IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDWIN GONZALEZ, DONNA ANN MINOR, KARA PIETROWICZ and ALBERINA ZIEMBA,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 03-445-KAJ
COMCAST CORPORATION, a Pennsylvania corporation, COMCAST CABLEVISION OF WILLOW GROVE, a Pennsylvania corporation, COMCAST CABLE COMMUNICATIONS, INC., a Delaware corporation, SUZANE KEENAN, ALLEN R. PEDDRICK, RICHARD GERMANO, JAMES SULLIVAN, E. MARK CONNELL, DINA GALEOTAFIORE, AL CALHOUN, STEVE TREVISON, PHILIP ANNONE, JOHN MCGOWAN, VINCENT JOHNSON, and MICHAEL A. DOYLE,	)	
Defendants.	)	

MEMORANDUM OPINION

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July 30, 2004
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

The plaintiffs, Edwin Gonzalez, Donna Ann Minor, Kara Pietrowicz, and Alberina Ziemba, are former employees of one or more[1] of the Comcast family of companies named as defendants in this suit (collectively "Comcast") and have brought this employment discrimination action against Comcast and the individual defendants, who hold a variety of supervisory and management positions within Comcast. (*See* Docket Item ["D.I."] 45 at 5-12.) The defendants have filed a Motion for Partial Summary Judgment (D.I. 153; the "Motion") which challenges (1) the plaintiffs' Title VII claims against the individual defendants (D.I.154 at 5); (2) the plaintiffs' claims under 42 U.S.C. § 1981 against defendants Doyle, Connell, Calhoun, Keenan, Comcast Corporation, and Comcast Cable of Willow Grove (*id.* at 5-7); (3) the plaintiffs' claims under 42 U.S.C. § 1985 (*id.* at 7-10); (4) the Plaintiffs' claims under 42 U.S.C. § 1986 (*id.* at 10-11); and (5) the plaintiffs' claims under Delaware state contract law for breach of the covenant of good faith and fair dealing (*id.* at 11-12).

[1]It is not clear from the pleadings or the briefing in this matter which of the four business entities named as defendants was the company that employed the plaintiffs. In fact, one of the matters in dispute is whether the four entities should be treated as a single employer for purposes of this case. *See infra* at 7-9. The defendants' briefing asserts that two of the four companies, namely Comcast Corporation and Comcast Cablevision of Willow Grove, were not the plaintiffs' employers (*see* D.I. 154 at 2, 5), which implies that, from the defendants' perspective, one or both of the other entities did employ the plaintiffs. That apparent concession is muddied, however, by the defendants' assertion that only Comcast Cablevision of New Castle County, LLC or its predecessor in interest had an employment contract with the plaintiffs. (*See id.* at 11-12.)

For the reasons that follow, the defendants' Motion will be granted as to item (1), will be granted in part as to item (2), but only insofar as summary judgment will be granted for defendant Keenan, and will be granted as to items (3) and (4). In all other respects, the Motion will be denied.

II. **BACKGROUND**[2]

The plaintiffs were all employed at the New Castle office of one of the Comcast entities, working under the supervision of a woman named Angela Wilson.[3] (D.I. 45 at ¶¶ 39, 41, 43, 45.) Ms. Wilson, an African-American, was a Human Resources Manager and had sought but was denied the opportunity to apply for a promotion to the position of Human Resources Director. (*Id.* at ¶¶ 15-19.) The plaintiffs allege that the defendants denied Ms. Wilson that opportunity because of her race and gender. (*Id.* at ¶ 19.) Ms. Wilson filed a complaint with the Equal Employment Opportunity Commission ("EEOC") and the Delaware Division of Labor, charging Comcast with discrimination. (*Id.* at ¶ 21.) The complaint was served on the defendants on January 2, 2002. (*Id.* at ¶ 22.) According to the plaintiffs, the defendants then retaliated against Ms. Wilson and her staff, including the plaintiffs, by firing them all two days later. (*Id.*) More specifically, the plaintiffs assert that, when they expressed their opposition to the

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[2]Since I am obligated to view the facts pertinent to this Motion in the light most favorable to the non-moving party, *see Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986), the following rendition of background information is based largely upon the allegations in the First Amended Complaint (D.I. 45), but also includes reference to certain evidence supplied by the parties in connection with their briefing. It does not represent findings of fact.

[3]Ms. Wilson is the plaintiff in a separate employment discrimination suit against Comcast in this court, [add case caption and Civ. Action No.]

treatment Ms. Wilson received at the hands of the defendants and further expressed their belief that Ms. Wilson was being discriminated against on the basis of her race and gender, the defendants fired them in retaliation. (*See id.* at ¶¶ 60-61, 65, 79, 85-86, 90, 104, 110-11, 115, 129, 135-36, 140, 154.)

The First Amended Complaint in this case contains a total of twenty counts, consisting of four sets of five counts, each set pertaining to one of the four plaintiffs. Each set of five counts is, except for the name of the specific plaintiff, virtually identical with every other set. The five counts are as follows: (1) a count alleging discrimination and retaliation under 42 U.S.C. § 2000e, *et seq.*, commonly referred to as "Title VII", (2) a count alleging "violation of equal rights under the law" and citing 42 U.S.C. § 1981, (3) a count citing 42 U.S.C. § 1985(3) and alleging that the defendants conspired to interfere with the plaintiffs' civil rights, (4) a count citing 42 U.S.C. § 1986 and alleging that individual Comcast supervisors failed to prevent the aforementioned conspiracy, and (5) a count alleging that the defendants breached their implied covenant under Delaware contract law to act in good faith and deal fairly in their employment relationship with the named plaintiff.

III. **STANDARD FOR SUMMARY JUDGMENT**

The well known rule governing summary judgment provides that such judgment shall be entered if "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). The "availability of summary judgment turn[s] on whether a proper jury question [has been] presented." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249 (1986). "[T]he judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine

whether there is a genuine issue for trial." *Id.* In making that determination, one must believe the non-moving parties' evidence and draw all inferences from the evidence in the non-moving parties' favor. *Id.* at 255; *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 456 (1992). In particular, in an employment discrimination case, "'a trial court must be cautious about granting summary judgment to an employer when ... intent is at issue.'" *Goosby v. Johnson & Johnson Medical, Inc.*, 228 F.3d 313, 321 (3d Cir. 2000) (quoting *Gallo v. Prudential Residential Services, Ltd. Partnership*, 22 F.3d 1219, 1224 (2d Cir. 1994)). Nevertheless, the party bearing the burden of persuasion in the litigation, must, in opposing a summary judgment motion, "identify those facts of record which would contradict the facts identified by the movant." *Port Authority of New York and New Jersey v. Affiliated FM Ins. Co.,* 311 F.3d 226, 233 (3d Cir. 2002)(internal quotes omitted).

IV. **DISCUSSION**

A. *Title VII*

Among other things, Title VII prohibits employment discrimination on the basis of race or sex. 42 U.S.C. § 2000e-2 ("It shall be an unlawful employment practice for an employer ... to discriminate against any individual with respect to his ... employment, because of such individual's race, color, religion, sex, or national origin ... ."). The defendants note that Title VII does not provide for individual liability of fellow employees who may discriminate; it makes only employers themselves liable. (*See* D.I.154 at 5.) Therefore, say the defendants, the plaintiffs' claims against the individual defendants under Title VII cannot stand. (*Id.*) In this they are correct, as the plaintiffs have conceded (D.I. 159 at 14). *See Sheridan v. E.I. duPont de Nemours & Co.*, 100 F.3d

1061, 1077-78 (3d Cir. 1996) ("[W]e are persuaded that Congress did not intend to hold individual employees liable under Title VII.") Judgment will therefore be entered[4] for the individual defendants on all of the Title VII counts.[5]

B. *Section 1981*

Section 1981 of Title 42 of the United States Code provides that all persons within our nation's jurisdiction will receive "the full and equal benefit of all laws and proceedings ... ." The plaintiffs assert that they have been deprived of those equal rights because the defendants retaliated against them for opposing unlawful discrimination against Ms. Wilson. (*See, e.g.,* D.I. 45 at ¶¶ 65-67.)

i. *Defendants Doyle, Calhoun, Connell, and Keenan*

The defendants argue that summary judgment should be granted against the plaintiffs on the § 1981 claims against Messrs. Doyle, Calhoun, and Connell and Ms. Keenan because those individuals were not involved in the decision to fire the plaintiffs and Ms. Wilson. (D.I. 154 at 5-6.) The plaintiff responds that inferences from the present record fairly implicate each of those four defendants in the firing. (D.I. 159 at 14-18.)

The Third Circuit has declared that, "[i]f individuals are personally involved in the [challenged] discrimination ... , and if they intentionally caused the [infringement of] ...

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[4]Though couched as a motion for summary judgment, this and other aspects of the defendants' Motion do not rely in any measure on evidence beyond the First Amended Complaint and the defendants' Answers (*see* D.I. 46-61) and are, in essence, requests for judgment on the pleadings. *See* Fed. R. Civ. P. 12(c) (2004).

