Elliott v. Oldcastle Lawn & Garden Inc et al

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION STANLEY ELLIOTT,) Plaintiff,) vs.) No. 2:16-cv-01929-DCN OLDCASTLE LAWN & GARDEN, INC.,) OLCASTLE INC., and OAK TREE HR) LLC d/b/a OAK TREE STAFFING,) ORDER Defendants) This matter is before the court on United States Magistrate Judge Jacquelyn D. report and recommendation (R&R), ECF No. 29, that the court deny defendant Oldcastle Inc. motion to dismiss, ECF No. 7, and grant in part and deny in part defendant Oak Tree HR LLC motion to dismiss, ECF No. 16, granting with respect to plaintiff Stanley termination claims . ECF No. 29. For the reasons sets forth below, the court adopts the R&R in full.

I. BACKGROUND A. Factual Allegations The R&R ably recites the relevant facts, and it is unnecessary to review the details of the complaint and depositions that constitute the factual record to this point. 1

In short, Elliot, who was 51 years old at the time of the events at issue, began working for the

1 Unless otherwise noted, the following background is drawn from the R&R. 2:16-cv-01929-DCN Date Filed 03/31/17 Entry Number 48 Page 1 of 10

staffing agency Oak Tree on April 15, 2015. Oak Tree placed Elliot with Oldcastle Law

e Lawn and Oldcastle, who terminated After his termination, defendants hired an employee under 40 who had no disability to replace Elliot. Elliot filed a charge of employment discrimination on the basis of disability with the Equal Employment Opportunity Commission , which issued a notice of the right to sue on March 18, 2016.

Elliot filed the instant case on June 14, 2016 against Oldcastle Lawn & Garden, Oldcastle, and Oak Tree, alleging violations of the Americans with Disabilities Act In his complaint, Elliot appears to assert ADA claims for failure to accommodate and retaliatory discharge, and ADEA claims for discriminatory discharge and retaliatory discharge. 2

deny Oldcastl , and (2) grant in part and deny in part . Oak Tree filed an objection on December 13, 2016, ECF No. 38, to which Elliott replied on December 28, 2016. ECF No. 42. Elliott filed an objection on December 16, 2016, ECF No. 39, to

2 the ADA, the ADEA, and Title VII of the Civil Rights Act of 1964. Like the magistrate judge, the court construes the complaint as only raising claims under ADA and the ADEA. 2:16-cv-01929-DCN Date Filed 03/31/17 Entry Number 48 Page 2 of 10

which Oak Tree HR LLC replied on December 21, 2016, ECF No. 41. The matter is now

II. STANDARDS OF REVIEW A. De Novo Review This court is charged with conducting a de novo review of any portion of the written objections are made. 28 U.S.C. 636(b)(1). The court may adopt the portions of the R&R to which a party does did not magistrate judge. Thomas v. Arn, 474 U.S. 140, 14 50 (1985). The recommendation of

make a final determination. Mathews v. Weber, 423 U.S. 261, 270 71 (1976). A. Motion to Dismiss A Rule 12(b)(6) motion for failure to state a claim upon which relief can be Francis v. Giacomelli, 588 F.3d 186, 192 (4th Cir. 2009) (citations omitted); see also Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. . . . does not resolve contests surrounding the facts, the merits of a claim, or the applicability

statemen R. Civ. P. 8(a)(2). A Rule 12(b)(6) motion should not be granted unless it appears certain that the plaintiff can prove no set of facts that would support his claim and would entitle him to relief. Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993). When considering a Rule 12(b)(6) motion, the court should accept all well-pleaded allegations 2:16-cv-01929-DCN Date Filed 03/31/17 Entry Number 48 Page 3 of 10

as true and should view the complaint in a light most favorable to the plaintiff. Ostrzenski v. Seigel, 177 F.3d 245, 251 (4th Cir.1999); Mylan Labs., Inc., 7 F.3d at 1134. Ashcroft v.

Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544,

that allows the court to draw the reasonable inference that the defendant is liable for the Id

III. DISCUSSION A. in full. Oldcastle did not file any objections to the R&R. In the absence of a timely filed

Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (internal citations omitted). Upon review, the court is satisfied that there is no clear error in the magistr analysis of motion to dismiss . 2:16-cv-01929-DCN Date Filed 03/31/17 Entry Number 48 Page 4 of 10

B. 3 The magistrate judge interpreted the complaint as laying forth claims under the ADA and the ADEA. The magistrate judge recommends granting dismiss , and denying as to failure to accommodate claim. ECF No. 29 at 7. Oak Tree filed an objection, arguing that the complaint contains no facts to support a failure to accommodate claim under the ADA. ECF No. 38 at 2. Elliot

filed an objection, arguing that that magistrate judge erred in granting the motion to dismiss as to his termination claims. ECF No. 39 at 1. The court separates its analysis in accordance with the objections filed.

1. Failure to Accommodate Claim Oak Tree objects to the failure to accommodate claim should survive the motion to dismiss. ECF No. 38 at 2. , 4

but a review of the briefing before the magistrate judge reveals that allegations regarding failure to accommodate. Oak Tree spends the entirety of its motion

to dismiss addressing whether Oak Tree had knowledge of the discriminatory act against Elliot, and the implications of the joint employer doctrine on its liability for

3 Oak Tree contends that the magistrate judge applied the incorrect standard in motion to dismiss, and that if the magistrate judge had used the correct pleading standard sh Iqbal/Twombly standard. ECF No. 28 at 1. Since the court finds that even under the Iqbal/Twombly pleading standard Elliott has stated a cognizable claim against Oak Tree, the court does not address this objection.

4 To be clear, the court takes no position on the merits of failure to accommodate claim.
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termination of Elliot. ECF No. 16 at 3. At no point in the complaint does Oak Tree discuss how nothing more than a part of the wrongful discharge claim, like it does in its objection.

ECF No. 38 at 2. Therefore, arguments on the failure to accommodate claim must be treated as newly raised. Courts have frowned upon objections to R&Rs that make new arguments that serve as a new basis for a motion to dismiss. See, e.g., Williams v. McNeil, 557 F.3d 1287, 1292 (11th Cir. 2009) (finding that requiring a district court to consider new arguments raised in objections would unfairly benefits litigants who change their tactics in response to an unfavorable recommendation from the magistrate); Murr v. United States, 200 F.3d 895, 902 n. 1 (6th Cir. 2000) (finding that argument before the magistrate judge constitutes waiver); Marshall v. Chater, 75 F.3d

1421, 1426 (10th Cir. 1996) (finding that issues raised for the first time in objections are waived); Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 990 91

right to de novo review by the judge of an argument never reasonably raised before the Dune v. G4s

Regulated Sec. Sols., Inc., 2015 WL 799523, at *2 (D.S.C. Feb. 25, 2015). While the court has the power to address such arguments, that power lies within the c discretion. Id. In this case, the court sees no reason to exercise such discretion Oak Tree had the burden to present its argument regarding
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claim to the magistrate judge and failed to do so. Accordingly, the court declines to accommodate claim. 5

2. Retaliatory Discharge Claim The magistrate judge recommended the court find that Elliott had failed to state a cognizable c factual allegations that Oak Tree participated in Plain ECF No. 29 at 8. Elliot contends that his allegation that clearly includes all of the defendants Old Castle Lawn, Old Castle, and Oak Tree. ECF No. 39 at 2. Elliot opportunity to reconcile the situation, The court

finding that Elliot has failed to state a prima facie claim of retaliation against Oak Tree because he has failed to plead any facts that Oak Tree denied him any accommodations.

5 ailure to accommodate claim survived a motion to dismiss only dismiss did not address the claim. ECF No. 29 at 2. That is to say, the magistrate judge made no finding that Elliot actually pled a cognizable failure to accommodate claim. However, Oak Tree should have addressed the failure to accommodate claim in the briefing before the magistrate judge. Allowing parties to make new arguments through objections undermines the very purpose of magistrate judges. f the Magistrates Act is to allow magistrates to assume some of the burden imposed on the Keitt v. Ormond, 2008 WL 4964770, at *2 (S.D.W. Va. Nov. 13, 2008) (quoting Jesselson v. Outlet Associates of , 784 F. Supp. 1223, 1228 29 (E.D. Va. 1991) parties . . . Id. Instead,

Id. 2:16-cv-01929-DCN Date Filed 03/31/17 Entry Number 48 Page 7 of 10

To make out a prima facie claim of retaliation under the ADA, a plaintiff must satisfy three elements: (1) the plaintiff engaged in a protected activity, (2) the employer took an adverse employment action against the plaintiff, and (3) a causal connection existed between the protected activity and the adverse employment action. y Without a Name v. Commonwealth of Va., 655 F.3d 342, 350 (4th Cir. 2011). Elliot alleges that defendants have discriminated against him as a handicapped person, failed to identify and make reasonable accommodations for employment, and retaliated against him by terminating him based on his disability and request for accommodation. Compl. ¶¶ 38 39, 42 46. However, the complaint does not make clear alleges that Oak Tree took in retaliation against him. Ac called Compl. ¶ 16. him with Old Castle Lawn and Old Castle. Id. ¶ 13. Although Elliot alleges that Old id.,

at no point does he specify what role Oak Tree played in his termination. The court finds that this is insufficient to state a cognizable claim for retaliation against Oak Tree, and . Elliot has requested leave to amend his complaint, and attached a proposed amended complaint to his objections. Rule 15(a) of the Federal Rules of Civil Procedure provides that once a responsive pleading has been serve s pleadings only by leave of court or by written consent of the adverse party; and leave
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The general standard for determining

In the absence of any apparent or declared reason such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.

Foman v. Davis, 371 U.S. 178, 182 (1962). [T]he federal rules strongly favor granting Medigen n, 985 F.2d 164, 167 68 (4th Cir. 1993). In accordance with this philosophy, the court grants motion to amend, and reiterates the to clearly and separately set out each count, specify the facts that apply to each separate count, and clearly state which count applies to which defendant. Specifically, Elliot should parse out what facts apply to each defendant. leave to amend his complaint. 2:16-cv-01929-DCN Date Filed 03/31/17 Entry Number 48 Page 9 of 10

IV. CONCLUSION For the reasons set forth above, the court ADOPTS the R&R, DENYING GRANTING IN PART AND DENYING IN PART ECF No. 16, GRANTING with DENYING ailure to accommodate claim. Finally, the court grants Elliott leave to file an amended complaint. AND IT IS SO ORDERED.

DAVID C. NORTON UNITED STATES DISTRICT JUDGE March 31, 2017 Charleston, South Carolina 2:16-cv-01929-DCN Date Filed 03/31/17 Entry Number 48 Page 10 of 10