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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

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EDWARD J. SIMONEAUX

CIVIL ACTION

VERSUS

NO. 00-755-B-M3

NEW YORK LIFE INS. CO.

**RULING ON DEFENDANT'S MOTION TO DISMISS**

This matter is before the Court on a motion to dismiss filed by New York Life Insurance Co. (New York).<sup>1</sup> Plaintiff has filed an opposition to this motion.<sup>2</sup> For reasons which follow, the defendant's motion is GRANTED.

I. Factual Background

The plaintiff, Edward J. Simoneaux, is a former employee of the defendant. Plaintiff alleges that after being employed by the defendant for approximately twenty-three years, he was wrongfully terminated and replaced by a younger person with less experience. Plaintiff further avers that during his employment, he was subjected to age-related comments, a lack of cooperation from the defendant in obtaining an office lease, and disproportionate

<sup>1</sup>Rec. Doc. No. 4.

<sup>2</sup>Rec. Doc. No. 6.

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company-wide lay-offs affecting employees over the age of fifty.<sup>3</sup> Plaintiff originally filed this suit in the Nineteenth Judicial District Court for the Parish of East Baton Rouge seeking recovery under the Louisiana Age Discrimination Law and for intentional infliction of emotional distress. Plaintiff alleges that the defendant "intentionally terminated" him based upon his age, thereby causing him "serious emotional distress."<sup>4</sup> Defendants timely removed the suit to this Court, and have now moved to dismiss plaintiff's claim for intentional infliction of emotional distress for failure to state a claim under Louisiana law.<sup>5</sup>

## II. Standard for a Motion to Dismiss

A motion to dismiss under Rule 12(b)(6) "is viewed with disfavor and is rarely granted."<sup>6</sup> The complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true.<sup>7</sup> The district court may not dismiss a complaint under Rule 12(b)(6) "unless it appears beyond

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<sup>3</sup>Petition at ¶ VIII.

<sup>4</sup>Petition at ¶ X.

<sup>5</sup>Rec. Doc. No. 4.

<sup>6</sup>*Shipp v. McMahon*, 234 F.3d 907, 911 (5<sup>th</sup> Cir. 2000) (quoting *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5<sup>th</sup> Cir. 1982)).

<sup>7</sup>*Shipp*, 234 F.3d at 911; *Campbell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5<sup>th</sup> Cir.), *cert. denied*, 476 U.S. 1159, 106 S. Ct. 2279, 90 L.Ed.2d 721 (1986).

doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."<sup>8</sup> This strict standard of review under Rule 12(b)(6) has been summarized as follows: "The question therefore is whether in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief."<sup>9</sup> While the Court must accept as true the complaint's well-pleaded allegation, this Court has noted that "the plaintiff must plead specific facts, not mere conclusory allegations."<sup>10</sup>

### III. Law and Analysis

Plaintiff seeks to hold the defendant liable for intentional infliction of emotional distress. In order to recover for intentional infliction of emotional distress under Louisiana law, a plaintiff must establish that: (1) the conduct of the defendant was extreme and outrageous; (2) the emotional distress suffered by the plaintiff was severe; and (3) the defendant desired to inflict severe emotional distress or knew that severe emotional distress

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<sup>8</sup>*Shipp*, 234 F.3d at 911; *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02, 2 L. Ed.2d 80 (1957).

<sup>9</sup>5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1357 (2nd ed. 1990).

<sup>10</sup>*Hornsby v. Enterprise Transportation Co.*, 987 F. Supp. 512, 516 (M.D. La. 1997) (citing *Guidry v. Bank of LaPlace*, 954 F.2d 278, 281 (5<sup>th</sup> Cir. 1992) and *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284-85 (5<sup>th</sup> Cir. 1993)).

would be certain or substantially certain to result from his conduct.<sup>11</sup> The Louisiana Supreme Court has held:

The conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. Persons must necessarily be expected to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind.<sup>12</sup>

