Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 5637	DATE	3/25/2004
CASE TITLE	EEOC vs. CATERPILLAR		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendant's motion for summary judgment [25-1], plaintiffs' motion for partial summary judgment [21-1] and motion *in limine* [21-2] are denied. The joint final pretrial order and agreed pattern jury instructions shall be presented on April 22, 2004 at 9:00 a.m. Plaintiffs' draft shall be submitted to defendant by April 13, 2004. Trial is set on May 27, 2004, at 9:00 a.m. SEE REVERSE FOR DETAILS.

Suzanne B. Conlon

(11) ■ [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.		number of notices	Document Number
	No notices required.			
✓	Notices mailed by judge's staff.		MAR 26 2004 date docketed	44
	Notified counsel by telephone.			
	Docketing to mail notices.		docketing deputy initials	
	Mail AO 450 form.	U.S. DISTRICT COURT CLERK 2004 MAR 25 PM 2:27	3/25/2004 date mailed notice	
	Copy to judge/magistrate judge.			
CB	courtroom deputy's initials	Date/time received in central Clerk's Office	PW mailing deputy initials	

(Reserved for use by the Court)

ORDER

The Equal Employment Opportunity Commission ("EEOC") sues Caterpillar Inc. seeking relief on behalf of three current and former African-American employees, Stanley McCallum, George Ervins and Rickey McNeal, for racial harassment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq* and Title I of the Civil Rights Act of 1991, 42 U.S.C § 1981a. McCallum, Ervins and McNeal have intervened. Caterpillar moves for summary judgment on all claims. The EEOC and the intervenors (collectively "plaintiffs") jointly move for partial summary judgment and *in limine* to bar certain evidence at trial.

Summary judgment is appropriate when the moving papers and affidavits show there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *King v. National Human Resource Committee, Inc.*, 218 F.3d 719, 723 (7th Cir. 2000). The summary judgment standard is applied with special scrutiny to employment discrimination cases because the outcome may depend on determinations of credibility and intent. *Michas v. Health Cost Controls of Illinois*, 209 F.3d 687, 692 (7th Cir. 2000).

Caterpillar contends summary judgment is proper because the alleged incidents of racial harassment proffered by plaintiffs are not sufficiently severe or pervasive to be deemed an actionable hostile work environment and because it took prompt and appropriate corrective action. Conversely, plaintiffs contend partial summary judgment is proper because Caterpillar did not fulfill, as a matter of law, its seventh affirmative defense, *i.e.*, that it "exercised reasonable care to prevent and correct promptly any racially harassing behavior." Def. Answer at 6.

Whether harassment is sufficiently severe or pervasive is dependant upon the totality of circumstances, including "the frequency of the discriminatory conduct; its severity; whether it was physically threatening or humiliating; or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v. Forklift Sys.*, 510 U.S. 17, 23 (1993). Harassment must be both objectively and subjectively hostile; plaintiffs must show a reasonable person would find the harassment hostile or abusive, and that they personally found it to be so. *Gentry v. Export Packaging Co.*, 238 F.3d 842, 850 (7th Cir. 2001).

The record supports a reasonable inference that plaintiffs subjectively believed work conditions at Caterpillar were hostile. According to plaintiffs, they complained about harassing conduct that they found offensive and upsetting on numerous occasions throughout their employment. Taking plaintiffs' account as true, a genuine issue of material fact exists as to whether the conditions were hostile from an objective standpoint. Graffiti of a gallows with a hangman's noose around the head of a stick figure, graffiti of a cargo plane dropping KKK crosses, racial graffiti in a frequented restroom ("kill all niggers black and white," "it's Aryan," "KKK," "are all niggers brothers," and a drawing of a swastika), and Caucasian employees whistling at plaintiffs like dogs may be severely offensive. These incidents purportedly occurred within months of African-American employee James Mack's discovery of an actual noose in his work area and being called "boy" by a Caucasian employee. These incidents known by at least two plaintiffs support an inference of objective hostility. *See Gleason v. Mesirow Financial, Inc.*, 118 F.3d 1134, 1144 (7th Cir. 1997) ("incidents [of harassment] – directed at others and not the plaintiff – do have some relevance in demonstrating the existence of a hostile work environment"). Caterpillar's protestation that many of plaintiffs' other, additional complaints involving non-racial graffiti, confrontations, and confederate flag insignia do not involve expressly racial conduct fails to consider context. The same Caucasian employees who were accused or disciplined for the other racial incidents were implicated in many of these incidents. *Qualls v. v. Radix Group Intern., Inc.*, No. 98 C 2695, 1999 WL 1267716 at *7 (N. D. Ill. Nov. 17, 1999). As often stated, there is no "magic threshold number" of incidents required to establish a hostile environment. *Daniels v. Essex Group, Inc.*, 937 F.2d 1264, 1274 (7th Cir. 1991). Drawing all reasonable inferences in plaintiffs' favor, genuine issues of material fact exist as to whether their work environment was objectively hostile. Although Caterpillar denies or downplays many of these incidents, plaintiffs are entitled to have a factfinder determine whether their testimony is sufficiently credible to overcome the version of events proffered by Caterpillar's witnesses.

Crediting plaintiffs' version of events, a material issue of fact also exists whether Caterpillar failed to take appropriate remedial measures in response to harassment complaints. Accordingly, both motions for summary judgment fail. Caterpillar maintains that it had a harassment policy in place at all relevant times prohibiting racial harassment, promptly investigated plaintiffs' complaints (disciplining employees where appropriate), and conducted diversity training. On the other hand, plaintiffs claim, *inter alia*, that Caterpillar failed to distribute its racial harassment policy to all employees until April 2001, that it completely failed to investigate some incidents and inadequately investigated others, and that it allowed employees "to lie or refuse to cooperate in the course" of an investigation. Depending on the resolution of these disputed facts, a reasonable jury could conclude that Caterpillar took "prompt and appropriate action reasonably likely to prevent harassment from recurring." *Tutman v. CBS, Inc.*, 209 F.3d 1044, 1048 (7th Cir. 2000).

Plaintiffs' motion *in limine* must also be denied. The court excludes evidence on a motion *in limine* only if the evidence is clearly inadmissible for any purpose. *See Hawthorne Partners v. AT&T Technologies*, 831 F.Supp. 1398, 1400 (N.D. Ill. 1993). Motions *in limine* are disfavored; admissibility questions should be ruled upon as they arise at trial. *Id.* If evidence is not clearly inadmissible, evidentiary rulings must be deferred until trial to allow questions of foundation, relevancy, and prejudice to be resolved in context. *Id.* at 1401. Denial of a motion *in limine* does not indicate evidence contemplated by the motion will be admitted at trial. Instead, denial of the motion demonstrates the court cannot determine whether the evidence in question should be excluded outside the trial context. *United States v. Connelly*, 874 F.2d 412, 416 (7th Cir. 1989); *Brom v. Bozell, Jacobs, Kenyon & Eckhardt*, 867 F.Supp. 686, 690-91 (N.D. Ill. 1994). The motion seeks to bar Caterpillar from presenting evidence about the intent of perpetrators of alleged incidents of racial harassment. However, that evidence may be probative of the existence of an objectively hostile working environment as well as the adequacy of Caterpillar's response to alleged incidents of racial harassment.

Suzanne B. Conlon