

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,
and

DENA ZECHELLA,

Intervener,

v.

CASE NO: 8:99-cv-2218-T-26MSS

OUTBACK STEAKHOUSE, INC.,

Defendant.

_____ /

ORDER

Before the Court is the Plaintiff's Renewed Motion for Judgment as a Matter of Law on the Issue of the Illegality of Defendant's Release (Dkt. 115) and the Defendant's Response (Dkt. 149). After carefully considering the submissions of the parties and the trial transcript, the Court concludes that the motion must be denied.

As the Defendant correctly contends, the relief requested by the Plaintiff - a determination that the release offered to the Intervenor by the Defendant is illegal - cannot be made in a vacuum. Such a determination must be made within the context of the specific legislative authority conferred on the Plaintiff in Title VII by Congress. Congress has spoken clearly on this issue - the Plaintiff is only entitled to sue an employer for engaging in unlawful employment practices when such practices take the

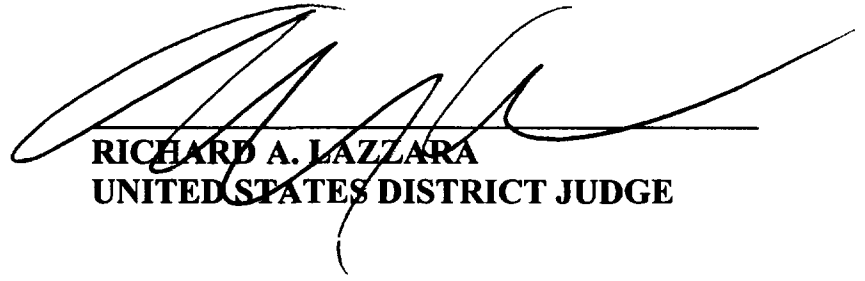
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form of discrimination or retaliation. See 42 U.S.C. § 2000e-5(a). Thus, it is not enough for the Plaintiff to establish that the release is per se illegal. Rather, the Plaintiff must demonstrate that the circumstances surrounding its presentation to the Intervenor constituted an act of discrimination or retaliation. This the Plaintiff has failed to do.

After searching the record, the Court can find not one scintilla of evidence that the offer of the release was tied to the Intervenor's sex or was done as an act of retaliation. Furthermore, the record is clear that the Intervenor never signed the release, opting instead to seek legal counsel before doing so. Finally, viewing the evidence and testimony in the light most favorable to the Defendant as the Court must do within the context of a rule 50 motion, the Court agrees with the Defendant's position that the delay occasioned in the Intervenor's receipt of her final paycheck could have reasonably "resulted from a miscommunication between Zechella and Butler; namely, the fact that Butler expected Zechella, after talking with Outback's attorney, to return and pick up her checks, which she never did." Thus, it is just as reasonable to conclude that the failure to give the Intervenor her final paycheck was the result of a mistake as opposed to an act of retaliation.

ACCORDINGLY, because the Plaintiff has failed to establish a nexus between the release at issue and the unlawful unemployment practices of discrimination or retaliation, the Renewed Motion for Judgment as a Matter of Law (Dkt. 115) is denied.

DONE AND ORDERED at Tampa, Florida, on October 24, 2001.



RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
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Notice sent to:

A handwritten signature in black ink, appearing to be 'JMR', is located in the upper right corner of the page.

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