

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEANNA VINCE,

Plaintiff,

v.

RANDY ITEN CHEVROLET, INC.,

Defendant.

ORDER

02-C-0088-C

This is a civil case for money damages in which plaintiff Jeanna Vince alleges that defendant Randy Iten Chevrolet, Inc. discriminated against her by subjecting her to a hostile work environment. It is before the court on defendant's motion for summary judgment.

Defendant argues that plaintiff's suit is barred by the principles of claim and issue preclusion, that this court should abstain from entertaining the case and that plaintiff cannot adduce sufficient evidence to persuade a jury to find in her favor. In addition, defendant has asked for sanctions against plaintiff pursuant to Fed. R. Civ. P. 11 for filing two identical suits against defendant, one in state court and one in federal court.

A telephone hearing was held on the motions before the court on December 4, 2002. Plaintiff was represented by Konstandinos Nicklow; defendant was represented by Christian

Preus.

After hearing argument from counsel, I held that defendant was entitled to summary judgment on the ground of claim preclusion. Plaintiff's counsel concedes that the parties are identical, that the claims asserted in both courts are identical and that the state court has entered a final judgment, disposing of the entire law suit. He argues that the judgment is not truly final until the appeal has been decided, but Wisconsin law holds otherwise. See Knuth v. Lepp, 180 Wis. 2d 529, 534, 193 N.W. 519 (1923) ("The stay pending appeal plainly in no wise lessens or affects the adjudication upon the issues presented to the court and disposed of in the judgment."); Town of Fulton v. Pomeroy, 111 Wis. 663, 669, 87 N.W. 831, 833 (1901). See also Omernick v. La Rocque, 406 F. Supp. 1156, 1160 (W.D. Wis. 1976) (applying Wisconsin law).

I reserved ruling on defendant's motion for sanctions so as to give plaintiff's counsel an opportunity to find any cases that support his position that it is not a violation of Fed. R. Civ. P. 11 to file two identical suits in two different courts.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendant Randy Iten Chevrolet, Inc. is GRANTED on the ground that plaintiff's suit in this court is barred by the principles of claim preclusion. A ruling is reserved on defendant's motion for the

imposition of sanctions. Plaintiff may have until December 11 2002, in which to file and serve a memorandum in opposition to the motion (which may consist of nothing more than a listing of cases). Defendant may have until December 18, 2002, in which to serve and file a memorandum in opposition.

Entered this 5th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge