may be brought under RIPFMLA. However, as discussed supra, federal precedent provides reliable and solid grounds for determining that the definition of "employer" in RIFEPA precludes individual liability, and the same rationale holds true for excluding individual liability under the RIPFMLA. Indeed, to find otherwise would allow a human resources employee who signs a letter of termination or discipline to be routinely subject to individual liability simply by signing his or her name. This would be an absurd result.

For the reasons set forth in the February 14, 2011 Decision as they relate to the RIFEPA claims, this Court finds that Plaintiff is not entitled under any set of

circumstances to relief against Defendants Nicholas Cardi, Peter Cardi, Roland Cardi and Pacheco in their individual capacities for RIFPMLA violations. Accordingly, Count VI shall be dismissed as against these four Defendants in their individual capacities.

#### **IV**

#### **Conclusion**

For the foregoing reasons, this Court grants the Individual Defendants' Motion to Dismiss as to the RIFEPA claims against each of them, namely, Counts I, II and III. The Court also dismisses Plaintiff's RIFPMLA claim, Count VI, against Defendants Nicholas Cardi, Peter Cardi, Roland Cardi and Maria Pacheco in their individual capacities. Finally, in keeping with law-of-the-case principles, Individual Defendants' Motion to Dismiss the RICRA claim set forth in Count IV is denied.

Counsel for Defendants shall prepare an Order consistent with this Decision.