*1999 U.S. Dist. LEXIS 19516, *; 81 Fair Empl. Prac. Cas. (BNA) 964; 15 BNA IER CAS 1587*

DAWN V. MARTIN, Plaintiff, v. HOWARD UNIVERSITY, et al., Defendants.

Civ. No. 99-1175 (TFH)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

1999 U.S. Dist. LEXIS 19516; 81 Fair Empl. Prac. Cas. (BNA) 964; 15 BNA IER CAS 1587

December 15, 1999, Decided
December 16, 1999, Filed

DISPOSITION: [*1] Defendants' Motion to Dismiss the Complaint or in the Alternative for Summary Judgment granted in part and denied in part.

CASE SUMMARY

PROCEDURAL POSTURE: Defendants' moved for either summary judgment, or in the alternative, to dismiss plaintiff's complaint, which alleged violations of Title VII and the District of Columbia Human Rights Act, as well as claims of retaliation, intentional infliction of emotional distress, and breach of contract.

OVERVIEW: Plaintiff professor brought suit against defendant university, law school, and law school dean and university president in both their individual and official capacities. Plaintiff claimed defendants knowingly allowed a homeless man free access to the law school campus and buildings, facilitating his sexual harassment of her in her workplace. The court dismissed the claims against defendants, law school dean and university president in their official capacities, since those claims merged into the lawsuit against defendant, law school and university. The court further granted defendants' motion for summary judgment with respect to the claim of intentional infliction of emotional distress since, even assuming all allegations in plaintiff's complaint were true, a reasonable juror could not deem defendants actions were sufficiently outrageous or extreme. The court denied defendants' motion as to all remaining claims, since they presented material disputes of fact appropriately left to a jury.

OUTCOME: Defendants' motion granted with respect to the intentional infliction of emotional distress claim and with respect to the suits against defendants dean and president in their official capacities; on all other counts, defendants' motion denied, because those claims presented material issues of fact to be decided by a jury.

CORE TERMS: hostile work environment, sexual harassment, summary judgment, retaliation, sex, intentional infliction of emotional distress, severe, non-employee, pervasive, sexual, protected activity, abusive, Howard University School of Law, breach of contract, supervisor, harasser, one year, harassment, workplace, tenure, offensive, utterance, law school, tenure-track, campus, track, outrageous conduct, causal connection, matter of law, appropriately

CORE CONCEPTS - Hide Concepts

Civil Procedure : Pleading & Practice : Defenses, Objections & Demurrers : Motions to Dismiss

Fed. R. Civ. P. 12(b)(6) permits the dismissal of complaints, which, on the face of the pleading, assuming all allegations to be true, fails to state a claim under which relief can be granted.

Civil Procedure : Summary Judgment : Summary Judgment Standard

Fed. R. Civ. P. 56 provides that summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.

Civil Procedure : Summary Judgment : Burdens of Production & Proof

The moving party for summary judgment has the burden of showing the absence of a genuine issue of material fact.

Torts : Vicarious Liability : Agents

In cases where an agent has been sued in his official capacity and the employer has also been sued, the lawsuit against the individual in his official capacity merges into the lawsuit against the employer.

Labor & Employment Law : Discrimination

The District of Columbia Human Rights Act (DCHRA) prohibits an employer from discriminating against employees. D.C. Code Ann. § 1-2502(10). In analyzing employment discrimination cases under the DCHRA, courts have looked to Title VII and the applicable caselaw under Title VII for guidance.

Labor & Employment Law : Discrimination : Sex Discrimination

Title VII makes it unlawful for an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's sex. 42 U.S.C.S. § 2000e-2(a)(1).

Labor & Employment Law : Discrimination : Sexual Harassment

Sexual harassment is considered discrimination on the basis of sex in violation of Title VII.

Labor & Employment Law : Discrimination : Sexual Harassment : Coverage & Definitions

To be actionable, a plaintiff must establish that the sexual harassment is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.

