UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 96-1104-CIV-KING

DOBSON COLLINS,

Plaintiff,

v.

FLAGSHIP AIRLINES, INC.,

Defendant.

_____/



**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES**

THIS CAUSE, arising out of a Complaint alleging racial discrimination in employment, comes before the Court upon a Motion To Strike Defendant's Affirmative Defenses, filed by Plaintiff, Dobson Collins, on September 16, 1996. Defendant, Flagship Airlines, Inc., filed a response in opposition on October 4, 1996.

Plaintiff moves, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, to dismiss each of Defendant's eight Affirmative Defenses, which were filed along with Defendant's Answer on August 28, 1996. Rule 12(f) permits the Court to order "stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Because motions to strike request a drastic remedy at an early stage of litigation, they are viewed with disfavor and are rarely granted. In determining the sufficiency of a defense, courts must view all well-pleaded facts in the light most favorable to the pleader.

That said, the Court finds that Defendant's First Affirmative Defense, which states that the Complaint "fails to state a claim

upon which relief may be granted," Pl.'s Mot. to Strike at 3, should be stricken. The Court, in its Order filed July 29, 1996, ruled that the Complaint does state a claim upon which relief may be granted. See Order Granting In Part And Denying In Part Defendant's Motion To Dismiss, July 29, 1996.

Similarly, Defendant's Sixth Affirmative Defense, which states that Plaintiff's claims "are outside the scope of his administrative charge," Pl.'s Mot. to Strike at 5, should be stricken. The Court, also in the Order of July 29, 1996, rejected Defendant's contention that the Complaint, specifically Count I, exceeded the scope of the charge that Plaintiff lodged with the Equal Employment Opportunity Commission in May 1994. See Order Granting In Part And Denying In Part Defendant's Motion To Dismiss, July 29, 1996.

Defendant's Affirmative Defenses labeled Second, Third, Fourth, Fifth, Seventh, and Eighth, allege defenses based, respectively, on: statute of limitations; waiver, estoppel, and/or laches; statutory prerequisites; exhaustion of administrative remedies; legitimate and reasonable business factors; and failure to mitigate damages. Each of those Affirmative Defenses turns on issues of fact or law that have not yet been proved. The Court therefore finds that the above-numbered Affirmative Defenses may stand.

Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Plaintiff's Motion To Strike

Affirmative Defenses labeled First and Sixth is GRANTED. Those Affirmative Defenses are STRICKEN.

FURTHER ORDERED and ADJUDGED that Plaintiff's Motion To Strike Affirmative Defenses labeled Second, Third, Fourth, Fifth, Seventh, and Eighth is DENIED. Those Affirmative Defenses may stand.

DONE and ORDERED in chambers at the United States District Courthouse, Federal Justice Building, Miami, Florida, this 22nd day of October 1996.

JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: Ira J. Kurzban
Terence G. Connor