

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES D. FREEMAN,

Plaintiff,

10cv1515

ELECTRONICALLY FILED

v.

PITTSBURGH GLASS WORKS, LLC,
ET AL.

Defendants.

I. Introduction

Defendants Counterclaims
of breach of contract and unjust enrichment/restitution. Doc. No. 28. The Court has reviewed
Motion (Doc. No. 28), Defendants Brief in Opposition Thereto (Doc. No. 30), and
No. 31). For the reasons that o Dismiss
will be granted in part and denied in part.

II. Factual Background

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, at this stage the Court
accepts all of the factual allegations in the Counterclaims as true and all reasonable inferences
are drawn in Defendant *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir.
2009). Therefore, the facts of the case are as follows:

Plaintiff is an individual who is currently 62 years of age. Doc. No. 19 ¶ 1. Defendant
Auto Glass employed Plaintiff, who oversaw sales and operations of eight distribution

branches of automotive windshields in North Carolina, South Carolina, Georgia, and Tennessee. Id. at ¶ 32. Defendant Auto Glass was the distribution arm of the Automotive Glass and Services Division of PPG Industries, Inc. prior to the establishment of Defendant Pittsburgh Glass Works, LLC. Id. at ¶ 2. Plaintiff was terminated by Defendants and filed the discrimination. ¹ Id. at ¶ 7.

Shortly after his employment with Defendants was terminated, Plaintiff signed a separation agreement and release which provided in pertinent part that:

b. Employee agrees never to file a lawsuit or becomes a member of a class asserting any claims that are released by Employee in this Agreement. Employee further agrees not to accept any money or benefits which may be obtained on his/her behalf by any other person or agency in any class or other action against the Company and explicitly waives the right to recover damages or other relief in any claim or suit alleging discrimination brought by or through the [EEOC] or any other federal, state or local agency on his/her behalf under any federal, state or local statute, order, ordinance or common law.

c. Employee understands that the releases and waivers in this paragraph do not include: any claims that cannot be released or waived as a matter of law; any claims for vested benefits under th enforce this Agreement and any claims based on acts or events occurring after the effective date of this Agreement, with the exception of claims associated with employment or the termination of is/her employment up to, and including, his/her Separation Date. Employee also understands that he/she does not waive the right to file a charge with the EEOC, to cooperate or participate in any investigation or proceeding conducted by the EEOC or to testify when required to do so by law.

Separation Agreement and Rele

nder the Age Discrimination in

Employment Act, 29 U.S.C. § 621, *et. seq.*

¹ Defendants admit that Plaintiff has complied with all conditions precedent to filing a suit under the ADEA. Doc. No. 19, ¶¶ 11-15.

III. Legal Standard

In considering a Rule 12(b)(6) motion, federal courts require notice pleading, as opposed to the heightened standard of fact pleading. Federal Rule of Civil Procedure 8(a)(2) requires only

Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

To survive a motion to dismiss, a party must allege sufficient facts that, if accepted as
Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility when a party pleads facts that allow the court to draw the reasonable inference that the defendant may be liable for the misconduct alleged. *Id.*

Iqbal, 129 S.Ct. at 1950 (quoting *Twombly*, 550 U.S. at 555). In deciding a motion to dismiss, a court must determine whether the Complaint or Answer

defendant (or plaintiff) is liable for the misconduct all *Pennsyl. Prison Soc. v. Cortes*, 622 F.3d 215, 233 (3d Cir. 2010), citing *Iqbal*

Id.; *See also Fowler*, 578 F.3d at 210-211.

As explained succinctly by the United States Court of Appeals for the Third Circuit:

Pursuant to *Ashcroft v. Iqbal*, [citation omitted], district courts must conduct a two-part analysis when presented with a motion to dismiss. *Fowler v. UPMC Shadyside*

Id.

Id. at 210-11.

Id. at 211 (quoting *Iqbal*, 129 S.Ct. at 1950).

Edwards v. A.H. Cornell and Son, Inc., 610 F.3d 217, 219 (3d Cir. 2010).

When determining whether a party has met the second part of the analysis and presented of the claim presented and the facts pled to substantiate that claim. For example, in *Fowler*, a case predicated upon a violation of the Rehabilitation Act, the Court of Appeals determined that

F *Fowler*

sufficient grounds to establish plausibility. *Id.* at 211-212.

The United States Court of Appeals for the Third Circuit, in *Guirguis v. Movers Specialty Services, Inc.*, 346 Fed.Appx. 774, 776 (3d Cir. 2009), a civil rights and Title VII case, affirmed to plead facts explaining why he believed his national origin was the basis for the termination of his employment.

Therefore, when deciding a motion to dismiss under Rule 12(b)(6), the district court should apply the following rules. The facts alleged in the Complaint or Answer, but not the legal conclusions, must be taken as true and all reasonable inferences must be drawn in favor of plaintiff. *Iqbal*, 129 S.Ct. at 1949; *Twombly*, 550 U.S. at 555. We may not dismiss a Complaint or Counterclaim merely because it appears unlikely or improbable that plaintiff can prove the facts alleged or will ultimately prevail on the merits. *Id.* at 556, 563 n.8. Instead, we must ask whether the facts alleged raise a reasonable expectation that discovery will reveal evidence of the necessary elements. *Id.* at 556. In short, the motion to dismiss should not be granted if a party alleges facts which could, if established at trial, entitle him to relief. *Id.* at 563 n.8. Generally

speaking, a complaint or counterclaim tha

See Fowler and Guirguis, supra.

