

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 99-9077-CIV-HURLEY/LYNCH

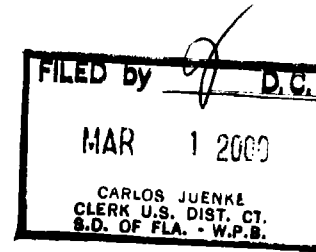
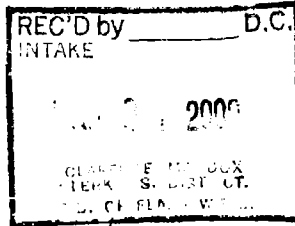
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

ATLANTIS GOLF CLUB, INC.,

Defendant.



ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

THIS MATTER is before the court following a review of plaintiff's complaint, which appears to violate the one-claim-per-count rule. See Rule 10(b), Fed. R. Civ. P. For the reasons set forth herein, plaintiff's complaint is dismissed *sua sponte* with leave to refile, within fifteen days, an amended complaint that comports with this order.

In Anderson v. District Board of Trustees of Central Florida Community College, 77 F.3d 364, 366-67 (11th Cir. 1996), the court, concerned about the ramifications of cases proceeding on the basis of "shotgun" pleadings, noted:

Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice.

See also Cesnik v. Edgewood Baptist Church, 88 F.3d 902, 905 (11th Cir. 1996), cert. denied, 519 U.S. 1110, 117 S. Ct. 946, 136 L. Ed.2d 834 (1997) and L.S.T., Inc. v. Crow, 49 F.3d 679, 684 (11th Cir. 1995). This court shares that experience, and notes that the problem is particularly acute in employment discrimination cases. Indeed, it is not uncommon for a plaintiff to attempt to conflate

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numerous and disparate legal theories into single counts. For instance a count for racial discrimination in violation of 42 U.S.C. section 1981 will include assertions of failure-to-promote as well as language suggesting “disparate treatment.” If a plaintiff wishes to assert discrimination arguing both theories, he or she must assert them as separate counts. The same is true with respect to factual allegations. Plaintiffs often detail facts and occurrences spanning an entire employment history, and then incorporate that factual recitation by reference, wholesale, into every count of the complaint. Such “shotgun” pleading imperils fundamental principles of due process.

In the instant case, plaintiff ‘s complaint contains a section entitled statement of claims. Paragraph seven contains two subparts which appear to assert the counts of alleged discrimination. However, it is difficult to determine the specific counts alleged in the complaint.

Mindful of the rule that a well-pleaded complaint contains only one claim per count, Fed. R. Civ. P. 10(b), and of the due process concerns articulated above, it is hereby

ORDERED and ADJUDGED:

(1) The complaint in this case is **DISMISSED**, with leave to refile an amended complaint that cures the noted pleading defects, such amended complaint to be filed within fifteen (15) days of the date of this order (computed in accordance with the Federal Rules of Civil Procedure).

(2) In redrafting the complaint, each count shall state with specificity both the factual and legal basis for the claim it sets forth. Other numbered paragraphs may be incorporated by reference but this must be done with particular care so that only relevant paragraphs are referenced. It is

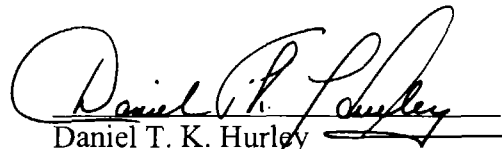
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impermissible to attempt a wholesale incorporation by reference of all preceding paragraphs.

(3) Defendant shall have ten (10) days from receipt of the amended complaint within which to file an amended answer.

(5) All time periods set forth in this order shall be computed in accordance with the Federal Rules of Civil Procedure.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 29th day of February, 2000.


Daniel T. K. Hurley
United States District Judge

Copies furnished to:

Lauren Ann Greenbaum, Esq.
Ellen Steingesser Malasky, Esq.