

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RENEE ROBERTS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 03-397 GMS  
 )  
 COMCAST CABLE COMPANY, )  
 )  
 Defendant. )

**MEMORANDUM**

**I. INTRODUCTION**

On January 10, 2003, the plaintiff, Renee Roberts (“Roberts”), filed the above-captioned action against her former employer, Comcast Cable Company (“Comcast”), alleging Title VII retaliation and state law contract and tort claims for fraudulent inducement, negligent misrepresentation and breach of the covenant of good faith and fair dealing. On September 22, 2003, Comcast filed a motion to dismiss Roberts’ complaint, and on May 21, 2003, Comcast filed a motion for summary judgment, alleging in part that Roberts’ claims were barred by the parties’ release agreement executed at the time of her termination. Roberts opposes Comcast’s motion for summary judgment on the grounds that the release is invalid. Because the court finds the release valid and preclusive of Roberts’ claims, it will grant summary judgment. The reasons for the court’s ruling are set forth below.

**II. STANDARD OF REVIEW**

The court may grant summary judgment “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 that the moving party is entitled to judgment as a matter

of law.” Fed. R. Civ. P. 56(c); *see also Boyle v. County of Allegheny, Pennsylvania*, 139 F.3d 386, 392 (3d Cir. 1998). Thus, the court may grant summary judgment only if the moving party shows that there are no genuine issues of material fact that would permit a reasonable jury to find for the non-moving party. *See Boyle*, 139 F.3d at 392. A fact is material if it might affect the outcome of the suit. *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986)). An issue is genuine if a reasonable jury could possibly find in favor of the non-moving party with regard to that issue. *Id.* In deciding the motion, the court must construe all facts and inferences in the light most favorable to the non-moving party. *Id.*; *see also Assaf v. Fields*, 178 F.3d 170, 173-174 (3d Cir. 1999). With these standards in mind, the court will describe the facts that led to the present motion.

### **III. FACTS**

Edwards graduated from high school in 1977 and thereafter took some college courses in computer science and business administration. Throughout her work history prior to employment with Comcast, Roberts has always held manager or supervisor positions.

From May 1998 to October 2001, Roberts, an African-American, was employed as a customer service supervisor at the Call Center in New Castle Delaware, which was acquired by Comcast in 2000. As a customer service supervisor, Roberts directed, trained, and evaluated Customer Account Executives assigned to her. Her direct manager was Doris Davis, another African American, who in turn reported to a director, Joanne Courtney, who is white. Courtney reported to the highest ranking person at the call center, Vice President Barbara Edwards, who is also white. Angela Wilson was the acting Human Resources Director at the Call Center during the relevant time period. Roberts’ performance evaluations were consistently positive.

In August 2001, Roberts disciplined a white employee, Lisa Burks for lateness issues. In

response, Burks complained about Roberts to Courtney and then to Wilson. She said that Roberts made her feel uncomfortable and implicated racial issues as the reason. Wilson then investigated Roberts' conduct to determine if she had engaged in any discrimination or other inappropriate behavior with regard to Burks and the other members of her team. Ultimately, Wilson rescinded Burks' discipline and instead issued a final warning to Roberts on August 21, 2001, alleging that interviews of certain unidentified witnesses confirmed Burks' allegations that Roberts had treated Burks unfairly and caused a hostile work environment.

On August 31, 2001, Roberts filed a lengthy written rebuttal to her final warning in which she was highly critical of Wilson's investigation, refuting Wilson's findings and pointing out the absence of any substantial basis for the allegations. In her rebuttal letter, Roberts also contended that Wilson's action with respect to her and Burks were part of a larger effort to appease white employees in a primarily black environment. Approximately one and a half pages of the letter were devoted to fleshing out these racial concerns.

Shortly after Roberts wrote the rebuttal, Edwards left her a voice mail message stating that she had read the response and ripped it up and that she wanted to meet with Roberts about it. The two met on September 17, 2001. Edwards told Roberts that she would "tweak" her final warning if Roberts "would go to HR and remove [her] copy [of the rebuttal] off of the file." Roberts refused to do so.

