

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
and)
)
TINA SETTLES, CAROLYN ROGERS,)
AND NATASHA DELONG,)
)
Plaintiffs-Intervenors,)
)
vs.)
)
HITEN HOSPITALITY L.L.C. d/b/a)
FAMILY MOTOR INN AND)
MIKE PATEL,)
)
Defendants.)

Cause No. 4:03CV01158 MLM

**ANSWER OF DEFENDANT HITEN HOSPITALITY L.L.C. d/b/a
FAMILY MOTOR INN TO PLAINTIFFS-INTERVENORS' COMPLAINT**

COMES NOW defendant Hiten Hospitality L.L.C. d/b/a Family Motor Inn
("Hiten"), and for its answer to plaintiffs-intervenors' ("Intervenors") Complaint, states to
the court as follows:

Introduction

Defendant Hiten admits that Intervenors purport to intervene pursuant to Missouri
statutes and common law. However, defendant denies that Intervenors are entitled to
any relief under this or any other statute and, therefore, defendant denies each and
every remaining allegation contained in plaintiffs' "Introduction."

Jurisdiction

1. Defendant Hiten denies the allegations contained in paragraph 1, and affirmatively states that this court lacks subject matter jurisdiction over this case, and lacks supplemental jurisdiction over the claims asserted in Intervenor's Complaint, as defendant Hiten at no time had the requisite number of employees to constitute an employer as defined by Title VII.

2. Defendant Hiten denies the allegations contained in paragraph 2.

3. Defendant Hiten admits that plaintiffs purport to invoke supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) but denies the remaining allegations contained in paragraph 3. Defendant Hiten affirmatively states that this court lacks supplemental jurisdiction over any state law claims, because there is no subject matter jurisdiction over the EEOC's claim in the first instance. The EEOC lacks jurisdiction over Hiten, as Hiten is not an employer as defined in Title VII.

Parties

4. Defendant Hiten admits that the plaintiff EEOC is the agency of the United States of America, but denies the remaining allegations contained in paragraph 4, and affirmatively state that the EEOC lacks standing to bring a cause of action against defendant Hiten under Title VII.

5. Defendant Hiten lacks sufficient knowledge concerning the truth of the allegations contained in paragraph 5 and therefore denies same.

6. Defendant Hiten denies the allegations contained in paragraph 6.

Facts Common To All Counts

7. Defendant Hiten admits that Hiten employed Mike Patel for a period of time but denies the remaining allegations contained in paragraph 7 and denies the allegations contained in subparts 7(a) through 7(d).

8. Defendant Hiten denies the allegations in paragraph 8.

9. Defendant Hiten denies the allegations in paragraph 9.

10. Defendant Hiten denies the allegations in paragraph 10.

Count I – Violation of Missouri Human Rights Act

11. To the extent that Intervenor's restate paragraphs 1 through 10 in their complaint into paragraph 11, defendant incorporates its answer to those allegations as if fully set out herein.

12. Defendant Hiten denies the allegations as worded in paragraph 12.

13. Defendant Hiten lacks sufficient knowledge concerning the truth of the allegations contained in paragraph 13 and therefore denies same.

14. Defendant Hiten denies the allegations in paragraph 14.

15. Defendant Hiten denies the allegations in paragraph 15.

Count II – Prima Facie Tort

Defendant Hiten makes no answer to Count II because Defendant Hiten has filed a Motion to Dismiss and/or Strike Count II.

Count III - Battery

Defendant Hiten makes no answer to Count III because it has filed a Motion to Dismiss and/or Strike Count III.

Count IV – Intentional Infliction of Emotional Distress

Defendant Hiten makes no answer to Count IV because it has filed a Motion to Dismiss and/or Strike Count IV.

Count V – Negligent Infliction of Emotional Distress

Defendant Hiten makes no answer to Count V because it has filed a Motion to Dismiss and/or Strike Count V.

