IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, et al.,

Plaintiffs,

v.

TOUCHSTAR AMERICAS, et al.,

Defendants,

NO. CIV-01-763-HE

ORDER

Plaintiffs The Equal Employment Opportunity Commission ("EEOC") and Raul Cantu brought this action against Touchstar Americas, a division of Touchstar Technologies, L.L.C., The Williams Companies, Inc., Williams Energy Services, L.L.C. and Williams WPC-Inc asserting claims under Title VII of the Civil Rights Act of 1964, as amended, and Oklahoma law. Specifically, plaintiffs allege that plaintiff Cantu was subjected to disparate terms and conditions of employment, retaliation and a hostile work environment based on his Hispanic origin. Plaintiff Cantu also brings a claim of intentional infliction of emotional distress. Defendants have filed a motion for summary judgment which the Court concludes should be granted in part and denied in part.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment

as a matter of law." Fed. R. Civ. P. 56(c). When applying this standard, the court "view[s] the evidence and draw[s] all reasonable inferences therefrom in the light most favorable to the party opposing summary judgment." Martin v. Kansas, 190 F.3d 1120, 1129 (10th Cir. 1999) *overruled on other grounds* Bd. of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356 (2001). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Martin, 190 F.3d at 1129.

In their motion, defendants allege they are entitled to summary judgment on plaintiffs' claims because they were not plaintiff Cantu's employer and therefore cannot be held liable for any alleged discriminatory acts. Plaintiffs respond by alleging that the defendants were either plaintiff Cantu's joint employer based on a contract between Williams WPC-Inc. and Touchstar Technologies, L.L.C.[1] or that the defendants constitute a single employer based on the integrated enterprise theory.[2] Taking the evidence in a light most favorable to plaintiffs, the Court concludes plaintiffs have produced sufficient evidence from which a reasonable jury could conclude the defendants were all plaintiff Cantu's employer.

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[1] *See Plaintiffs' Exhibit CC.*

[2] *The integrated enterprise theory, also known as the single-employer test or the true-economic realities test, consists of four factors: "(1) interrelation of operations;(2) centralized control over labor relations; (3) common management; and (4) common ownership or financial control." Knowlton v. Teltrust Phones, Inc., 189 F.3d 1177, 1184 (10th Cir. 1999). It is not necessary that all four factors are present in order for the single-employer status to exist. Id. "Rather, the heart of the inquiry is whether there is an absence of an arm's length relationship among the companies." Id.*

Therefore, defendants' request for summary judgment as to the issue of "employer" status is DENIED.[3]

With regard to plaintiffs' federal claims of disparate treatment, retaliation and hostile work environment, the Court concludes, after considering the evidence in a light most favorable to plaintiffs, that material questions of fact exist which preclude the entry of summary judgment. Therefore, summary judgment on these claims is DENIED.

Plaintiff Cantu's claim of intentional infliction of emotional distress, however, fails. The evidence, even when viewed in a light most favorable to plaintiffs, simply does not demonstrate extreme and outrageous conduct on the part of defendants or severe emotional distress on the part of plaintiff Cantu. See Starr v. Pearle Vision, Inc., 54 F.3d 1548, 1558 (10th Cir. 1995) ("Nothing short of 'extraordinary transgressions of the bounds of civility' will give rise to liability for intentional infliction of emotional distress.") (quoting Merrick v. N. Natural Gas Co., 911 F.2d 426, 432 (10th Cir. 1990)); Daemi v. Church's Fried Chicken, Inc., 931 F.2d 1379, 1389 (10th Cir. 1991) (the distress suffered by the plaintiff "must be of such a character that no reasonable person could be expected to endure it") (internal quotations omitted). Therefore, summary judgment on this claim is GRANTED in

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[3]*The Court finds defendants' argument that the plaintiffs have waived the integrated enterprise theory by failing to plead it in their amended complaints to be without merit. The authority cited by defendants does not provide a basis for summary judgment on this issue in light of the evidence submitted which creates a material question of fact regarding the status of defendants as plaintiff Cantu's employer. Furthermore, even if plaintiffs' complaints could have been more specific with regard to this theory, the Court would nevertheless allow an amendment of the pleadings as the issue has been the subject of extensive discovery.*

favor of defendants.

Accordingly, defendants motion for summary judgment is granted with respect to plaintiff Cantu's intentional infliction of emotional distress claim[4] and denied with respect to plaintiffs' federal claims.

IT IS SO ORDERED this 24 day of February, 2003.

JOE HEATON
UNITED STATES DISTRICT JUDGE

[4] *Judgment on this claim will be entered when the case is concluded with respect to all claims. Fed. R. Civ. P. 54(b).*