

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *[Signature]* D.C.
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ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
PUCCINI AND PASTA LLC,)
)
Defendant.)

NO.: 03-2726-D-An

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL DISCOVERY

Before the Court is Plaintiff's Motion to Compel Discovery filed on October 27, 2004.

For the reasons set forth below, the Motion is **DENIED**.

BACKGROUND

The Plaintiff, Equal Employment Opportunity Commission, filed this action pursuant to Title VII of the Civil Rights Act of 1964, as amended, and Section 102 of the Civil Rights Act of 1991, against the Defendant, Puccini and Pasta LLC, and alleges that the Defendant engaged in unlawful employment practices against several female employees of the Defendant. Specifically, the Complaint alleges that the Defendant's General Manager, George Cortez ("Cortez"), subjected the female employees to unwelcomed sexual conduct at the Defendant's restaurant in Memphis, Tennessee. Compl. at pp. 2-5. It is alleged that the unwelcomed sexual conduct created an abusive working environment at the restaurant, and that some of the female employees

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were constructively discharged.

On June 30, 2004, Plaintiff served its First Set of Interrogatories on the Defendant, and the Defendant responded thirty days thereafter. However, the Plaintiff was not satisfied with some responses and objections interposed by the Defendant. Counsel for the parties engaged in discussions which resolved some, but not all, of the dispute. After it became apparent that counsel would be unable to resolve the remaining disputes, the Plaintiff filed its Motion to Compel Discovery.

The unresolved disputes involve five Interrogatories that request information not only about the Defendant, but also about the owners of the Defendant who are not parties to this lawsuit. The Interrogatories at issue state as follows:

Interrogatory No. 1: Please state the name of each of the owners of Defendant during 2001, 2002, 2003, and 2004, and describe in detail the nature of the ownership interest of each of the owners. For each person identified, please state the name and address of every other business owned, in whole or in part, by the person at any time 2001, 2002, 2003, and 2004. For each of the businesses identified, please describe in detail the nature of the business, state the names and addresses of any other owners of the business, and describe in detail the nature of the ownership interest of each of the owners.

Interrogatory No. 2: Please state the name and job title of each person who was employed by Defendant in a management or supervisory position at any time during 2001, 2002, 2003, or 2004, and state whether each person identified had any management or supervisory responsibilities during 2001, 2002, 2003, or 2004 in any other companies that were owned, in whole or in part, by any of Defendant's owners during 2001, 2002, 2003, or 2004. For each person identified who is not employed by Defendant at this time, please also state the person's last home address known to Defendant, last home telephone number known to Defendant, last cellular telephone number known to Defendant, the person's Social Security Number, the date the person's employment with Defendant ended, and the name and telephone number(s) of anyone the person indicated that Defendant should contact in case of an emergency.

Interrogatory No. 3: Please state the name, address, and telephone number of the person or company who created any policies or procedures concerning labor relations or personnel administration (including, but limited to, any policies and procedures for hiring employees, any policies or procedures concerning disciplining or discharging employees for unsatisfactory job performance or conduct, any policies or procedures requiring approval from someone before an employee was hired or discharged, any harassment policies and complaint procedures, and “open door” policies for employees to express complaints or concerns, and any policies or procedures concerning the display of required posters and notices in the workplace) that were used by Defendant at any time during 2001, 2002, 2003, or 2004; state the title and briefly describe the content of such policy and procedure; and state whether each such policy and procedure was used in any other companies that were owned, in whole or in part, by any of Defendant’s owners during 2001, 2002, 2003, or 2004.

Interrogatory No. 4: Please state the name, address, and telephone number of the person or company who processed Defendant’s payroll during 2001, 2002, 2003, and 2004, and state whether that person or company also processed the payroll for any other companies that are owned, in whole or in part, by any of Defendant’s owners during 2001, 2002, 2003, or 2004.

Interrogatory No. 5: Please state the name, address, and telephone number of any company that provided any type of insurance to Defendant at any time during 2001, 2002, 2003, and 2004, and state whether that company also provided similar insurance to any other companies that were owned, in whole or in part, by any of Defendant’s owners at any time during 2001, 2002, 2003, or 2004.

The Defendant responded, in pertinent part, to the Interrogatories by objecting on the basis that the information requested was not relevant to the subject matter of the pending action and that the Interrogatories did not appear reasonably calculated to lead to the discovery of admissible evidence.¹

¹The Defendant also objected to any part of the Interrogatories that sought information dated prior to the creation or after the last day of operation of the Defendant, and objected to the requests for Social Security numbers of third parties due to confidentiality. In response to Interrogatory No. 2, the Defendant did provide the names and addresses of persons who were employed in a management or supervisory position between 2001 and 2004, and identified George Cortez as the person who created any policies or procedures concerning labor relations or

In its Memorandum of Facts and Law in Support of Plaintiff's Motion for an Order Compelling Discovery, the Plaintiff contends that it is entitled to the information requested in the Interrogatories so that it can determine if the "single employer" or "integrated enterprise" doctrine is applicable to this case. Under the single employer doctrine, two companies may be treated as a single employer if they are deemed to have substantial identity. *Armbruster v. Quinn*, 711 F.2d 1332, 1336 (6th Cir. 1983). In determining whether to treat two companies as a single employer, courts generally examine the (1) interrelation of operations; (2) common management; (3) centralized control of labor relations and personnel; and (4) common ownership and financial control. *Swallows v. Barnes & Noble Book Stores, Inc.*, 128 F.3d 990, 994 (6th Cir. 1997) (citing *York v. Tennessee Crushed Stone Ass'n*, 684 F.2d 360, 362 (6th Cir. 1982)). The Plaintiff does not state that it has any reason to believe that the single employer doctrine would be applicable to the facts of this case, but rather contends that the Defendant should be required to answer the Interrogatories because the Interrogatories are reasonably calculated to lead to the discovery of admissible evidence.

In its Memorandum filed in Response to Plaintiff's Motion for An Order Compelling Discovery, the Defendant contends that there are no allegations in the Complaint, or otherwise, that the Defendant is part of an integrated enterprise, and that the Complaint is limited to allegations that Cortez sexually harassed the female employees while employed at the restaurant

personnel administration that were used by the Defendant between 2001 and 2004. The Defendant stated in Response to Interrogatory No. 3 that it could not produce copies of policies and procedures that were in effect at the restaurant between 2001 and 2004 because it was evicted from the premises where it operated the restaurant in March, 2004. The Defendant stated that many documents belonging to it remained in the restaurant after it was evicted, and that it would supplement its response to Interrogatory No. 3 if it was able to locate the policy and procedures. In Response to Interrogatory No. 4, the Defendant identified the company who was responsible for processing its payroll between 2001 and 2004. And, in Response to Interrogatory No. 5, the Defendant provided the identity of the insurance company who provided insurance to it between 2001 and 2004.

in Memphis. As such, the Defendant contends that any information relating to the owners of the Defendant, who are non-parties, would be irrelevant and would not lead to the discovery of admissible evidence.

ANALYSIS

“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. . . .For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.” FED. R. CIV. P. 26(b)(1). Relevancy, for purposes of FED. R. CIV. P. 26(b)(1), means “appears reasonably calculated to lead to the discovery of admissible evidence.” FED. R. CIV. P. 26(b)(1); *See also Coleman v. American Red Cross*, 23 F.3d 1091, 1097 (6th Cir. 1994). However, discovery does have ““ ultimate and necessary boundaries.”” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380, 57 L.Ed. 2d 253 (1978). “[T]he scope of discovery is within the sound discretion of the trial court”, and “the trial court is given wide discretion in balancing the needs and rights of both the plaintiff and defendant.” *Coleman v. American Red Cross*, 23 F.3d at 1096; *Scales v. J.C. Bradford & Co.*, 925 F.2d 901, 906 (6th Cir. 1991).

In this matter, it is important to note that the 2000 Amendments to Rule 26(b)(1) narrowed the scope of discoverable material. *See Beauchem v. Rockford Products Corp.*, 2002 WL 31155088 (N.D. Ill.); *Behler v. Hanlon*, 199 F.R.D. 553, 555 (D.Md. 2001)). The Advisory Committee Notes to Rule 26(b)(1) state, in pertinent part,:

The Committee intends that the parties and the court focus on the actual claims and defenses involved in the action. The dividing line between information relevant to the claims and defenses and that relevant only to the subject matter of the action cannot be defined with precision. . . .

The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings. The Advisory Committee Notes to the 2000 Amendment to Rule 26(b)(1).

“However, the narrowing of Rule 26(b) does not mean that a fact must be alleged in a pleading for the party to be entitled to discovery or information concerning that fact. Rather it means that the fact ‘must be germane to a specific claim or defense asserted in the pleading for information concerning it to be a proper subject of discovery.’” *Beauchem v. Rockford Products Corp.*, 2002 WL 31155088 (N.D. Ill.); *Behler v. Hanlon*, 199 F.R.D. 553, 555 (D.Md. 2001)); 6 Moore’s Federal Practice, § 26.41 (Matthew Bender 3d ed.)

The Court concludes that the information requested by the Plaintiff in its Interrogatories is not germane to a specific claim asserted in the pleadings. To a large extent, the information requested does not relate to the Defendant, but rather relates to the owners of the Defendant who are non-parties. The allegations in the Complaint are confined to instances of sexual harassment which were perpetrated by a single individual at a single restaurant in Memphis.

The Court is also influenced by the fact that the Plaintiff acknowledges that it can cite no legal authority which supports its position. In a letter dated September 21, 2004, from counsel for the Plaintiff to counsel for the Defendant, the Plaintiff states:

With respect to the information requested by Interrogatories 1-5, we must disagree with your distinguishing observations. The only controlling legal authority I am aware of on the single employer or integrated enterprise issue is **Swallows v. Barnes & Noble Book Stores, Inc.**, 128 F.3d 990, 993-994 (6th Cir. 1997), and it does not address the specific issue of the appropriateness of discovery when only one of the companies which may be part of an integrated enterprise or single employer is a defendant in the lawsuit. I have not been able to find any controlling legal authority on that specific issue.

Likewise, the Court has been unable to find any controlling legal authority that addresses the specific issue now before it. As such, the Court is unwilling to require non-parties to respond to Interrogatories concerning other business interests that they may be involved in so that the Plaintiff can see if there might be other claims, not already pleaded, which it could assert. *See Gehring v. Case Corp.*, 43 F.3d 340, 342 (7th Cir. 1994) (holding that the district judge did not abuse her discretion when she concluded privacy interests can be a basis for limiting discovery.)

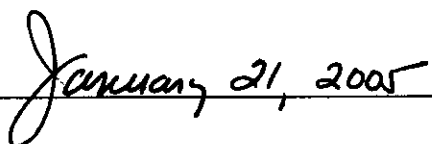
For the foregoing reasons, the Court concludes that the Plaintiff has failed to present sufficient cause to justify granting its Motion to Compel, and the Motion is therefore **DENIED**

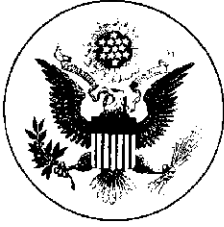
Any exceptions to this Order shall be made by Motion within ten days of the date of this Order, setting forth particularly those portions of the Order excepted to and the reasons for the exceptions.

IT IS SO ORDERED.



S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE

Date: 



Notice of Distribution

This notice confirms a copy of the document docketed as number 39 in case 2:03-CV-02726 was distributed by fax, mail, or direct printing on January 28, 2005 to the parties listed.

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