



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-22912-CIV-LENARD/SIMONTON

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, and
JUAN SANCHEZ,

Plaintiffs,

XIOMARA GUERRERO; OFELIA
RODRIGUEZ; MARIBEL SUAREZ;
JORGE FIOL; ERNESTO HEDMAN;
HILARIO PINEDA; JUAN CARLOS
SUAREZ; and ALEXIS SILVA,

Intervenor Plaintiffs,

v.

AIRGUIDE CORPORATION, PIONEER
METALS, INC., and GOODMAN
GLOBAL HOLDINGS, INC.,

Defendants.

ORDER GRANTING MOTION FOR PROTECTIVE
ORDER AND TO QUASH SUBPOENA

Presently pending before this Court is Intervenor Plaintiff Hilario Pineda's and Plaintiff Juan Sanchez' Motion For Protective Order and To Quash Subpoena (DE # 100, filed 3/1/04). All discovery motions in this case are referred to the undersigned Magistrate Judge (DE ## 11, 19, 28). The motion is fully briefed (DE ## 105, 109). For the reasons stated below, the motion for protective order is granted and the subpoenas to creditors of Pineda and Sanchez are quashed.

I. The Complaint

The Equal Employment Opportunity Commission (hereafter EEOC), Intervenor Plaintiffs and Plaintiff Sanchez have brought these consolidated actions alleging hostile

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work environment sexual harassment and/or retaliation for engaging in protected activities, and related state law claims (DE ## 1, 30).

II. The Instant Motion

A. Movant's Position

Pineda and Sanchez state that Defendants have noticed their intent to serve subpoenas on numerous creditors of Pineda and Sanchez for 1) all written applications or other documents declaring current income and creditworthiness submitted by Pineda and Sanchez and 2) all monthly statements submitted to Pineda and Sanchez showing charges or debits on any account numbers for the 12 months prior to February 3, 2000. Pineda and Sanchez move for a protective order and to quash the subpoenas on the grounds that these subpoenas are overbroad, and intrusive as to Pineda and Sanchez's private financial affairs unrelated to this case; and that the information sought is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Pineda and Sanchez note that Defendants have received copious discovery concerning their wages and financial situations. Pineda and Sanchez also contend that Defendants are seeking the information solely to harass, annoy and embarrass them, and that the subpoenas have imposed an undue expense of time and money on all parties (DE # 100). Pineda and Sanchez also state that Defendants are not seeking to discover whether Pineda and Sanchez have lied about a material issue to the litigation, but rather whether Pineda and Sanchez have lied about their credit history, and that Defendants have not shown how this related to the claims asserted by Plaintiffs or to the defenses asserted by Defendants (DE # 109).

B. Defendants' Position

Defendants assert that they have issued a number of subpoenas duces tecum to various nonparty credit agencies seeking copies of Pineda and Sanchez's applications and spending statements for credit cards Pineda and Sanchez possessed prior to or at the time they each filed for bankruptcy in 2000 (Pineda) and 2001 (Sanchez). Defendants contend that the subpoenas seek relevant information, reasonably calculated to lead to admissible evidence that could eventually be used by Defendants to impeach the truthfulness of Pineda and Sanchez. Defendant seeks to ascertain whether Pineda and Sanchez told the truth at their depositions regarding their credit card debt, the representation of their income and creditworthiness given to creditors, and their bankruptcy filings. Defendants state that the subpoenas are not overbroad, that they do not present an undue expense of time and money to Pineda and Sanchez, and that Pineda and Sanchez have no personal right and confidence to the subpoenaed materials (DE # 105).

III. Analysis

Pineda and Sanchez's motion for a protective order and to quash the subpoenas to their creditors is granted. Defendants have not made a sufficient showing of relevance to defeat Pineda and Sanchez's motion.

Fed.R.Civ.P. 26(b) states, in pertinent part, that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, . . . Relevant information need not be admissible at the trial if the discovery appear reasonably calculated to lead to the discovery of admissible evidence."

Defendants have not shown how the materials requested in the subpoenas are either relevant or reasonably calculated to lead to the discovery of admissible evidence.

Whether Pineda and Sanchez lied at their depositions about their credit card debt, the representation of their income and creditworthiness given to creditors, and their bankruptcy filings, is of minimal, if any relevance to the issues in this case, i.e. whether Defendants engaged in hostile work environment sexual harassment against Plaintiffs and/or retaliation against Plaintiffs for engaging in protected activities. This having been said, extrinsic evidence concerning Pineda and Sanchez's credit card debt, the representation of their income and creditworthiness given to creditors, and their bankruptcy filings, appear to be of no relevance to the issues raised in this case. Defendants have not shown how any evidence obtained through the subpoenas would be admissible at trial. See F.R.Evid. 608(b). Nor have Defendants shown either how any evidence obtained through the subpoenas is reasonably calculated to lead to the discovery of admissible evidence, or what admissible evidence they expect the subpoenaed evidence to lead to. Although a witness may be cross-examined concerning prior untruthful statements, in the case at bar, Defendants have not provided any basis for their belief that Pineda and Sanchez have lied, nor any specific question or statement which they believe is false. Defendants have not controverted Plaintiffs' assertions that Defendants have received copious information concerning their finances, including the public records of their bankruptcy proceedings. If Defendants had advanced some plausible basis for their speculation that Plaintiffs had lied, their argument for discovery would stand on firmer ground. However, based upon the record before this Court, it appears that Defendants are proceeding on a fishing expedition calculated to embarrass and annoy Pineda and Sanchez with respect to otherwise private financial information, and therefore, Pineda and Sanchez are entitled to protection.

Therefore, it is hereby

ORDERED AND ADJUDGED that Intervenor Plaintiff Hilario Pineda's and Plaintiff Juan Sanchez' Motion For Protective Order and To Quash Subpoena (DE # 100, filed 3/1/04), is **GRANTED**.

DONE AND ORDERED in Miami, Florida, this 7th day of April, 2004.


ANDREA M. SIMONTON
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Joan A. Lenard
United States District Judge

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