

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

SEP -3 2002

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

BABU THANU CHELLEN, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 JOHN PICKLE CO., INC., and )  
 JOHN PICKLE, JR., )  
 )  
 Defendants. )

Case No. 02-CV-85-EA (M)

ORDER

Plaintiffs filed this action on February 1, 2002, naming Babu Thanu Chellen as the first plaintiff in the caption of the Complaint, and the Clerk docketed the matter under that name. Plaintiffs alleged violations of the Fair Labor Standards Act, false imprisonment, and deceit. They filed a First Amended Complaint on February 6, 2002, in which they attempted to "re-adopt and re-allege" the allegations set out in the original complaint while adding some allegations. On February 8, 2002, plaintiffs filed a Second Amended Complaint in which they again "re-adopted and re-alleged" the allegations in the original and First Amended Complaint, added plaintiffs, requested a jury trial, and added an attorney lien claim. Defendant John Pickle Company, Inc. ("JPC") filed an Answer to all three complaints on February 26, 2002, and, as part of its answer, included a Motion to Dismiss in the text of the answer without filing a separate brief. The Clerk docketed that motion to dismiss as a pending motion, Dkt. # 11-2. JPC sought dismissal of all claims based on an alleged lack of jurisdiction, improper venue, and failure to state a claim.

Plaintiffs filed a Third Amended Complaint on March 15, 2002, apparently without leave of Court. They recited in the Third Amended Complaint that a status conference was held on March 6, 2002, but there is no record of such conference on the docket sheet. Plaintiffs changed the caption

of the Third Amended Complaint by listing plaintiff Vankar Rammikbhai Laljibhali as the first-named plaintiff, and they added a claim for race discrimination.

The Court subsequently granted plaintiffs an extension of time for plaintiffs to file a response to JPC's motion to dismiss (Dkt. # 11-2), and then the Court granted a motion by plaintiffs to substitute and add party plaintiffs, and for leave to file a fourth amended complaint. Plaintiffs filed such complaint on April 30, 2002. The Fourth Amended Complaint lists plaintiff Joshy Mathappan Aleparambu as the first-named plaintiff and adds claims for intentional infliction of emotional distress, violation of Title VII of the Civil Rights Act of 1964, and violation the Immigration and Control Act. JPC filed an Answer on May 17, 2002, and therein moved to dismiss four of the seven claims. Since plaintiffs did not entitle their pleading as a motion and did not file a brief, however, the Clerk did not docket the pleading as a motion to dismiss to which a responsive pleading would be required.

Instead, the Court permitted plaintiffs to file a separate motion to dismiss and brief in support after a status conference held June 11, 2002. Plaintiffs filed such pleading on June 21, 2002 (Dkt. # 41), and it remains a pending motion on the Court's docket. However, plaintiff subsequently filed another motion to amend, which the Court granted so that plaintiffs could add additional party plaintiffs. Plaintiffs filed the Fifth Amended Complaint on July 9, 2002, again listing the first-named plaintiff as Aleparambu. Although plaintiffs did not explicitly name John Pickle, Jr. ("Pickle"), as an additional defendant in the caption of the Fifth Amended Complaint, the text of the pleading includes allegations against Pickle individually. The following day, July 10, 2002, plaintiffs responded to JPC's motion to dismiss the Fourth Amended Complaint, and JPC replied on July 19, 2002.

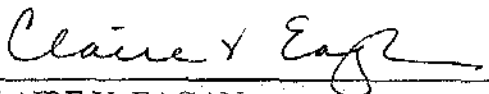
On July 30, 2002 JPC filed an Answer to the Fifth Amended Complaint, asserting therein motions to dismiss plaintiffs' claims for violation of the Fair Labor Standards Act, race discrimination, violation of the Civil Rights Act, and violation of the Immigration Reform and Control Act, but did not file a separate brief. JPC asserts that the claims in plaintiffs' Fifth Amended Complaint that it moves to dismiss are identical to the claims in the Fourth Amended Complaint, and, in JPC's Answer to the Fifth Amended Complaint, it incorporates by reference the arguments in their Motion to Dismiss the Fourth Amended Complaint. Pickle filed a separate Answer and Motion to Dismiss on August 13, 2002. Pickle's Motion to Dismiss (Dkt. # 62-2) is a pending motion before this Court. The motion to dismiss contained in JPC's Answer to the Fifth Amended Complaint is not a pending motion because JPC did not entitle its pleading to include a motion to dismiss and filed no brief in support.

The numerous pleading errors by plaintiffs and defendants in this matter have created procedural chaos. Since each amended pleading supercedes the previous pleading, see Miller v. Glanz, 948 F.2d 1562, 1565 (10th Cir. 1991), an answer or a separate motion to dismiss should have followed each amended complaint. Plaintiffs should have listed the plaintiffs, added by subsequently pleading, separately in the caption as "additional plaintiffs" to avoid confusion as to the case name as it was originally filed in this Court. When plaintiffs added claims against John Pickle, Jr. as an individual, they should have clearly identified him in the caption as an additional party defendant. The parties should caption future pleadings as set forth above.

In an effort to bring order to the procedural chaos, the Court finds that **Dkt. ## 11-2 and 41** are hereby **MOOT**, due to plaintiffs' filing of the Fifth Amended Complaint. The motion to dismiss found in JPC's Answer to the Fifth Amended Complaint (Dkt. #56) will be considered as a

**PENDING** Motion to Dismiss (**Dkt. #56-2**), but no additional briefing is required as to those motions: the Court will consider the arguments contained in JPC's Motion to Dismiss the Fourth Amended Complaint as incorporated into the JPC's motions to dismiss the Fifth Amended Complaint. Finally, the Motion to Dismiss filed by John Pickle, Jr. (**Dkt. # 62-2**) is **PENDING** until the parties have had the opportunity to file response and reply briefs and the Court rules on that motion.

IT IS SO ORDERED this 3rd day of September, 2002.

  
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CLAIRE V. EAGAN  
UNITED STATES DISTRICT JUDGE