

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
MAR 19 2003
10:00
CLERK OF COURT
TAMPA, FLORIDA

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
et al.,

Plaintiff(s),

vs.

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

RIO BRAVO INTERNATIONAL,
INC., et al.,

Defendants/
Third Party Plaintiffs,

vs.

ROBERT EVANS,

Third Party Defendant.

_____ /

ORDER

This cause is before the Court on:

- Dkt. 246 Third Party Complaint
- Dkt. 287 Motion for Judgment on the Pleadings
- Dkt. 292 Response

This case is a Title VII job discrimination case for claims of sexual harassment filed by employees at a Rio Bravo restaurant in Clearwater, Florida. Plaintiff and Plaintiffs/Intervenors seek monetary damages as well as injunctive relief. The conduct of Robert Evans while he was employed by Defendant Rio Bravo allegedly provoked the filing of the sexual harassment claims.

The following facts are not disputed for the purposes of this Motion:

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1. On or about July, 1994, Evans began his employment at the Rio Bravo Cantina in Clearwater, Florida as a bartender.
2. On or about October, 1996, Evans entered into the Manager in Training program at the South Tampa Rio Bravo Cantina.
3. On or about January, 1997, Evans completed the Manager in Training program, and was transferred back to the Clearwater Rio Bravo Cantina as an assistant manager.
4. On or about March 13, 1998, Evans was terminated from his employment as the Clearwater Rio Bravo Cantina.
5. Robert Evans was terminated after allegations of acting improperly towards female crewmembers were raised against him, which allegations were investigated by Third Party Plaintiffs.
6. On or about April 1998, Sheri Calvo, Veronica Ferek and Melissa Scarborough ("Intervenors") filed charges of sexual harassment with the Equal Employment Opportunity Commission against Third-Party Plaintiffs.
7. On or about July 16, 1999, the EEOC filed this action against Third Party Plaintiffs claiming that Evans sexually harassed the Intervenors as well as numerous unidentified "similarly situated" female crewmembers.
8. The EEOC claims that Third Party Plaintiffs have violated Title VII and is seeking extensive monetary damages as well as injunctive relief against Defendants.
9. On or about July 15, 1999, Intervenors served their Motion to Intervene, which was granted on November 5, 1999.
10. The Intervenors claim that Third Party Plaintiffs violated Title VII and the Florida Civil Rights Act and are seeking extensive monetary damages. Their complaint is based on alleged verbal and sexual

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harassment by Evans.

11. Third Party Plaintiffs are potentially subject to significant monetary damages as a result of the alleged behavior of Evans.

12. Rio Bravo Cantina had an established policy against sexual and other forms of harassment.

13. Robert Evans knew of the policy against harassment.

Third Party Plaintiffs filed a two-count complaint against Third Party Defendant Evans. Count I is a claim for breach of fiduciary duty. Count II is a claim for breach of implied employment contract.

I. Third Party Defendant's Motion

Third Party Defendant Evans requests the entry of judgment on the pleadings. Evans argues that Title VII and the FCRA prohibit the causes of action brought by Third Party Plaintiffs, and that the claims are premature. Third Party Defendant relies on Gilmore v. List & Clark Construction, 886 F.Supp. 1310 (D. Ka. 1994), and on Northwest Airlines, Inv. v. Transport Workers Union of America, 451 U.S. 77 (1981). In other words, Third Party Defendant Evans contends that although the claims presented are for breach of fiduciary duty and for breach of contract, the claims are for indemnity and contribution of any award on the Title VII and FCRA claims.

II. Third Party Plaintiffs' Response

Third Party Plaintiffs request the denial of the Motion for

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Judgment on the Pleadings. They argue that Title VII expressly reserves non-conflicting state laws, and state law claims for breach of fiduciary duty and breach of implied contract are preserved because they do not require or permit the doing of any act which would be an unlawful employment practice under Title VII. In addition, Third Party Plaintiffs argue that the FCRA is interpreted in accordance with decisions construing Title VII, and therefore it does not preempt non-conflicting state laws. Third Party Plaintiffs have cited to cases which acknowledge that under Title VII there is no right to contribution or indemnity, but under state law claims, other courts have found a right to indemnity or contribution. See Biggs v. Surrey Broad. Co., 811 P.2d 111 (Okla.Ct. App. 1991) (employer entitled to indemnity under state law against its employee for amounts paid in settlement of civil rights claim for sexual harassment and discrimination perpetrated by employee) and Donajkowski v. Alpena Power Co., 596 N.W.2d 574 (1998).

Discussion:

The Court notes that in Northwest Airlines, Inv. v. Transport Workers Union of America, 451 U.S. 77 (1981), the Supreme Court stated that Title VII contains no provision touching upon contribution and there was no federal statute authorizing contribution. In the absence of any federal statute supporting a contribution action, the Supreme Court declined to impose one, finding that to be a legislative prerogative of Congress.

Third Party Defendant Evans has asked the Court to find that, as a matter of law, other state law claims that arise from

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the same operative facts as Title VII and FCRA claims are prohibited. Florida has adopted the Uniform Contribution Among Tortfeasors Act, Sec. 768.31, Florida Statutes. The factual situation in this case is in the nature of an intentional tort. After consideration, the Court concludes that Northwest Airlines, supra, is not controlling.

As to prematurity, the Court notes that third party claims based on the same facts as first party claims are brought in the same case as a matter of judicial economy. Accordingly, it is

ORDERED that the Motion for Judgment on the Pleadings (Dkt. 287) is **denied**.

DONE and ORDERED in Chambers, in Tampa, Florida on this 20th day of March, 2003.



ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:
All parties and counsel of record

Date Printed: 03/20/2003

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