

United States Court of Appeals For the First Circuit

No. 13-2073

EDWIN TOLEDO-COLÓN,
Plaintiff, Appellant,

v.

COMMONWEALTH OF PUERTO RICO, represented by Hon. Gov. Luis Fortuño-Burset in his personal and official capacity; PUERTO RICO DEPARTMENT OF JUSTICE, represented by Hon. Luis Somoza Colombani in his official capacity; PUERTO RICO DEPARTMENT OF LABOR AND HUMAN RESOURCES, represented by Hon. Miguel Romero in his personal and official capacity; VOCATIONAL REHABILITATION ADMINISTRATION; NYDIA COLÓN, in her personal and official capacity; MARIDELI ARRIETA, in her personal and official capacity; WANDA LOZADA, in her personal and official capacity; GILDA DACOSTA-MARTEL, in her personal and official capacity; RUBÉN BONILLA, in his personal and official capacity; LEYDA SANTIAGO, in her personal and official capacity; MARÍA BENÍTEZ, in her personal and official capacity; CARMEN DÍAZ-TRINIDAD, in her personal and official capacity; MYRNA CAMBRELEN, in her personal and official capacity,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Gustavo A Gelpí, U.S. District Judge]

Before

Torruella, Thompson, and Barron,
Circuit Judges.

Carlos Rodriguez García for appellant.
Tanaira Padilla-Rodríguez, Deputy Solicitor General, with whom
Margarita L. Mercado-Echegaray, Solicitor General, and Susana I.

Peñagaricano-Brown, Assistant Solicitor General, were on brief, for appellees.

January 9, 2015

PER CURIAM. Plaintiff Edwin Toledo-Colón appeals from several adverse rulings by the district court on his federal and state claims sounding in discrimination and retaliation. Finding that Toledo-Colón failed to adequately allege a claim on any count, we affirm the district court's dismissal of his case.

BACKGROUND

Toledo-Colón suffers from Avoidant Personality Disorder, which entitles him to support from the Vocational Rehabilitation Administration (VRA). Since 2002, he has received services in support of his higher education, including funding for room and board, classes, and computer equipment. In 2003, Toledo-Colón requested computer equipment costing approximately \$37,000. Thereafter, he submitted a formal complaint with the Office of the Advocate for Persons with Disabilities (Office) against the VRA. According to Toledo-Colón, upon his filing of the complaint, the VRA agreed to provide the equipment; however, once the administrative proceedings concluded (with a finding that the VRA did not have to provide the equipment) the VRA formally denied his request for the computer equipment.¹ In spite of not having the

¹ Though our focus here is on the complaint, we note that in their motion for summary judgment, defendants contended that Toledo-Colón's request was denied because he did not actually need the expensive equipment. They cited the fact that his master's thesis professor "unequivocally stated that not all theses require the equipment that plaintiff is requesting" and Toledo-Colón's desire to present his thesis in the form of a documentary (which is what was necessitating the equipment) did not derive from any university requirement.

benefit of the sought-after equipment, Toledo-Colón earned a bachelor's degree, and then commenced a master's degree program; he continued to receive benefits from the VRA.

In 2010, Toledo-Colón sued the VRA, the Commonwealth of Puerto Rico, the Puerto Rico Department of Labor and Human Resources, the Puerto Rico Department of Justice, and several individual defendants in their official and personal capacities. In short, Toledo-Colón alleged that the VRA discriminated against him by failing to provide the requested computer equipment, and then retaliated against him for filing a complaint with the Office. He asserted federal claims under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., and the Federal Rehabilitation Act, 29 U.S.C. §§ 701 et seq., along with violations of the First and Fourteenth Amendments under 42 U.S.C. § 1983. Toledo-Colón also brought claims under state law, specifically Puerto Rico Law 115, P.R. Laws Ann. tit. 29, § 194(a), Puerto Rico Law 44, P.R. Laws Ann. tit. 1, §§ 501 et seq., Articles 1802 and 1803 of the Civil Code of Puerto Rico, P.R. Laws Ann. tit. 31, §§ 5141-5142, and the Puerto Rico Constitution.

In 2011, the district court dismissed all claims except for the claims for injunctive relief and monetary damages against the defendants in their individual capacities under § 1983. A couple years later, the court granted defendants' motion for

summary judgment on the remaining claims, and then denied Toledo-Colón's motion to alter the judgment.

DISCUSSION

Toledo-Colón appeals the district court's various adverse judgments, citing multiple supposed errors, but the particulars of the court's rationale is not something we need to get into. We are not bound by the district court's reasoning, and may affirm its decision on any basis in the record. Lydon v. Local 103, Int'l Bhd. of Elec. Workers, 770 F.3d 48, 53 (1st Cir. 2014). Here, after fruitlessly searching Toledo-Colón's complaint for allegations that might support his discrimination and retaliation theories, we conclude that he failed to state any plausible claims under federal or state law.

In reviewing the complaint, we discard conclusory allegations and determine whether the remaining charges, which we assume are true, state a plausible claim upon which relief may be granted. Lebrón v. Commonwealth of Puerto Rico, 770 F.3d 25, 29 (1st Cir. 2014). The allegations must suffice to "raise [the] right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). It is not enough to "tender[] naked assertion[s] devoid of further factual enhancement." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted) (second alteration in original).

We turn to Toledo-Colón's specific claims.

A. ADA and Rehabilitation Act Claims

A plaintiff states a claim for discrimination under Title II of the ADA and Section 504 of the Rehabilitation Act by alleging that the defendant "engaged in some wrongful action" against the plaintiff on account of his disability. Lebrón, 770 F.3d at 31 (citing Lesley v. Hee Man Chie, 250 F.3d 47, 52-53 (1st Cir. 2001) (Rehabilitation Act); Parker v. Universidad de Puerto Rico, 225 F.3d 1, 5 (1st Cir. 2000) (ADA)).

Here, the complaint states that the denial of computer equipment was an "irrational act of . . . discrimination." However, Toledo-Colón fails to allege a single fact to support his claim that his request was denied on account of his disability. When pressed at oral argument, even Toledo-Colón's counsel was unable to point to anything in the record that supported such an inference. Without more, the statements in the complaint do not suffice to state a claim that Toledo-Colón was discriminated against because of his disability. See id. Equally inchoate is Toledo-Colón's retaliation claim.

To make out a claim of retaliation under either statute,² a plaintiff must allege that he engaged in protected conduct, was

² In addition to the ADA and Rehabilitation Act, Toledo-Colón references the anti-retaliation provision of Title VI of the Civil Rights Act, 42 U.S.C. §§ 2000d et seq., insofar as the Rehabilitation Act has incorporated its procedural requirements. It does not appear that Toledo-Colón is attempting to make out a distinct Title VI claim. To the extent he is, it would fail for the same reasons his other retaliation claims fail.

subject to an adverse action by the defendant, and that there was a causal nexus between the protected conduct and the adverse action. D.B. ex rel. Elizabeth B. v. Esposito, 675 F.3d 26, 41 (1st Cir. 2012).

It is undisputed that the VRA denied the request for \$37,000 worth of computer equipment (though it continued to provide funding for Toledo-Colón's education) and that advocating for one's right to be free from disability-based discrimination constitutes protected conduct for the purposes of a retaliation claim. See id. However, on the causal-nexus piece, Toledo-Colón's claim falters. Though he alleges that "retaliatory events . . . commenced and have continued" after he filed the complaint, and that the equipment denial was an "irrational act of retaliation," Toledo-Colón fails to allege any facts permitting a plausible inference that the VRA denied the request in order to get back at Toledo-Colón for filing a complaint. He offers nothing more than conclusory allegations that the defendants retaliated against him. Again, just saying something does not make it so.

B. Fourteenth Amendment Claim

A sufficient equal protection claim, under the Fourteenth Amendment, "must allege facts indicating selective treatment compared with others similarly situated . . . based on impermissible considerations such as . . . malicious or bad faith intent to injure a person." Aponte-Torres v. Univ. of Puerto Rico,

445 F.3d 50, 57 (1st Cir. 2006) (internal quotation marks omitted). Toledo-Colón does not allege any facts tending to show he was treated differently than other similarly situated individuals; indeed, his complaint only refers to individuals with physical, as opposed to mental, disabilities. There are also no allegations speaking to malicious or bad faith intent. That is, the complaint contains no facts that permit us to infer that any of the defendants attempted to injure Toledo-Colón. Rather, he simply states that "Defendants planned and place[d] into action an elaborate scheme to deny the Plaintiff of his Constitutional and statutory federal rights." This fails to suffice.

C. First Amendment Claim

To prove a First Amendment retaliation claim, the plaintiff is required to show that he "engaged in constitutionally protected conduct" and that he "was subjected to an adverse action by the defendant" for which "the protected conduct was a substantial or motivating factor." Esposito, 675 F.3d at 43. It is entirely unclear what Toledo-Colón's First Amendment claim is based on. In the complaint, he references the "right of free speech," referring to case law providing that statements to, and appearances before, the Equal Employment Opportunity Commission are protected from retaliation under the First Amendment. However, there is no allegation, or indication in the record, that Toledo-Colón was in any way involved in EEOC proceedings. Even assuming

he seeks to characterize his filing of the complaint with the Office as constitutionally protected activity, he (as we have already said) has failed to plausibly allege that it was this filing that motivated the VRA.

D. State Law Claims

Toledo-Colón also brings a panoply of state law claims, citing the relevant laws but offering us nothing else. As the state law claims simply seem to mirror Toledo-Colón's federal law theories, we find that Toledo-Colón fails to allege any facts from which we might plausibly infer that the defendants discriminated or retaliated against him in violation of state law.

CONCLUSION

Simply put, Toledo-Colón's complaint is convoluted at its best, and incomprehensible at its worst. As he has failed to state any claim upon which relief can be granted, we affirm the district court's dismissal of his case.