IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	§	
Plaintiff,	§	
and	§	
ERIC MITCHEL, et al.,	§	
Intervenors,	§	
v.	§	**Civil Action No. 3:05-CV-1379-L**
ALLIED AVIATION SERVICES, INC., ALLIED AVIATION FUELING CO. OF DALLAS, LP and ALLIED AVIATION FUELING COMPANY OF TEXAS, INC.,	§	
Defendants.	§	

ORDER

Before the court is Defendants' Motion to Dismiss and Brief in Support, filed July 26, 2006, and the Intervenors' Response, filed August 14, 2006. For the reasons discussed below, the court **denies** the Motion to Dismiss.

I. Background

Plaintiff Equal Employment Opportunity Commission (the "EEOC" or "Plaintiff") filed this action on July 11, 2005, against Defendant Allied Aviation Services, Inc. ("Allied Services"). Plaintiff alleges race discrimination and retaliation on behalf of three named individuals[1] and other similarly situated employees of Allied Services. Allied Services filed a motion to dismiss on

[1] The named individuals are Eric Mitchel, Francisco Ochoa, and Christopher DiGiorgio.

September 12, 2005, contending that it was not the employer of the individuals represented by the EEOC, and that the pleadings did not state that an employment relationship existed between Allied Services and the individuals represented by the EEOC.

Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, the motion was referred to the United States magistrate judge for proposed findings and recommendation. On October 25, 2005, the Findings and Recommendation of the United States Magistrate Judge ("Report") were filed. On November 3, 2005, Allied Services filed its Objections to the Findings and Recommendations of the United States Magistrate Judge Regarding Defendant's Motion to Dismiss ("Objections").

The magistrate judge found that under the exacting standards governing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), "the court is unable to say that the EEOC can prove no set of facts which would entitle it to relief." Report at 3. Specifically, the magistrate judge reviewed the following allegation in the complaint:

> During the employment of Mr. Mitchel, Mr. Ochoa, Mr. DiGiorgio and the class of similarly situated aggrieved individuals, Defendant subjected them to a barrage of unwelcome racial remarks, graffiti and threats of physical violence, as well and [sic] subjecting them to disparate terms and conditions of employment, and in failing to promote at least one aggrieved individual because of his race[.]

Plaintiff's Complaint ¶7. The magistrate judge determined that this allegation, "construed in the light most favorable to plaintiff, clearly implies an employment relationship between the [named individuals] and [Allied]." Report at 3. The magistrate judge further noted that proof that Allied was not an employer within the meaning of Title VII would require consideration of extraneous evidence outside the pleadings, which the court cannot do when ruling on a Rule 12(b)(6) motion. *Id.* The magistrate judge recommended that the motion to dismiss be denied.

In its Objections, Allied Services argued that the magistrate judge erred because the EEOC had not alleged sufficient facts to state a claim that it was the employer of any of the individuals. The court disagreed, finding that Plaintiff had clearly met its pleading obligation under Fed. R. Civ. P. 12(b)(6). The court noted that, "[i]f it is later determined that Defendant is not the employer of the individuals represented by Plaintiff, then the court would agree that it does not have subject matter jurisdiction; however, at this stage of litigation, it has not been demonstrated to the court that it lacks subject matter jurisdiction." The court denied Allied Services's Motion to Dismiss on November 10, 2005.

II. Defendants' Motion to Dismiss

In May 2006, the EEOC amended its Complaint, adding Allied Aviation Fueling of Dallas, LP and Allied Aviation Fueling of Texas, Inc. as Defendants. In addition, the court granted the motion of certain employees or former employees of Defendants to intervene in this lawsuit.[2] The Intervenors assert that the Defendants engaged in race discrimination, harassment and retaliation against them in violation of Title VII.

The Defendants now move to dismiss the Intervenors' Complaint on the same grounds raised by Allied Services' prior motion. Defendants assert that Allied Aviation Services, Inc. and Allied Aviation Fueling Company of Texas, Inc. are not proper parties to this lawsuit because they were not the employers of the Intervenors. Defendants assert that the entity that employed the Intervenors is Allied Aviation Fueling of Dallas, LP, and thus it is the only proper defendant. Defendants also assert that "nowhere on the face of Plaintiff's pleadings does it state that an employment relationship

[2] The intervenors are Eric Mitchel, Francisco Ochoa, Christopher DiGiorgio, Carl Gaines, Mark Barrett, Andrew Cervantes, Tristian Fernandez, Henry Firth, Walter Kelley, Wilborn Lyles, David McCoy, Scotty Mills, Michael Nelson, Jerome Sloan, Josh Toram Sr., Anthony Walker, Mark Webster, and Willie Winters.

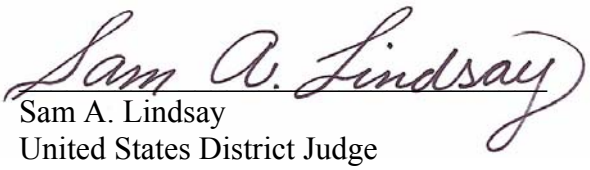
existed between Allied Aviation or Allied Texas and any of the individual Intervenors."

A motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) "is viewed with disfavor and is rarely granted." *Lowrey v. Texas A&M University System,* 117 F.3d 242, 247 (5th Cir. 1997). A district court cannot dismiss a complaint, or any part of it, for failure to state a claim upon which relief can be granted "unless it appears beyond 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); *Blackburn v. City of Marshall,* 42 F.3d 925, 931 (5th Cir. 1995). In reviewing a Rule 12(b)(6) motion, the court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. *Baker v. Putnal,* 75 F.3d 190, 196 (5th Cir. 1996). In ruling on such a motion, the court cannot look beyond the pleadings. *Id.* The ultimate question in a Rule 12(b)(6) motion is whether the complaint states a valid cause of action when it is viewed in the light most favorable to the plaintiff and every doubt resolved in favor of the plaintiff. *Lowrey,* 117 F.3d at 247. The plaintiff, however, must plead specific facts, not mere conclusory allegations, to avoid dismissal. *Guidry v. Bank of LaPlace,* 954 F.2d 278, 281 (5th Cir. 1992).

The court denies Defendants' current motion to dismiss for the same reasons it denied the previous motion. The Intervenors' Complaint asserts sufficient facts to state a claim that Defendants were their employers. The Intervenors allege generally that they have been aggrieved by Defendants' actions, and that Defendants have actively engaged in a pattern of unlawful discrimination and retaliation and/or knowingly encouraged and tolerated such discrimination and retaliation by their employees located in their DFW workplace. The Complaint also details allegations of Defendants' unlawful conduct specific to each individual. Proof that Allied Aviation Services, Inc. and Allied Aviation Fueling Company of Texas, Inc. were not the Intervenors'

employers within the meaning of Title VII would require consideration of extraneous evidence outside the pleadings, which the court cannot do when ruling on a Rule 12(b)(6) motion. The court hereby **denies** Defendants' Motion to Dismiss.

It is so ordered this 5th day of January, 2007.



Sam A. Lindsay
United States District Judge