IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 9:06-CV-226-TH**
	§	**JURY**
NATIONAL VISON, INC. d/b/a THE VISION CENTER, and DR. S. J. CHARENDOFF,	§	
	§	
Defendants.	§	

ORDER GRANTING DEFENDANT CHARENDOFF'S MOTION FOR SUMMARY JUDGMENT

Before the Court is the *Defendant Dr. S.J. Charendoff's Motion for Summary Judgment* [Clerk's Docket No. 37] filed July 13, 2007. After considering the motion, this Court is of the opinion that the motion should be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Equal Employment Opportunity Commission (EEOC) filed a complaint on September 25, 2006, seeking "to correct unlawful employment discrimination on the basis of sex and to provide appropriate relief to a class of female employees who were adversely affected by Defendant National Vission, Inc. D/b/a The Vision Center's unlawful practices." *EEOC's Original Complaint* [Clerk's Docket No. 1], paragraph 1. Members of the class of female employees who were allegedly harassed successfully intervened in the suit, joining in the Title VII claims against National Vision, Inc. The Plaintiff-Intervenors also filed state law claims of assault by offensive physical contact, battery, and/or sexual harassment against Intervenor Defendant Dr. Charendoff (referred to herein as "Charendoff"). In the instant Motion for Summary Judgment, which Plaintiff-Intervenors have not opposed, Charendoff seeks to show that Plaintiff-Intervenors state law claims of assault are barred by the applicable statue of limitations.

II. STANDARD OF REVIEW

Summary judgment is proper when, after viewing the evidence in the light most favorable to the non-movant, "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." *Amburgey v. Corhart Refractories Corp.*, 936 F.2d 805, 809 (5th Cir. 1991); FED. R. CIV. P. 56(c). If the moving party establishes the absence of any genuine issue, the burden shifts to the non-moving party to produce evidence of the existence of a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548 (1986). Conclusory allegations, unsubstantiated assertions, and mere scintillas of evidence do not satisfy this burden. *Little v. Liquid Air Corp.,* 37 F.3d 1069, 1075 (5th Cir. 1994)(en banc). Only a genuine dispute over a material fact (a fact which might affect the outcome of the suit under the governing substantive law) will preclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). The dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party on the issue. *Id.*

Fed. R. Civ. P. 56(c) requires the court to look at the full record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits. But the court is not going to "sift through the record in search of evidence to support a party's opposition to summary judgment." *Doddy v. Oxy USA, Inc.*, 101 F.3d 448, 463 (5th Cir. 1996). All reasonable inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion, and any doubt must be resolved in its favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1335, 1356 (1986). However, only *reasonable* inferences in favor of the nonmoving party can be drawn from the evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.,* 504 U.S. 451, 112 S.Ct. 2072, 2083 (1992).

III. ANALYSIS

As stated above, Plaintiff-Intervenors have brought state common law assault claims against Charendoff. Under Texas law, the statute of limitations is two years for a claim of assualt. *See* Tex. Civ. Prac. & Rem. Code §16.003(a)(Vernon 2006); *Polly v. Houston Lighting & Power Co.*, 803 F.Supp. 1, 7 (S.D. Tex. 1992). Further, under Texas case law, a cause of action for assault accrues at the time such assault occurs. *Brothers v. Gilbert, 950 S.W.2d 213, 216* (Tex. App. - Eastland, 1997, pet. denied). The record shows that Plaintiff-Intervenors filed their *Motion to Intervene* [Clerk's Docket No.3] on October 11, 2006, and subsequently filed their *Original Complaint* [Clerk's Docket No. 7] on October 30, 2006. Charendoff provides summary judgment evidence that, the alleged contact which forms the basis of each of the Plainiff-Intervenors state common law assault claims, occurred prior to October 30, 2004. As such, Charendoff would show that Plaintiff-Intervenors' claims are barred by the statute of limitations as a matter of law. Plaintiff-Intervenors offer no evidence in rebuttal, and admit in their Response to Charendoff's

Motion for Summary Judgment, that Charendoff's Motion presents a valid statute of limitations defense to the state common law assault claims.

Accordingly, no genuine issue of material fact exists to show that Plaintiff-Intervenors assault claims against Charendoff are not barred by the statute of limitations. Summary judgment is appropriate as to the Plaintiff-Intervenors' assault claims against Charendoff.

IV. CONCLUSION

Having considered the motion, the summary judgment evidence, and the applicable law, this Court is of the opinion that Plaintiff-Intervenors fail to carry their summary judgment burden to demonstrate a genuine issue of material fact showing that their state common law claims of civil assault against Charendoff are not barred by the statute of limitations. Accordingly, the state law claims of civil assault made by the Plaintiff-Intervenors against Charendoff should be dismissed with prejudice.

IT IS THEREFORE ORDERED that *Defendant Dr. S.J. Charendoff's Motion for Summary Judgment* [Clerk's Docket No. 37] is **GRANTED**.

IT IS FURTHER ORDERED that the claims against Defendant-Intervenor Charendoff made by the Plaintiff-Intervenors are hereby **DISMISSED WITH PREJUDICE**, with all costs to be borne by those incurring same.

SO ORDERED.

SIGNED this the **12** day of **September, 2007.**

Thad Heartfield
United States District Judge