In 2001, Comcast was building a new Call Center in Voorhees, New Jersey, which was projected to take about 90,000 accounts out of the New Castle Call Center. In the planning process, management decided that there would be a downsizing of team leaders in the New Castle County Call Center. The downsizing was to be done through a draft process whereby managers would build

their own teams by choosing which team leaders to retain. Their selections were to be based on merit.

The team leader selection meeting was held on September 14, 2001. Edwards visited this meeting and strongly suggested certain team leaders for them to select. Of approximately forty team leaders, only eight were to be laid off. During the initial exercise, the managers identified team leaders who were not viewed as performing sufficiently well to survive the layoff. These persons were to be excluded from the draft at its inception. Roberts was not identified on this list. Next, the remaining names went into a draft whereby managers selected their teams. In this process, one of the managers, Mr. Sullenberger, chose Roberts for one of the teams.

After the draft, but before the final list was published, Edwards held a “loose ends” meeting with the managers on September 21, 2001, and then held another Staff meeting on October 2, 2001 at nearby restaurant. During the October 2 meeting, Edwards reviewed the lists and said that she was not comfortable with what the managers had come up with. In particular, she relayed that upper management had concerns about Roberts’ being on the leadership team going forward. Edwards instructed the managers that she wanted Roberts removed from the list and asked Sullenberger to choose someone else. He complied by selecting Aixa Rivera to replace Roberts.

On October 12, 2001, Courtney and Davis met with Roberts at a nearby restaurant to inform her that she had not been selected as part of the new management team. An unidentified in-house attorney for Comcast was also present at the meeting.<sup>1</sup> Edwards, via her assistant, had drafted and distributed a script for the managers to read to the employees who had not been selected in the draft. Courtney did not read from the script, but essentially covered its contents in this meeting with

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<sup>1</sup>Roberts recalls a Comcast in-house attorney being present, but Davis and Wilson have no specific recollection of this.

Roberts.

Courtney then opened a folder and presented Roberts with a Separation Agreement and General Release. The agreement states in pertinent part on the first page:

You and Company have mutually agreed to terminate without cause your employment with Company.

You have been afforded at least 45 days to consider this Agreement after it was first presented to you.

Company has urged you to consult with and obtain advice from counsel of your choice before signing this Agreement. . . .

You may revoke your approval of this Agreement within 7 days after you sign it by giving written notice of revocation to Company as provided herein.

Later in the agreement, the language again emphasizes the importance of reviewing the document with an attorney, stating, “You understand and Acknowledge that prior to signing this Agreement, Company has advised and encouraged you to consult with and seek advice from an attorney of your choosing.” It then goes on to provide for severance payments of Roberts’ weekly salary through January 11, 2002, and other benefits, in exchange for Roberts’ release of any claims she may have brought against Comcast. Specifically, the “GENERAL RELEASE” provision of the agreement states:

You, on your own behalf and on behalf of your heirs, executors, administrators and assigns (collectively, “Employee Releasers”), hereby knowingly and voluntarily waive, release and forever discharge Company, its parents, affiliates, subsidiaries, successors, assigns, employees, officers, agents and directors (collectively, “Comcast Releasees”), of and from any and all actions, causes of action, suits, claims, debts, charges, demands and complaints whatsoever, in law or equity, that the Employee Releasers or any of them ever had, now have, or may have against the Comcast Releasees or any of them arising out of or relating to your employment with

Company or the termination of that employment, including but not limited to any tort, the violation of any federal, state or local fair employment practice, workers compensation or other employment relations statute, regulation or executive order, any rights or claims under Title VII of the Civil Rights Act of 1964 (as amended), The Americans With Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967 (“ADEA”), The Older Workers Benefit Protection Act, and any other federal, state or local law prohibiting discrimination, harassment or retaliation in employment, and any claims for defamation, injury to reputation, wrongful discharge, breach of contract (whether oral, written, express or implied from any source), breach of public policy, fraud, physical, mental or emotional distress or harm, pain and suffering, and counsel fees and costs which you ever had, now have, or may have. The parties intend this release to be broadly construed in favor of Company. This does not, however, release any ADEA and workers compensation rights or claims which may arise after the date on which you sign this Agreement, and does not release the rights and obligations of the parties under this Agreement.

Courtney told Roberts that she had forty-five days to review the document. Roberts further admitted in her deposition that it is possible Courtney also told her that she should consult a lawyer regarding the agreement.<sup>2</sup> Courtney also told Roberts that by signing the release she would receive severance pay. Courtney did not raise her voice at any time during the encounter and was polite and professional throughout the meeting.

Roberts said that she would sign the agreement. Courtney then handed her a pen, which Roberts used to sign the agreement. Roberts did not read the agreement prior to signing it, nor did she ask anyone at the meeting if any of the terms of the agreement could be changed. Roberts admits that no one at the meeting or otherwise in any way prevented her from reading the document. Instead, she offers as her reason for not reading the agreement the fact that she was emotionally upset about not being selected for continued employment and was therefore not thinking logically

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<sup>2</sup>Courtney and Davis both testified in their depositions that Courtney advised Roberts to speak with a lawyer.

or clearly at the time.

Edwards was fired several months later. At this time, Roberts became convinced that Edwards had played a role in her termination and filed charges with the Delaware Department of Labor. Thereafter, Roberts learned the details of Edwards' influence over the draft process.

#### **IV. DISCUSSION**

Comcast argues that all of Roberts' claims are barred by the Separation Agreement and General Release. Roberts counters that she did not knowingly and voluntarily sign the Separation Agreement and General Release, that her acquiescence was the result of misrepresentation and fraud, and that the release is therefore invalid and her claims permitted. For the following reasons the court disagrees.

The release language explicitly covers all of the claims Roberts asserts in this case. The agreement signed by Roberts in exchange for severance pay to which she would not otherwise be entitled constitutes a binding contract. Rights under Title VII can be waived if the waiver was knowing and voluntary. *See Cole v. Gaming Entertainment, L.L.C.*, 199 F. Supp. 2d 208, 212 (D. Del. 2002). The burden is on the employer to establish that the waiver is knowing and voluntary. *See Am. Airlines, Inc. v. Cardoza-Rodriguez*, 133 F.3d 111, 117 (1<sup>st</sup> Cir. 1998). Construing the facts in the light most favorable to Roberts, Comcast still satisfies its burden to establish that the release was knowing and voluntary and not otherwise procured by fraud. The release is therefore valid and preclusive of Roberts' claims.

The standard for determining the validity of a release is the "totality of circumstances." *W.B. v. Matula*, 67 F.3d 484, 497 (3d Cir. 1995); *Moseley v. Bay Ship Mgmt., Inc.*, 174 F. Supp. 2d 192, 197 (D.N.J. 2000). The Court of Appeals for the Third Circuit has established the factors which a

court may consider, including:

(1) the clarity and specificity of the release language; (2) the plaintiff's education and business experience; (3) the amount of time plaintiff had for deliberation about the release before signing it; (4) whether plaintiff knew or should have known his rights upon execution of the release; (5) whether plaintiff was encouraged to seek, or in fact received benefit of counsel; (6) whether there was an opportunity for negotiation of the terms of the Agreement; and (7) whether the consideration given in exchange for the waiver and accepted by the employee exceeds the benefits to which the employee was already entitled by contract or law.

*Moseley*, 174 F. Supp. 2d at 197 (citing *Cirillo v. Arco Chem. Co.*, 862 F.2d 448, 451 (3d Cir. 1998), *superseded by statute as stated in* Long v. Sears Roebuck & Co., 105 F.3d 1529, 1539 (3d Cir. 1997) (holding that the factors established in *Cirillo* were no longer applicable to alleged waiver of ADEA rights because new legislation (the Older Workers Benefit Protection Act (OWBPA)) requires specific formalities when executing a release of liability under the ADEA)); *see also e.g.*, *Matula*, 67 F.3d at 497; *Coventry v. U.S. Steel Corp.*, 856 F.2d 514, 523 (3d Cir. 1988). “In addition, general principles of contract construction, specifically the absence of fraud or undue influence, are also applicable in determining the validity of a waiver.” *Martinez v. Nat’l Broadcasting Co.*, 877 F. Supp. 219, 227 (D.N.J. 1994) (citing *Coventry*, 856 F.2d at 522).

In evaluating the totality of circumstances of Roberts’ waiver, the court will take each of the *Cirillo* factors in turn. With regard to the clarity of the waiver language, the Separation Agreement and General Release speaks for itself and could not be any clearer. The release section is set apart by the title “General Release,” which is underlined and in capital letters. Moreover, it clearly states that by signing the agreement the employee forever waives, releases and discharges Comcast from any and all actions, causes of action, suits, claims, debts, charges, demands and complaints, and then goes on to list specific kind of claims included in the waiver such as Title VII retaliation, fraud and



misrepresentation, the subjects of Roberts' present lawsuit.

As a high school graduate with some college training in computers and business and over twenty-five years of managerial experience, Roberts' background amply suggests that she had the intelligence and business savvy to appreciate and understand not only the clear language of the release but also the significant provisions written in plain language on the very first page of the document. Those provisions clearly advised her to review the document with an attorney, reinforced that she had forty-five days to consider the agreement, and explained that, even after she may sign the agreement, she had seven days from that time to reconsider.

With respect to the amount of time Roberts had to consider the agreement before signing it, again, she was given forty-five days to review the document, in addition seven days from the time of signature to reconsider her decision. "[A]n employee must be afforded a reasonable amount of time to review the release before a waiver may be considered knowing and voluntary." *Cole*, 199 F. Supp. 2d at 213 (citing *Martinez*, 877 F. Supp. at 227). Forty-five days for consideration more than satisfies the reasonable amount of time requirement. Moreover, that Roberts chose to sign the agreement the same day does not negate the fact that she was given a reasonable amount of time to review it. *See Lloyd v. Brunswick Corp.*, 180 F.3d 893, 895 (7<sup>th</sup> Cir. 1999) (OWBPA requirements met where plaintiff signed release "on the spot" although he was given more time); *Kendrick v. Kmart Corp.*, No. 99-73367, 2000 WL 246582, at \*2 (E.D. Mich. Feb. 25, 2000) (OWBPA not violated where employee signed release on the same day, but he was not instructed to do so); *see also Cole*, 199 F. Supp. 2d at 214 (noting that "if Cole had signed the release on July 27, but the defendant did not instruct him to do so, the court might reach a different result"). The agreement explicitly stated, and Courtney orally reinforced, that Roberts had forty-five days to consider the

agreement before signing it. The third *Cirillo* factor therefore also weighs in favor of Comcast.

Roberts further had reason to know of her rights upon execution of the release. On this point, Roberts argues that she did not have reason to know of her retaliation claim until several months after she signed the release and learned that Sullenberger had originally chosen her to be on his team in the original draft.<sup>3</sup> The court, however, is not persuaded. Under the discovery rule, "a claim accrues in a federal cause of action upon awareness of actual injury, not upon awareness that this injury constitutes a legal wrong." *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1286 (3d Cir. 1994). It is undisputed that Roberts knew of both her injury—the discharge—and the cause of her injury—Comcast’s decision not to select her as part of the new management team—at the time of signing the release. *See Wastak v. Lehigh Valley Health Network*, 333 F.3d 120, 126 (3d Cir. 2003). Moreover, she also knew that she had filed a rebuttal implicating concerns of race discrimination and that Edwards had urged her to destroy the letter. From these facts Roberts should have been able to infer that retaliation might have been the motive for her not being selected for continued employment. What she learned later about the specifics of what occurred in the meetings surrounding the draft indeed buttressed Roberts’ retaliation case, but that information was not a

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<sup>3</sup>Roberts also argues that release is invalid in that her signature was procured by fraud and/or misrepresentation in the form of Courtney’s statement to her at the October 12, 2001 meeting. The record is clear that Courtney told Roberts that she had not been selected to stay. This statement was true and in no way fraudulent. The court also doubts that the circumstances could form the basis of a negligent misrepresentation claim. However, whether or not Courtney’s statement establishes a fraud or misrepresentation claim is not an issue the court need decide, as any such claims are also extinguished by the General Release. *See Seredinski v. Clifton Precision Prods. Co.*, 776 F.2d 56, 60 (3d Cir. 1985) (federal law controls analysis of validity of release over pendent state law claims designed to revive federal employment discrimination claims); *Easton v. Bristol-Myers Squibb Co.*, 289 F. Supp. 2d 604, 612 n.7 (E.D. Pa. 2003) (find that a “release sufficient to waive federal anti-discrimination claims necessarily waives state claims under contract law”).

necessary predicate to awareness of her injury and its cause. The fourth *Cirillo* factor is therefore satisfied by the facts surrounding Roberts' discharge. In addition, the release itself spelled out that Title VII retaliation claims are waived by signing the agreement.

Next, Roberts admits the possibility that Courtney advised her to review the Separation Agreement and General Release with an attorney. Moreover, the agreement states in clear language on the first page "Company has urged you to consult with and obtain advice from counsel of your choice before signing this Agreement." Then again in paragraph 9(e), the agreement states that "prior to signing this Agreement, [Comcast] has advised and encouraged you to consult with and seek advice from an attorney of your choosing." The relevant inquiry on the fifth *Cirillo* factor is "whether consultation with a lawyer was encouraged orally or in writing, not whether plaintiff in fact received the benefit of counsel." *Bennett v. Independence Blue Cross*, No. 92-4249, 1993 WL 15603, at \*3 (E.D. Pa. 1993) (quoting *Cook v. Buxton, Inc.*, 793 F. Supp. 622, 625 (W.D. Pa. 1992)). Given the explicit language of the agreement which urges attorney consultation and the absence of evidence that Comcast in any way attempted to discourage Roberts from reviewing it on her own or with an attorney, the court finds that Comcast has satisfied the fifth *Cirillo* factor.

Skipping to the seventh *Cirillo* factor, it is undisputed that Roberts received significant consideration for signing the release. This consideration consisted of three months salary and other benefits. She otherwise would not have been entitled to a severance package.

Finally, the court must consider the sixth of the *Cirillo* factors—whether there was an opportunity for negotiation. The record was unrevealing as to whether Roberts attempted or was given the opportunity to negotiate the terms of the Separation Agreement and General Release. Admittedly, the terms appear to be boilerplate. In addition, quite understandably, Roberts was upset

that she was losing her job. On the other hand, Courtney explicitly told Roberts that she had forty-five days to review the document. Moreover, Roberts admits that Courtney was courteous and polite during the meeting of October 12, 2001.

*Cirillo* makes clear that, absent an oppressive atmosphere, lack of opportunity to negotiate should not weigh heavily in the court's analysis. *Cirillo*, 862 F.2d at 455 n.4. Given the facts noted above, the atmosphere cannot be fairly described as oppressive. Thus, in light of these facts, together with the degree to which the six other *Cirillo* factors tip the scales in favor of finding a waiver, the court believes it must conclude that Roberts knowingly and voluntarily waived her right to assert a legal challenge to her termination.

**V. CONCLUSION**

Under the totality of circumstances and in view of the relevant factors, the court finds the Separation Agreement and General Release signed by Roberts and Comcast to constitute a knowing and voluntary waiver of Roberts' Title VII retaliation and state law claims. The causes of action in Roberts' complaint are therefore precluded, and her case must be dismissed.

Dated: August 23, 2004

/s/ Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE

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 COMCAST CABLE COMPANY, )  
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**ORDER**

For the reasons set forth in the court's memorandum issued contemporaneously herewith,  
IT IS HEREBY ORDERED that:

1. Defendant's Motion for Summary Judgment (D.I. 55) is GRANTED;
2. Defendant's Motion to Dismiss Plaintiff's Amended Complaint (D.I. 30) is MOOT; and
3. Defendant's Motion to Postpone Pretrial Submissions, Pretrial Conference and Trial (D.I. 68) is MOOT.

Dated: August 23, 2004

/s/ Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE