IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	
DAN LEPORE & SONS COMPANY and L.F. DRISCOLL COMPANY,	:	
Defendants.	:	NO. 03-CV-5462

MEMORANDUM ORDER

Presently before the Court is Plaintiff Burroughs's Motion for Reconsideration (Dkt. No.27). For the reasons that follow, Burroughs's motion is DENIED.

Factual Background and Procedural History

In 2003, Beth Anne Burroughs ("Burroughs") filed charges of discrimination with the Equal Employment Opportunity Commission (the "EEOC" or the "Commission"). (Compl. ¶ 6). On September 30, 2003, more than thirty days after Burroughs filed her charges of discrimination, the EEOC filed the instant action pursuant to Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991 alleging unlawful gender biased employment practices and retaliation. (See generally Compl.). The Commission alleged that Beth Anne Burroughs ("Burroughs") was sexually harassed by Defendant Dan Lepore & Sons Company's ("Lepore") foreman and male co-workers on two separate construction sites. The Commission also alleged that Burroughs was also subjected to disparate treatment as a consequence of her gender when she was evicted by the general contractor, Defendant L.F.

Driscoll Company ("Driscoll," Lepore and Driscoll collectively identified as "Defendants"), from the job site because she was not wearing safety glasses. Male employees who also failed to wear safety glasses and hard hats were not similarly evicted. (Id.) The Commission further alleges that, in retaliation for reporting the sexual harassment to Driscoll, Burroughs was not hired for future projects.

On October 10, 2003, pursuant to Federal Rule of Civil Procedure 24(a), Burroughs's filed a Motion to Intervene As Party Plaintiff. (Dkt. No. 2). On November 6, 2003, Burroughs filed an Amended Motion to Intervene As Party Plaintiff, adding an antitrust claim under the Clayton Act. (Dkt. No. 6). In her amended motion, Burroughs sought to assert the following claims: (1) federal antitrust violations under the Sherman Act and the Clayton Act; (2) a state law claim for gender discrimination in violation of the Pennsylvania Human Relations Act ("PHRA"); and (3) violations of Article I § 28 of the Pennsylvania Constitution, which is commonly identified as the Pennsylvania Equal Rights Amendment ("PERA").

On January 29, 2004, this Court granted in part and denied in part Burroughs' Motion to Intervene. (Dkt. No. 24). Specifically, the Court granted the motion to the extent that Burroughs sought to assert claims against Defendants pursuant to the PHRA, and denied the motion to the extent that Burroughs sought to assert claims pursuant to antitrust laws and the PERA. The Court found that Burroughs lacked standing to prosecute the claims asserted under the PERA because the PERA does not confer a private right of action for damages.

Burroughs filed a complaint-in-intervention on February 9, 2004. At that time, Burroughs also filed the instant motion seeking reconsideration of the Court's ruling with respect to Burroughs' proposed PERA claim. Burroughs urges reconsideration as a result of the

perceived need to correct a clear error of law and to prevent manifest injustice. (Pl. Reply Br. at 2). Defendant Driscoll opposes reconsideration. (Dkt. No. 29).

Courts should grant motions for reconsideration sparingly, reserving them for instances where there has been "(1) an intervening change in controlling law, (2) the emergence of new evidence not previously available, or (3) the need to correct a clear error of law or to prevent a manifest injustice." General Instrument Corp of Delaware. v. Nu-Tek Elecs. & Mfg., Inc., 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd., 197 F.3d 83 (3d Cir. 1999); see also Harsco Corp. V. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171, 106 S.Ct. 2895 (1986) ("The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence."). Mere dissatisfaction with the court's ruling is not a proper basis for reconsideration. See U.S. v. Phillips, Nos. Civ. A. 97-6475, 93-CR-513, 2001 WL 527810, at *1 (E.D. Pa. May 17, 2001) (citing Burger King Corp. v. New England Hood and Duct Cleaning Co., No. 98-3610, 2000 WL 133756, at *2 (E.D. Pa. Feb. 4, 2000)).

