UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff(s),

and

SHERI CALVO, VERONICA FEREK and MELISSA SCARBOROUGH,

Intervenor/Plaintiffs,

vs. CASE NO. 8:99-CV-1371-T-17MAP

RIO BRAVO INTERNATIONAL, INC., et al.,

Defendants/
Third Party Plaintiffs,

v.
ROBERT EVANS,

Third Party Defendant.

_____/

ORDER

This cause is before the Court on:

Dkt. 139 Motion for Summary Judgment
Dkt. 195 Response
Dkt. 338 Notice to the Court
Dkt. 345 Response

This case is a hostile environment sexual harassment case. Defendant Rio Bravo International, Inc. and Innovative Restaurant Concepts, Inc. seek the entry of summary judgment against

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Plaintiff Equal Employment Opportunity Commission as to the injunctive relief requested in paragraphs "A" and "B" on the Complaint's prayer for relief: (1) "enjoining the defendants, their officer, successors, assigns and all persons in active concert or participation with them from engaging in sexual harassment and any other employment practice which discriminates on the basis of sex and/or opposition to an unlawful employment practice." and (2) ordering defendants to "institute and carry out policies, practices and programs which provide equal employment opportunities to females which eradicate the effects of its alleged past employment practices."

I. Defendants' Motion

Defendants argue that Plaintiff E.E.O.C. is not entitled to a permanent injunction in this case because a permanent injunction is appropriate only when: 1) an employer's record shows abundant evidence of a wide-spread pattern of past discrimination, and there exists a reasonable probability that violations will recur absent an injunction, and 2) where there is no consistent pattern of past discrimination by the employer, but at least one employee suffered discrimination, and, without an injunction, there remains a reasonable probability that violations will persist. Defendants argue that neither situation is present in this case, and that the evidence will show only incidents of alleged sexual harassment by one former manager at one of Defendants' former locations. Defendants further argue that Plaintiff E.E.O.C. cannot demonstrate that such practices are reasonably likely to persist absent an injunction, since the employment of the employees allegedly responsible for sexual harassment was terminated in 1998. Defendants no longer own the

location where the alleged sexual harassment took place. Other managerial employees responsible for the administration of Defendants' sexual harassment policy are no longer employed by Defendants. In other words, Defendants argue that Plaintiff's request for an injunction is moot.

In their argument, Defendants rely on N.A.A.C.P. v. City of Evergreen, 693 F.3d 1367 (11th Cir. 1982); E.E.O.C. v. Rogers Bros., 470 F.2d 965 (5th Cir. 1972) (absent clear and convincing proof of no reasonable probability of further noncompliance with the law, a grant of injunctive relief is mandatory); Cox v. American Cast Iron Pipe Co., 784 F.2d 1546, 1561 (11th Cir. 1986); James v. Stockam Valves & Fitting Co., 559 f.2d 310, 355 (5th Cir. 1977)(where past and ongoing discrimination exists, unless a Court can discern and identify clear and convincing evidence that there is no reasonable probability of further non-compliance, the District Court should enter a broad injunction.) Defendants also rely on E.E.O.C. v. Massey Yardley Chrysler Plymouth, 117 F.3d 1244 (11th Cir. 1997), in which the Eleventh Circuit Court of Appeals held that the E.E.O.C. is normally entitled to injunctive relief where it proves discrimination against at least one employee when the employer fails to prove that future violations are not likely to occur.

II. Plaintiff's Response

Plaintiff responds that Defendants' request for summary judgment on the issue of injunctive relief is premature. While to date there has been no finding of the presence of intentional discrimination, that is an open issue to be resolved at trial.

Plaintiff further argues that the E.E.O.C. need not show the presence of a pattern and practice of discrimination throughout Defendants' organization to be entitled to a permanent injunction against Defendants. Plaintiff relies on E.E.O.C. v. Massey Yardley Chrysler Plymouth, 117 F.3d 1244, 1253 (11th Cir. 1997); E.E.O.C. v. Frank's Nursery & Crafts, Inc., 188 F.3d 695, 702 (6th Cir. 1999)(the E.E.O.C. need not demonstrate or allege a pattern or policy of discrimination in order to obtain a permanent injunction); E.E.O.C. v. Northwest Airlines, Inc., 188 695, 702 (6th Cir. 1999)(the E.E.O.C. may obtain general injunctive relief, under the equitable discretion of the district court, even when the E.E.O.C. only identifies one or a mere handful of aggrieved employees.); E.E.O.C. v. Pacific International Equities, Inc., 2000 U.S. Dist. LEXIS 11238 (S.D. Fla. 2000); and E.E.O.C. v. HBE Corp., 135 F.3d 543 (8th Cir. 1998).

After consideration, the Court denies the Motion for Summary Judgment (Dkt. 1239) without prejudice. The presence of disputed factual issues precludes the entry of summary judgment. The Court has discretion to fashion injunctive relief, but it needs to know what the underlying wrong is to fashion an appropriate remedy. The open issues in this case include not only the presence of intentional discrimination, but the response of management and the effectiveness of its sexual harassment policy. Accordingly, it is

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ORDERED that the Motion for Summary Judgment (Dkt. 139) as to permanent injunctive relief is **denied**.

DONE and ORDERED in Chambers, in Tampa, Florida on this 9th day of May, 2003.

ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:
All parties and counsel of record

F I L E C O P Y

Date Printed: 05/07/2003

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