Labor & Employment Law : Discrimination : Sexual Harassment : Coverage & Definitions

In the context of sexual harassment analysis, determining whether a working environment is "hostile" or "abusive," the court should consider the totality of the circumstances. Specifically, a court should consider the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; whether it unreasonably interferes with an employee's work performance; and the effect on the employee's psychological well-being.

Labor & Employment Law : Discrimination : Sexual Harassment : Hostile Work Environment

An employer may be held liable for a hostile work environment that is created by a non-employee, including those non-employees who were invited or permitted to remain on an employer's premises. The environment in which an employee works can be rendered offensive in an equal degree by the acts of supervisors, coworkers, or even strangers in the workplace. An employer may also be responsible for the acts of non-employees with respect to sexual harassment of employees in the workplace.

Labor & Employment Law : Discrimination : Sexual Harassment : Hostile Work Environment

To prevail against an employer for a hostile work environment created by a non-employee, a plaintiff must show that the employer knew or should have known of the existence of a hostile work environment and failed to take proper remedial action.

Labor & Employment Law : Discrimination : Sexual Harassment : Hostile Work Environment

In determining whether an employer should be responsible for a hostile work environment caused by a non-employee, courts consider the extent of the employer's control over the harasser and any other legal responsibility which the employer may have with respect to the conduct of the non-employees.

Labor & Employment Law : Discrimination : Sex Discrimination : Coverage & Definitions

Title VII does not prohibit all verbal or physical harassment in the workplace; it is directed solely at discrimination because of sex.

Labor & Employment Law : Discrimination : Sex Discrimination : Coverage & Definitions

Workplace harassment is not automatically discrimination because of sex merely because the words used have sexual content or connotations. The critical issue is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.

Labor & Employment Law : Discrimination : Sexual Harassment : Hostile Work Environment

A hostile work environment may be established if the harassment is "because of sex," even if not sexual in nature.

Labor & Employment Law : Discrimination : Sexual Harassment : Hostile Work Environment

In analyzing a hostile or abusive work environment, a court must consider: (1) the frequency of the discriminatory conduct, (2) whether it was physically threatening or humiliating or a mere offensive utterance; and (3) whether it unreasonably interferes with an employee's work performance. The severity or seriousness of the alleged conduct varies inversely with the pervasiveness or frequency of the conduct; in other words, one act may be sufficient if it is particularly severe while less intense incidents may be sufficient if numerous. Moreover, the court must consider both the victim's subjective impressions of this activity and whether the alleged actions would constitute unlawful sexual harassment from the perspective of a reasonable victim.

Labor & Employment Law : Discrimination : Sexual Harassment : Coverage & Definitions

To prevail on a sexual harassment claim, plaintiff must also show that a reasonable female would have found the allegedly harassing actions to be severely hostile or abusive. Whether or not the harasser intended his behavior to be abusive or threatening is irrelevant to this inquiry.

Labor & Employment Law : Discrimination : Sexual Harassment : Defenses & Exceptions

The reasonable victim standard classifies conduct as unlawful sexual harassment even when harassers do not realize that their conduct creates a hostile work environment. Therefore, the alleged harasser's intent is unimportant and "compliments" are not a defense.

Labor & Employment Law : Discrimination : Sex Discrimination : Coverage & Definitions

Mere utterance of an epithet which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficient degree to violate Title VII.

Labor & Employment Law : Discrimination : Sex Discrimination : Other Laws

Title VII makes it illegal for an employer to take adverse employment actions against an employee for engaging in activity protected by the statute. 42 U.S.C.S. § 2000e-3.

Labor & Employment Law : Discrimination : Retaliation

In order to establish a prima facie case of retaliation, a plaintiff must show that: (1) she was engaged in protected activity under Title VII, (2) she was subjected to adverse employment action, (3) and a causal connection exists between the protected activity and the adverse action.

Labor & Employment Law : Discrimination : Retaliation

An Equal Employment Opportunity Commission complaint is not a legal prerequisite for a retaliation claim.

Labor & Employment Law : Discrimination : Retaliation

An adverse action a month and a half after protected activity can constitute circumstantial evidence of retaliation.

Torts : Intentional Torts : Intentional Infliction of Emotional Distress

To establish a claim for intentional infliction of emotional distress, a plaintiff must prove that the defendant engaged in: (1) extreme and outrageous conduct that (2) intentionally or recklessly caused (3) severe emotional distress to another. Generally, these claims are reserved for behavior that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.

Torts : Intentional Torts : Intentional Infliction of Emotional Distress

Although action that violates public policy, including discrimination, can constitute such extreme and outrageous conduct, the discrimination allegations must be particularly egregious, such as the pattern or campaign of harassment, intimidation or abuse, to rise to the level of extreme and outrageous conduct.

Contracts Law : Statutes of Frauds

See D.C. Code Ann. § 28-3502.

Contracts Law : Statutes of Frauds

The District of Columbia Statute of Frauds has been interpreted to apply only to those contracts whose performance could not possibly or conceivably be completed within one year. The enforceability of a contract under the statute does not depend on the actual course of subsequent events or on the expectations of the parties but rather applies only to those contracts whose performance could not possibly be conceivably be completed within one year.

COUNSEL: For Plaintiff(s): James William Martin, Esq., Wood, Bohm & Francis, Washington, D.C.

For Defendant(s): Leroy T. Jenkins, Jr., Esq., Nadine Chandler Wilburn, Esq., William Chappele Robinson, Esq., Office of Legal Affairs, Washington, D, C.

JUDGES: Thomas F. Hogan, United States District Judge.

OPINIONBY: Thomas F. Hogan

OPINION: MEMORANDUM OPINION

Pending before the Court is Defendants' Howard University, Howard University School of Law, President H. Patrick Swygert and Dean Alice Bullock (in her official capacity only) Motion to Dismiss the Complaint or in the Alternative for Summary Judgment. After careful consideration of the Defendants' Motion, the Plaintiff's Opposition, the Defendants' reply, and the entire record herein, this Court will grant Defendants' Motion to Dismiss or in the Alternative for Summary Judgment with respect to the intentional infliction of emotional distress claim and with respect to the suits against Dean Bullock and President Swygert in their official capacities. On all other counts, Defendants' Motion will be denied because those [*2] claims present material issues of fact which must be decided by a jury.

Background

Plaintiff Dawn Martin was a Visiting Associate Professor at Howard University School of Law from July 1996 through May 1998. She brought this suit on May 14, 1999 against Howard University, Howard University School of Law, Alice Gresham Bullock, Dean of the Law School (in both her individual and official capacities), and H. Patrick Swygert, President of Howard University (in both his individual and official capacities), alleging that she has been the victim of a hostile work environment in violation of Title VII and the District of Columbia Human Rights Act (DCHRA). Plaintiff also filed claims of retaliation, intentional infliction of emotional distress, and breach of contract. In her first amended complaint filed on July 7, 1999, Plaintiff withdrew her claim against Mr. Swygert in his individual capacity.

Plaintiff alleges that she has been the victim of hostile work environment sexual harassment as a result of the conduct of Mr. Leonard Harrison, a homeless person who resided in a shelter and was neither an employee nor a student of the University but who regularly used Howard University's [*3] Law School library. Specifically, Plaintiff claims that Defendants knowingly allowed Mr. Harrison, a man characterized by the D.C. Metropolitan Police Department as a "stalker" with a criminal record and history of violence, free access to the law school campus and buildings, thereby facilitating his sexual harassment of Plaintiff in her workplace. Due to this alleged inaction, Plaintiff

claims that Defendants have violated both Title VII and the DCHRA as well as caused her intentional infliction of emotional distress. Plaintiff also claims that due to her complaints, Defendant Bullock took retaliatory measures, on five different occasions, to ensure that Plaintiff was not offered a permanent professorship or a renewed visitorship at the Law School. Furthermore, Plaintiff alleges that Defendants Howard University and Howard University School of Law breached their contract with Plaintiff in failing to renew her contract or selecting her for a tenure-track position in violation of Professor Taslitz's alleged oral promise to Plaintiff that she would placed into a tenure track position as soon as one became available. And finally, Plaintiff claims that she was forcefully and prematurely [*4] evicted from her office in retaliation for her filing of a charge with the U.S. Equal Employment Opportunity Commission ("EEOC").

Applicable Law

Rule 12(b)(6) of the Fed. R. of Civ. P. permits the dismissal of complaints, which, on the face of the pleading, assuming all allegations to be true, fails to state a claim under which relief can be granted.

Rule 56 of the Fed. R. Civ. P. provides that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." The moving party for summary judgment has the burden of showing the absence of a genuine issue of material fact. Adickes v. S.H. Kress and Co., 398 U.S. 144, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970).

Discussion

I. Suits Against Dean Bullock and President Swygert in Their Official Capacity

Defendants claim that this Court should dismiss Plaintiff's Title VII and DCHRA claims against Dean Bullock and President Swygert in their official capacity because in cases where an agent has been sued [*5] in his official capacity and the employer has also been sued, the lawsuit against the individual in his official capacity "merges" into the lawsuit against the employer. See Gary v. Long, 313 U.S. App. D.C. 403, 59 F.3d 1391, 1399 (D.C. Cir. 1995) (dismissing claims filed against a supervisor in his official capacity under Title VII, reasoning that the suit against the supervisor in his official capacity was really a suit against the employer and therefore that the claims against the supervisor "merge" with those against the employer). n1 Therefore, since Howard University and Howard University School of Law are defendants in this matter, Plaintiff's claims against Dean Bullock and President Swygert in their official capacity should be dismissed.

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n1 The DCHRA also prohibits an "employer" from discriminating against employees. D.C. Code § 1-2502(10). In analyzing employment discrimination cases under the

DCHRA, courts in this jurisdiction have looked to Title VII and the applicable caselaw under Title VII for guidance. See Daka, Inc. v. Breiner, 711 A.2d 86, 92 n.14 (D.C. 1998).

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II. Hostile Work Environment Sexual Harrassment

Title VII makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . ." 42 U.S.C. § 2000e-2(a)(1). Sexual harassment is considered discrimination on the basis of sex in violation of Title VII. Meritor Savings Bank FSB v. Vinson, 477 U.S. 57, 64, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986).

To be actionable, a plaintiff must establish that the sexual harassment is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Meritor, 477 U.S. at 67. In determining whether an environment is "hostile" or "abusive," the court should consider the totality of the circumstances. Harris v. Forklift Systems, Inc., 510 U.S. 17, 126 L. Ed. 2d 295, 114 S. Ct. 367 (1993). Specifically, a court should consider the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; whether it [*7] unreasonably interferes with an employee's work performance; and the effect on the employee's psychological well-being. Id.

An employer may be held liable for a hostile work environment that is created by a non-employee, including those non-employees who were invited or permitted to remain on an employer's premises. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1992) ("the environment in which an employee works can be rendered offensive in an equal degree by the acts of supervisors, coworkers, or even strangers in the workplace."); see also 29 C.F.R. § 1604.11(e) (EEOC Guidelines) ("An employer may also be responsible for the acts of non-employees with respect to sexual harassment of employees in the workplace. . . "). To prevail against an employer in these cases, a plaintiff must show that the employer knew or should have known of the existence of a hostile work environment and failed to take proper remedial action. Henson, 682 F.2d at 903. Consequently, although Mr. Harrison was not a University employee, the University may be responsible for his conduct if it knew or should have known that Mr. Harrison's actions created a hostile [*8] work environment for the Plaintiff and failed to take corrective action. Id. In determining whether an employer should be responsible for a hostile work environment caused by a non-employee, courts consider the extent of the employer's control over the harasser and any other legal responsibility which the employer may have with respect to the conduct of the non-employees. Otis v. Wyse, 1994 U.S. Dist. LEXIS 15172, 1994 WL 566943 at *7 (D. Kan., Aug. 24, 1994).

