UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PATRICIA POMPEII,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO. 3:03CV1170 (RNC)
	:	
	:	
ALEXANDER MFG., INC., AND PERINI CORP.,	:	
	:	
Defendants.	:	

RULING AND ORDER

Plaintiff Patricia Pompeii brings this action against defendants Alexander Manufacturing, Inc. ("Alexander") and Perini Corporation ("Perini"), alleging gender discrimination and sexual harassment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) ("Title VII") and the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. 46a-60(a)(1) and (a)(4) ("CFEPA"). Defendant Perini has filed a motion to dismiss the action against it under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief can be granted. For the reasons that follow, the motion is granted.

I. Facts

In ruling on this motion, the court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in plaintiff's favor. Charles W. v. Maul, 214 F.3d 350, 356 (2d Cir. 2000). Plaintiff alleges that in April 2000 Alexander

hired her as a carpenter to work at the Mohegan Tribe's facility in Uncasville, Connecticut. The Mohegan Tribe had contracted with Alexander for certain carpentry services, while contracting with Perini for other services, including "construction management services." Plaintiff alleges that between April 2000 and June 2001, agents of Alexander and Perini subjected her to sexual harassment. She also alleges that Alexander discriminated against her by providing male employees with better job assignments. She alleges that she complained about the harassment to Alexander and Perini supervisors, who failed to do anything to remedy the problem.

II. Discussion

Perini argues that it is not plaintiff's employer, and thus cannot be liable for employment discrimination against plaintiff under Title VII or CFEPA. Title VII primarily covers relations between employees and their employers or their employers' agents, not between employees and third parties. Los Angeles, Dep't of Water & Power v. Manhart, 435 U.S. 702, 718 (1978). However, the term "employer," as it is used in Title VII, is sufficiently broad to encompass any party who significantly affects the access of any person to employment opportunities, regardless of whether that party is the "employer" of the person as that term has been defined at common law. Spirt v. Teachers Ins. & Annuity Ass'n, 691 F.2d 1054, 1063 (2d Cir. 1982); see also Sibley Memorial Hospital v. Wilson, 488

F.2d 1338, 1340-42 (D.C. Cir. 1973). A defendant can be considered a plaintiff's "employer" if the plaintiff alleges that the defendant had authority to hire or fire the plaintiff, to supervise her work or conditions of employment, to determine her rate or method of pay, to maintain records of her employment, or at a minimum, to affect her employment with her direct employer in some way. Kern v. City of Rochester, 93 F.3d 38, 45 (2d Cir. 1996).

Since plaintiff does not allege that Perini was her direct employer, the question is whether plaintiff has alleged facts sufficient to raise the possibility that Perini was her "employer" in the broader sense of significantly affecting her access to employment opportunities. She has not. Plaintiff's complaint does not allege that Perini had any supervisory authority over her work, or that Perini had any influence over the existence or terms of her employment with Alexander, or that Perini was related to her employment in any way apart from the fact that Perini's agents shared a working space with Alexander's agents. Plaintiff's complaint does allege that Perini contracted with the Mohegan Tribe to provide "construction management services," but does not allege any further facts to suggest that Perini had authority to affect her employment with Alexander.[1]

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[1] Plaintiff's brief in opposition to Perini's motion asserts that Perini "was the Construction Manager of the ... Project," and "was (continued...)

The Connecticut Supreme Court has not decided when non-employers may be held liable under CFEPA. But the Court has ruled that CFEPA was intended to be coextensive with Title VII, Pik-Kwik Stores, Inc. v. Commission on Human Rights & Opportunities, 365 A.2d 1210, 1211 (Conn. 1976), and it therefore looks to federal interpretations of Title VII for guidance in interpreting CFEPA. State v. Commission on Human Rights & Opportunities, 559 A.2d 1120, 1124 (Conn. 1989). Thus, just as plaintiff has not stated a cause of action against Perini under Title VII, nor has he stated a cause of action against Perini under CFEPA.

III. Conclusion

Accordingly, the motion to dismiss the claims against Perini [Doc. #11] is granted. Plaintiff's claims against Alexander remain pending.

So ordered.

Dated at Hartford, Connecticut this 7th day of November 2003.

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Robert N. Chatigny
United States District Judge

[1](...continued)
certainly in a position to discriminatorily interfere with Plaintiff's employment opportunities with Alexander." Even assuming this allegation could arguably be accepted as adequate to defeat the motion to dismiss, it cannot be considered because it appears in a brief rather than the complaint. Fonte v. Board of Managers of Continental Towers Condominium, 848 F.2d 24, 25 (2d Cir. 1988).