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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)

Plaintiff,)

v.)

CAESARS ENTERTAINMENT,)
INCORPORATED, a Delaware Corporation,)
PARK PLACE ENTERTAINMENT)
CORPORATION, a Delaware Corporation and)
DOES 1-10, inclusive,)

Defendants.)

ELINA MASID, JESSICA ALVARADO)
PANAMENO, TANGE JOHNSON and)
CANDELARIA TURCIOS,)

Plaintiffs/Intervenors,)

v.)

CAESARS ENTERTAINMENT,)
INCORPORATED, a Delaware Corporation,)
PARK PLACE ENTERTAINMENT)
CORPORATION, a Delaware Corporation;)
DESERT PALACE INC., a Nevada)
Corporation. dba CAESARS PALACE; JUAN)
GONZALEZ; DANIEL PINELO; RICARDO)
HERNANDEZ; and DOES 1-10 inclusive,)

Defendants.)

02:05-CV-00427-LRH (PAL)

ORDER

1 Presently before the court is Juan Gonzalez's ("Gonzalez") Motion for Summary Judgment
2 (# 108¹). Plaintiffs/Intervenors Elina Masid, Jessica Alvarado Panameno, Tange Johnson and
3 Candelaria Turcios (collectively, "Plaintiffs/Intervenors") filed an opposition (# 118), and Gonzalez
4 replied (# 128).

5 **I. Factual Background**

6 This is a sexual harassment and retaliation action brought by the United States Equal
7 Employment Opportunity Commission ("EEOC") pursuant to Title VII of the Civil Rights Act of
8 1964. Plaintiffs/Intervenors intervened in this action by filing a motion to intervene (# 3) on May
9 11, 2005. The court granted the motion and Plaintiffs/Intervenors filed a Complaint in Intervention
10 (# 15) on June 16, 2005.

11 The four Plaintiffs/Intervenors have been employed by Caesars during the time periods
12 relevant to this litigation. Gonzalez commenced his employment with Park Place entertainment on
13 June 5, 2000, and was placed on administrative leave on November 22, 2002. Gonzalez was
14 formally terminated on December 27, 2002. During his employment, Gonzalez maintained a
15 supervisory position over Plaintiffs/Intervenors.

16 Plaintiff/Intervenor Tange Johnson filed charges of sexual harassment with the EEOC and
17 Nevada Equal Rights Commission ("NERC") on March 23, 2001. Plaintiffs/Intervenors Elina
18 Masid, Jessica Alvarado Panameno, and Candelaria Turcios filed charges of discrimination and
19 sexual harassment with the EEOC and NERC on November 18, 2002. In June, 2004,
20 Plaintiffs'/Intervenors' attorney informed them that NERC had closed their file and forwarded their
21 complaints to the EEOC. Plaintiffs/Intervenors followed the EEOC's instructions for requesting a
22 right to sue letter, but never received one from the EEOC. Following an investigation, the EEOC
23 filed suit on March 31, 2005.

24
25 ¹Refers to the court's docket number.

1 In their complaint in intervention, Plaintiffs/Intervenors have asserted both state and federal
2 claims of sexual harassment and retaliation along with state tort claims for battery, assault,
3 intentional infliction of emotional distress, negligent infliction of emotional distress, false
4 imprisonment, and negligence.

5 **II. Legal Standard**

6 Summary judgment is appropriate only when “the pleadings, depositions, answers to
7 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
8 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
9 law.” Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together
10 with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable
11 to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
12 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

13 The moving party bears the burden of informing the court of the basis for its motion, along
14 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,
15 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party
16 must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could
17 find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.
18 1986). *See also Idema v. Dreamworks, Inc.*, 162 F.Supp.2d 1129, 1141 (C.D.Cal. 2001). For those
19 issues where the moving party will not have the burden of proof at trial, the movant must point out
20 to the court “that there is an absence of evidence to support the nonmoving party’s case.” *Catrett*,
21 477 U.S. at 325.

22 In order to successfully rebut a motion for summary judgment, the non-moving party must
23 point to facts supported by the record which demonstrate a genuine issue of material fact. *Reese v.*
24 *Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might
25 affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.

1 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary
2 judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute
3 regarding a material fact is considered genuine "if the evidence is such that a reasonable jury could
4 return a verdict for the nonmoving party." *Liberty Lobby*, 477 U.S. at 248. The mere existence of a
5 scintilla of evidence in support of the plaintiff's position will be insufficient to establish a genuine
6 dispute; there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at
7 252.

8 **III. Discussion**

9 The issues raised in Gonzalez's motion are virtually identical to those raised by co-
10 defendant Daniel Pinelo in his Motion for Summary Judgment (# 25). Therefore, the disposition of
11 the present motion is largely controlled by the court's April 25, 2005, order. In the present motion,
12 Gonzalez is seeking to dismiss Plaintiffs'/Intervenors' statutory claims because Gonzalez is not an
13 employer. With respect to Plaintiffs'/Intervenors' state law claims, Gonzalez argues that they
14 should be dismissed due to the expiration of the statute of limitations.

15 **A. State and Federal Statutory Claims**

16 Plaintiffs'/Intervenors' first five claims for relief allege violations of Title VII of the Civil
17 Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*, and sections 613.330 and 613.340(a) of the Nevada
18 Revised Statutes, Nev. Rev. Stat. §§ 613.330, 613.340(a). *See* (Compl. in Intervention.) The court
19 has previously determined that an individual employee cannot be held liable under Title VII or
20 sections 613.330 and 613.340(a) of the Nevada Revised Statutes. (April 25, 2005, Order (# 61) at
21 5-6.) However, Plaintiffs'/Intervenors argue that Gonzalez can be held liable under the state and
22 federal statutes because he had supervisory authority over Plaintiffs'/Intervenors.

23 Plaintiffs'/Intervenors are mistaken. Although some courts agree with
24 Plaintiffs'/Intervenors' position, *see, e.g., Tafoya v. Adams*, 612 F.Supp. 1097, 1104-05 (D. Colo.
25 1985), the Ninth Circuit, in *Miller v. Maxwell's Int'l Inc.*, 991 F.2d 583, 587-88 (9th Cir. 1993),
26

1 determined that individual defendants, including supervisory level employees, cannot be held liable
2 for damages under Title VII. In making this determination, the Ninth Circuit stated, “[n]o
3 employer will allow supervisory or other personnel to violate Title VII when the employer is liable
4 for the Title VII violation. An employer that incurred civil damages because one of its employees
5 believes he can violate Title VII with impunity will quickly correct that employee’s erroneous
6 belief.” *Id.* at 588. Therefore, the court finds that Gonzalez cannot be held liable for an alleged
7 violation of Title VII.

8 Similarly, the court finds that Gonzalez, as a supervisory level employee, cannot be held
9 individually liable for violations of sections 613.330 and 613.340(a) of the Nevada Revised
10 Statutes. As the court has previously recognized, the issue of whether a supervisor can be held
11 liable under sections 613.330 and 613.340(a) is an issue of first impression. *see* (April 25, 2005,
12 Order (# 61). Therefore, the task of this court is to predict how the Nevada Supreme Court would
13 decide the issue. *Credit Suisse First Boston Corp. v. Grunwald*, 400 F.3d 1119, 1126 (9th Cir.
14 2005) (citing *Walker v. City of Lakewood*, 272 F.3d 1114, 1125 (9th Cir. 2001)). Because the
15 Nevada Supreme Court often looks to federal courts for guidance in discrimination cases, *Pope v.*
16 *Motel 6*, 114 P.3d 277, 280 (Nev. 2005), this court predicts that the Nevada Supreme Court would
17 follow the Ninth Circuit’s decision in *Miller*. Accordingly, the court finds that Gonzalez cannot be
18 held individually liable for the alleged violation of section 613.330 and 613.340(a).²

19 **B. State Tort Claims**

20 Plaintiffs/Intervenors have brought a number of tort claims against Gonzalez including
21 battery, assault, intentional infliction of emotional distress, negligent infliction of emotional
22 distress, false imprisonment, and negligence. Gonzalez seeks to dismiss these claims as time-
23 barred under Nevada’s statute of limitations. In fact, the parties do not dispute that

24
25 ²To the extent Plaintiffs/Intervenors wish to amend their Complaint in Intervention to name Gonzalez
26 as a defendant in his official capacity, Plaintiffs/Intervenors should file a motion in compliance with the Federal
Rules of Civil Procedure and Local Rule 15-1.

1 Plaintiffs'/Intervenors' state law tort claims are barred by the statute of limitations. *See Nev. Rev.*
2 *Stat. § 11.190(4)*. Nevertheless, Plaintiffs/Intervenors oppose Gonzalez's motion for summary
3 judgment arguing that this court should equitably toll the limitations period.

4 " [I]n situations 'where the danger of prejudice to the defendant is absent, and the interests
5 of justice so require, equitable tolling of the limitations period may be appropriate.'" *Sieno v.*
6 *Employers Ins. Co. of Nevada*, 111 P.3d 1107, 1112 (Nev. 2005) (quoting *Azer v. Connell*, 306
7 F.3d 930, 936 (9th Cir. 2002)). Nevada courts use six nonexclusive factors in determining whether
8 equitable tolling should be applied: (1) the diligence of the claimant; (2) the claimant's knowledge
9 of the relevant facts; (3) the claimant's reliance on authoritative statements by the administrative
10 agency that misled the claimant about the nature of the claimant's rights; (4) any deception or false
11 assurances on the part of the employer against whom the claim is made; (5) the prejudice to the
12 employer that would actually result from delay during the time that the limitations period is tolled;
13 (6) and any other equitable considerations appropriate in the particular case. *Copeland*, 673 P.2d at
14 492.

15 Here, the issues raised by Plaintiffs/Intervenors with respect to equitable tolling are
16 identical to those previously raised with respect to co-defendant Daniel Pinelo's Motion for
17 Summary Judgment (# 25). Accordingly, the court finds the reasoning in its April 25, 2005, Order
18 (# 61) equally applicable to the present motion. For the reasons stated in that order, the court finds
19 that equitable tolling is not warranted in this case. *See* (April 25, 2005, Order (# 61).); *see also*
20 *Arnold v. United States*, 816 F.2d 1306, 1312-13 (9th Cir. 1987) (declining to equitably toll the
21 limitations period for tort claims, filed pursuant to California law, while the Plaintiff pursued her
22 Title VII remedies).³ Therefore, there is no genuine issue of material fact that

23
24 ³In the present motion, Plaintiffs/Intervenors assert that the policy against claim splitting requires this
25 court to equitably toll the statute of limitations. However, as previously stated by the court,
26 Plaintiffs/Intervenors could have filed their state causes of action in state court and sought a stay pending the
outcome of the EEOC and NERC investigations. If Plaintiffs/Intervenors had pursued this route, they
ultimately could have sought a consolidation of the two cases.

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Plaintiffs'/Intervenors' state law causes of action are barred by the statute of limitations.

IT IS THEREFORE ORDERED that Gonzalez's Motion for Summary Judgment (# 108) is hereby GRANTED.

IT IS SO ORDERED.

DATED this 27th day of September, 2006.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE