

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

SEP 21 2001

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff

VS.

McCALL-TL, LTD. d/b/a STERLING
McCALL LEXUS,

Defendant

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CIVIL ACTION NO. H-01-2401

Michael N. Milby, Clerk of Court

ORDER

Pending before the Court in the above referenced action alleging race discrimination against Roger Tyrone Brown, an employee of Defendant McCall-TL, Ltd. d/b/a Sterling McCall Lexus, is Defendant's motion for partial dismissal pursuant to Fed. R. Civ. P. 12(b)(6) (instrument #8). The motion argues that Plaintiff the Equal Opportunity Commission ("EEOC"), in seeking relief on behalf of Roger Tyrone Brown, is subject to a binding arbitration agreement.

In reviewing the sufficiency of a complaint in response to a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), before any evidence has been submitted, the district court's task is limited. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support its claims. Id. The district court should consider all allegations in favor of the plaintiff and accept as true all well-pleaded facts in the complaint. Lawal v. British Airways, PLC, 812 F. Supp. 713, 716 (S.D. Tex. 1992). Dismissal

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is not appropriate "unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of [his] claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Because the Court may not consider evidence attached to a motion under Rule 12(b)(6) and because the document submitted by Defendant is unauthenticated, the Court

ORDERS that the motion for partial dismissal is DENIED. Defendant is granted leave to move to enforce the alleged arbitration agreement or for summary judgment with properly authenticated evidence, if appropriate.

SIGNED at Houston, Texas, this 20th day of September, 2001.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE