

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:03-CV-256

FILED  
CHARLOTTE, N.C.

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U.S. DISTRICT COURT  
W. DIST. OF N.C.

F. BARRON STONE, )  
)  
Plaintiff, )  
)  
v. )  
)  
DUKE ENERGY CORPORATION, )  
DUKE ENERGY BUSINESS SERVICES, )  
(DEBS) )  
Defendants. )

**ORDER**

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THIS MATTER comes before the Court upon Defendants' 18 July 2003 Motion to Dismiss. On 4 August 2003, Plaintiff filed a Response. Defendants filed a Reply on 18 August 2003.

Pursuant to the Federal Rules of Civil Procedure "[a] pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." *See* Fed. R. Civ. P. 8 (2004). Moreover, "[a]ll averments . . . shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances" such that "[e]ach claim founded upon a separate transaction or occurrence . . . shall be stated in a separate count . . . whenever a separation facilitates the clear presentation of the matters set forth." *See* Fed. R. Civ. P. 10.

Plaintiff's Complaint is a shotgun pleading which violates the letter and spirit of Rules 8 and 10. The first count of Plaintiff's Complaint consists of seventy-five numbered paragraphs. These paragraphs contain multiple averments that are lengthy, confusing and, seemingly, unrelated to any cause of action. Purportedly, Plaintiff seeks relief for Unlawful Demotion and Retaliation under § 806 of the Sarbanes-Oxley Act of 2002, codified at 18 U.S.C. § 1514A. The Sarbanes-Oxley Act does not apply retroactively to claims brought under § 806. *See Kunkler v. Global Fixtures & Fortex, Ltd.*, 203-SOX-6 (ALJ Apr. 24 2003); *Gilmore v. Parametric Tech.*, 2003-SOX-1 (ALJ Feb. 6, 2003); *see also Landgraf v. USI Film Products*, 511 U.S. 244 (1994) (requiring express congressional intent for retroactive application). Although the Sarbanes-Oxley Act was not passed until 30 July 2002, paragraphs five through forty-six, forty-nine, and sixty-seven through seventy-five allege facts that occurred before the Act's enactment.<sup>1</sup>

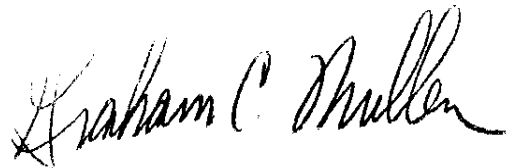
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<sup>1</sup>Furthermore, these allegations, as well as others, allege facts on or before 16 August 2002. Plaintiff, however, did not commence this action with the Department of Labor until 30 October 2002. Therefore, these allegations are not actionable because "[a]n action under [the Sarbanes-Oxley Act] shall be commenced not later than 90 days after the date on which the violation occurs." *See*

From this pleading, this Court is unable to identify which facts implicate which sections of the Act. The averments read like a stream of consciousness rather than a concise articulation of the facts and circumstances relevant to the claim. Likewise, Plaintiff's other claims, Harassment/Discrimination, Wrongful Demotion, Defamation, Negligent Representation and Diminution in the Value of Stock, incorporate the preceding paragraphs without providing the Court with any aid in identifying the relevant factual basis, if any. The Court will not waste its time searching through Plaintiff's disorganized and indefinite Complaint for a prima facie case. *See, e.g., Cass v. Richard Joshua Reynolds Tobacco Co., Inc.*, 1998 WL 834856, \*2 (M.D. N.C. 1998) ("The Complaint . . . is a rambling fount of senseless writing . . . [which] lacks sufficient factual allegations for the court to wade through the ramblings in search of a possible legal theory.").

IT IS THEREFORE ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE.

This, the 10<sup>th</sup> day of February, 2004.



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GRAHAM C. MULLEN  
CHIEF UNITED STATES DISTRICT JUDGE

United States District Court  
for the  
Western District of North Carolina  
February 12, 2004

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 3:03-cv-00256

True and correct copies of the attached were mailed by the clerk to the following:

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- Judge ( )
- Magistrate Judge ( )
- U.S. Marshal ( )
- Probation ( )
- U.S. Attorney ( )
- Atty. for Deft. ( )
- Defendant ( )
- Warden ( )
- Bureau of Prisons ( )
- Court Reporter ( )
- Courtroom Deputy ( )
- Orig-Security ( )
- Bankruptcy Clerk's Ofc. ( )
- Other \_\_\_\_\_ ( )

2/12/04

