

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

and

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

SHERI CALVO, VERONICA
FEREK and MELISSA
SCARBOROUGH,

Intervenor/Plaintiffs,

v.

RIO BRAVO INTERNATIONAL,
INC., et al.,

Defendants/Third Party
Plaintiffs,

v.

ROBERT EVANS,

Third Party Defendant.

ORDER

This cause is before the Court on:

Dkt. 467 Defendants' Post-Trial Motion for Judgment
As a Matter of Law
Dkt. 473 Plaintiff Intervenor's Response
Dkt. 474 Plaintiff EEOC's Response

Defendants request that the Court set aside the punitive damages award in this case pursuant to Rule 50(b), reduce the punitive damages award to a constitutionally acceptable level, or order a remittitur or new trial on the issue of punitive damages.

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I. Standard of Review

The standard of review for the denial of a motion for judgment as a matter of law is whether, considering the evidence in the light most favorable to the non-moving party, the evidence so strongly points in favor of one party that reasonable men could not reach a contrary verdict. Iervolino v. Delta Air Lines, Inc., 796 F.2d 1048, 1419 (11th Cir. 1986).

II. Defendants' Motion

Defendants argue that Rio Bravo had a well-publicized policy forbidding sexual harassment, gave training on sexual harassment to new employees and managers, and established a grievance procedure for sexual harassment complaints. Defendants argue that when corporate human resources was informed, Rob Evans' employment was promptly terminated following an investigation pursuant to Defendants' policies. Defendants argue that pursuant to Kolstad v. American Dental Ass'n, 527 U.S. 526 (1999), these actions establish a good faith effort to prevent and punish sexual harassment as a matter of law. Defendants argues that the failure of mid-level managers to follow the Defendants' policies, even if true, is not sufficient to hold the corporate Defendants liable for punitive damages.

III. Responses

Plaintiff EEOC and Plaintiff-Intervenors have responded in opposition to Defendants' request.

Plaintiff points out that the prior Rule 50 Motion as to the

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issue of punitive damages (Dkt. 416) did not include Sheri Calvo and Renee Brown. Defendants conceded that there was admissible evidence that Sheri Calvo and Renee Brown complained to individuals above the store level. The Court found that the issue of punitive damages as to Sheri Calvo and Rene Brown was available for resolution by the jury.

The Court granted the prior Rule 50 Motion as to Plaintiffs Veronica Ferek, Melissa Scarborough and Leslie Cucinotta, finding that there was one alleged harasser at one store, and no evidence that levels of management above the local level were aware of the harassing conduct (Dkt. 474). Later the Court reconsidered that ruling as to Veronica Ferek based on testimony demonstrating notice to upper management of her complaints.

The Court previously found that the effectiveness of Defendants' written anti-discrimination policy was a question for the jury. The Court previously found that complaints made to the Area Director level were sufficient to constitute complaints to "higher management" for purposes of punitive damages. The Court notes that Defendants' Human Resources officer testified at trial that Area Directors were included in Rio Bravo's definition of "upper management." Defendants have not made any argument that convinces the Court to revisit those rulings.

After consideration, the Motion for Judgment as a matter of law is **denied**.

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IV. Constitutionality of Punitive Damages Award

Defendants argue that the punitive damages award in this case exceeds constitutional limits because the punitive damages are 30 times the compensatory damages awarded. Defendants rely on State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S.Ct. 1513 (2003) (citing BMW of N. Am., Inc. v Gore, 517 U.S. 559 (1996)).

Plaintiff and Plaintiff-Intervenors object to any reduction of punitive damages. Plaintiff EEOC argues that each award has already been reduced to comply with the statutory cap of \$300,000, which takes into account an amount the legislature has deemed reasonable and appropriate.

This case was brought pursuant to Title VII, a statutory scheme which identifies the prohibited conduct as well as the potential range for financial penalties applicable to the prohibited conduct.

In order to satisfy due process requirements, an award of punitive damages must be based on conduct in a single state where the tortious conduct occurred, and must reflect a legitimate state interest in punishing and deterring that conduct. See Johansen v. Combustion Engineering, Inc., 170 F.3d 1320 (11th Cir. 1999).

It is undisputed that the employment discrimination complained of in this case took place within a restaurant located in Clearwater, Florida. The State of Florida has a statutory scheme in place in the form of the Florida Civil Rights Act of 1992, and, before that, the Florida Human Rights Act of 1977, in

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punishing and deterring the conduct complained of in this case. The Court finds that the award of punitive damages is based on tortious conduct that occurred within the State of Florida and that there is a legitimate state interest in punishing and deterring that conduct.

In BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996), the Supreme Court analyzed three "guideposts" in deciding whether a punitive damages award is unconstitutionally excessive. The BMW guideposts include: 1) the "degree of reprehensibility" of the wrongdoing; 2) "the disparity between the harm or potential harm suffered by [the plaintiff] and [her] punitive damages award"; and 3) "the difference between this remedy and the civil penalties authorized or imposed in comparable cases." 517 U.S. 559, 575 (1996). In applying the guideposts, courts should also consider whether the amount of punitive damages serves the interest of deterrence.

A. Degree of Reprehensibility

The Court notes that the "degree of reprehensibility" is the most important factor in determining the reasonableness of a punitive damages award. In conducting reprehensibility analysis, the Supreme Court noted certain factors to consider. These factors include: 1) whether the injury caused physical harm; 2) whether the tortious conduct demonstrated an indifference to, or a reckless disregard of, the health or safety of others; 3) whether the target was financially vulnerable; 4) whether the conduct involved repeated actions; and 5) whether the harm was the result of intentional malice, trickery or deceit. See State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003).

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1. As to physical harm, the conduct complained of caused emotional distress and humiliation rather than a physical injury.

2. The conduct complained of continued for an extended period of time. There was a training program in place, but in practice higher management tolerated the sexual harassment of employees. This demonstrates indifference to the health and safety of Defendants' employees.

3. There was no evidence of financial vulnerability.

4. The conduct complained of continued for an extended period of time and was repetitive. A number of different targets presented complaints.

5. There was evidence of a sham investigation and cover-up; therefore the Court concludes that the conduct complained of involved deceit. John Moore, Defendants' Human Resources Office testified that Defendant was unable to corroborate allegations of sexual harassment, and Defendants took prompt remedial action. John Moore also asserted his Fifth Amendment privilege when asked if he made misrepresentations to the EEOC. The jury could draw an adverse inference from this testimony. The jury did not accept Defendants' argument that Defendants made good faith efforts to comply with Title VII. The Court's reading of the verdict is that the jury found that Defendants' profit motive was more important to Defendants than compliance with Title VII, and this conduct should be deterred.

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After consideration, the Court concludes that the conduct complained of in this case meets the definition of reprehensible conduct.

B. Ratio to Actual Damages

In Campbell, supra, the Supreme Court states that few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. However, the Supreme Court explained that in some situations a higher ratio may be appropriate where a particularly egregious act has resulted in only a small amount of economic damages.

The Eleventh Circuit Court of Appeals has recognized that there will be some situations in which "the combination of a small damages award and a strong state interest in deterrence of a particular wrongful act may justify 'ratios higher than might otherwise be acceptable.'" EEOC v. W&O, Inc., 213 F.3d 600, 616 (11th Cir. 2000) (quoting Johansen, 170 F.3d at 1338).

After consideration, the Court concludes that the ratio of punitive damages to compensatory damages is justified in this case.

C. Comparable Cases

There are no other civil or criminal penalties for the conduct complained of in this case. Title VII identifies prohibited conduct, and the statutory scheme plainly identifies the potential range of financial penalties for such conduct. The Court has already reduced the amounts awarded by the jury to

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amounts within the statutory cap. The award in this case does not "shock the judicial conscience" of the undersigned, and "constitute a denial of justice."

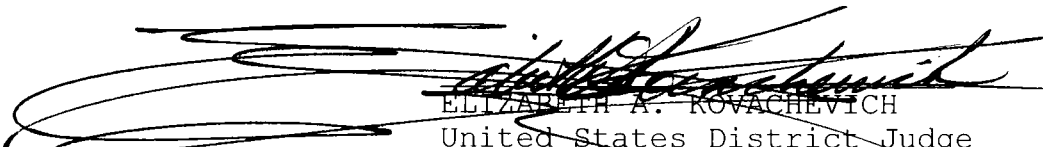
Based on the above guideposts, the Court denies Defendant's Motion to reduce the punitive damages award to a constitutionally acceptable level.

V. Remittitur and New Trial

Defendants argues that Defendants did not engage in any reprehensible conduct, and made good efforts to comply with Title VII. The Court previously found that there was a jury question as to whether Defendants made a genuine effort to comply with Title VII, and the jury found adversely to Defendants. After consideration, the Court denies the request for remittitur and new trial. Accordingly, it is

ORDERED that Defendants' Post-Trial Motion for Judgment as a Matter of Law (Dkt. 467) is **denied**.

DONE and ORDERED in Chambers, in Tampa, Florida on this *2nd* day of March, 2005.


ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:
All parties and counsel of record