

# Rumors Run Amok: Poorly Managing Rumors of an Alleged Affair Opens Title VII Liability

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Just in time for Valentine's Day, in *Parker v. Reema Consulting Services, Inc.*, the U.S. Court of Appeals for the Fourth Circuit has held that a false rumor that a woman slept with her manager to obtain promotions could give rise to Title VII liability. Reema Consulting Services Inc. had won a motion to dismiss Evangeline Parker's discrimination and retaliation claims. The district court viewed Parker's allegations as describing harassment motivated not by her gender but by false allegations about her conduct. The court had also ruled that because the rumor was in circulation for such a short time, the treatment Parker suffered because of it was not severe or pervasive.

The Fourth Circuit reversed and remanded most of Parker's claims. But it also affirmed the district court's dismissal of a discrimination claim based on her discharge because the charge she filed with the Equal Employment Opportunity Commission ("EEOC") had not included important details regarding that claim.

## Male Jealousy at Parker's Quick Rise in the Ranks

Because the case was decided on a motion to dismiss, the appeals court treated the facts alleged as true and drew all inferences in Parker's favor. The background facts show many missteps, as the company fumbled with a rumor that was begun by a jealous coworker and then spread throughout the workplace by other men.

As alleged in the complaint, Parker and Donte Jennings were both hired in December 2014 as low-level clerks in a warehouse where Demarcus Pickett was one of the higher-ranking managers. Parker was promoted half a dozen times between December 2014 and March 2016, quickly surpassing Jennings and becoming his supervisor. Her final promotion was to assistant operations manager in March 2016. Just two weeks later, Jennings began to spread a rumor that Parker was sleeping with Pickett. As other men in the warehouse spread the rumor, Parker's direct reports and other coworkers began showing her open hostility. The warehouse's highest-ranking manager, Larry Moppins, asked Pickett if his wife was going

to divorce him for sleeping with Parker.

## Parker Took the Blame for the Rumor

The rumor spread unchecked for more than six weeks, and Moppins called a mandatory all-staff meeting. Both Parker and Pickett were late to the meeting. Moppins allowed Pickett in, but slammed the door in Parker's face, and then discussed the rumor without her presence or input. Parker later met with Moppins to address the rumor, and he blamed her for bringing the situation to the workplace. Moppins said he had planned great things for Parker but would no longer support her career progression because of the rumors. When Parker met with him a second time, Moppins lost his temper and screamed at her, continuing to blame her for the rumor and for complaining about it, and saying he should have fired her when she first raised the issue. Parker subsequently filed a formal complaint with the company's human resources department.

Several weeks later, Jennings (who the Fourth Circuit repeatedly refers to as the rumor monger) submitted a complaint to human resources that Parker was causing a hostile work environment through her inappropriate conduct. Human resources directed Parker to avoid Jennings, but placed no restrictions on him. So Jennings was allowed to hang around Parker's work area, distracting her direct reports and mocking her. Parker complained to her own manager and to human resources about Jennings' conduct, but no action was taken.

On May 18, 2016, Parker was called into a meeting with Moppins, human resources and the company's in-house lawyer. She was presented with two written warnings – one related to Jennings' complaint and one for insubordination to Moppins and poor management ability. Her employment was terminated in that meeting.

## Old Perceptions Inform the Fourth Circuit's View of Parker's Claims

In dismissing Parker's hostile work environment claim, the district court focused on the fact that the rumor spread about Parker was not specific to her gender; it was focused on her falsely alleged conduct. The district court also viewed the treatment Parker subsequently suffered as "slights" that took place over a relatively short period of time rather than the severe or pervasive conduct affecting the terms and conditions of her employment.

The Fourth Circuit noted that a rumor that a female subordinate had sex with a male superior to obtain a promotion tapped into an old and "deeply rooted perception" that women, not men, use sex to achieve professional success and thus are labeled as sluts or even prostitutes. The appellate court emphasized that the rumor about Parker was started by a man and spread by men, including upper management, and it focused on the woman and not the man in the alleged affair. The appellate court also noted that the rumor monger, Jennings, was permitted to disrupt Parker's workspace, and that while Parker was sanctioned, neither Pickett (who was also the subject of the rumor) nor Jennings (who started the rumor) faced discipline.

The Fourth Circuit also rejected the district court's conclusion that the short time frame precluded finding severe or pervasive conduct. The appellate court emphasized the physically threatening aspects of the treatment Parker faced, including having the highest-ranked manager in the warehouse, to whom she reported, publicly slam a door in her face and scream at her in a meeting. The appellate court also noted that Parker's terms and conditions of employment were obviously affected, since she was excluded from a meeting at which the rumor was discussed, humiliated in front

of her coworkers, restrained in where she could work and ultimately terminated from employment. Thus, the Fourth Circuit remanded Parker's hostile work environment and related retaliatory discharge claims.

## Parker's EEOC Charge Lacked Sufficient Specificity to Support her Discriminatory Termination Claim

The Fourth Circuit affirmed the district court's dismissal of Parker's third count of discrimination based on her employment termination. Parker's EEOC charge had alleged she was terminated based on facts relating to the rumor and following conduct, but her lawsuit alleged that the company had failed to follow its "three strikes" policy by terminating her after only two written warnings. Parker's lawsuit alleged that the company regularly allowed men to continue working after three strikes, but terminated women after fewer than three strikes or in connection with three warnings delivered simultaneously at the time of termination. Parker's charge had not mentioned disparate treatment in connection with the three strikes policy in particular, so the appellate court agreed that the company had not had adequate notice of the broader pattern of misconduct Parker's complaint alleged.

## Key Takeaways

Employers can take a few key lessons away from the case:

- **Maintain confidentiality in confronting sensitive allegations.** The rumor about Parker seems to have gathered significant steam as top management in the warehouse discussed it publicly, providing additional fuel and likely adding to its credibility and impact.
- **Treat similarly situated employees consistently.** Parker and Pickett were falsely accused of similar conduct (trading promotion for sexual favors). Top management's focus on and blame of Parker and the absence of similar focus and blame toward Pickett helped the Fourth Circuit conclude that Parker may have been treated differently because of her gender. Moppins' conversation with Pickett, giving him a hard time about how his wife might react, was markedly different in tone and content than his conversations with Parker, screaming blame at her for bringing the issue into the workplace and refusing to further support her career because of it.
- **Investigate and address issues quickly.** Top management at the company knew about the rumor within a few weeks of its inception, and Parker ultimately filed a formal complaint with human resources. But the complaint contained no indication that any action was taken to protect Parker. Had the rumor been investigated when it first became an issue, Jennings might have faced discipline or at least been warned to stop spreading false information, and human resources would have had an opportunity to coach Moppins, Pickett and Parker about their immediate next steps.
- **Carefully compare complaints to their underlying EEOC charges.** The Fourth Circuit affirmed dismissal of Parker's discriminatory discharge claim because her lawsuit expanded too far beyond the details she provided in her charge. This final point drew a dissent from one of the appellate judges, who described it as demanding "more specificity and foresight...than our precedents or good sense require." Employers can rely on this decision to challenge lawsuits that expand the allegations made in an EEOC charge, and this may be the beginning of a shift in the Fourth Circuit toward more stringent requirements in exhaustion of administrative remedies.

Rumors can create chaos and damage employee morale, and the *Parker* decision makes clear they could also create Title VII liability if employers fail to handle them properly.

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