

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
 MIAMI DIVISION

CASE NO. 98-1458-CIV-JORDAN

EQUAL EMPLOYMENT OPPORTUNITY)
 COMMISSION)
)
 Plaintiff)
)
 vs.)
)
 PACIFIC INTERNATIONAL EQUITIES, INC.,)
 SOUTHEASTERN FLORIDA PROPERTIES,)
 INC., and SOUTHEASTERN FLORIDA)
 MANAGEMENT, INC.)
)
 Defendants)
)

FILED by *[Signature]* D.C.
 APR 10 2000
 CLARENCE MADDOX
 CLERK U.S. DIST. CT.
 S.D. OF FLA. MIAMI

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

The Equal Employment Opportunity Commission sues defendants Pacific International Equities, Inc., Southeastern Florida Properties, Inc., and Southeastern Florida Management, Inc., under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A. The EEOC’s complaint brings a single count of discrimination under theories of sexual harassment, hostile work environment, and retaliatory discharge. The EEOC seeks a permanent injunction against defendants prohibiting future violations of the civil rights laws, *see* Amended Complaint [D.E. 29] ¶¶ A–C at 17–18 (Oct. 15, 1999), requiring that defendants institute remedial policies, *see id.* ¶¶ D–F at 18, back pay and other compensatory damages, *see id.* ¶¶ G–O at 18–20, and punitive damages, *see id.* ¶¶ P–R at 20–21.

Facts

The defendants are in the construction industry and are under common control. *See* Answer to Amended Complaint [D.E. 30] ¶¶ 11–13 at 2 (Nov. 8, 1999). Joelle DeSimone Sambino began working as a secretary for Southeastern Florida Management in May of 1995. The EEOC alleges that Ms. DeSimone Sambino was sexually harassed by managers between November 1, 1995, and July 24, 1996, when she was fired. *See id.* at 13–17; Charge of Discrimination (Exhibit 1 to Amended Complaint). It also alleges that other similarly situated women were sexually harassed.

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Motions and Issues

The EEOC moves for summary judgment on conciliation, arguing that no issue of fact exists as to whether the EEOC discharged its duty to resolve this dispute without litigation. *See* Plaintiff's Motion for Partial Summary Judgment [D.E. 36] at 1 (Jan. 14, 2000).

The defendants move for summary judgment on the EEOC's claims as they relate to Ms. DeSimone Sambino herself on the grounds that: (i) she was not treated differently because of her gender, (ii) her allegations are insufficient to state a claim for hostile work environment, and (iii) she was not fired for complaining about sexual harassment. *See* Defendants' Motion for Summary Judgment [D.E. 32] ¶¶ 6–9 at 2 (Jan. 14, 2000). The defendants also move for summary judgment on the EEOC's claims as they relate to women similarly situated to Ms. DeSimone Sambino. They argue that no such women have been identified, that the EEOC knows of no such women, and that the EEOC took no steps to conciliate the claims of any such women.

In support of their various arguments, both parties in this case have filed, among other things, letters exchanged between their counsel. Such letters are not evidence and are not to be filed. *See* Local Rule 7.7. The Court has therefore disregarded them.

Conciliation of Ms. DeSimone Sambino's Claims

The EEOC is required to conciliate claims, *i.e.* to attempt to resolve them informally, prior to bringing a lawsuit. *See* 42 U.S.C. § 2000e-5(b). In determining whether the EEOC has fulfilled this duty,

the fundamental question is the reasonableness and responsiveness of the EEOC's conduct under all of the circumstances. The EEOC has fulfilled its statutory duty to attempt conciliation if it outlines to the employer the reasonable cause for its belief that Title VII has been violated, offers an opportunity for voluntary compliance, and responds in a reasonable and flexible manner to the reasonable attitudes of the employer.

EEOC v. Klingler Elec. Corp., 636 F.2d 104, 107 (5th Cir. Unit A Feb. 5, 1981) (*per curiam*).^{*}
Accord EEOC v. Johnson & Higgins, Inc., 91 F.3d 1529, 1534 (2d Cir. 1996). If the EEOC has made

^{*}All cases decided by the former Fifth Circuit before October 1, 1981, and those cases decided after that date by Unit B of the former Fifth Circuit are binding precedent in the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*); *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33, 34 (11th Cir. 1982).

absolutely no attempt to conciliate a claim prior to bringing suit or there is evidence of bad faith, the action should be dismissed; if its conciliation efforts were abbreviated, the suit should be stayed. *See Klinger Elec.*, 636 F.2d at 107; *EEOC v. Die Fliedermaus, L.L.C.*, 77 F.Supp.2d 460, 466–67 (S.D.N.Y. 1999).

The defendants do not claim that the EEOC made no attempt to conciliate Ms. DeSimone Sambino's claims. Rather, they oppose the EEOC's motion for partial summary judgment because they allege that the EEOC did not disclose enough information, specifically the identity of the alleged perpetrator of sexual harassment, during the conciliation process. They do not state how such information might have obviated this litigation. While the defendants claim that the EEOC did not strictly adhere to its policy manual on conciliation, there is no allegation of bad faith. Thus, neither dismissal nor summary judgment are appropriate, even if the defendants' allegations are true.

The question, then, is whether there is any need to stay this case to allow further efforts at conciliation. There is every indication that a stay would be fruitless. The parties recently participated in mediation pursuant to Local Rule 16.2. By then, they had engaged in discovery and the alleged perpetrator's identity had been disclosed. That mediation ended in an impasse. *See Final Report of Mediation [D.E. 49] (Feb. 9, 2000).*

The Court makes no finding as to whether the EEOC's effort to conciliate Ms. DeSimone Sambino's claims were deficient in the respects alleged. Such findings are not necessary at this late stage in the case. At this point, because there is no allegation or evidence of any bad faith and because the parties have now had ample opportunity to resolve this claim, the conciliation requirement has been met. The EEOC's motion for partial summary judgment is therefore granted with respect to Ms. DeSimone Sambino's claims.

Ms. DeSimone Sambino's Claims

There are genuine issues of material fact precluding summary judgment on Ms. DeSimone Sambino's claims. Specifically, there is conflicting evidence as to whether a hostile work environment existed and whether Ms. DeSimone Sambino was fired for complaining about sexual harassment. For example, while there is some agreement as to the fact that Mr. Cordovez threw things at Ms. DeSimone Sambino, there is conflicting evidence as to whether he was motivated to do so because of her gender or whether he treated everyone that way. *See Defendant's Motion for*

Summary Judgment at 5–7. Similarly, there is sufficient evidence to raise a jury question as to whether Mr. Cordovez’s allegedly crude behavior and explicit comments created a hostile work environment. *See id.* at 9–10. The jury must also weigh the conflicting evidence and determine whether Ms. DeSimone Sambino was fired for complaining about sexual harassment or for some other reason.

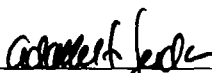
Unidentified Similarly Situated Women

As to the similarly situated women on whose behalf the EEOC seeks to proceed, the Court grants summary judgment in favor of the defendants on any such claim. The EEOC has not disputed that it made no attempt to conciliate any claims on behalf of women similarly situated to Ms. DeSimone Sambino and that it has not identified any such women. The defendants correctly note that the proposed conciliation agreements prepared by the EEOC made no mention of similarly situated women. Rather, only Ms. DeSimone Sambino was identified as a charging party. *See* Defendants’ Response to Plaintiff’s Motion for Partial Summary Judgment [D.E. 50], Exhibit 6 (Feb. 10, 2000). The EEOC agrees that it has failed to pursue any claims relating to similarly situated women.

Relief

The EEOC’s motion for partial summary judgment [D.E. 36] is GRANTED with respect to the conciliation of Ms. DeSimone Sambino’s claims. The defendants’ motion for summary judgment [D.E. 32] is GRANTED with respect to any and all claims relating to similarly situated women.

DONE and ORDERED in chambers in Miami, Florida, this 10th day of April, 2000.



Adalberto Jordan
United States District Judge

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