Count VI – Punitive Damages

Defendant Hiten makes no answer to Count VI because it has filed a Motion to Dismiss and/or Strike Count VI.

AFFIRMATIVE DEFENSES

1. Further answering, and by way of affirmative defense, defendant Hiten states that this court lacks subject matter jurisdiction over this case. Defendant Hiten is not an employer as defined in Title VII and thus there is no federal question which would allow the court to have supplemental jurisdiction over Intervenors.

2. Further answering, and by way of further affirmative defense, hypothetically and alternatively, defendant Hiten states that Intervenors' claims are barred by the doctrines of waiver, laches, estoppel, and unclean hands.

3. Further answering, and by way of further affirmative defense, hypothetically and alternatively, defendant Hiten states that Intervenors' claims are barred because Intervenors unreasonably failed to take advantage of internal processes, procedures and policies for making complaints.

4. Further answering, and by way of further affirmative defense, hypothetically and alternatively, defendant Hiten states that any and all actions and

decisions taken with respect to Intervenor were taken for legitimate, non-discriminatory, and non-retaliatory reasons.

5. Further answering, and by way of further affirmative defense, hypothetically and alternatively, defendant Hiten states that any and all damages sustained by Intervenor, if any and without admitting same, were the direct and complete result of Intervenor's own negligence and fault.

6. Further answering, and by way of further affirmative defense, hypothetically and alternatively, Intervenor has failed to state a claim for punitive damages.

7. Further answering, and by way of further affirmative defense, hypothetically and alternatively, Intervenor's claim for punitive damages against defendants violate defendants' rights secured by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and by Article I, Sections 2, 10, 13, 14, and 21 of the Missouri Constitution in that the claim for punitive damages is for the purpose of punishing defendants and is tantamount to imposition of a criminal fine based upon conduct and a mental state which is not defined with sufficient precision to notify defendants in advance of that conduct which will give rise to imposition of punishment in the form of punitive damages, and the amount of penalty that may be imposed is indeterminate in that there are no definite standards governing the discretion of the fact finder in determining the severity of punishment to be inflicted, all of which violate defendants' rights to procedural and substantive due process secured by both the federal and state constitutions; the claim for punitive damages constitutes an excessive fine and therefore deprives this defendant of the guarantee secured by the

state constitution that excessive fines shall not be imposed; the punitive damage claim discriminates against defendant on the basis of wealth, in that different amounts can be awarded against different defendants for the same act based only upon the difference in wealth, and further the lack of standards for imposing punitive damages allows the fact finder to impose punishment on one defendant while refusing to impose punishment on another defendant for engaging in the same or similar conduct, and therefore is irrational, arbitrary, and capricious, and constitutes a deprivation of defendants' rights to the equal protection of the law as secured by the federal and state constitutions; the claim for punitive damages amounts to an ex post facto law and a punishment which is retrospective in operation, impairs defendants' rights to contract and to access to the courts, and further constitutes an uncertain remedy, all in contravention of rights secured for defendant by the federal and state constitutions.

8. Further answering, and by way of further affirmative defense, hypothetically and alternatively, defendant Hiten states that to the extent Intervenorors have failed to mitigate their damages, plaintiffs should be barred from any recovery or, recovery, if any, should be reduced.

9. Further answering, and by way of further affirmative defense, hypothetically and alternatively, defendant Hiten states the Intervenorors' claims are barred due to failure to exhaust their administrative remedies.

10. Further answering, and by way of further affirmative defense, hypothetically and alternatively, defendant Hiten states that the claims of Intervenorors are barred by the applicable statutes of limitation.

11. Further answering, and by way of further affirmative defense, hypothetically and alternatively, defendant Hiten states there was no adverse employment action taken against any Intervenors.

WHEREFORE, having fully answered Intervenor's Complaint, defendant Hiten prays this court to enter an order dismissing Intervenor's Complaint, for its costs and attorney's fees, and for any other relief this court deems just and proper.

GREENSFELDER, HEMKER & GALE, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2003, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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