Based upon this standard, this Court has reviewed Defendants Amended Complaint (Doc. No. 19), Plain Motion to Dismiss (Doc. No. 28), Defendants Response Brief in Opposition Thereto

IV. Discussion

A. Breach of Contract

To sustain a breach of contract claim or counterclaim, a party must allege facts to establish : (1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damages. *Omicron Sys. v. Weiner*, 860 A.2d 554, 564 (Pa. Super. Ct. 2004). Plaintiff does not contend that not establish such common law elements, but rather, that the separation agreement does not met the mandatory prerequisites for a valid and enforceable release based upon Benefit waiver requirements. Doc. No 31, 5.

was knowing and voluntary, 29 C.F.R. §1625.22 notes that:

Section 7(f)(1)(B) of the ADEA provides, as part of the minimum requirements ghts or claims under this Act. Pursuant to this subsection, the waiver agreement must refer to the Age Discrimination in Employment Act (ADEA) by name in connection with the waiver.

Here,

required. Such a requirement is distinct from the elements of common law breach of contract claims. *See Oubre v. Entergy Operation, Inc.*, 522 U.S. 422 own regime for assessing the effect of ADEA waivers, separate

This Court noted the objective requirements of the Act in *Rupert v. PPG Industries*, No. 07-705, 2009 U.S. Dist. LEXIS 125743 at * 26, n. 8 (W. D. Pa. Feb. 11, 2009)

Furthermore, 29 C.F.R. §

sue, Defendants were required to expressly include that Plaintiff was waiving all rights and claims under the ADEA in his separation agreement. *See Rupert*, at * 20-22. Failure to specifically inform Plaintiff that the general waiver also covered his ability to bring a claim under the ADEA _____ ct of misleading, misinforming, or failing to inform participants and affected individuals . 29 C.F.R. § 1625.22(b)(4). Therefore, _____ eparation was an ineffective waiver of any potential ADEA claims.

_____ -claim is premised on the contention that Plaintiff breached his valid waiver agreement by bringing the present suit. However, as previously noted and as thoroughly discussed in *Rupert*, there was no valid waiver of ADEA claims. As such, _____ d not be found in breach of a contractual waiver.

Therefore, b _____ sed upon an invalid release clause and because discovery could not produce any evidence to cure such a defect,

B. Unjust Enrichment/Restitution

Plaintiff has also motioned this Court to dismiss Defendants' counterclaim of unjust enrichment. Defendants allege that Plaintiff was provided various benefits, including dental, basic life, basic accidental death and dismemberment insurance, for at least twelve months after his termination. Doc. No. 19, ¶ 26. Defendants further allege that such benefits were provided

Id. at ¶ 27. Accordingly, Defendants claim that

and material representations of fact. Therefore, Defendants contend that for [Plaintiff] to accept and retain the benefits described above without fulfilling his promise not

When taken as true, a factual averments support a claim for unjust enrichment. *See Martik Brothers, Inc. v. Huntington Nat'l Bank*, 2009 U.S. Dist. LEXIS 2785 * 25 (W.D. Pa. Jan. 14, 2009). As such, counterclaim provides Plaintiff fair notice of what the claim is and the grounds upon which it rests. *Twombly*, 127 S.Ct. at 1964. Furthermore, enrichment may be properly brought even though the contract may be found invalid. *See Gonzalez v. Old Kent Mortgage Co.*, 2000 U.S. Dist. Lexis 14530, [to dismiss unjust enrichment claim] is premature . . . plaintiffs are free to pursue alternative theories of recovery, including pleading breach of contract

unjust enrichment cannot be permitted under EEOC regulation 29 C.F.R. § 1625.23(c). Doc. No.

29, 12. EEOC Regulation Section 1625.23(c)(1)

discretion to determine whether an employer is entitled to restitution, recoupment or setoff . . .

Rupert, Doc. No. 168 (W.D.Pa. Apr. 13, 2009),

it is premature to determine the final effect said regulation will have in this case because it has not yet been determined whether Plaintiff will prevail on the merits of his ADEA claims.

Therefore, in light of the liberal pleading standards, this Court finds that the facts alleged a counterclaim for unjust enrichment/restitution rises above the speculative level and supports the cause of action alleged. As such, Dismiss Defendants Counterclaim for unjust enrichment will be denied.

V. Conclusion

AND NOW, for the reasons set forth in this Memorandum Order filed this 3rd day of March, 2011, **IT IS HEREBY ORDERED** that 28) is **GRANTED** contract and is **DENIED** as to without prejudice to Plaintiff raising the issues set forth therein in a Motion for Summary Judgment at the appropriate time.

SO ORDERED,

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties