

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

BALLARD, SPAHR, ANDREWS & : MAY TERM, 2007  
INGERSOLL, LLP :  
 :  
v. : NO. 3699  
 :  
 :  
JANE ENNIS SHEEHAN : Control No. 080075

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SEP 2 2007  
CIVIL ADMINISTRATION

ORDER & OPINION

Di Vito, J.

Dated:

Sept 24, 2007

Defendant Jane Ennis Sheehan ("Sheehan") is a non-equity partner in the Baltimore office of Ballard, Spahr, Andrews & Ingersoll, LLP ("Ballard Spahr"). On May 9, 2007, defendant, through counsel, notified Ballard Spahr that she had potential legal claims against the firm and several of its individual partners for gender discrimination and retaliation claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e, the Equal Pay Act and the Maryland Fair Employment Practices Act ("FEPA"), as well as common law breach of fiduciary duty and breach of contract claims. This arose out of defendant's belief that she was being paid less than a male colleague.

On May 31, 2007, plaintiff Ballard Spahr filed this instant action for declaratory judgment arguing that plaintiff had not violated defendant's right under the Equal Pay Act and it had not breached any fiduciary duty owed to defendant. Defendant subsequently filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") and the Maryland Commission on Human Relations ("Maryland Commission") on June 11, 2007. Defendant now moves to determine preliminary objections.

Defendant argues that she is required to exhaust her administrative remedies before proceeding at common law. Where statutory remedies are provided, the procedure prescribed by the statute must be strictly pursued, to the exclusion of other methods of redress. It is well established that a court of equity will not invoke its jurisdiction where there is an adequate remedy at law and those statutory remedies, if adequate, must be exhausted before equitable jurisdiction may be resorted to. Pennsylvania Life Ins. Co. v. Pennsylvania Nat'l Life Ins. Co., 417 Pa. 168, 208 A.2d 780 (Pa. 1965). In this action, defendant filed claims under Title VII and the Maryland FEPA with the EEOC and the Maryland Commission. The same principle requiring the exhaustion of statutory remedies holds true in Maryland. One must exhaust statutorily prescribed administrative remedies before resorting to the courts. Therefore, a litigant must first pursue the applicable administrative process; other remedies cannot be pursued prematurely. Maryland Comm'n on Human Rels. v. Downey Communs., 110 Md. App. 493, 678 A.2d 55 (1996). Although the plaintiff argues that the Equal Pay Act and defendant's fiduciary duty claims may be adjudicated by this court, the Equal Pay Act and Title VII claims originate from the same claims, making them inextricably intertwined. The Equal Pay Act and Title VII must be construed in harmony, particularly where claims made under the two statutes arise out of the same discriminatory pay policies. Lavin-Mceleney v. Marist College, 239 F.3d 476, 2001 U.S. App. LEXIS 1503 (2d Cir. 2001). Therefore, this action is premature.

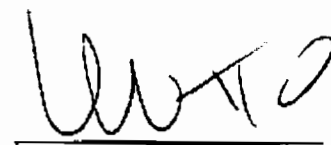
To sustain an action under the Declaratory Judgment Act, a plaintiff must demonstrate an "actual controversy" indicating imminent and inevitable litigation, and a

direct, substantial and present interest. Because an action for declaratory judgment cannot be sustained until these elements can be shown to exist, it follows that a cause of action for declaratory judgment does not arise until such "actual controversy" exists. Wagner v. Apollo Gas Co., 399 Pa. Super. 323, 582 A.2d 364 (Pa. Super. Ct. 1990). Furthermore, declaratory relief is unavailable when it is sought in anticipation of an action at law by another party. American Nuclear Insurers v. Metropolitan Edison Co., 399 Pa. Super. 375, 582 A.2d 390 (Pa. Super. Ct. 1990). This court does not find that an actual controversy existed in this matter. Although defendant filed claims with the EEOC and Maryland Commission, she has not filed any claims with this court and there is no indication that she planned to file claims here in the imminent future, particularly when she is required to exhaust her statutory remedies.

For the above stated reasons, the Preliminary Objections are sustained in part as follows: defendant's Preliminary Objection which argues that the defendant is required to exhaust her statutory remedies is sustained; and defendant's Preliminary Objection which argues that no justiciable controversy exists is sustained. Defendant's remaining Preliminary Objections are dismissed as moot and the Complaint is dismissed without prejudice.

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PURSUANT TO Pa.R.C.P. 236(b)  
OCT 03 2007  
FIRST JUDICIAL DISTRICT OF PA  
USER I.D.:

**BY THE COURT:**



**DI VITO, J.**