UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v. Case No.: 3:02-cv-910-J-20HTS

ALLIED PLASTICS COMPANY, INC.,

Defendant.

ORDER

Before the Court is Defendants' Motion to Dismiss Counts VII, XIV, and XIX of the Intervenor Complaint (Doc. No. 12, filed April 14, 2003); Intervenor Plaintiffs have not responded. The counts in question are claims for intentional infliction of emotional distress by the three intervenors. Each claim alleges that Defendant Uhrie engaged in or threatened numerous intentional acts of physical force or touching, including hugging, kissing, following, detaining, and intimidating. However, count XIX alleges only hugging and intimidation. The claims also allege that these actions caused "irreparable injury" to Plaintiffs.

Standard for Motion to Dismiss

In deciding a motion to dismiss, the district court is required to view the complaint in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232 (1974). A complaint should not be dismissed for failure to state a cause of action "unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Bank v. Pitt, 928 F.2d 1108, 1112 (11th Cir. 1991).

The Federal Rules of Civil Procedure "do not require a claimant to set out in detail the facts

upon which he bases his claim." Conley, 355 U.S. at 47. All that is required is "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). The Federal Rules have adopted this "simplified pleading" approach because of "the liberal opportunity for discovery and other pretrial procedures . . . to disclose more precisely the basis of both claim and defense . . . ." Id. at 48. The purpose of notice pleading is to reach a decision on the merits and to avoid turning pleading into "a game of skill in which one misstep by counsel may be decisive to the outcome." Id.

Analysis

To state a cause of action for the tort of intentional infliction of emotional distress, Plaintiffs must show: 1) deliberate or reckless infliction of mental suffering, 2) by outrageous conduct, 3) which conduct must have caused the suffering, and 4) the suffering must have been severe. Ball v. Helig-Meyers Furniture Co., 35 F. Supp2d 1371, 1376 (M.D. Fla. 1999); Dominguez v. Equitable Life Assurance Society, 438 So.2d 58, 59 (Fla. 3d DCA 1983). Florida courts have adopted the Restatement (Second) of Torts §46 definition of outrageous and require that the conduct "go beyond all possible bounds of decency ... and [be] utterly intolerable in a civilized community." Metropolitan Life Ins. Co. v. McCarson, 467 So. 2d 277, 278 (Fla. 1985). Defendants assert that Plaintiffs' allegations are not sufficiently outrageous to state a cause of action.

Whether conduct is sufficiently outrageous to state a claim for intentional infliction of emotional distress is a matter of law for the court. Baker v. Florida Nat'l Bank, 559 So. 2d 284, 287 (Fla 4th DCA 1990). At first blush, Defendants' alleged actions appear outrageous and intolerable. However case law makes clear that Florida sets a high standard for outrageous conduct. See Ball, 35 F.Supp 2d at 1376 (defendant rubbed penis across plaintiff's posterior, squeezed plaintiff's posterior, attempted to touch plaintiff's breasts, and made vulgar and suggestive comments to

plaintiff, but conduct was not outrageous); Blount v. Sterling Healthcare Group, Inc., 934 F.Supp 1365, 1371 (S.D. Fla. 1996) (finding that "tight" hugging, rubbing breast with arm, massaging back of head, and verbal harassment was not outrageous); Howry v. Nisus, Inc., 910 F.Supp 576, 580 (M.D. Fla. 1995) (requiring plaintiff to listen to explicit telephone conversations, commenting on size of penis, presenting a suggestive doll, and physically touching himself and plaintiff in a suggestive way was not outrageous); Hare v. Citrus World Inc., 39 F. Supp 2d 1365, 1367 (M.D. Fla. 1999) (inappropriate sexual comments, i.e., "give me some ass," rubbing arms, blowing kisses, and grabbing by the waist and performing a "humping motion" was not outrageous); but see Johnson v. Thigpen, 788 So. 2d 410, 412, 414 (Fla. 1st DCA 2001) (finding vulgar comments and suggestions centered on oral sex, unwelcome touching of breasts, running of a pencil up her thigh, and placing her hand on his crotch constituted outrageous conduct); Stockett v. Tolin, 791 F. Supp 1536, 1556 (S.D. Fla. 1992) (finding that repeated and relentless grabbing and touching of plaintiff's private body parts, repeated kissing, bodily attacks, and verbal licentiousness did not constitute outrageous conduct); Urquiola v. Linen Supermarket, Inc., 1995 WL 266582, *4 (M.D. Fla. 1995) (holding that numerous incidents of kissing, grouping, and attempted rape coupled with constant usual of vulgar and sexually explicit language sufficiently outrageous).

While it is clear that purely verbal harassment is not sufficiently outrageous, no formula or pattern for conduct involving both verbal and physical harassment develops from the case law. Although the Court finds the alleged behavior objectionable, the Court finds that, as pleaded, the behavior, which includes hugging, kissing, following, detaining, and intimidating, does not rise to

the level of outrageousness as outlined by case law[1]. Accordingly, Defendants' Motion is **GRANTED**, and counts VII, XIV, and XIX of the intervenor complaint are **DISMISSED WITHOUT PREJUDICE.**

DONE AND ORDERED at Jacksonville, Florida, this 13th day of May, 2003.

HARVEY E. SCHLESINGER
United States District Judge

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[1] While not briefed by either party, it also appears that the complaint fails to allege that the damage was severe as required by Florida law.

F I L E C O P Y

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