

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, MARK H. DAVIS, an individual, Plaintiff Intervenor, vs. WARREN PROPERTIES, INC., a Delaware Corporation, d/b/a WILLOW CLIFF APARTMENTS, Defendant.

FILED

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

Case No. CIV-00-676-M

DOCKETED

ORDER

Before the Court is plaintiffs' Motion to Compel Documents and Motion to Allow Introduction of Evidence of Defendant's Financial Status at Trial, filed April 6, 2001. On April 6, 2001, defendant filed its response. Plaintiffs move this Court (1) to compel the production of requested documents regarding the financial status of defendant, (2) to allow plaintiffs to refer to, use, and enter such documents into evidence in their case in chief without first obtaining a ruling by the Court as to whether plaintiffs have presented evidence sufficient for the submission of a punitive damages jury instruction to the jury, and (3) to submit an instruction regarding punitive damages to the jury without need for any initial finding by the Court.

Punitive damages are available to plaintiffs in Title VII civil rights actions. Section 1981a(b)(1) provides:

A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the

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respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

42 U.S.C. § 1981a(b)(1).

Courts have generally held that when punitive damages are sought, the defendant's financial condition is relevant to the subject matter of the action and is a proper subject of pretrial discovery. *See Miller v. Doctor's General Hospital*, 76 F.R.D. 136, 140 (W.D. Okla. 1977); *Vollert v. Summa Corp.*, 389 F. Supp. 1348 (D. Haw. 1975); annot., 27 A.L.R.3d 1375, §4 (1969).

Plaintiffs seek punitive damages in this action. The Court finds documents regarding the financial status of defendant are relevant and are a proper subject of pretrial discovery. Accordingly, the Court compels defendant to produce the requested documents regarding its financial status prior to trial.

One goal of punitive damages is deterrence. "The size and wealth of the defendant are relevant factors in this regard." *Deters v. Equifax Credit Information Services, Inc.*, 202 F.3d 1262, 1271 (10th Cir. 2000). Accordingly, the Court finds evidence regarding defendant's financial condition is relevant to the issue of punitive damages and is admissible into evidence.

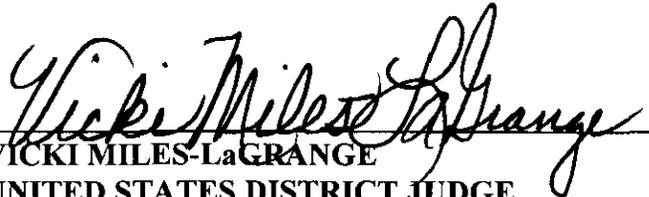
Unlike claims brought under Oklahoma state law, the award of punitive damages in a Title VII case is not bifurcated. *See* 42 U.S.C. § 1981a. Any evidence regarding the appropriate amount of punitive damages, therefore, must be presented during a plaintiff's case in chief. Accordingly, the Court finds plaintiffs may introduce documents regarding defendant's financial status during their case in chief.

Finally, whether plaintiffs are entitled to punitive damages is a question for the jury. *See* 42 U.S.C. § 1981a. The Court, accordingly, will submit a punitive damages instruction to the jury.¹

CONCLUSION

For the above reasons, the Court GRANTS plaintiffs' Motion to Compel Documents and Motion to Allow Introduction of Evidence of Defendant's Financial Status at Trial.

IT IS SO ORDERED this 9th day of April, 2001.


VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE

¹Defendant, however, at the close of plaintiffs' case in chief, may move for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a) on the issue of punitive damages.