Burroughs contends that the Court should grant her motion for reconsideration to prevent a manifest injustice because her counsel failed to properly brief the issues surrounding Burroughs' PERA claims, and she should not be penalized for her counsel's mistake. (Pl. Br. at 1). Additionally, Burroughs asserts that the Court should correct a clear error of law because she, as a private litigant, has standing to assert a claim under the PERA. (Pl. Reply Br. at 2). Defendant Driscoll contends that the Court should deny Burroughs's motion as a matter of law because Burroughs' counsel's failure to brief this arguments is not cognizable under Federal Rule of Civil Procedure 59(e) or Local Rule of Civil Procedure 7.1(g). (Def. Br. at 1).

"A motion for reconsideration is not properly grounded on a request that a court

reconsider repetitive arguments that have already been fully examined by the court or a request to raise arguments that could have previously been asserted." Assisted Living Group, Inc. v. Upper Dublin Township, Civ. A. No. 97-3427, 1997 WL 762801, at *2 (E.D. Pa. Dec. 8, 1997) (citing Harsco Corp. v. Zlotnicki, 799 F.2d 906, 909 (3d Cir. 1985)) (disposing of a motion to reconsider a denial of a motion to intervene). Indeed, in her Reply to Defendant Driscoll's Opposition to Intervention, Burroughs made the tactical decision not to contest the merits of Driscoll's PERA argument, and instead asserted that Driscoll's motion constituted "an extra, preliminary motion to dismiss." (Pl. Reply Br. at 2.)[1] Because Burroughs simply asks this Court to consider "arguments that could have previously been asserted," Burroughs fails to meet the standard for granting a motion for reconsideration. See Assisted Living Group, 1997 WL 762801, at *2. Therefore, Burroughs' Motion for Reconsideration is denied.

Burroughs' motion for reconsideration is further denied to the extent that it seeks to correct an alleged manifest error of law. Indeed, the issue of whether there is a private cause of action under the PERA is not conclusively resolved within the Third Circuit. See Ryan v. General Machine Products, 277 F. Supp. 2d 585 (E.D. Pa. 2003) (holding that there is no private cause of action under the PERA), Douris v. Schweiker, 229 F. Supp. 2d 391, 405 (E.D. Pa. 2002) (holding that there was no private cause of action for damages under the Pennsylvania Constitution); Sabitini v. Reinstein, No. 99-2393, 1999 WL 636667, at *3 (E.D. Pa. Aug. 20, 1999) (same); *Cf.* Imboden v. Chowns Communications Inc., 182 F. Supp. 2d 453 (E.D. Pa.

[1] Burroughs contends neither party properly briefed the merits of the PERA private right of action previously. (Pl. Reply Br. at 2). Burroughs, however, is incorrect. (See Def. Driscoll's Supplemental Memorandum of Law in Support of Its motion in Opposition to Plaintiff's Amended Motion to Intervene at 1-2).

2002) (allowing a private plaintiff to proceed with her claim under the PERA against defendant without a showing of state action) and Barrett v. Greater Hatboro Chamber of Commerce, Inc., Civ. A. No. 02-4421, 2003 WL 22232869 (E.D. Pa. Aug. 19, 2003) (same).[2] This Court, however, finds that neither Imboden nor Barrett specifically addresses the issue of standing under the PERA; rather, both cases address the issue of whether a cause of action lies against private actors under the PERA. On the contrary, Ryan v. General Machine Products is squarely on point; this Court agrees with its analysis and conclusion. Ryan, 277 F. Supp. 2d at 595. Thus, Burroughs has failed to demonstrate the need to correct a manifest error of law; consequently, the Motion for Reconsideration is denied.

AND NOW this day of March 2004, upon consideration of Burroughs' Motion for Reconsideration (Dkt. No. 24), and the responses thereto, it is hereby ORDERED that Burroughs' motion is DENIED.

By the Court:

Legrome D. Davis

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[2] Burroughs also relies on Pfeifer v. Marion Center Area School District, 917 F.2d 779 (3d Cir. 1990), Kemether v. Pennsylvania Interscholastic Athletic Association Inc., 15 F. Supp. 2d 740, 755 (E.D. Pa. 1998) and Hartford Acc. & Indemnity Co. v. Insurance Commissioner of Pennsylvania, 505 Pa. 571, 482 A.2d 542 (1984) for the proposition that a private cause of action exists under the PERA. As with Imboden and Barrett, each of these cases specifically addresses the issue of whether a plaintiff may state a claim under the PERA in the absence of state action, not whether there is private right of action for damages under the PERA.