UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	*	CIV 97-4160
Plaintiff,	*	
-vs-	*	ORDER ON POST-TRIAL MOTIONS
TACO BELL CORP., d/b/a TACO BELL EXPRESS,	*	
Defendant.	*	

All post-trial motions are now ready for decision, and it appears to the Court that oral argument thereon is unnecessary.

This case was brought by the Equal Employment Opportunity Commission (EEOC) against Taco Bell Corp. d/b/a Taco Bell Express and Double-D, Inc. alleging that Ms. Zick and Ms. Handegard were subjected to a sexually hostile work environment while employed at a Taco Bell Express located in the Wal-Mart store in Sioux Falls, South Dakota. Double D settled with the plaintiff and was dismissed as a party to this action. See Doc. 130. The claims against Taco Bell were tried to a jury, which found that Ms. Zick and Ms. Handegard

were employed by Taco Bell and that they were subjected to a hostile work environment. The jury found that Taco Bell proved all of the elements of the affirmative defense established by Faragher v. City of Boca Raton, ___ U.S. ___, 118 S.Ct. 2275 (1998), and returned verdicts for the defendant against the plaintiff.

Defendant Taco Bell Corp.'s Motion to Amend, Doc. 148, seeks to amend its Answer to assert the affirmative defense established by Faragher. This defense was tried to the jury by both sides, and the jury was instructed thereon in Instruction 17 with the consent of the parties. This proposed amendment was actually tried without objection and the motion to amend will be granted.

At trial, the Court quashed a subpoena duces tecum served by Taco Bell in an attempt to get a copy of the Double-D settlement. Defendant now seeks to vacate that order. If the jury had returned a verdict against Taco Bell, I conclude that Taco Bell would be entitled to a copy of the Double-D settlement, but since Taco Bell won, it is not now entitled to a copy of the settlement. Defendant Taco Bell Corp.'s Motion to Vacate Order Quashing Subpoena Duces Tecum, Doc. 153, will be denied.

Plaintiff has made a Combined Motion for Judgment Notwithstanding the Verdict or, Alternatively, a New Trial, Doc. 146. The Motion for Judgement Notwithstanding the Verdict is made pursuant to Federal Rule of Civil Procedure 50(a), which now refers to such motions as motions for judgment as a matter of law. The Court will utilize the current terminology in discussing this motion.

Plaintiff has a heavy burden to prove it is entitled to judgment as a matter of law:

> In ruling on a motion for [judgment as a matter of law], the district court must (1) consider the evidence in the light most favorable to the prevailing party, (2) assume that all conflicts in the evidence were resolved in favor of the prevailing party, (3) assume as proved all facts that the prevailing party's evidence tended to prove, and (4) give the prevailing party the benefit of all favorable inferences that may reasonably be drawn from the facts proved. That done, the court must then deny the motion if reasonable persons could differ as to the conclusions to be drawn from the evidence.

Haynes v. Bee-Line Trucking Co., 80 F.3d 1235, 1238 (8th Cir. 1996) (citations omitted).

Plaintiff bases its motion for judgment as a matter of law in part on the claim that the Faragher affirmative defense should not have been submitted because defendant did not include it in its Answer. Defendant was permitted to amend

its summary judgment motion to allege the Faragher affirmative defense therein, and the Faragher defense was a part of this case thereafter. Plaintiff submitted a proposed jury instruction thereon and did not object to the Court's Instruction 17 submitting this defense to the jury.

Plaintiff also asserts there is insufficient evidence to establish the two prongs of the affirmative defense. Considering the standard for evaluating a motion for judgment as a matter of law as set forth above, I conclude that there was sufficient evidence to support the jury's decision thereon. See id. The Taco Bell Express was operated by the Hudson family as owners of Double-D. Their evidence presented at trial was sufficient to establish both prongs of the affirmative defense. The Motion for Judgment Notwithstanding the Verdict (motion for judgment as a matter of law), Doc. 146, will be denied.

On plaintiff's Motion for a New Trial, I believe there is ample evidence in the record to support the verdict. In ruling on a motion for new trial pursuant to Rule 59(a) of the Federal Rules of Civil Procedure "... the ultimate test [is] whether there ha[s] been a miscarriage of justice." White v. Pence, 961 F.2d 776, 780 (8th Cir. 1992). The evidence in

this case was in dispute on all issues, and the jury decided some of those issues in favor of the plaintiff and some in favor of the defendant. I do not believe the jury erred in any of its decisions or that there has been a miscarriage of justice in this case. The motion for a new trial will be denied.

Now, therefore,

IT IS ORDERED:

(1) That Defendant Taco Bell Corp.'s Motion to Amend, Doc. 148, is granted.

(2) That Defendant Taco Bell Corp.'s Motion to Vacate Order Quashing Subpoena Duces Tecum, Doc. 153, is denied.

(3) That Plaintiff's Combined Motion for Judgment Notwithstanding the Verdict or, Alternatively, a New Trial, Doc. 146, is denied in all respects.

Dated this 17th day of December, 1998.

BY THE COURT:

John A. Jones

Senior U.S. District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Linda M. Zeglen
DEPUTY
(SEAL)