Plaintiff's complaint does not allege any acts upon which a cause of action for intentional infliction of emotional distress could be based. The only conduct of the defendant alleged by the plaintiff is his termination, age-related comments, a lack of cooperation with the plaintiff in obtaining an office lease, and disproportionate company lay-offs. Even if proven true, these alleged facts would not permit a conclusion that the defendant engaged in conduct that was so outrageous in character it went beyond all possible bounds of decency or that it intentionally caused plaintiff extreme mental suffering. The Fifth Circuit has

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<sup>11</sup>Nicholas v. Allstate Ins. Co., 765 So. 2d 1017 (La. 8/31/00) (citing White v. Monsanto, 585 So. 2d 1205, 1209 (La. 1991)).

<sup>12</sup>White, 585 So. 2d at 1209 (La. 1991).

consistently held "ordinary employment disputes" do not give rise to an intentional infliction claim.<sup>13</sup>

Plaintiff's argument that the "mere fact that Plaintiff . . . toiled for New York Life for twenty-three (23) years before being swept under the door in his twilight years may be considered so outrageous as to support Plaintiff's claim"<sup>14</sup> illustrates that this is essentially an age-discrimination claim. However, mere age-discrimination is not actionable as intentional infliction of emotional distress.<sup>15</sup> Article 2315 of the Louisiana Civil Code, the source of an action for intentional infliction of emotional distress in Louisiana, simply does not provide a cause of action for employment discrimination.<sup>16</sup>

Additionally, plaintiff has failed to allege that the defendant intentionally caused plaintiff extreme mental suffering

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<sup>13</sup>*Deus v. Allstate*, 15 F.3d 506, 515 (5<sup>th</sup> Cir.), cert. denied, 513 U.S. 1014, 115 S. Ct. 573, 130 L.Ed.2d 490 (1994).

<sup>14</sup>Rec. Doc. No. 6, Plaintiff's Memo. In Opposition at 4.

<sup>15</sup>*See Pinsonat v. JE Merit Constructors, Inc.*, 962 F. Supp. 848 (M.D. La. 1996); *Durning v. Duffens Optical, Inc.*, 1996 WL 67640 (E.D. La. 1996).

<sup>16</sup>*Loftice v. Mobil Oil Exploration and Producing U.S., Inc.*, 1999 WL 744049 (E.D. La. 1999); *Gluck v. Casino America, Inc.*, 20 F. Supp. 2d 991 (W.D. La. 1998); *Hornsby v. Enterprise Transportation Co.*, 987 F. Supp. 512, 515 (M.D. La. 1997); *Caletka v. State Farm Mutual Automobile Ins. Co.*, 936 F. Supp. 380 (W.D. La. 1996); *Baynard v. Guardian Life Ins. Co.*, 399 So. 2d 1200 (La. App. 1 Cir. 1981).

or anguish.<sup>17</sup> Therefore, even if the allegations in the Petition did constitute outrageous conduct beyond all possible bounds of decency, plaintiff still would not have a valid claim under Louisiana law for *intentional* infliction of emotional distress.<sup>18</sup>


#### IV. Conclusion

The Court finds that the defendant's motion to dismiss plaintiff's claim for intentional infliction of emotional distress is proper. Plaintiff's claim for age discrimination under the Louisiana Age Discrimination law was not part of the defendant's motion to dismiss and is not affected by the Court's ruling.

Therefore:

**IT IS ORDERED** that New York Life's motion to dismiss plaintiff's claim for intentional infliction of emotional distress be and it is hereby **GRANTED**.

Baton Rouge, Louisiana, April 25, 2001.

  
FRANK J. POLOZOLA, CHIEF JUDGE  
MIDDLE DISTRICT OF LOUISIANA

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<sup>17</sup>Rather, the Petition alleges that the defendant intentionally terminated the plaintiff. Petition at X. It is not the conduct that must be intentional, but rather the resulting extreme mental anguish. See *White v. Monsanto Co.*, 585 So. 2d 1205 (La. 1991).

<sup>18</sup>See *Pinsonat v. JE Merit Constructors, Inc.*, 962 F. Supp. 848 (M.D. La. 1996).