Karpaitis v. Mandal's, Inc.

2022 | Cited 0 times | S.D. Mississippi | July 5, 2022

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION MARIA KARPAITIS

PLAINTIFF v. CAUSE NO. 1:21-cv-305-LG-RHWR

DEFENDANT MEMORANDUM OPINION AND ORDER GRANTING IN PART AND DENYING IN PART FOR PARTIAL DISMISSAL

BEFORE THE COURT is the [7] Motion Claims filed by Defendant, . Plaintiff filed a [11] Response, to which

Defendant [13 record in this matter, and the applicable law, the Court finds that the Motion should be granted in part and denied in part.

BACKGROUND Plaintiff, Maria Ka alleged violations of the Fair Labor Standards Act, Title VII of the Civil Rights Act,

the Age Discrimination in Employment Act, and 42 U.S.C. § 1981. The present [7] Motion for Partial Dismissal concerns sexual harassment and retaliation claims under Title VII.

The Complaint narrates a May 2020 incident in which new president, Mr. Billy Owens, , make you feel uncomfortable, I just wanted you to know that

The interaction was witnessed by

visible discomfort. (Id. ¶ 11). The Complaint also recounts another incident which occurred in June 2020. (Id. ¶¶ 12- 15). At that time, Owens reportedly approached Plaintiff and a receptionist, who were conversing about Id. ¶ 13). According to Plaintiff,

when she agreed that a comment more of a form of entertainment; Id. ¶ 15).

Plaintiff reported this latter incident via oral and written complaint to an Id. ¶¶ 16-18). Plaintiff tested positive for COVID-19 on June 14, 2020, and quarantined until June 23, 2020, where after she returned to work. (Id. ¶¶ 25-32). After she returned, on July 7, Owens summoned Plaintiff and two

other employees to a conference, where he questioned her about leaving work forty minutes early on July 3 without notifying management. (Id. ¶¶ 35- early that day because she had already worked 40 hours that week and she was still

struggling with shortness of breath residually from the Covid- Id. ¶ 38). Id. ¶

39). withholding an apology. (Id. ¶¶ 40-42). was facing reorganization and she would be the first one terminated, but in reality,

Id. ¶ 43). Plaintiff attributes this decision to Owens, who repor [her] signed her termination letter. (Id. ¶ 44). During this conversation, Owens cited

Id. ¶¶ 46-47). Finally, Plaintiff observes

that Plaintiff, was the subject of numerous employee and customer complaints. (Id. ¶¶ 48-51).

Plaintiff filed the instant action in this Court on September 24, 2021. On December 1, 2021, Defendant filed the present [7] Motion for Partial Dismissal, Supp. Mot. Part. Dismissal Pl Response on December 22, 2021, to which Defendant [12] replied. After the briefing

was completed, the Court held a hearing on the Motion on June 21, 2022. The issues are now fully briefed and ripe for disposition by the Court.

DISCUSSION I. Rule 12(b)(6) Motion to Dismiss Standard

Under Rule -pleaded facts as true and Great Lakes Dredge & Dock Co. LLC v. La. State, 624 F.3d 201, 210 (5th Cir. 2010). Further,

and any ambiguities in the controlling substantive law must be resolved in the plaintiff Walker v. Beaumont Indep. Sch. Dist., 938 F.3d 724, 735 (5th Cir. 2019). On the other hand, courts are not bound to accept as true a legal conclusion couched as a factual allegation. Id if it tenders naked assertion[s] devoid of further factual enhancement. Id. (alteration in original) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). The Court may review the facts set forth in the Complaint, documents attached to the Complaint, and matters of which the court may take judicial notice under Federal Rule of Evidence 201. Id. II.

retaliation under Title VII of the Civil Rights Act. It

shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual s . . . sex -2(a).

A. Sexual Harassment There are two kinds of sexual harassment claims under Title VII: quid pro quo a tangible employment decision relating thereto. Burlington Indus., Inc. v. Ellerth,

524 U.S. 742, 753-54 (1998). Although briefs the Court on hostile work environment case law, that she asserts a claim of quid pro quo sexual harassment. (¶ 7, ECF No. 11). The Court finds that the facts alleged in the Complaint fail to state a claim under either theory of sexual harassment.

1. Hostile Work Environment Theory (1) that the employee belongs to a protected class; (2) that the employee was subject

to unwelcome sexual harassment; (3) that the harassment was based on sex; (4) that the harassment affected a term, condition, or privilege of employment; and (5) that the employer knew or should have known of the harassment and failed to take prompt remedial action. Shepherd v. Comptroller of Pub. Accts. of State of Tex., 168 F.3d 871, 873 (5th Cir. 1999) (quoting , 793 F.2d 714, 719- 20 (5th Cir. 1986)). not make out a prima facie case of discrimination in order to survive a rule 12(b)(6)

Whitlock v. Lazer Spot, Inc., 657 F. (5th Cir. 2016) (citation omitted).

While Plaintiff need not set forth a prima facie case, this plaintiff from alleging facts Meadows v. City of Crowley Cir. 2018) (emphasis in

original) (citing Chhim v. Univ. Tex. Austin hostile work environment claim . . . necessarily rests on an allegation that an

. . Raj v. La. State Univ., 714 F.3d 322, 330-31 (5th Cir. 2013). an

Stone v. La. Dept. of Revenue 340 (5th Cir. 2014); see also Alaniz v. Zamora-Quezada, 591 F.3d 761, 771 (5th Cir.

intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the

S extremely serious) will not amount to discriminatory changes in the terms and

Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) (internal citations omitted); see also Clark Cty. Sch. Dist. v. Breeden, 532 U.S. 268, 271 (2001) (repeating this rule). tribulations of the workplace, such as the sporadic use of abusive language, gender-

Faragher, 524 U.S. at 788 (internal quotations and citations omitted). Thus, a single gender-related joke Clark

Cty. Sch. Dist., 532 U.S. at 271 (citation omitted).

Still, [a]n egregious, yet isolated, incident can alter the terms, conditions, or privileges of employment and satisfy the fourth element necessary to constitute a Lauderdale v. Tex. Dept. of Crim. Justice, Institutional Div., 512 F.3d 15 seriousness of the harassing conduct varies inversely with the pervasiveness or

Id. (quoting Ellison v. Brady, 924 F.2d 872, 878 (9th Cir. 1991)). For instance, inappropriate touching at the workplace, which is significantly more severe than rude or sexual comments, for a lack of pervasiveness to support a hostile work environment claim. Rico v. Family Emergency Rooms, LLC, No. 1:21CV0587-LY, 2021 WL 8362168, at *4 (W.D. Tex. Oct. 13, 2021) (quoting Bookman v. AIDS Arms, Inc., No. 3:14CV814-B, 2014 WL 4968189, at *4 (N.D. Tex. Oct. 3, 2014)).

Here, suggestive comments towards Plaintiff on two occasions. On one occasion, he the other, he approached a conversation involving Plaintiff about exercise regimens

Id. ¶ 13). When Plaintiff agreed that a comment was unnecessary, he

continued: Id. ¶ 15). These allegations, assumed to be true on a Rule 12(b)(6) Motion to Dismiss, are two isolated incidents of unwanted gender-related teasing and flirtation. See

Faragher, 524 U.S. at 788. Thus, the Court finds that the allegations do not rise to severe or conduct required to maintain a hostile work environment claim. Id. Further, the allegations are not of particularly egregious conduct such as more severe than rude or sexual comments which could compensate for the lack

of pervasiveness. See Rico, 2021 WL 8362168, at *4.

Therefore, extent it is based on a hostile work environment theory, remains unsupported by sufficient factual allegations and must be dismissed. See, e.g., Johnson v. Bd. of Supervisors of La. State Univ., Civ. No. 19-12823, 2020 WL 1903997, at *2-3 (E.D. La. Apr. 17, 2020) (dismissing a Title VII hostile work environment claim at the r severe nor pervasive); Lucio v. Fern at Tenth

LLC, Civ. No. 7:19CV189, 2019 WL 4993418, at *9-10 (S.D. Tex. Oct. 8, 2019) (dismissing a Title VII hostile work environment claim at the motion to dismiss were not physically threatening or humiliating, and were not hostile or abusive as

to make them objectively offensive to a reasonable person

2. Quid Pro Quo Theory On the other hand, a quid pro quo sexual harassment claim requires that the plaintiff suffer a tangible employment action for her refusal to submit to a supervisor sexual demands. Ellerth, 524 U.S. at 753-54 (characterizing quid pro

quo claims as those in which res ; Henson v. City

of Dundee sexual harassment], the supervisor relies upon his apparent or actual authority to extort sexu Here, Plaintiff has alleged that she was terminated by Owens for rejecting his sexual harassment. (Compl. ¶¶ 65- 74, ECF No. 1). is clearly which supports a quid pro quo claim under Title VII. See Ellerth, 524 U.S. at 761

A tangible employment action constitutes a significant change in employment

At the other end of the exchange, Plaintiff must allege that she was terminated for refusing to submit to a sexual demand or favor. For instance, in a case where the plaintiff alleged nine incidents of sexual harassment, which largely consisted of gender-based comments, questions, and compliments, a federal district Pfeil

v. Intecom Telecomms., 90 F.Supp.2d 742, 745- remarks certainly could be considered insensitive, boorish, uncouth, or even Id. at 747-48. But because the supervisor threatened her or in any way implied d or stated that she was incompetent

Id. at 748. 1

The Fifth Circuit has held that where the alleged harasser y physical contact, or make any conduct could not support a quid pro quo claim as a matter of law. Ellert v. Univ.

Tex. at Dallas, 52 F.3d 543, 545 (5th Cir. 1995).

Here, Plaintiff does not allege that Owens made any sexual advances or threats towards her. Rather, in her response brief, she states her quid pro quo claim in the following way:

A reasonable jury could conclude based on those facts that the employer terminated Plaintiff because Plaintiff would not agree to her jokes in the workplace that demeaned women.

( ). Like Pfeil, the Court finds that flirtatious, offensive, and altogether inappropriate, but not by themselves actionable as quid pro quo sexual harassment under Title VII. See Pfeil, 90 F.Supp.2d at 745-48. In other words, on this Rule 12(b)(6) motion to dismiss, the Court finds that Plaintiff has failed to support her quid pro quo claim with allegations that Owens propositioned her for sex or made any other sexual

1 See also Sparks v. Reg l Med. Ctr. Bd., 792 F. Supp. 735, 745 (N.D. Ala. 1992) jokes directed at plaintiff, offensive language, and instances of rough conduct, . . . [t]his type of conduct is more representative of hostile work environment sexual Steele v. Offshore Shipbuilding, 867 F.2d 1311, 1316 (11th Cir. 1989)).

demand, advance, touch, or threat of any kind. Nor are there specific factual allegations that her employment was conditioned on her responsiveness to any such demands. Hence, the Complaint currently fails as a matter of law to state a quid pro quo theory of sexual harassment. See Matthews v. High Island Indep. Sch. Dist., 991 F.Supp. 840, 845 (S.D. Tex. 1998) (dismissing quid pro quo claims on a Amended Complaint to substantiate allegations that [the supervisor] or anyone else

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B. Retaliation Plaintiff also alleges that she was terminated for engaging in the protected activity of reporting the sexual harassment. Defendant argues that Plaintiff did not have a reasonable belief that she was engaging in a protected activity. Defendant reasons that, no reasonable person could interpret the statement as constituting sexual

harassment. In opposition, Plaintiff contends that she must only show a good faith claim should not be dismissed.

A plaintiff alleging a Title VII retaliati engaged in activity protected by Title VII, (2) that an adverse employment action occurred, and (3) that a causal link existed between the protected activity and the Long v. Eastfield Coll., 88 F.3d 300, 304 (5th Cir. 1996).

in an investigati Wilson v.

of Tex., LP, No. 3:19-cv-593-B, 2019 WL 3859666, at *4 (N.D. Tex. Aug. 16, 2019) (quoting Byers v. Dallas Morning News, Inc., 209 F.3d 419, 427- 28 (5th Cir. 2000)); see also 42 U.S.C. § 2000e-3(a). A plaintiff need not prove that

Wilson, 2019 WL 3859666, at *3 (quoting Payne , 654 F.2d 1130, 1140 (5th Cir. Sept. 4, 1981)). Wilson, 2019 WL 3859666, at *4 (citation omitted).

Here, Plaintiff relies on the report she made See Compl., ¶ 76, ECF

No. 1). The report cites Owens making Plaintiff uncomfortable by unwelcome comments about pole dancing. (EEOC Charge, at 1-

2, ECF No. 1-1). Plaintiff notes that, on both occasions, employees witnessed the incidents and noticed her discomfort. (See EEOC Charge, at 1-2, ECF No. 1-1). Plaintiff was sexually harassed by Owens is properly alleged in the Complaint. objectively unreasonable.

However, the objective reasonableness of this belief may be a fact-intensive question that is better left to summary judgment. See, e.g., Byers, 209 F.3d at 428

belief of racial discrimination was objectively unreasonable).

reasonableness of a belief is evaluated based on the knowledge available to a reasonable person in the same factual circumstances with the same training and Allen v. Admin. Review Bd., 514 F.3d 468, 477 (5th Cir. 2008) (citation omitted); see also id. (holding that, Lipphardt v. Durango

Steakhouse of Brandon, Inc., 267 F.3d 1183, 1188 (11th Cir. 2001)). Under this factual standard the Court cannot say at the early Rule 12(b)(6) stage of this litigation that Plaintiff unreasonably believed that she was sexually harassed in violation of Title VII. See Morales v. Motion Indus., Inc., No. 3:09CV2070-N, 2010 WL 11618060, at *4 (N.D. Tex. person could believe that the conduct Morales complained of violated Title VII and, therefore Morales did not engage in a protected activity. This argument is better suited for a motion for summary judgmen retaliation claims is thus denied. III. Leave to Amend

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading once without seeking leave of court or the consent of the adverse party at any time before a responsive pleading is served. After a responsive pleading is serv Case 1:21-cv-00305-LG-BWR Document 14 Filed 07/05/22 Page 13 of 15 Id. Id. pleadings is entrusted Norman v.

Apache Corp. Chitimacha

Tribe, 690 F.2d at 1163. Here, the Court finds that the pleading deficiencies identified by this Memorandum Opinion are correctable and that Plaintiff should be allowed to amend her Complaint. 2

The Court will therefore exercise its discretion and allow Plaintiff to file an Amended Complaint within fourteen (14) days of this Order.

The Complaint alleges numerous claims and causes of action, including claims of gender, age, ethnicity discrimination and violations of the Fair Labor Standards Act. In the event that Plaintiff intends to file an amended complaint, she should state with clarity and specificity those facts which support a cause of action.

IT IS THEREFORE ORDERED AND ADJUDGED that the [7] Motion for ., is

2 ry motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, Leal v. McHugh, 731 F.3d 405, 417 (5th Cir. 2013) (alteration in original) (citations omitted). The Court finds that these factors warrant an opportunity for Plaintiff to amend her Complaint.

GRANTED IN PART AND DENIED IN PART. sexual harassment claims are hereby DISMISSED

WITHOUT PREJUDICE.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff is GRANTED leave to file an Amended Complaint within fourteen (14) days of the date of this Memorandum Opinion and Order. SO ORDERED AND ADJUDGED this the 5 th

day of July, 2022.

s/ Louis Guirola, Jr. LOUIS GUIROLA, JR.

UNITED STATES DISTRICT JUDGE