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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, et al.,	)	
Plaintiffs/ Intervenors,	)	
v.	)	
RON CLARK FORD, INC.,	)	
Defendant.	)	Civil Action No. 2:01-CV-245-C

ORDER

On this day the Court considered Plaintiffs' and Intervenors' Motion for Partial Summary Judgment filed March 15, 2002. Defendant did not file a Response to Plaintiffs' and Intervenors' Motion. After considering all relevant arguments and evidence, the Court GRANTS Plaintiffs' and Intervenors' Motion for Partial Summary Judgment.

I.
BACKGROUND

On June 27, 2001, the Equal Employment Opportunity Commission filed this action under Title VII of the Civil Rights Act of 1964 to correct unlawful employment practices on the basis of sex and to provide relief to William M. Blount, Joe M. Charles, John D. Crawford, and aggrieved individuals Richard Epps, Dusty Harrison, and Ulises Herrera, who were subjected to a sexually hostile work environment, sex-based discrimination, retaliation, and/or constructive discharge. The complaint alleges that Defendant subjected the aggrieved individuals to a

sexually hostile work atmosphere in that they were constantly and repeatedly subjected to sexually explicit remarks, sexually aggressive advances, and a work atmosphere which was filled with lewd and sexually offensive behavior. On October 17, 2001, William Blount, Joe Charles, and John Crawford filed a Motion to Intervene. On October 19, 2001, this Court granted the Motion to Intervene.

II.
STANDARD

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," when viewed in the light most favorable to the non-moving party, "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986) (internal quotations omitted). A dispute about a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Id.* at 248. In making its determination, the court must draw all justifiable inferences in favor of the non-moving party. *Id.* at 255. Once the moving party has initially shown "that there is an absence of evidence to support the nonmoving party's case," *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986), the non-movant must come forward, after adequate time for discovery, with significant probative evidence showing a triable issue of fact. FED. R. CIV. P. 56(e); *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 118 (5th Cir. 1990). Conclusory allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation are not adequate substitutes for specific facts showing that there is a genuine issue for trial. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428 (5th Cir. 1996) (en banc); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993). To defeat a

properly supported motion for summary judgment, the non-movant must present more than a mere scintilla of evidence. *See Anderson*, 477 U.S. at 251. Rather, the non-movant must present sufficient evidence upon which a jury could reasonably find in the non-movant's favor. *Id.*

Rule 56(e), Federal Rules of Civil Procedure, requires the party against whom the motion is made to "set forth specific facts showing that there is a genuine issue for trial." Absent such a showing, a properly supported motion for summary judgment should be granted. *See Eversley v. MBank Dallas*, 843 F.2d 172, 173-74 (5th Cir. 1988); *Resolution Trust Corp. v. Starkey*, 41 F.3d 1018, 1022-23 (5th Cir. 1995). However, the mere fact that no opposition is filed does not excuse the moving party from meeting its burden on the summary judgment motion. *Anchorage Assocs. v. Virgin Island Bd. of Tax Rev.*, 992 F.2d 168, 175 (3d Cir. 1990). If no factual showing is made in opposition to a motion for summary judgment, the district court is not required to search the record *sua sponte* for some genuine issue of material fact. It may rely entirely on the evidence designated by the moving party showing no such triable issue. *Guarino v. Brookfield Township Trustees*, 980 F.2d 399, 403 (6th Cir. 1992).

III.
DISCUSSION

Plaintiffs and Intervenors urge this Court to grant their Motion for Partial Summary Judgment on several of the Affirmative Defenses asserted in Defendant's Original Answer to Original Complaint in Intervention. Plaintiffs and Intervenors first urge this Court that they are entitled to partial summary judgment on Defendant's claim that all conditions precedent had not been completed prior to the filing of this lawsuit. Plaintiffs and Intervenors assert that all conditions precedent to filing a lawsuit under Title VII have been completed.

The conditions precedent to filing a suit under Title VII are as follows: 1) filing with the Commission a timely charge of discrimination; 2) notice of the charge served upon the Respondent; 3) an investigation of the charge; 4) a determination by the Commission that reasonable cause exists to believe that the charge is true; 5) an attempt by the EEOC to eliminate the unlawful employment practices by conciliation; and 6) inability by the Commission to secure from the Respondant a conciliation agreement acceptable to the EEOC. 42 U.S.C. § 2000e-5(e)(1), (f)(1) (1994). After reviewing the evidence presented to the Court, the Court is satisfied that all conditions precedent to filing a suit under Title VII have been satisfied. Plaintiffs' and Intervenors' Motion for Partial Summary Judgment on this issue is **GRANTED.**

Plaintiffs and Intervenors also seek partial summary judgment on Defendant's affirmative defense of statute of limitations. In Defendant's Original Answer to Original Complaint in Intervention, Defendant stated that "Defendant invokes the applicable statute of limitations." EEOC enforcement actions, such as this action, are not subject to state statute of limitations. *Occidental Life Ins. v. EEOC*, 432 U.S. 355, 368 (1977). Additionally, after reviewing the evidence before the Court, Plaintiffs and Intervenors met all the applicable time limitations contained within 42 U.S.C. § 2000e. Plaintiffs' and Intervenors' Motion for Partial Summary Judgment on this issue is **GRANTED.**

Defendant also asserted the affirmative defense of laches. Plaintiffs and Intervenors seek partial summary judgment on this defense. Defendant is entitled to the affirmative defense of laches only if the EEOC unreasonably delayed filing suit after conciliation was completed. *National Ass'n of Government Employees v. City Public Service Board of San Antonio*, 40 F.3d 698, 708 (5th Cir. 1994). The evidence before the Court establishes that conciliation efforts in

this case failed on April 18, 2001, and suit was filed on June 27, 2001. The Court finds that no unreasonable delay resulted. Plaintiffs' and Intervenors' Motion for Partial Summary Judgment on this issue is **GRANTED.**

Plaintiffs' and Intervenors' final argument for partial summary judgment is based upon Defendant's affirmative defense "invok[ing] the exclusive remedy provisions of the Texas Labor Code." Plaintiffs and Intervenors claim that the exclusivity provisions of state labor laws do not preclude federal remedies. *See Adams Fruit Co. v. Barrett*, 494 U.S. 638, 647 (1990). According to case authority from the Fifth Circuit, negligent causes of action are preempted by the Texas Workers' Compensation Act. Tex. Lab. Code Ann. §408.001 (Vernon 1996 & Supp. 2001). The Act provides the exclusive remedy for injuries sustained by the employee in the course of his employment as a result of the employer's negligence. *See Ward v. Bechtel Corp.*, 102 F.3d 199, 203-04 (5th Cir. 1997). In this suit, Plaintiffs' and Intervenors' claims are not based on the Defendant's alleged negligence. Accordingly, recovery is not foreclosed by the Texas Workers' Compensation Act. Plaintiffs' and Intervenors' Motion for Partial Summary Judgment on this issue is **GRANTED.**

IV.
CONCLUSION

For the reasons previously discussed, Plaintiffs' and Intervenors' Motion for Summary Judgment is **GRANTED.** All relief not expressly granted is denied.

SO ORDERED this 18th day of April, 2002.

SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE