

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

PHILIP EMIABATA and
SYLVIA EMIABATA,

Plaintiffs,

v.

MARTEN TRANSPORT, LTD. and
FREIGHTLINER, INC.,

Defendants.

ORDER

07-C-465-C

Plaintiffs Philip and Sylvia Emiabata, husband and wife, filed this case originally in the United States District Court for the Western District of Texas, where plaintiffs reside. In their complaint, they allege that defendant Marten Transport, Ltd. “resides” in Wisconsin, that defendant Freightliner, Inc. “resides” in Oregon, and that the amount in controversy exceeds \$75,000. They allege also that defendant Marten Transport “conspired” with defendant Freightliner to wrongfully discharge them from their jobs. In particular, plaintiffs allege in their complaint that on March 12, 2007, while they were traveling over the roads for defendant Marten Transport, Marten Transport asked plaintiffs to stop at defendant Freightliner, Inc.’s truck repair facility in Tulsa, Oklahoma. There, one of

defendant Freightliner's employees, "one Brady," conducted a "wrongful" search of the truck and then reported a lie to defendant Marten Transport that he had found an unopened can of beer in plaintiffs' personal refrigerator within the truck. As a result of Brady's lie, defendant Marten informed plaintiffs that their employment was being terminated because they had violated Marten's policies and § 392.4 of the Federal Motor Carrier Safety Regulations (codified at 49 C.F.R. § 392.4). Plaintiffs contend that their termination violated their rights under 49 C.F.R. § 392.4, the Fourth Amendment's protection against unreasonable searches and seizures, and constituted retaliation for the exercise of their First Amendment right to free speech and, possibly, because of their race. It is extremely difficult to make out from plaintiffs' complaint the exact nature of the alleged motive for defendants' alleged retaliation. On page 5 of their complaint, plaintiffs allege that the true reason defendant Marten terminated their jobs was because "of prior complaints made by plaintiffs on several times/occasions to Marten as regard most especially working condition, racism, plaintiffs being accused of stolen ('missing') loaded trailer et al by one of Marten's employee." On page 3 of the first attachment to plaintiffs' complaint (which is an unauthenticated copy of a letter plaintiffs apparently wrote to defendants on March 26, 2007), plaintiffs again suggest that the retaliatory firing stems from their having asked one of Marten's employees to investigate "the racist, very odious actions" of another employee. At no time do plaintiffs allege what race they are or state in unmistakable terms that they

believe defendants discriminated against them because of their race. Nevertheless, construing the allegations of plaintiffs' complaint generously, I understand them to be raising a claim of a violation of their rights under Title VII of the Civil Rights Act of 1964.) In addition, plaintiffs allege that defendants violated their rights under state law. In particular, they allege in the body of their complaint that defendants were negligent (they do not explain how), and, in the attachment to their complaint at page 2, that defendants intentionally inflicted emotional distress upon them, engaged in fraudulent misrepresentation and defamed them in a letter signed by defendant Marten Transport's employee, Kristi Decker, dated March 12, 2007.

On August 6, 2007, United States District Judge Sam Sparks granted the motion of defendant Marten Transport Ltd. to transfer venue of the case from Texas to this court. Judge Sparks subsequently denied plaintiffs' motion for reconsideration of the decision to transfer.

A review of the record of the case as it developed prior to transfer to this district reveals that two motions remain pending at this time. The first is a motion filed by defendant Freightliner, Inc., for a more definite statement or, in the alternative, to dismiss plaintiffs' complaint against them for plaintiffs' failure to state a claim upon which relief may be granted. That motion is fully briefed and will be taken under advisement.

The second motion is a motion for summary judgment filed by plaintiffs five days

after Judge Sparks ruled that the case was to be transferred to this district. That motion will be denied without prejudice to plaintiffs' filing a new motion that complies with this court's Procedures to be Followed on a Motion for Summary Judgment. Plaintiffs will receive those procedures as an attachment to a preliminary pretrial conference order, which will be issued by United States Magistrate Judge Stephen Crocker as soon as a preliminary pretrial conference has been held.

ORDER

IT IS ORDERED that defendant Freightliner, Inc.'s motion for a more definite statement or, in the alternative, for dismissal of plaintiffs' claims against them for their failure to state a claim upon which relief may be granted is taken under advisement.

Further, IT IS ORDERED that plaintiffs' motion for summary judgment is DENIED without prejudice to their filing a new motion at a later stage of these proceedings that complies with this court's summary judgment procedures.

The clerk of court is requested to schedule this case for a telephonic preliminary pretrial conference before United States Magistrate Judge Stephen Crocker as soon as the magistrate judge's calendar permits.

Entered this 23d day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge