

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

SEP 3 1998

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY          DEPUTY

EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
P & P MARKETING OF )  
OKLAHOMA CITY, INC., )  
 )  
Defendant. )  
 )  
and )  
 )  
NIKKI OCHS and BRANDI JOHNSON, )  
 )  
Intervenors, )  
 )  
v. )  
 )  
P&P MARKETING OF OKLAHOMA )  
CITY, INC., LOUIS PLUMBTREE, )  
 )  
Defendants. )

No. CIV-97-1998-L

**DOCKETED**

**ORDER**

This matter is before the court on defendant Louis Plumbtree's motion to dismiss the complaint of intervenors Nikki Ochs and Brandi Johnson for lack of subject matter jurisdiction. The court finds defendant's arguments to be without merit. Section 1367(a) of Title 28 expressly provides that

in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or

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controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder of additional parties.

28 U.S.C. § 1367(a). As the state law allegations against Plumbtree and the Title VII claims against P&P Marketing of Oklahoma City, Inc. arise out of a common nucleus of operative facts, the requirements of § 1367(a) are satisfied. Thus, the court has subject matter jurisdiction over Plumbtree and the claims asserted against him. See Kelley v. Michaels, 59 F.3d 1055, 1058 (10th Cir. 1995).

Plumbtree also seeks dismissal of the intervenors' complaint for failure to state a claim. The standard governing a motion to dismiss is clear. A complaint should not be dismissed for failure to state a claim "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) (footnote omitted); Meade v. Grubbs, 841 F.2d 1512, 1526 (10th Cir. 1988). The complaint must be construed in the light most favorable to the intervenors and all factual allegations in the complaint must be presumed to be true. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Meade, 841 F.2d at 1526. Based on this standard, the court must deny Plumbtree's motion. The court cannot say at this juncture that the intervenors can prove no set of facts in support of their claims.

Defendant, Louis Plumbtree's Motion to Dismiss (Docket No. 22) is DENIED.

It is so ordered this 3rd day of September, 1998.



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TIM LEONARD  
United States District Judge