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Clerk, U. S. District Court
Western District of Texas
By [Signature] Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. DR-99-CA-11-OG
)
SAN ANTONIO SHOE, INC.,)
)
Defendant.)

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION
AND DENYING SUMMARY JUDGMENT

Before the Court is the Report and Recommendation of the United States Magistrate Judge¹ recommending denial of the motion for partial summary judgment filed by Defendant San Antonio Shoe, Inc. ("SAS"), and the objections² filed by SAS, the response³ filed by the Plaintiff Equal Employment Opportunity Commission ("EEOC"), and the parties' supplemental letter briefs⁴. After due consideration, the Court accepts the Report and Recommendation and denies SAS's motion for partial summary judgment.

Where no party has objected to the Magistrate Judge's Memorandum and Recommendation, the Court need not conduct a de novo review of it. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or

¹ Dkt. No. 53.

² Dkt. No. 54.

³ Dkt. No. 55.

⁴ Dkt. Nos. 56, 57.

specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Memorandum and Recommendation and determine whether it is either clearly erroneous or contrary to law. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989).

On the other hand, if any party objects to the Memorandum and Recommendation, the Court must review it de novo. See Kreimerman v. Casa Veerkamp, S.A. de C.V., 22 F.3d 634, 646 (5th Cir. 1994); Longmire v. Guste, 921 F.2d 620, 623 (5th Cir. 1991). Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. Battle v. United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987).

In this case, the Court has considered the Report and Recommendation and the parties' objections and responses de novo in light of the entire record. The Court finds that the Magistrate Judge applied the correct legal standards to the summary judgment evidence in determining that a genuine issue of material fact exists as to whether the pre-1996 claims of sexual harassment alleged by Gloria Franco are not time-barred under the equitable tolling or continuous violation doctrines⁵. The court is required to undertake a fact specific analysis on a case-by-case basis in determining the applicability of the equitable tolling and continuous violation

⁵ Specifically, the Magistrate Judge found a material issue of fact as to whether Ms. Franco " 'knew or should have known' to file a charge of discrimination with the EEOC," with respect to the application of equitable tolling, and a material issue of fact regarding Ms. Franco's "knowledge and understanding of [Cuevas'] conduct," with respect to application of the continuing violation doctrine. Report and Recommendation at 6, 8.

doctrines⁶. The Court agrees with the Magistrate's legal and factual analysis under the circumstances of this case. The equitable tolling and continuous violation cases cited by SAS in its objections are distinguishable in that they do not encompass a plaintiff's ignorance of her legal rights under federal law, the employer's complete failure to inform its employees of their rights and recourse under federal anti-discrimination laws⁷, and the on-going pattern of discrimination, all of which are key elements of the Magistrate's analysis under the circumstances of this case⁸.

SAS's objection that it cannot be held liable as a matter of law for the alleged rape of Gloria Franco by its employee, Manuel Cuevas, is simply incorrect. The fact that the alleged rape occurred outside the workplace does not remove the conduct from the scope of Title VII⁹. Further, an employer may be held directly liable for sexual harassment by a co-worker, as

⁶ Hartnett v. Chase Bank of Texas Nat'l Assoc., et al., 59 F.Supp.2d 605, 613 (N.D. Tex. 1999) (equitable tolling and continuous violation doctrines require factual case-by-case analysis); see, e.g., Henderson v. AT&T Corp., 933 F.Supp. 1326, 1336 (S.D. Tex. 1996) (material issue of fact as to whether employee knew or should have known she might have an age or sex discrimination claim before her replacement, and thus whether equitable tolling applied, precluded summary judgment for employer on Title VII and ADEA claims).

⁷ Title VII requires an employer to post notice of employees' rights under Title VII. 42 U.S.C. § 2000e-10(a); see also, 29 C.F.R. § 1604.11(f) (EEOC regulation advising employers to take necessary steps to *prevent* sexual harassment, such as informing employees of their rights and recourse) (emphasis added).

⁸ For example, the fact that SAS's own human resources representative in Del Rio was unaware that sexual harassment is covered by Title VII's prohibition of "discrimination based on sex," and is thus subject to redress by the EEOC.

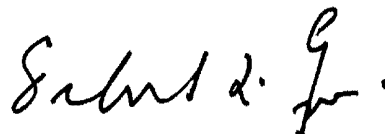
⁹ See, Pfau v. Reed, 125 F.3d 927, 933 (5th Cir. 1997), cert. granted, judgment vacated, 525 U.S. 801 (1998), judgment reinstated, 167 F.3d 228, 229 (5th Cir. 1999), cert. denied, 120 S.Ct. 49 (1999) (holding that sexual harassment suffered both inside and outside workplace may affect a "term, condition, or privilege of employment within the meaning of Title VII"); Meritor Savings Bank v. Vinson, 477 U.S. 57, 66-67 (1986) (plaintiff who suffered sexual harassment both during and after office hours stated claim under Title VII).

opposed to a supervisor, under a negligence standard if the employer had actual or constructive knowledge of the harassment and failed to take prompt remedial action¹⁰. The Magistrate Judge applied the correct legal standards to the summary judgment evidence on this issue and properly concluded that genuine issues of material fact exist as to whether SAS had actual or constructive knowledge of the alleged sexually harassing conduct by its employee and whether SAS failed to take prompt remedial action to eradicate the hostile environment¹¹.

Defendant SAS's objections are without merit. The Court concurs entirely with the factual and legal findings in the Report and Recommendation. Accordingly, the Court finds that the Magistrate Judge's Report and Recommendation should be accepted.

IT IS ORDERED THAT the Report and Recommendation of the United States Magistrate Judge filed in this cause on May 12, 2000 (Dkt. No. 53), be and is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that the Defendant SAS's motion for partial summary judgment (Dkt. No. 30) is DENIED.

SIGNED and ENTERED on the 25 day of September, 2000.



ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

¹⁰ See, Williamson v. City of Houston, 148 F.3d 462, 464-65 (5th Cir. 1998).

¹¹ Report and Recommendation at 12.