

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

-----  
PEARL CISTRUNK,

Plaintiff,

v.

LA PETITE ACADEMY,

Defendant.  
-----

ORDER

07-C-170-C

In an order dated May 4, 2007, I granted plaintiff Pearl Cistrunk, a former employee of defendant La Petite Academy, leave to proceed in forma pauperis on her claim that defendant violated her rights under Title VII of the Civil Rights Act of 1964 by discriminating against her because of her race and gender and firing her in retaliation for her complaints about persistent racial and sexual harassment. Because plaintiff was proceeding in pauper status, I ordered the United States Marshals to serve defendant with a copy of the summons, plaintiff's complaint and this court's May 4 screening order.

Although service was effected on May 15, 2007, it appears that defendant may not have received a copy of the court's screening order. On June 5, 2007, defendant moved to dismiss plaintiff's claims against it, asserting that plaintiff failed to state a claim under Title

VII, an argument clearly at odds with this court's finding. Because I have ruled on the question already, defendant's motion to dismiss will be denied with respect to its assertion that plaintiff has failed to state a claim. (An additional copy of the May 4 screening order is enclosed with this order.)

Defendant has moved in the alternative for the court to dismiss plaintiff's complaint because of her alleged failure to exhaust her administrative remedies. According to defendant, plaintiff filed her lawsuit before the Equal Employment Opportunity Commission (EEOC) issued her a right to sue letter. Before a litigant may bring suit under Title VII, she must (1) file a charge with the EEOC within a specified time period and (2) wait to sue until receiving notification (a "right to sue" letter) that the Commission does not intend to sue on their behalf. Doe v. Oberweis Dairy, 456 F.3d 704, 708 (7th Cir. 2006). The purpose of these requirements is both to give the Commission a chance to investigate the charge and decide whether to sue, and to encourage the complainant and the employer to resolve their dispute informally, with or without the state agency's or EEOC's assistance. Id.

Although the "receipt of a right-to-sue letter is not a jurisdictional prerequisite to bringing a Title VII suit," defendants can assert the lack of such a letter as a defense, Worth v. Tyer, 276 F.3d 249, 259 (7th Cir. 2001), subjecting plaintiffs' Title VII claim to possible dismissal at any time prior to the receipt of such a letter. Klassy v. Physicians Plus Insurance Co., 276 F. Supp. 2d 952, 958 (7th Cir. 2003) (citing Perkins v. Silverstein, 939 F.2d 463,

471 (7th Cir. 1991). If defendant is right and the EEOC has not issued plaintiff a right to sue letter, her complaint will be dismissed. Therefore, I will set briefing on the question whether plaintiff's suit should be dismissed because she filed it prematurely.

Plaintiff may have until June 25, 2007 in which to file and serve her response, along with a copy of her right to sue letter, if one exists. Defendant may have until July 2, 2007 in which to file and serve its reply, if any.

#### ORDER

IT IS ORDERED that defendant La Petite Academy's motion to dismiss is

1. DENIED with respect to defendant's request to dismiss plaintiff's case for failure to state a claim under Fed. R. Civ. P. 12(b)(6); and

2. STAYED with respect to defendant's request to dismiss plaintiff's claim for her failure to exhaust administrative remedies. With respect to that request alone, the parties will complete briefing. Plaintiff may have until June 25, 2007 in which to file and serve her response, along with a copy of her right to sue letter, if one exists. Defendant may have until

July 2, 2007 in which to file and serve its reply, if any.

Entered this 12<sup>th</sup> day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge