Rohan v. Networks Presentations

2003 | Cited 0 times | D. Maryland | April 17, 2003

MEMORANDUM

Tess Rohan has sued Networks Presentations, LLC ("Networks") under the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. ("ADA").[1] The record establishes that Networks: (1) hired Rohan as an actress knowing that she suffered from Post Traumatic Stress Disorder ("PTSD") and severe depression, as well as the physical manifestations of these mental illnesses; (2) tolerated her bizarre behavior for several months on the tour; (3) attempted to accommodate her needs by giving her a benefit (a single hotel room) not given to other members of the tour; and (4) brought her employment to an end only after she began to exhibit suicidal behavior.[2] Reason and common sense dictate that on these facts Networks is not liable for its actions. That is what I hold. However, the uncertain reach of the ADA and the arcane rules that have been developed under it make the analysis leading to this self-evidently sound conclusion tortured and unsatisfying.

I.

Rohan suffers from PTSD and severe depression. These mental conditions allegedly stem from childhood abuse and molestation by her father. As a result of her conditions, Rohan suffers flashbacks and abreactions ("episodes"), has difficulty interacting with others, has difficulty sleeping, and experiences various forms of paranoia.

In May 2000, Networks hired Rohan to perform in a traveling theater production of Jekyll & Hyde. In August 2000, rehearsals began in New York City. At the beginning of rehearsals, Rohan told Gretchen Pfarrer, the company manager, and Janine Vanderhoff, the stage production manager about her mental illnesses and the episodes. She also indicated that she suffered from depression, acute disassociative disorder, and PTSD on a cast information and emergency contact form.

During rehearsals in New York, Rohan had a number of episodes. Pfarrer described one of the episodes as follows:

Ms. Rohan was sitting at the piano with the rehearsal pianist, tears streaming down her cheeks; Jenn Lyons came into the office to ask me to help Ms. Rohan. I talked to her telling her where she was, this was no help. I took her into the company manager office and continued talking to her. She started hysterically crying and telling me to stop, please stop. At that point she seemed to be in a child like state and started to hit me. I held her arm and told her that I was Gretchen the company manager of the Jekyll & Hyde tour. This took about 10 minutes to get her calmed down and back to a

normal state. (Pfarrer Aff., Pl. Ex. 6, at 1.)

In September 2000, rehearsals moved to North Charleston, South Carolina. While in South Carolina, Rohan continued to experience episodes. On September 13, tour management held an orientation to discuss the logistics of the tour with the cast and crew. Before the orientation meeting, Pfarrer arranged to meet with Rohan. Pfarrer explained to Rohan that management felt she should disclose her condition to the cast and crew. Rohan agreed with this request,[3] and she prepared a written statement explaining her condition with Pfarrer's assistance. Rohan read the statement at the end of the orientation meeting to the entire cast and crew.

From late September to early December, the tour performed at various locations around the country. During this time, Rohan frequently experienced episodes similar to those she experienced in New York and South Carolina. The episodes ranged in severity and usually occurred on the bus between tour stops. However, some episodes occurred immediately before and even during performances. During one November show, Rohan had to leave the theater before completing her performance.

During the tour, Rohan's condition manifested itself in other ways as well. On a number of occasions, she berated other cast members for being immature. She also frequently made negative comments about the acting ability of other actors and actresses on the tour. Most significantly, Rohan made a number of statements indicating that she wanted to kill herself. Although she made no serious suicide attempts, she did cut her left wrist with a dull razor and would occasionally scratch her wrists until they bled. The suicidal threats increased in frequency as the tour continued.

In November, Rohan's roommate informed Pfarrer that she could not sleep in the same room as Rohan because of Rohan's recurring nightmares and episodes. To accommodate Rohan's roommate and to give Rohan privacy, Networks decided to provide Rohan with her own room. Rohan was very grateful to Networks for providing her with the special accommodations.

During one bus trip in early December, Rohan stated that she did not feel like living anymore and took a handful of tranquilizer pills. She then asked Pfarrer to stop the tour bus so she could speak with her therapist. Pfarrer immediately complied with Rohan's request and tried to console her during the stop. After the bus trip, Pfarrer called Gregory Vander Ploeg, Networks's associate general manager. Vander Ploeg suggested that he and Pfarrer have a meeting with Rohan regarding her ability to continue on the tour. Vander Ploeg also called Rohan's therapist and ex-husband and described the situation to them. Finally, Vander Ploeg purchased a plane ticket for Rohan to return home in the afternoon of December 6.[4]

On December 5, Vander Ploeg met the tour in Gainesville, Florida. After that night's performance, Vander Ploeg called Rohan's room. He left a message asking Rohan to meet with him and Pfarrer in the morning. At approximately 2:00 a.m. on December 6, Rohan returned Vander Ploeg's call. Rohan demanded that they meet immediately if she was being fired. Vander Ploeg assured Rohan that he

only wanted to discuss ways to make her more comfortable on tour. Rohan then insisted that Vander Ploeg book her a flight home immediately.

Vander Ploeg subsequently met with Pfarrer and described his phone conversation with Rohan. During this meeting, Vander Ploeg and Pfarrer received a phone call from an actor on the tour, who told them that Rohan was very upset. Vander Ploeg and Pfarrer went to Rohan's room. When they arrived, they found Rohan crying and packing her bags as fast as she could. After Vander Ploeg and Pfarrer attempted to console her, Rohan again demanded that they immediately get her a flight home. Vander Ploeg purchased Rohan a ticket on a plane that left at 7 a.m. Vander Ploeg and Rohan returned to Maryland on that flight.

Based on the above events, Rohan brings four claims against Networks: (1) wrongful discharge under Title I of the ADA; (2) hostile work environment under Title I of the ADA; (3) breach of contract; and (4) invasion of privacy.

II.

Rohan must show that she is a "qualified individual with a disability" to succeed on either of her ADA claims.[5] Rohan cannot make this required showing. As a result, I will grant Networks's motion for summary judgment on Rohan's ADA claims.

A.

1.

An individual is disabled under the ADA if she has an impairment that substantially limits one of her major life activities. 42 U.S.C. § 12102(2)(A). Rohan claims that her depression and PTSD substantially limit her in the major life activity of interacting with others.[6]

Within the context of this case, this claim contains a fatal inconsistency. If Rohan is substantially limited in her ability to interact with others-as she must be to qualify as disabled under the ADA-she cannot be a "qualified individual."

A "qualified individual" is one who, with or without reasonable accommodation, can perform the essential functions of her job. 42 U.S.C. § 12111(8). This provision means "that a 'qualified' person must be 'able to meet all of a program's requirements in spite of [her] handicap.'" Tyndall v. Nat'l Educ. Ctrs., 31 F.3d 209, 213 (4th Cir. 1994) (quoting Southeastern Cmty. Coll. v. Davis, 442 U.S. 397, 406 (1979)). In order to demonstrate that she is a qualified individual, Rohan must show either: (1) that she could perform all the essential functions of her job-"functions that bear more than a marginal relationship to the job at issue"-or (2) that her employer could provide reasonable accommodations that would enable her to perform those functions. Id. (quoting Chandler v. City of Dallas, 2 F.3d 1385,

1393-94 (5th Cir. 1993)).

Based on the record before me, it is clear that an essential function of Rohan's job as a touring actress was the ability to interact with others. Rohan had to interact with other actors and actresses on stage and backstage during rehearsals and performances. Rohan also had to interact with directors and tour managers. Finally, social interaction was necessary on the tour bus and in the hotels between performances. (See Letter from Marcus to Wolmack of 4/4/01, Pl. Ex. 8, at 3; Rohan Dep., Def. Ex. 2, at 491.) In short, interacting with others was part of Rohan's job that bore "more than a marginal relationship to the job at issue." Tyndall, 31 F.3d at 213. Finding that Rohan is substantially limited in her ability to interact with others requires me to find that she cannot perform this essential function of her job.[7]

I also can think of no reasonable accommodations Networks could provide that it did not to enable Rohan to interact with others. Two facts support this conclusion. First, Networks provided Rohan with her own room to give her privacy (the only reasonable accommodation I can think of that the tour could have made), and it did not help. (Pfarrer Aff., Pl. Ex. 6, at 7-8.). Second, Rohan never requested any accommodations while working for Networks.[8] Cf. Martinson v. Kinney Shoe Corp., 104 F.3d 683, 687 (4th Cir. 1997) ("[Plaintiff] never requested any accommodation (other than tolerance of his seizures), perhaps recognizing, as we conclude, that no reasonable accommodation was possible here.").

If Rohan is substantially limited in her ability to interact with others, she cannot perform the essential functions of her job. Moreover, Networks cannot provide her reasonable accommodations to help her to interact with others. As a result, she cannot be a "qualified individual" under the ADA.[9]

2.

There is a second problem with Rohan's claim that she is a qualified individual. 42 U.S.C. § 12113(b) provides a defense to employers who fire disabled employees who "pose a direct threat to the health or safety of other individuals in the workplace." The EEOC regulations provide that an employer may rely on this defense when an employee poses a risk to others and when an employee poses a risk to his or her own health or safety. 29 C.F.R. § 1630.15(b)(2); Chevron U.S.A. Inc. v. Echazabal, 536 U.S. 73, __, 122 S.Ct. 2045, 2048-49 (2002). Determining that an individual poses a direct threat to herself or others should "be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job." 29 C.F.R. § 1630.2(r).

The EEOC's regulations provide several factors to consider when determining whether an employee is a direct threat to herself or others:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

Id. Applying these factors to the facts of this case suggest that Rohan was a direct threat to herself, and thus unable to safely perform the essential functions of her job, when Networks decided to fire her. Rohan made numerous threats to commit suicide over the course of several months. When she made one of these threats she took a handful of tranquilizer pills. At one point she even cut her wrist with a razor. These actions indicate a continuing, very severe, likely, and imminent potential harm.

Rohan makes two arguments against my reliance on this defense.[10] First, she contends that in order for the direct threat defense to be applicable, Networks had to fire her. Because Networks contends that it did not fire her, Rohan insists that Networks cannot now make use of this defense. Rohan is probably correct that some sort of adverse employment action is necessary to trigger the applicability of the direct threat defense. See 42 U.S.C. § 12113; 29 C.F.R. § 1630.15(b)(2). However, Rohan herself contends that Networks did fire her. (Pl.'s Opp'n at 19-22.) Rohan cannot contend that Networks fired her to prove a prima facie case of discrimination and then contend that Networks did not fire her to avoid the application of an affirmative defense.

Rohan also argues that Networks cannot use the direct threat defense because Networks's primary justification for firing Rohan was that she had become a distraction, not that she was going to commit suicide. Rohan's argument fails because the record demonstrates that her threats of suicide were the primary reason she had become a distraction. In other words, contrary to what Rohan contends, Networks's explanation for firing her-that she had become a distraction-and her threats of suicide are not mutually exclusive.

The record clearly demonstrates that Networks tolerated misbehavior and "disruptions" on the tour. It made every attempt to accommodate personal issues, like Rohan's episodes, and disciplined misbehavior without firing the offending parties. (See Vanderhoff Decl., Pl. Ex. 18, ¶¶ 6-7, 9-11. See generally Pfarrer Aff., Pl. Ex. 6.) Networks's approach to Rohan's condition changed only after she began exhibiting suicidal behavior. (See Pfarrer Aff., Pl. Ex. 6, at 6-9; Vander Ploeg Dep., Pl. Ex. 10, at 112-14, 124-25; Vander Ploeg Aff., Pl. Ex. 20, at 1; Patricia Gentry Dep., Pl. Ex. 16, at 115-16; Kenneth Gentry Dep., Pl. Ex. 22, at 37-38.) The only reasonable conclusion that can be drawn from this evidence is that Rohan's "disruptions" became severe enough to justify termination only after Networks concluded that Rohan was becoming a real threat to herself. Thus, the record reveals that a primary reason Networks terminated Rohan-why it considered her a disruption-was her suicidal behavior.

B.

An individual also is disabled under the ADA if she is regarded as having an impairment that substantially limits one of her major life activities. 42 U.S.C. § 12102(2)(C). Rohan claims that Networks regarded her as having an impairment that substantially limited her in the major life activity of working.[11] (Pl.'s Opp'n at 40-42.) To prove this contention, Rohan must show that Networks fired her because it perceived her "to be significantly restricted in [her] ability to perform either a class of jobs or a broad range of jobs in various classes." Cline v. Wal-Mart Stores, Inc., 144 F.3d 294, 303 (4th Cir. 1998).

To support her claim, Rohan relies on statements made by Networks's management. The statements all reflect: (1) Networks's concern that Rohan was not able to handle the stress of life on the Jekyll & Hyde tour, and (2) Networks's belief that Rohan would be better off in a more stable environment. (See Pfarrer Aff., Pl. Ex. 6, at 9; Vander Ploeg Aff., Pl. Ex. 20, at 2. See generally Pl.'s Opp'n at 23-27.) Rohan contends that these statements show that Networks regarded her as unable to work in traveling shows and unable to work in general. (Pl.'s Opp'n at 40-42.) No reasonable jury could agree with Rohan's characterization of the evidence.

The only reasonable conclusion to be drawn from the record is that Networks felt Rohan was unable to continue on the Jekyll & Hyde tour. Rohan has presented no evidence suggesting that Networks felt Rohan could not work as an actress or that Rohan could not eventually return to work in a touring theater company. In fact, the record shows that Networks regarded Rohan as an "outstanding" performer. (See, e.g., E-mail from Jaeger to Rohan of 11/22/00, Pl. Ex. 15.) Moreover, Rohan has presented evidence that Networks felt she was only temporarily unable to perform on the Jekyll & Hyde tour. (Gentry Notes, Pl. Ex. 24.) Overall, Rohan's evidence falls far short of showing that Networks regarded her as unable "to perform either a class of jobs or a broad range of jobs in various classes." Cline, 144 F.3d at 303.

III.

Rohan also claims that Networks breached her employment contract by firing her prematurely.[12] Rohan concedes that Networks could terminate her if she breached her employment contract. (Pl.'s Opp'n at 49.) However, Rohan contends that Networks could not terminate her contract without notifying her that she was in breach and giving her the opportunity to cure her breach. (Id.) To support this argument, Rohan relies on the following provision of her employment contract:

No party to this Agreement shall be deemed to have breached any provisions hereof, unless and until the other party hereto has sent written notice to said party specifying said party's failure in respect of any provision, and said failure is not corrected or rectified within five (5) business days after party's receipt of such written notice from the other party. (Employment Contract, Pl. Ex. 1, ¶ 27.) Rohan's claim fails.

The clear purpose of paragraph 27 is to provide a breaching party with an opportunity to cure a

breach before the non-breaching party has a right to terminate the contract. This provision reflects the general common law rule that a non-breaching party must give the breaching party an opportunity to cure before terminating the contract. See Spectrum Holobyte California, Inc. v. Stealey, 885 F. Supp. 138, 140 (D. Md. 1995) ("[A] Court in equity will usually allow a good faith defaulter an opportunity to cure a claimed breach."). See generally E. Allan Farnsworth, Farnsworth on Contracts § 8.18, at 502-05 (2d ed. 1998). One exception to this general rule is that a non-breaching party does not need to provide an opportunity to cure if the facts of the case suggest that the breaching party will not be able to cure its breach. See generally Farnsworth, supra, § 8.18, at 504-05. Although this exception is not explicitly stated in Rohan's employment contract, I believe it is implicit.

Under this interpretation of the employment contract, I find that Networks was justified in not providing Rohan with a written notice of breach and five days to cure the breach before it terminated Rohan's employment contract. Requiring Networks to adhere to these formalities in this case makes little sense. As Rohan therapist makes clear in her declaration, Rohan could not cure her inability to interact with others or suicidal behavior within five days. (Sheahen Decl., Pl. Ex. 3, ¶ 9.) As a result, I find that Networks's failure to notify Rohan of her breach or provide her with an opportunity to cure her breach does not amount to a breach of the employment contract.[13]

IV.

Finally, Rohan claims that Networks invaded her privacy by forcing her to disclose her mental illness to fellow cast members. In South Carolina,[14] to establish a prima facie case of publication of private facts-the branch of the invasion of privacy tort applicable here-a plaintiff must show: "(1) publicizing, (2) absent any waiver or privilege, (3) private matters in which the public has no legitimate concern, (4) so as to bring shame or humiliation to a person of ordinary sensibilities." Swinton Creek Nursery v. Edisto Farm Credit, 514 S.E.2d 126, 131 (S.C. 1999).

As I explained in a previous opinion, this case raises a potentially novel issue of South Carolina law: "[W]hether the element of publicity in an invasion of privacy case is satisfied when the plaintiff herself publicizes the information as a result of compulsion." Rohan, 175 F. Supp. 2d at 816. In that opinion, I provided the parties with an opportunity to more thoroughly brief this issue. Id. Having read the briefs, I am still in no position to determine how the South Carolina courts would rule on this issue. In short, this issue remains a novel issue of state law. As a result, I decline to exercise supplemental jurisdiction over Rohan's invasion of privacy claim. 28 U.S.C. § 1367(c)(1).

A separate order consistent with this memorandum is being entered herewith.

ORDER

For the reasons stated in the accompanying memorandum, it is, this 17th day of April 2003,

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ORDERED that

1. Defendant's motion for summary judgment is granted on Counts I, II, and III;

2. Judgment is entered in favor of defendant on Counts I, II, and III;

3. I decline to exercise supplemental jurisdiction over Count IV; and

4. This case is closed.

1. Rohan has also asserted state law claims for breach of contract and invasion of privacy. For the reasons stated later in this opinion, I grant Networks's motion for summary judgment on the breach of contract claim and decline to exercise supplemental jurisdiction over the invasion of privacy claim.

2. Networks contends that Rohan voluntarily quit and that it did not terminate her employment. As discussed later in this opinion, a genuine issue of material fact exists on this issue.

3. Rohan claims she agreed with this request only because she felt she would be fired if she did not make the disclosure.

4. Vander Ploeg claims he purchased the ticket so that Rohan would have a way to get home if she decided to leave the tour.

5. To establish a prima facie case of wrongful discharge under the ADA, a plaintiff must show that: (1) she is within the ADA's protected class; (2) she was discharged; (3) her job performance met her employer's expectation when she was discharged; and (4) her discharge occurred under circumstances that raise a reasonable inference of unlawful discrimination. Haulbrook v. Michelin North Am., Inc. 252 F.3d 696, 702 (4th Cir. 2001). An employee is within the ADA's protected class if she is "a qualified individual with a disability." Id. (quoting 42 U.S.C. § 12112). To establish a prima facie case for a hostile work environment claim under the ADA, a plaintiff must show that: (1) she is a qualified individual with a disability; (2) she suffered unwelcome harassment; (3) the harassment was based on her disability; (4) the harassment was so severe or pervasive that it altered a term, condition, or privilege of employment; and (5) a factual basis exists to impute liability to the employer. Fox v. Gen. Motors Corp., 247 F.3d 169, 177 (4th Cir. 2001).

6. I will assume that Rohan's severe depression and PTSD are impairments under the ADA. See, e.g., Baird ex rel. Baird v. Rose, 192 F.3d 462, 467 n.3 (4th Cir. 1999) (recognizing that depression can be a disability); Hamilton v. Southwestern Bell Tel. Co., 136 F.3d 1047, 1050 (5th Cir. 1998) (finding that PTSD can be a disability in certain circumstances). I will also assume that interacting with others is a major life activity. The Fourth Circuit has not explicitly ruled on this issue, but has stated that this is "a claim about which we have some doubt." Davis v. Univ. of North Carolina, 263 F.3d 95, 101 n.4 (4th Cir. 2001). The other circuits are split. Compare Soileau v. Guilford of Maine, Inc., 105 F.3d 12, 15 (1st Cir. 1997) (finding that the ability to get along with others is not a major life activity), with McAlindin v. County of San Diego, 192 F.3d 1226, 1234 (9th Cir. 1999) (concluding that interacting with others is a major life activity).

7. There is substantial evidence in the record supporting Rohan's contention that she is not able to interact with others. (See Pl.'s Opp'n at 9-14.) Rohan's therapist has described Rohan's inability to interact with others as follows: For the past several years, [Rohan's] depression and PTSD have imposed significant limitations on her ability to interact with others in normal fashion as compared to the average person in the general population. . . . [Rohan] has isolated herself socially from others and the community at large. She avoids interaction with her parents and siblings. She avoids making friends and makes no effort to have a social life. She has a fear of relationships. She has severe difficulties in interacting with men, and such interactions often trigger flashbacks or abreactions of the earlier abuse. [Rohan] also has substantial difficulties in interacting with certain types of women, especially strong, authoritative women. She has substantial difficulty asserting herself with someone (man or woman) whom she perceives as an authority figure. . . . Her impairments have imposed, and will continue to impose for some time, significant limitations on her social and personal functioning, especially her ability to interact with and trust others. (Sheahen Decl., Pl. Ex. 3, ¶¶ 8-9.) This diagnosis is corroborated by Rohan's recurring episodes, conflicts with other members of the cast, and suicidal tendencies. (See generally Pfarrer Aff., Pl. Ex. 6; Rohan Hand-Written Journal, Def. Ex. 11; Rohan Typed Journal, Pl. Ex. 13; E-mail from Rohan to Sheahen of 12/4/00, Def. Ex. 13.)

8. Rohan maintains that she did not need or want any accommodations. (Rohan Dep., Def. Ex. 2, at 472.)

9. Rohan makes two arguments attempting to show that she is a "qualified individual." First, Rohan contends that she is a qualified individual because Networks regarded her as an excellent performer. (See Pl.'s Opp'n at 14-16.) However, Rohan's performances were not the only essential function of her job. As discussed above, the ability to interact with others was also an essential function of her job. Rohan also attempts to rely on an admission made by Networks. Networks did admit "the allegations contained in Paragraph 141 of Plaintiff's Amended Complaint." (Answer ¶ 141.) Paragraph 141 of Rohan's amended complaint states, "Plaintiff could perform, and did perform, the essential functions of the role of Lady Beaconsfield/Ensemble in Networks's Jekyll & Hyde production." (Am. Compl. ¶ 141.) I read Networks's answer as admitting that Rohan was able to adequately perform as an actress. This is consistent with Networks's employee's reviews that characterized Rohan's performances as "outstanding." (See, e.g., E-mail from Jaeger to Rohan of 11/22/00, Pl. Ex. 15.) However, I do not read Networks's answer as admitting that Rohan was able to interact with others or that interacting with others was not an essential function of her job.

10. During the hearing on this motion, Rohan initially argued that the direct threat defense is an affirmative defense that Networks never raised. I find that the direct threat defense is an affirmative defense in the sense that the defendant has the obligation to produce evidence on the issue. See 42 U.S.C. § 12113; Echazabal, 536 U.S. at __, 122 S.Ct. at 2049. In other words, a plaintiff does not have to show that he or she is not a direct threat to others or to him or herself. I find that the direct threat defense is not an affirmative defense in the sense that a defendant must plead the defense under Fed. R. Civ. P. 8(c). Rohan, however, is not completely immune from this defense simply because Networks did not raise the issue. First, the record, even when viewed in the light most favorable to Rohan, clearly establishes that she was a direct threat to herself. Moreover, Rohan had an opportunity at the hearing on this motion to respond to my questions concerning this issue and raised several objections that are discussed above.

11. Although not a basis for my decision, I have serious doubts about the reasonableness of the federal regulation, 29 C.F.R. § 1630.2(i), that defines major life activity to include "working." See Toyota Motor Mfg. v. Williams, 534 U.S. 184,

200 (2002); Sutton v. United Air Lines, Inc., 527 U.S. 471, 492 (1999). As the Supreme Court has indicated, allowing "working" to qualify as a major life activity makes the ADA circular. See Sutton, 527 U.S. at 492. A more reasonable reading of the ADA requires the exclusion of "working" as a major life activity. In every case I have read where a plaintiff claims he or she is limited in the major life activity of working, the plaintiff suffers from an impairment that limits his or her ability to perform some basic life function, e.g., walking, breathing, performing manual tasks, or interacting with others. The plaintiff's inability to perform a basic life function is what impairs his or her ability to work. It is these basic life functions, not working, that should qualify as a major life activity.

12. Networks contends that it never fired Rohan. (Def.'s Mem. at 22-24.) While this may be true, the evidence in the record creates a genuine dispute of fact about this issue. Rohan's husband has stated in a declaration that Vander Ploeg suggested that he was going to fire Rohan. (Rohan Decl., Pl. Ex. 23, ¶¶ 2, 5.) Rohan's therapist has also submitted a declaration stating that Vander Ploeg told her he was going to fire Rohan. (Sheahen Decl., Pl. Ex. 3, ¶ 10.) Finally, Networks has admitted that it provided Rohan with severance pay. (Vander Ploeg Dep., Pl. Ex. 10, at 228.) Thus, I will assume for purposes of this motion that Networks terminated Rohan on December 6, 2000.

13. Rohan's damages would also be nominal. Maryland follows the well-established rule that "[t]he amount of damages recoverable for breach of contract is that which will place the injured party in the monetary position he would have occupied if the contract had been properly performed." Hall v. Lovell Regency Homes Ltd. P'Ship, 121 Md. App. 1, 12, 708 A.2d 344, 349 (1998). Here, if Networks breached the contract by not notifying Rohan and providing her five days to cure the breach, Rohan would be entitled to five days worth of salary.

14. South Carolina law applies because the alleged forced disclosure occurred in South Carolina. Rohan v. Networks Presentation LLC, 175 F. Supp. 2d 806, 815 (D. Md. 2001).