

**FILED**

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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff,**

**-vs-**

**Case No. 6:01-cv-1133-Orl-28KRS**

**KMART CORPORATION,**

**Defendant.**

**ORDER**

The Equal Employment Opportunity Commission ("EEOC") brings the instant action alleging unlawful employment practices under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII") on behalf of five former employees of Defendant, Kmart Corporation ("Kmart"). The former employees intervened and filed individual actions under Title VII and the Florida Civil Rights Act of 1992, Fla. Stat. § 760.01 et seq. ("FCRA"). Kmart then filed for protection under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. Thereafter, the Bankruptcy Court entered an order confirming Kmart's plan of reorganization. The Confirmation Order provided that the reorganization plan "shall not operate to bar the United States from pursuing any police or regulatory action against [Kmart] to the extent excepted from the automatic stay provisions of . . . the Bankruptcy Code." (Confirmation Order, Ex. A to Doc. 41, at 66 ¶ 49(c).)

Kmart now has pending before this court its "Motion To Dismiss And/Or Motion For Summary Judgment As To Individual Plaintiffs, Virginia Anderson, Tracy Brown, Jennifer Valdez, Y'Sheena McCoy, and Lisa Williams" (Doc. 41). Also before the court are responses filed by Defendants Lisa Williams (Doc. 56), Virginia Anderson and Tracy Brown

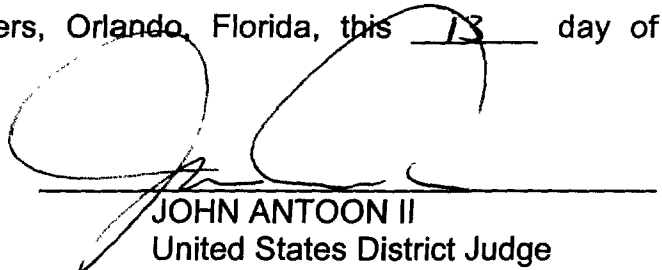
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(Doc. 58), and Y'Sheena McCoy (Doc. 59), as well as Kmart's Omnibus Reply (Doc. 69). In its motion Kmart argues that, pursuant to §§ 1141 and 524 of the Bankruptcy Code, the Bankruptcy Court's order confirming Kmart's Chapter 11 plan operates as a discharge and permanent injunction with respect to the prosecution of claims made prior to its bankruptcy petition. Notwithstanding this statutory injunction, § 362(b)(4) of the Bankruptcy Code provides an exception allowing the EEOC to pursue an action to enforce its "police or regulatory power."

In response to Kmart's motion, Ms. Anderson and Ms. Brown relinquish their claims under the FCRA but maintain that they have a right to continue pursuing their Title VII claims as intervenors in the EEOC action. Ms. McCoy and Ms. Williams respond by complaining of notice deficiencies in the claims resolution procedures before the bankruptcy court. None of the intervenors provide authority in support of their positions and this court concludes that their responses are without merit.

Accordingly, Kmart's Motion to Dismiss (Doc. 41) is **GRANTED** and the claims of Virginia Anderson, Tracy Brown, Jennifer Valdez, Y'Sheena McCoy, and Lisa Williams are **dismissed**. To the extent Kmart's motion (Doc. 41) seeks summary judgment, it is **DENIED as moot**.

**DONE** and **ORDERED** in Chambers, Orlando, Florida, this 13 day of November, 2003.

  
\_\_\_\_\_  
JOHN ANTOON II  
United States District Judge

 Copies furnished to:  
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F I L E C O P Y

Date Printed: 11/13/2003

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