

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

FILED

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CLEARING HOUSE  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,  
et al.,

Plaintiffs,

vs.

CASE NO. 8:99-CV-1371-T-17MAP

RIO BRAVO INTERNATIONAL,  
INC., et al.,

Defendant.

\_\_\_\_\_ /

ORDER

This cause is before the Court on the following:

- Dkt. 113 Motion for Summary Judgment - Applebee's  
Not Proper Defendant
- Dkt. 114 Memorandum
- Dkt. 115 Affidavit
- Dkt. 187 Response

Defendant Applebee's International, Inc. seeks the entry of summary judgment that it is not a proper defendant because Defendant was not an employer of the individual Plaintiffs, and because Defendant was not a "joint employer" or "integrated enterprise/single employer" with their employer, Innovative Restaurant Concepts, Inc.

In this Title VII case, Plaintiffs will be required to prove that Defendant Applebee's International, Inc. was their employer. Whether Defendant was Plaintiffs' employer depends upon whether

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Defendant is liable for the acts of its subsidiaries, Innovative Restaurant Concepts, Inc. and Rio Bravo International, Inc.

The primary purpose of Title VII is remedial, and its aim is to eliminate employment discrimination by creating a federal cause of action to promote and effectuate its goals. To that end, Title VII is to be given a liberal construction, which includes a broad interpretation as to the employer and employee provisions. There is a tension between the broad interpretation accorded Title VII, and corporate law principles.

Businesses may incorporate to limit liability, and to isolate liabilities among separate entities. The doctrine of limited liability creates a strong presumption that a parent company is not the employer of its subsidiary's employees, and the courts have found otherwise only in extraordinary circumstances. See Frank v. U.S. West (10<sup>th</sup> Cir. 1993) (quoting Johnson v. Flowers Industries, Inc., 814 F.2d 978, 980-81 (4<sup>th</sup> Cir. 1987)).

#### I. Standard of Review

This circuit clearly holds that summary judgment should only be entered when the moving party has sustained its burden of showing the absence of a genuine issue as to any material fact when all the evidence is viewed in the light most favorable to the nonmoving party. Sweat v. The Miller Brewing Co., 708 F.2d 655 (11<sup>th</sup> Cir. 1983). All doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. Hayden v. First National Bank of Mt. Pleasant, 595 F.2d 994, 996-7 (5<sup>th</sup> Cir. 1979), quoting Gross v. Southern Railroad Co., 414

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F.2d 292 (5<sup>th</sup> Cir. 1969). Factual disputes preclude summary judgment.

The Supreme Court of the United States held, in Celotex Corp. v. Catrett, 477 U.S. 317 (1986),

In our view the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Id at 273

The court also said, "Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file, designate "specific facts showing there is a genuine issue for trial.'" Celotex Corp. at p. 274.

## II. Statement of Facts

1. Applebee's International, Inc. is a Delaware corporation which was incorporated in October, 1987, with its principal place of business at Overland Park, Kansas. Applebee's International, Inc. is the franchising arm of the Applebee's restaurant system.

2. In March, 1995, a subsidiary of Applebee's International, Inc. acquired Innovative Restaurant Concepts, Inc., the owner of Rio Bravo Cantina chain, in a merger. Innovative Restaurant Concepts, Inc. became a wholly-owned subsidiary of Applebee's International, Inc. Innovative Restaurant Concepts, Inc. is the operating arm of the Rio Bravo Cantina system.

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3. In Fall, 1995, Innovative Restaurant Concepts, Inc. became a wholly-owned subsidiary of Rio Bravo International, Inc. Rio Bravo International, Inc. is the franchising arm of the Rio Bravo Cantina system.

4. Rio Bravo International, Inc. is a wholly-owned subsidiary of Applebee's International, Inc.

5. As of December, 1998, Innovative Restaurant Concepts, Inc. operated 40 Rio Bravo Cantina restaurants in seven states, and franchisees of Rio Bravo International, Inc. operated 26 Rio Bravo Cantina restaurants in nineteen states. Innovative Restaurant Concepts, Inc. owned and operated the Clearwater store where the events occurred from which this case arose. The employees at the Clearwater Rio Bravo were employed directly by Innovative Restaurant Concepts, Inc.

6. In February, 1999, Chevy's, Inc. agreed to purchase the Rio Bravo Cantina concept from Innovative Restaurants Concepts, Inc., including the company-owned Rio Bravo restaurants and the franchisor rights to the franchisee restaurants. The sale was completed on April 12, 1999.

7. Plaintiff/Intervenors worked as servers and hostesses at Rio Bravo Cantina in Clearwater, Florida, from February, 1996 through 1998.

8. John Moore was the Human Resources Manager for Rio Bravo in 1998. John Moore testified he reported to John Prutsman when he was hired. (Dkt. 187, Exh. 5, Moore Deposition, p. 188). John Moore maintained personnel files for Rio Bravo employees in

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Atlanta, and forwarded copies of those files to Applebee's in Kansas City, Kansas. (Moore Deposition, p. 189). John Moore conducted investigational interviews as to the incidents on which this case is based. John Moore testified that Applebee's legal counsel assisted him in preparing Rio Bravo's position statement to the EEOC (Moore Deposition, p. 91).

9. Patti Nash was the Director of Human Resources for Rio Bravo in 1998. Patti Nash reported to the President of Rio Bravo as well as to the Vice President of Human Resources for Applebee's International (Moore Deposition, p. 188).

10. John Prutsman was the Director of Human Resources for Applebee's International in 1998.

11. The Corporate Officers for Rio Bravo International Inc. are listed as: 1) CEO - Lloyd L. Hill; 2) CFO - George D. Shadid; 3) Secretary - Robert T. Steinkamp. (Dkt. 187, Ex. 8).

12. The Corporate Officers for Applebee's International, Inc. are listed as: 1) President - Lloyd L. Hill; 2) Treasurer - George D. Shadid; 3) Secretary - Robert T. Steinkamp. (Dkt. 187, Exh. 8).

13. The Corporate Officers of Innovative Restaurant Concepts, Inc. are listed as : 1) Lloyd L. Hill; 2) George D. Shadid; 3) Robert T. Steinkamp and 4) Abe J. Gustin Jr.

14. The sexual harassment policies of Rio Bravo and Applebee's International are identical (Dkt. 187, Exh. 6).

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III. Single Employer/Integrated Enterprise Theory

Under the "single employer" or "integrated enterprise" concept, two companies may be considered so interrelated that they constitute a single employer subject to liability under Title VII. In determining whether to treat two companies as a single employer, courts examine the following factors: 1) interrelation of operations, i.e. common offices, common record keeping, shared bank accounts and equipment; 2) common management, common directors and boards; 3) centralized control of labor relations and personnel; and 4) common ownership and financial control. In order to find a single employer, it is not necessary that each factor be met, and the Court notes that control over labor relations is the most significant factor. The "single employer" standard is relevant when "separate corporations are not what they appear to be, that in truth they are but divisions or departments of a 'single enterprise.'" See NLRB V. Deena Artware, Inc., 361 U.S. 398, 402 (1960).

A. Interrelation of Operations

Defendant argues that Applebee's, Rio Bravo and Innovative Restaurant Concepts did not share resources, equipment or employees. Applebee's charged any management services provided to Rio Bravo, such as site selection and marketing, as an expense to Rio Bravo. Defendant argues that Applebee's and Innovative Restaurant Concepts had separate payrolls. Defendant further argues that the quarterly informational meetings as to financial matters are consistent with a normal parent/subsidiary relationship, and other corporate formalities were preserved. Defendant argues that the use of Applebee's letterhead by Rio

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Bravo personnel does not establish an integrated enterprise.

Plaintiff responds that there are material factual disputes as to this issue based on the testimony of Chris Hemmings and John Moore. Chris Hemming was Vice President of Operations for Rio Bravo International. Chris Hemmings testified that he received stock options from Applebee's, that Rio Bravo store managers used Applebee's letterhead and logo, and at some time Rio Bravo shifted its payroll to Applebee's payroll system. (Hemmings Deposition, p. 102). Mr. Hemmings also testified that Applebee's Human Resources department documented discipline issues for Rio Bravo (Hemmings Deposition, pp. 189-190).

John Moore testified that Applebee's legal counsel, Robert Steinkamp and Tom McGrath, assisted him in planning the investigation of the sexual harassment complaints. In addition, John Moore testified that copies of personnel files for Rio Bravo employees were forwarded to the home office of Applebee's International, Inc., as well as merit increase documents for Rio Bravo employees. These records were put into Applebee's human resources information system.

#### B. Centralized Control of Labor Relations

In making the assessment of centralized control of labor relations, the Court should focus its inquiry on the parent's actual involvement in the particular circumstances giving rise to the litigation and then determine which entity made the final decisions regarding employment matters related to the person claiming discrimination. See Frank, 3 F.3d at 1363.

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Defendant argues that each entity established and administered its own operating and management practices and personnel policies. Defendant argues that the critical factor is actual and active control of day-to-day labor practices, including hiring, firing, wages, hours or working conditions of the subsidiary's employees. Defendant contends Innovative Restaurant Concepts, Inc. exercised this control (Steinkamp Affidavit).

Defendant further argues that Innovative Restaurant Concepts, Inc. trained and evaluated its own employees, and maintained its own job classifications and salary structures. Defendant further argues that the decision to discipline and terminate Rob Evans, the alleged harasser, was made by Chris Hemmings, Vice President of Operations for Innovative Restaurant Concepts, and Patty Nash, Director of Human Resources for Innovative Restaurant Concepts, with consultation from Rio Bravo Area Director Cote Turner, and John Moore, Manager of Human Resources. Rob Evans was notified of his suspension and termination on Innovative Restaurant Concepts, Inc. letterhead. Defendant Applebee's further argues that the telephone hotline for sexual harassment complaints was routed to Atlanta, Innovative Restaurant Concept's home office, not to the home office of Applebee's.

Defendant further argues that Applebee's oversight of its subsidiary operations does not establish actual and active involvement in the daily operations of Innovative Restaurant Concepts, Inc.



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Plaintiffs argue that the published sexual harassment policies of Applebee's International and Rio Bravo International, Inc. are virtually identical. Plaintiffs have also argued that there is evidence that Rio Bravo personnel issues were handled by Applebee's Human Resources. Plaintiffs suggest that Plaintiffs are entitled to an inference that the parent corporation exercised a significant measure of control over the subsidiary's hiring decisions and financial status.

#### C. Common Management

Defendant argues that the board of directors and President of Rio Bravo and Innovative Restaurant Concepts had complete decision-making authority. Defendant contends that Applebee's did not participate in the preparation of Rio Bravo's or Innovative Restaurant Concept's pricing structure, and product plans, including menus or vendor contracts.

The corporate records provided by Plaintiffs establish that parent and subsidiary had common officers, and some officers were board members.

#### D. Common Ownership

Rio Bravo International, Inc. is a wholly-owned subsidiary of Applebee's International, Inc. Innovative Restaurant Concepts, Inc. is a wholly-owned subsidiary of Rio Bravo, International, Inc. Defendant argues that none of these entities is a sham.

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E. Discussion

In considering whether the Court should treat Defendants as separate corporate entities, the Court will consider indicia of an interrelationship between the immediate corporate employer and the affiliated corporation which would justify belief by the employees that the affiliated corporation is responsible for the acts of the immediate employer. If such an interrelationship is present, it would constitute a departure from the normal separation between the corporate entities. See Armbruster v. Quinn, 711 F.2d 1332 (6<sup>th</sup> Cir. 1983).

In Armbruster v. Quinn, 711 F.2d 1332 (6<sup>th</sup> Cir. 1983), the Court notes that, in addition to handling the subsidiary's payroll accounting and receiving periodic financial reports from the subsidiary, the parent corporation handled the subsidiary's cash accounting and accounts receivable, provided administrative backup, monitored all of the subsidiary's sales shipments, negotiated and closed the purchase of the subsidiary's office building, and approved the subsidiary's office remodeling. The subsidiary's bank accounts were located at the parent's headquarters, and the subsidiary's management used the parent's credit cards and corporate aircraft.

In E.E.O.C. v. Dolphin Cruise Lines, Inc., 945 F.Supp. 1550 (S.D. Fla. 1996), the related companies shared offices, used logos and letterhead interchangeably, advertised jointly, issued checks on each other's behalf, shared accounting services and bank accounts, and maintained personnel and other business records at the same office. In addition, one entity prepared the other's tax returns, budgets and annual statements.

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In Armbruster and Dolphin, the facts supported a finding of interrelated operations. However, the facts in this case are somewhat different, and the Court finds that the interrelatedness of the entities is not in excess of a normal parent/subsidiary relationship.

The most significant issue is the centralized control of labor relations. Applebee's and Rio Bravo are operated as distinct concepts. There is no rotation of employees between the two types of restaurants. The Court finds no evidence that Applebee's approved or directly participated in hiring and firing for Rio Bravo employees. Plaintiffs have not provided any evidence that Applebee's played any role in the employment decisions and alleged discriminatory conduct affecting them. Each female Plaintiff alleges she was sexually harassed by a supervisor at the Rio Bravo restaurant. The alleged harasser, Rob Evans, was a Rio Bravo employee. The complaints of harassment were reported to and dealt with by Rio Bravo management. After charges were filed with the EEOC, an investigation was conducted, and Applebee's counsel participated at that time. However, the Court does not consider the later investigation to constitute participation in the alleged discriminatory practices at Rio Bravo, or an exercise of control over Rio Bravo's labor relations.

After consideration, the Court concludes that the Motion for Summary Judgment as to the "single employer" theory should be granted due to the absence of any evidence on the most significant factor, centralized control of labor relations.

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#### IV. Joint Employer Theory

In order to find that Defendants are a "joint employer", the Court must find that one employer, while contracting in good faith with an otherwise independent company, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer. The "joint employer" concept recognizes that the business entities involved are in fact separate, but that they share or codetermine those matters governing the essential terms and conditions of employment. Courts have considered the following factors in determining whether the "joint employer" test is met: 1) authority to hire and fire employees, promulgate work rules and assignments, and set conditions of employment; 2) day-to-day supervision of employees, including employee discipline; and 3) control of employee records, including payroll, insurance, taxes, etc. See Virgo v. Riviera Beach Associates, Ltd., 30 F.3d 1350, 1359-61 (11<sup>th</sup> Cir. 1994). In Virgo, the Eleventh Circuit Court of Appeal found that actual control is a factor to be considered when deciding the "joint employer" issue, but the authority or power to control is also highly relevant.

In considering whether the "joint employer" relationship is the appropriate test for the factual scenario involved in the case, the Court considered the distinctions between the "joint employer" and "single employer" situation, as discussed in Clinton's Ditch Coop Co. V. National Labor Relations Bd., 778 F.2d 132, 137 (2d Cir. 1985) (identifying the distinctions between these two types of situations), cert. denied, 479 U.S. 814, 107 S.Ct. 67, 93 L.Ed.2d 25 (1986). In a "joint employer"

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situation, no finding of a lack of arm's length transaction or unity of control or ownership is required, as in "single employer" cases.

In Clinton's Ditch, the Second Circuit Court of Appeals notes that whether Clinton's Ditch possessed sufficient control over the Fairfield Drivers to qualify as a joint employer is essentially a factual issue. The Court must determine whether two entities have chosen to handle certain aspects of their employer-employee relationships jointly. In Clinton's Ditch, the Second Circuit found that sufficient evidence of immediate control over the employees was not present, after considering hiring and firing, discipline, pay, insurance and records, supervision, and participation in the collective bargaining process.

In this case, the Court finds no evidence that Defendant Applebee's directly participated in hiring and firing of Rio Bravo employees, nor did Applebee's directly administer discipline. Day to day supervision of Rio Bravo employees was carried out directly by Rio Bravo management personnel. The evidence presented establishes only an indirect connection to pay and other aspects of labor relations.

After consideration, the Court concludes that the Motion for Summary Judgment should be granted as to the "joint employer" theory. Accordingly, it is

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**ORDERED** that the Motion for Summary Judgment (Dkt. 113) is **granted**. Defendant Applebee's International, Inc. Is therefore dismissed as a Defendant in this case.

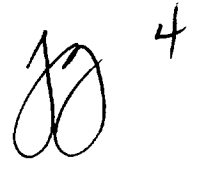
**DONE and ORDERED** in Chambers, in Tampa, Florida on this 9<sup>th</sup> day of September, 2002.



ELIZABETH A. KOVACHEVICH  
United States District Judge

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All parties and counsel of record

Date Printed: 09/10/2002



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