

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY JJ D.C.

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ROBERT D. DETROLO  
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WESTERN DISTRICT OF TENNESSEE

EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHILI'S, INC., BRINKER )  
INTERNATIONAL PAYROLL )  
CORPORATION, and BRINKER )  
INTERNATIONAL, INC., d/ba/ )  
COZYMEL'S COASTAL MEXICAN )  
GRILL )  
 )  
Defendants. )

Civ. No. 01-2076 D A

**ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL DISMISSAL**

This matter is before the Court on defendants' motion to dismiss plaintiff's complaint as to the sex discrimination claims of Wendy Brasher-Zinn and Wendy Ferrer, on the grounds that (a) Brasher-Zinn and Ferrer failed to file timely charges with the Equal Employment Opportunity Commission and (b) the discriminatory acts that formed the basis of their claims occurred beyond the statutory limit to "piggy-back" on other timely claims. For the reasons stated herein, defendants' motion as to the individual claims of Brasher-Zinn and Ferrer is **DENIED**.

**I. Factual Background**

From approximately October 1997 until October 1999, defendant employer unlawfully discriminated against certain female employees at its Memphis restaurant by subjecting them to

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physical and verbal harassment, and exposing them to sexually unwelcome conduct. In October 1999, plaintiff Tara Hedges was assaulted and called sexually offensive names by defendant employer's manager, Jake Hart. Hedges subsequently filed a timely charge of sex discrimination with the EEOC. On January 30, 2001, the EEOC brought suit in this Court on behalf of Hedges and other female employees harmed by defendant's conduct. In the suit, the EEOC included the claims of Brasher-Zinn and Ferrer, although neither had previously filed a charge with the Commission, and the discriminatory conduct that formed the basis of their claims occurred outside of the statutory limit. On December 27, 2001, defendants moved to dismiss Brasher-Zinn and Ferrer from the complaint, contending that their claims were time-barred.

## **II. Motion to dismiss standard**

A party may bring a motion to dismiss for failure to state a claim under Fed. R. of Civ. Proc. 12(b)(6). This motion only tests whether a cognizable claim has been pleaded in the complaint. Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1988). Essentially, it allows the court to dismiss meritless cases which would otherwise waste judicial resources and result in unnecessary discovery. See, e.g., Nietzke v. Williams, 490 U.S. 319, 326-27, 109 S.Ct. 1827, 1832, 104 L.Ed.2d 338 (1989).

In reviewing the complaint, the court must accept as true all factual allegations in the complaint and construe them in the light most favorable to the plaintiff. Windsor v. The Tennessean, 719 F.2d 155, 158 (6th Cir. 1983). Indeed, the facts as alleged by the plaintiff cannot be disbelieved by the court. Nietzke, 490 U.S. at 327, 109 S.Ct. at 1832; Murphy v. Sofamor Danek Group, Inc., 123 F.3d 394, 400 (6th Cir. 1997). Where there are conflicting

interpretations of the facts, they must be construed in the plaintiff's favor. Sinay v. Lamson & Sessions Co., 948 F.2d 1037, 1039-40 (6th Cir. 1991). However, legal conclusions or unwarranted factual inferences should not be accepted as true. Lewis v. ACB Business Services, Inc., 135 F.3d 389, 405 (6th Cir. 1997).

The Supreme Court has held that "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, 78 S.Ct. 99, 102 L.Ed.2d 80 (1957); see also Nietzsche, 490 U.S. at 326-27, 109 S.Ct. at 1832; Lewis, 135 F.3d at 405-06. Thus, the standard to be applied when evaluating a motion to dismiss for failure to state a claim is very liberal in favor of the party opposing the motion. Westlake v. Lucas, 537 F.2d 857, 858 (6th Cir. 1976). Even if the plaintiff's chances of success are remote or unlikely, a motion to dismiss should be denied.

### **III. Discussion**

Defendants contend that, as plaintiffs Brasher-Zinn and Ferrer failed to timely file charges with the EEOC, and as the discriminatory acts that form the bases of their claims occurred beyond the statutory limit to "piggy-back" on other timely claims, the Court lacks jurisdiction to grant relief.

Plaintiff EEOC contends that, as the face of the complaint alleges ongoing unlawful employment practices, and as the claims of Brasher-Zinn and Ferrer could have been reasonably expected to grow out of the charging party's claims, those claims are not subject to the statutory bar. The Court agrees.

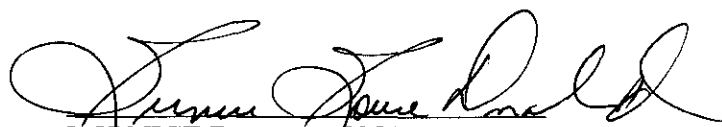
It is well settled that enforcement actions brought by the EEOC may seek recovery for additional unlawful acts or practices of discrimination uncovered during the course of its investigation. General Telephone Co. v. EEOC, 446 U.S. 318 (1980); EEOC v. Kimberly-Clark Co., 511 F.2d 1352 (6<sup>th</sup> Cir. 1975). Moreover, plaintiffs not filing a charge with the EEOC may be permitted to join an action as long as (a) at least one plaintiff has timely filed a proper complaint with the Commission, and (b) the claims of the filing and nonfiling plaintiffs have arisen from similar discriminatory treatment in the same time frame. EEOC v. Wilson Metal Casket Co., 24 F.3d 836 (6<sup>th</sup> Cir. 1994).

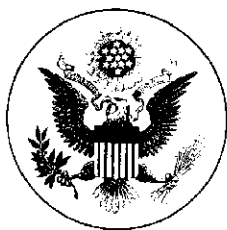
In the instant case, the face of the complaint indicates that the charging party filed a timely claim with the Commission. Moreover, the complaint indicates that all plaintiffs were subjected to the same sexually discriminatory conduct within the same time frame. Therefore, viewing the facts in the light most favorable to plaintiff, as the EEOC may properly seek recovery for additional similar acts of discrimination, the Court finds that the claims of Brasher-Zinn and are not time-barred. Accordingly, defendants' motion to dismiss their individual claims is **DENIED.**

**IV. Conclusion**

For the foregoing reasons, defendants' motion to dismiss the individual claims of Brasher-Zinn and Ferrer is **DENIED**.

**IT IS SO ORDERED** this 15<sup>th</sup> day of January 2002.

  
BERNICE BOUIE DONALD  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 42 in case 2:01-CV-02076 was distributed by fax, mail, or direct printing on January 16, 2002 to the parties listed.

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