[5]The counts in the First Amended Complaint are misnumbered, but the Title VII counts bear the roman numerals I, VI, XII (which is actually the eleventh count), and XVII (which is actually the sixteenth count).

Section 1981 rights, or if they authorized, directed, or participated in the alleged discriminatory conduct, they may be held liable." *Al-Khazraji v. Saint Francis College*, 784 F.2d 505, 518 (3d Cir. 1986). The evidence cited by the plaintiffs is sufficient, under the strictures of summary judgment review, to hold Messrs. Doyle, Calhoun, and Connell in the case, but not Ms. Keenan.

If all reasonable inferences are drawn in the plaintiffs' favor, one could conclude, as plaintiffs do, that Calhoun and Connell were actively involved in the firing decision, as evidenced by their presence at a meeting in which Comcast executives are alleged to have met to discuss the most effective way to cover-up unlawful discrimination against Ms. Wilson. (*See id.* at 16.) Similarly, one could conclude that, because Calhoun's and Connell's presence at the meeting was at the express direction of Doyle, Doyle was "in the loop" and had in some meaningful sense authorized the allegedly discriminatory course of conduct. (*See id.*) There are thus issues of material fact which remain to be resolved with respect to the liability of Messrs. Doyle, Calhoun, and Connell, and the Motion must be denied as to those individual defendants.

As to Ms. Keenan, however, even the plaintiffs admit that her involvement "was a bit different." (*Id.* at 17.) Indeed, the most that the plaintiffs are able to muster against Ms. Keenan is that she showed some interest in the events surrounding the shake-up at the New Castle Call Center. (*See id.* at 17-18.) That is not a basis for liability. Accordingly, the Motion will be granted as to Ms. Keenan.[6]

[6]The counts containing the § 1981 allegations bear the roman numerals II, VIII (which is actually the seventh count), XIII (which is actually the twelfth count), and XVIII (which is actually the seventeenth count).

ii. *Defendants Comcast Corporation and Comcast Cable of Willow Grove*

The defendants also argue that summary judgment should be entered for two of the corporate defendants, Comcast Corporation and Comcast Cable of Willow Grove, because they did not employ the plaintiffs and because the plaintiffs have not provided evidence that would warrant ignoring the corporate veils separating those entities from the other corporate defendants. (*See* D.I. 154 at 6-7.) The plaintiffs respond by asserting that they have adduced evidence to at least raise a material issue of fact on the question of whether Comcast Corporation and Comcast Cable of Willow Grove are sufficiently integrated with the other corporate defendants for all of them to be treated as a joint employer of the plaintiffs. (*See* D.I. 159 at 18-19.)

In *Marzano v. Computer Science Corp. Inc.*, 91 F.3d 497 (3d Cir. 1996), the Third Circuit, citing fundamental principles of corporate law,[7] stated in the context of an employment discrimination case that the veil separating corporate entities could only be ignored when those entities are "so interrelated and integrated in their activities, labor relations, and management, [that] it is clear ... they may be treated as a single employer." *Id.* at 513 (quoting *Ratcliffe v. Insurance Co. of North America*, 482 F. Supp. 759, 764 (E. D. Pa. 1980). This "integrated enterprise" test has been interpreted to require review of the related entities to consider "(1) inter-relation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial controls." *McNeal v. Maritank Philadelphia, Inc.,*1999 WL 80268

[7]The Court in that case was applying New Jersey's corporation law, but the principles at issue, i.e., the doctrine of limited liability and its corollary that separate corporate entities ought generally to be treated as such, are basic.

at *7 (E. D. Pa. Jan. 29, 1999); *see also Johnson v. Cook Composites and Polymers, Inc.*, 2000 WL 249251 at *3 (D.N.J. Mar. 3, 2000) (same); *Brown v. Vitelcom, Inc.,* 47 F. Supp. 2d 595, 600 (D.V.I. 1999) (listing factors as: "(1) the degree to which ... operations were integrated ... , (2) whether ... [there was] centralized control over ... labor relations, and (3) whether ... [the entities] were commonly owned and managed").

The plaintiffs emphasize two types of evidence which they assert raise a material issue of fact as to the integration of the corporate defendants. First, they point to the federal W-2 wage and tax forms issued to the plaintiffs during various years.[8] Each of the W-2 forms submitted with the briefing lists the employer as Comcast Cablevision of Willow Grove.[9]

Second, they refer to the "General Respondent Questionnaire" filed by Comcast with the Delaware Department of Labor's Office of Labor Enforcement in response to the plaintiffs' administrative complaint before that body. Prior to commencing the present suit, the plaintiffs pursued administrative remedies, including filing an administrative action before the Delaware Department of Labor. (*See* D.I. 160 at B-27 through B-30.) The named Respondent in that administrative action was "Comcast Cablevision of New Castle County, Inc." In response to a question requiring the full name of the complainants' employer, the defendants' counsel wrote "Comcast

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[8]Examples were given for the years 2000 (D.I. 160 at B-24), 2001 (*id.* at B-23, B-26), and 2002 (*id.* at B-25).

[9]The precise abbreviation for the entity varies slightly, but in all cases it is clearly identifying Comcast Cablevision of Willow Grove. One of the W-2s is for Ms. Pietrowicz (D.I. 160 at B-23), one for Ms. Minor (*id.* at B-24), one for Ms. Ziemba (*id.* at B-25), and one for Mr. Gonzalez (*id.* at B-26).

Cablevision of New Castle County, Inc." (*Id.* at B-27.) However, when asked to identify those responsible for the management of the Respondent, the answer given was "Not Applicable. The employer is ultimately owned by a publicly traded company, Comcast Corporation." (*Id.*) Other responses on the questionnaire either expressly or by implication identify Comcast Corporation as the employer of the plaintiffs. (*See id.* at B-28, responses to questions 3 and 4.) Thus, Comcast Corporation chose to identify itself as the employer, essentially ignoring the separate existence of Comcast Cablevision of New Castle County, Inc. One might therefore infer that Comcast treats other members of the Comcast family of companies similarly, all being integrated units, at least for employment purposes.

Despite the defendants' protestations that these points of evidence are insufficient to pierce the corporate veil (D.I. 163 at 3-4), the evidence does raise a general issue of material fact as to the inter-relation of operations among the defendant corporations, their common management, and centralized control of their labor relations.[10] Accordingly, the defendants' efforts to have Comcast Corporation and Comcast Cable of Willow Grove eliminated from the case fail.

C. *Section 1985(3)*

[10]The fourth factor in the "integrated enterprise" test, the extent of common ownership or financial controls, does not appear to be disputed. All the corporate defendants are apparently tightly interconnected under the Comcast ownership structure. If this point is subject to dispute, however, the same evidence raises an issue of fact as to that factor as well. (*Cf.* D.I. 160 at B-27 (noting ownership by Comcast Corporation) and B-28 (identifying Comcast Corporation as the employer and "ultimate parent of the Respondent", and describing itself as a nationwide company with over 20,000 employees)).

Section 1985(3) of Title 42 forbids any conspiracy to "depriv[e], either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws ... ." The statute "does not itself create any substantive rights; rather, it serves only as a vehicle for vindicating federal rights and privileges which have been defined elsewhere." *Brown v. Philip Morris Inc.*, 250 F.3d 789, 805 (3d Cir. 2001) (citing *Great Am. Fed. Sav. & Loan Ass'n v. Novotny,* 442 U.S. 366, 376 (1979)). The plaintiffs allege that the individual defendants conspired to violate their "civil rights guaranteed by 42 U.S.C. § 1981, and thus are [in] ... violation of 42 U.S.C. § 1985." (*E.g.*, D.I. 45 at ¶ 71.) The defendants respond that a claim under § 1985(3) cannot lie for alleged violations of § 1981. (D.I. 154 at 7-9.)

"[T]he conspiracy provision of § 1985(3) provides a cause of action under rather limited circumstances ... ." *Brown*, 250 F.3d at 805. While other courts may have approved the use of § 1985(3) as a basis for claims alleging a conspiracy to violate § 1981 (*see* D.I. 159 at 21), the Third Circuit has noted that "in the context of actions brought against private conspirators, the Supreme Court has thus far recognized only two rights protected under § 1985(3): the right to be free from involuntary servitude and the right to interstate travel." *Brown*, 250 F.3d at 805. In an employment discrimination context, like that facing the court here, the Supreme Court explicitly rejected an attempt to employ § 1985(3) as an adjunct to a Title VII employment discrimination claim. *See Great Am. Fed. Sav. & Loan Ass'n,* 442 U.S. at 376. In view of such precedent, the Third Circuit has stated that, "[i]n order to prevent the use of § 1985(3) as a general federal tort law, courts have been careful to limit causes of action thereunder to conspiracies that deprive persons of constitutionally protected rights, privileges and

immunities ... ." *Brown*, 250 F.3d at 805. Consequently, I agree with precedent holding that alleged violations of statutory rights under § 1981, by themselves, cannot be a foundation for a conspiracy claim under § 1985(3). *See Dixon v. Boscov's, Inc.*, 2002 WL 1740583 at *2 (E. D. Pa. July 17, 2002) (holding that the Third Circuit's decision in *Brown* compels conclusion "that statutory rights pursuant to section 1981 cannot be the basis of a section 1985 remedy."). Judgment will therefore be entered for the individual defendants on the plaintiffs' § 1985(3) claims.[11]

D. *Section 1986*

Section 1986 of Title 42 makes liable "[e]very person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do ... ." Because § 1986 by its terms depends upon a violation of § 1985, the parties agree that, if I determine, as I have, that the plaintiffs have no cause of action under § 1985, then the plaintiffs' § 1986 claims must also fail. (*See* D.I. 154 at 10; D.I. 159 at 22.) Accordingly, judgment will also be entered for the individual defendants on the plaintiffs' § 1986 claims.[12]

E. *Good Faith and Fair Dealing*

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[11]The counts containing the § 1985(3) claims bear the roman numerals III, IX (which is actually the eighth count), XIV (which is actually the thirteenth count), and XIV (which is actually the eighteenth count).

[12]The counts containing the § 1986 claims bear the roman numerals IV, X (which is actually the ninth count), XV (which is actually the fourteenth count), and XV (which is actually the nineteenth count).

Under Delaware law, it has long been the case that a covenant of good faith and fair dealing is implied as a part of every contract. *See E.I. DuPont de Nemours and Co. v. Pressman*, 679 A.2d 436, 440 (Del. Supr. 1996) ("The Covenant, perhaps in less robust form and by a different name, also has a long history."). The plaintiffs and the defendants agree (D.I. 154 at 11-12; D.I. 159 at 23) that, because the individual defendants were not parties to the employment contracts with the plaintiffs, those defendants cannot be subject to the plaintiff's breach of contract claims. *See Castetter v. Delaware Dept. of Labor*, 2002 WL 819244 at *3 (Del. Super. Apr. 30, 2002) (dismissing breach of good faith and fair dealing claim against individual defendant because "[o]nly a party to a contract can breach the implied covenant"). Accordingly, judgment will be entered for the individual defendants on those claims.[13]

The defendants also argue that summary judgment should be entered on those claims to the extent they are asserted against Comcast Corporation, Comcast Cablevision of Willow Grove, and Comcast Cable Communications, Inc. "because these entities were not parties to any contract with the Plaintiffs." (D.I. 154 at 11-12.) For the same reasons discussed in section IV.B.ii. of this Opinion, the defendants motion in this regard will be denied.

V. **CONCLUSION**

Based on the foregoing reasons and authorities, the defendants' Motion will be granted in part and denied in part. It will be granted to the extent that judgment will be

[13]The counts containing the claims for breach of the covenant of good faith and fair dealing bear the roman numerals V, XI (which is actually the tenth count), XVI (which is actually the fifteenth count), and XVI (which is actually the twentieth count).

entered in favor of the individual defendants on the Title VII claim; that summary judgment will be entered for defendant Keenan on the plaintiffs' § 1981 claims; and that judgment will be entered in favor of the individual defendants on the plaintiffs' claims under §§ 1985 and 1986. The Motion will be denied in all other respects. An appropriate order will follow.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDWIN GONZALEZ, DONNA ANN MINOR, KARA PIETROWICZ and ALBERINA ZIEMBA, Plaintiffs, v. COMCAST CORPORATION, a Pennsylvania corporation, COMCAST CABLEVISION OF WILLOW GROVE, a Pennsylvania corporation, COMCAST CABLE COMMUNICATIONS, INC., a Delaware corporation, SUZANE KEENAN, ALLEN R. PEDDRICK, RICHARD GERMANO, JAMES SULLIVAN, E. MARK CONNELL, DINA GALEOTAFIORE, AL CALHOUN, STEVE TREVISON, PHILIP ANNONE, JOHN MCGOWAN, VINCENT JOHNSON, and MICHAEL A. DOYLE, Defendants.	)	Civil Action No. 03-445-KAJ

ORDER

For the reasons set forth today in the Memorandum Opinion in this case,

IT IS HEREBY ORDERED that the defendants' Motion for Summary Judgment (D.I. 153; the "Motion") is GRANTED to the extent that judgment is entered in favor of the individual defendants on the plaintiffs' Title VII claims; that judgment is entered for defendant Keenan on the plaintiffs' claims under 42 U.S.C. § 1981; and that judgment is entered in favor of the individual defendants on the plaintiffs' claims under 42 U.S.C. §§ 1985 and 1986. In all other respects, the Motion is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

July 30, 2004
Wilmington, Delaware