In this case, Defendants admit that the sufficiency of the University's response is a factual question for the jury but they contend that Plaintiff's hostile work environment claim must be dismissed because Plaintiff cannot establish a prima facie case of hostile work

environment under Title VII. Specifically, Defendants claim that Plaintiff cannot show that Mr. Harrison's conduct was based on sex and that Mr. Harrison's conduct was sufficiently severe or pervasive.

A. The Alleged Harassment Must Be Based on Sex

Title VII does not prohibit all verbal or physical harassment in the workplace; it is directed solely at discrimination because of sex. Oncale v. Sundowner Offshore Services, 523 U.S. 75, 118 S. Ct. 998, 1001, 140 L. Ed. 2d 201 (1998). [*9] Workplace harassment is not automatically discrimination because of sex merely because the words used have sexual content or connotations. Id. "The critical issue is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed." Id.

Here, Plaintiff alleges that Mr. Harrison sent her two letters, left three voice mail messages for her and attempted three personal visits to Plaintiff's office, all due to his conviction that she was his "wife." Plaintiff contends that these interactions with Mr. Harrison convinced her that this "mentally unstable homeless stranger" had conducted research on her since he knew her middle name and the name of a course which she taught in Cleveland. Moreover, Plaintiff refers to a letter written by Mr. Harrison to Attorney Valerie Edwards in Canada as evidence that Mr. Harrison's pursuit of Plaintiff was sexual in nature: "Verily, it appeared that this Valerie Edwards look-alike was actually a taller, more youthful, prettier and (forgive me for saying) more voluptuous woman than the Valerie Edwards whom I had met and known at Lakeside. . . .The truth is, I had never [*10] looked at Valerie Edwards full in the face, on account of painful bashfulness -- while enamored by her person and both distracted and infatuated with her legs -- and so was not aware of her exact features." It is clear from Mr. Harrison's own description of his search for "Geneva Crenshaw" or "Valerie Edwards" that he targeted women other than Plaintiff: "the only method available to me as far as finding Valerie was the most primitive means of choosing the name 'Valerie' from within the vast array of academic category and pursuing it. Eventually, I had lost even the name 'Valerie' and pursued others." Plaintiff argues that Mr. Harrison's pursuit of her as his "wife" was inherently sexual in nature since it was clear that Plaintiff was being pursued as a woman and that she would not have been sought by Mr. Harrison as his wife if she were a man. Moreover, Plaintiff claims that she was being stalked by Mr. Harrison and that stalking is primarily a crime against women, with sexual connotations.

A hostile work environment may be established if the harassment is "because of sex," even if not sexual in nature. Spain v. Gallegos, 26 F.3d 439 (3d Cir. 1999); Hicks v. Gates Rubber Co., 928 F.2d 966, 971 (10th Cir. 1991); [*11] Hall v. Gus Const. Co., Inc., 842 F.2d 1010 (8th Cir. 1988). In this case, it is clear that Plaintiff was only the object of Mr. Harrison's attention because she was a female; therefore, the alleged stalking activities do appear to have been "because of sex" even if they were not inherently sexual in nature. Therefore, the Court cannot dismiss Plaintiff's hostile work environment claim on the ground that Mr. Harrison's activities did not constitute sexual harassment.

B. Sexual Harassment Must be Severe and Pervasive

Defendants also claim that Plaintiff's hostile work environment claim should fail because Mr. Harrison's conduct was not severe or pervasive as a matter of law. The legal standard for determining a hostile or abusive work environment was set out by the Supreme Court in Harris v. Forklift Systems, Inc., 510 U.S. 17, 23, 126 L. Ed. 2d 295, 114 S. Ct. 367 (1993). A court must consider: (1) the frequency of the discriminatory conduct, (2) whether it was physically threatening or humiliating or a mere offensive utterance; and (3) whether it unreasonably interferes with an employee's work performance. The severity or seriousness of [*12] the alleged conduct varies inversely with the pervasiveness or frequency of the conduct; in other words, "one act may be sufficient if it is particularly severe while less intense incidents may be sufficient if numerous." See Powell v. Las Vegas Hilton Corp., 841 F. Supp. 1024, 1029 (D. Nev. 1992). Moreover, the Court must consider both the victim's subjective impressions of this activity and whether the alleged actions would constitute unlawful sexual harassment from the perspective of a reasonable victim.

In this case, Plaintiff alleges eight instances of sexual harassment: two letters, hand-delivered to Plaintiff's office; three phone calls to Plaintiff's direct line which were picked up by her voice mail; and three personal visits to Plaintiff's office, although Plaintiff was out of her office during the first two visits and the Security Officer chased Mr. Harrison from her office at the third visit. Plaintiff has alleged, and the Defendants do not appear to dispute, that she subjectively felt threatened by Mr. Harrison's behavior; however, to prevail on a sexual harassment claim, Plaintiff must also show that a reasonable female would have found these actions [*13] to be severely hostile or abusive. Whether or not Mr. Harrison intended his behavior to be abusive or threatening is irrelevant to this inquiry. See Powell, 841 F. Supp. at 1029 ("The reasonable victim standard classifies conduct as unlawful sexual harassment even when harassers do not realize that their conduct creates a hostile work environment. . . . Therefore, the alleged harasser's intent is unimportant and "compliments" are not a defense.")

The alleged incidents in this case may or may not be sufficiently severe or pervasive to amount to actionable sexual harassment. However, they certainly amount to more than the "mere utterance of an epithet." Meritor, 477 U.S. at 67 ("mere utterance of an. . . epithet which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficient degree to violate Title VII). Whether or not a reasonable victim would find them sufficiently severe or pervasive to alter the conditions of Plaintiff's employment and create an abusive working environment is appropriately an issue of fact for the jury, not one which this Court can summarily adjudicate. See Powell, 841 F. Supp. at 1029 [*14] (holding that whether two incidents of verbal abuse -- "great tits" and "great legs" -- and three incidents of staring by non-employees constituted sexual harassment of plaintiff was a triable issue of fact). Therefore, since the Court finds that Mr. Harrison's conduct could be considered sexual harassment and that the question of whether this behavior was sufficiently severe or pervasive to be actionable is a jury question, and since Defendants admit that there is a material dispute regarding whether

the University took appropriate actions in connection with Mr. Harrison, the Court must deny Defendants' Motion to Dismiss or Alternatively for Summary Judgment with regard to the Hostile Work Environment claim.

III. Retaliation

Title VII makes it illegal for an employer to take adverse employment actions against an employee for engaging in activity protected by the statute. See 42 U.S.C. § 2000e-3. In order to establish a prima facie case of retaliation, Plaintiff must show that: (1) she was engaged in protected activity under Title VII, (2) she was subjected to adverse employment action, (3) and a causal connection exists between the protected [*15] activity and the adverse action. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-253, 67 L. Ed. 2d 207, 101 S. Ct. 1089 (1973); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-804, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); Barnes v. Small, 268 U.S. App. D.C. 265, 840 F.2d 972, 976 (D.C. Cir. 1988).

Plaintiff asserts that Dean Bullock took five separate actions against her because she complained about a hostile work environment and requested protection from Mr. Harrison. Specifically, Plaintiff alleges that Dean Bullock retaliated against her by: (1) denying her application for a permanent EEO position at the Law School on December 18, 1997; (2) failing to authorize the Appointment Promotion and Tenure ("APT") Committee to fill vacant positions in January, 1998, because she believed the ATP Committee would recommend Plaintiff for one of these positions; (3) converting a Constitutional Law/Civil Rights position into a Tax/Trusts and Estates position in April 1998 so that the APT Committee could not consider her for the position; (4) leaving a tenure-track position vacant in the Spring of 1998, so that the APT Committee would not consider Plaintiff [*16] for the position; (5) ordering Plaintiff on May 26, 1998, to vacate her office by Friday, May 29, 1998, and actually "forcing" her out of the office in early June 1998.

Plaintiff alleges that Defendants were initially placed on legal notice of her protected activities when she reported Mr. Harrison's letters and voice-mails to Associate Dean Michael Newsom on November 20, 1997. At the latest, Plaintiff claims that she engaged in protected activity as a result of her November 25, 1997 letter, advising Dean Bullock about Mr. Harrison's conduct and criticizing the level of security on campus. Defendants argue that this letter made no mention of Title VII or other law and therefore contained no information that would communicate that Plaintiff believed that she had been the victim of a hostile work environment under Title VII. Therefore, Defendants contend that Plaintiff did not engage in protected activity until she filed a charge with the EEOC and that Dean Bullock could not have retaliated until she learned of this EEOC complaint. Following Defendants' reasoning the only act that could be considered retaliatory was the alleged early eviction from her office. Defendants assert that [*17] Plaintiff cannot prevail on this claim because she cannot prove a material adverse change in the terms or conditions of her employment. With respect to this early eviction claim, the Court finds that this is a material issue of fact for the jury and not one which can be disposed of pursuant to summary judgment.

With respect to the other four alleged adverse actions, this Court does not read Title VII to suggest that the protections afforded by this statute against retaliation are only available against individuals who have filed formal charges with the EEOC. See Brandau v. State of Kansas, 968 F. Supp. 1416, 1421-22 (D. Kansas 1997) (holding that it was undisputed that plaintiff had engaged in protected opposition to discrimination because she spoke directly with the alleged harasser and reported his conduct to her supervisors); Powell v. Las Vegas Hilton Corp., 841 F. Supp. 1024, 1025 (D. Nev. 1992) (holding that where the harasser is a non-employee, protected opposition under Title VII includes the statement to the employee, "I don't have to take this," or a simple request to the employer to "do something."). Moreover, whether or not Plaintiff's [*18] letter was sufficiently detailed to put Dean Bullock on notice that she believed she had been the victim of a hostile work environment is a question of fact for the jury. See Howard U. v. Green, 652 A.2d 41, 46 (D.C. App., 1994) (holding that there are no "magic words" which must be chanted in order to invoke Title VII protection), citing EEOC v. Crown Zellerbach Corp., 720 F.2d 1008, 1012-1013 (9th Cir. 1983). Since an EEOC complaint is not a legal prerequisite for a retaliation claim and since the Court cannot find that no reasonable juror could decide that Plaintiff had engaged in "protected activity" under Title VII when she informed Dean Bullock of Mr. Harrison's activities and complained about what she felt was the inadequacy of campus security, Defendants' motion for summary judgment on the other four retaliation claims must also be denied. n2

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n2 To the extent that the causal connection is in dispute, the Court finds that since the Plaintiff's complaints about Mr. Harrison and campus security were closely followed by the alleged adverse actions, a sufficient causal connection has been established to create a triable issue of material fact with regard to Plaintiff's retaliation claims. See Ramirez v. Oklahoma Dep't of Mental Health, 41 F.3d 584, 596 (10th Cir. 1994) (adverse action a month and a half after protected activity constituted circumstantial evidence of retaliation).

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IV. Intentional Infliction of Emotional Distress

To establish a claim for intentional infliction of emotional distress, a plaintiff must prove that the defendant engaged in: (1) extreme and outrageous conduct that (2) intentionally or recklessly caused (3) severe emotional distress to another. King v. Kidd, 640 A.2d 656, 667 (D.C. 1993). Generally, these claims are reserved for behavior that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." Sere v. Group Hospitalization, Inc., 443 A.2d 33, 37 (D.C. 1982). Although action that violates public policy, including discrimination, can constitute such extreme and outrageous conduct, the discrimination allegations must be "particularly egregious, such as the pattern or campaign of harassment, intimidation or abuse, to rise to

the level of extreme and outrageous conduct. Richardson v. Bell Atlantic Corp., 946 F. Supp. 54, 77 (D.D.C. 1996). Even assuming all of the allegations in Plaintiff's complaint are true, this Court cannot find that a reasonable [*20] juror would deem them to be sufficiently outrageous or extreme to rise to the level of intentional infliction of emotional distress. Therefore, Defendants' motion for summary judgment with respect to the claim of intentional infliction of emotional distress is granted.

V. Breach of Contract

In Count IV of the complaint, Plaintiff alleges that Howard University breached its contract with her by "not considering her, in good faith, for available permanent positions with Howard." Defendants argue that this breach of contract claim is barred by the Statute of Frauds since they assert that it is based upon oral representations made by Professor Taslitz, Vice-Chair of the APT Committee, to Plaintiff before she accepted the position with the University. Plaintiff argues that these oral representations induced her to accept the position because Professor Taslitz had suggested to her that she would be placed in the next available tenure track position.

The District of Columbia Statute of Frauds reads as follows:

> An action may not be brought. . . upon an agreement that is not to be performed within one year from the making thereof, unless the agreement upon which the action [*21] is brought, or a memorandum or note thereof, is in writing. . . and signed by the party to be charged therewith or a person authorized by him.

D.C. Code § 28-3502. However, the Statute of Frauds has been interpreted in this Circuit to apply only to those contracts whose performance could not possibly or conceivably be completed within one year. Hodge v. Evans Financial Corporation, 262 U.S. App. D.C. 151, 823 F.2d 559, 561 (D.C. Cir. 1987) (holding that "the enforceability of a contract under the statute does not depend on the actual course of subsequent events or on the expectations of the parties" but rather "applies only to those contracts whose performance could not possibly be conceivably be completed within one year.")

The question in this case is whether the tenure-track position which Professor Taslitz allegedly promised Plaintiff could have become available within one year of Plaintiff's acceptance of Defendant's offer of employment. Defendants argue that the tenure-track position could not have been offered to Plaintiff until the expiration of her two-year contract with the University. Plaintiff argues that this agreement could have been performed [*22] within one year if a tenure track position had become available within that one-year period because her contract did not preclude her from taking a tenured position. Based on the pleadings before the Court, this issue presents factual questions that cannot be resolved by the Court as a matter of law pursuant to a motion to dismiss or a motion for summary judgment. Whether or not Professor Taslitz had authority to bind

the University and whether the University could have offered Plaintiff the tenure track position before her two-year term had expired are material factual disputes which are more appropriately left to a jury. Therefore, Defendants' Motion to Dismiss or Alternatively for Summary Judgment on the Breach of Contract claim must be denied.

Conclusion

For the foregoing reasons, based on the briefs before this Court and the entire record herein, Defendants' Motion to Dismiss or Alternatively for Summary Judgment is granted in part and denied in part. The suits against Dean Bullock and President Swygert in their official capacities will be dismissed and Plaintiff's intentional infliction of emotional distress claim will also be dismissed. All remaining claims present material [*23] disputes of fact which are more appropriately left to a jury; therefore, Defendants' Motion with respect to the hostile work environment, retaliation, and breach of contract claims is denied. An order will accompany this opinion.

December 15Th, 1999

Thomas F. Hogan

United States District Judge

ORDER

In accordance with the accompanying memorandum opinion, it is hereby

ORDERED that Defendants' n1 Motion to Dismiss the Complaint or in the Alternative for Summary Judgment is granted in part and denied in part. Specifically, it is

ORDERED that Defendants' Motion is granted with respect to the suits against Dean Bullock and President Swygert in their official capacities and with respect to the intentional infliction of emotional distress claim. And it is further

ORDERED that Defendants' Motion is denied with respect to the hostile work environment sexual harassment, retaliation, and breach of contract claims.

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n1 This motion was brought by Defendants Howard University, Howard University School of Law, President H. Patrick Swygert, and Dean Alice Gresham-Bullock (in her official capacity only); this Order affects these moving parties only.

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December 15Th, 1999

Thomas F. Hogan

United States District Judge