

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

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

ORDER

and

11-cv-267-bbc

LORI DUNSE, MYLINDA BROWN and SAMANTHA GAY,

Intervenor Plaintiffs,

v.

MISSOULA MAC, INC. d/b/a  
McDONALD'S RESTAURANTS,

Defendant.  
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Plaintiff Equal Employment Opportunity Commission is suing defendant Missoula Mac, Inc. for sex discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964. In particular, plaintiff alleges in its complaint that male employees at a McDonald's restaurant in Reedsburg, Wisconsin sexually harassed intervening plaintiffs Lori Dunse, MyLinda Brown, Samantha Gay "and other similarly situated female employees" and defendant failed to take appropriate action to correct the problem. In addition, plaintiff

alleges that defendant constructively discharged Brown and fired Dunse and Gay in retaliation for complaining about the harassment.

Plaintiff EEOC has filed a motion for leave to amend its complaint in two ways. First, it wishes to add Gorichs Corporation as a defendant for the purpose of obtaining injunctive relief. (Plaintiff identifies that corporation as “Gorichscorp, Inc.” in its proposed amended complaint, but both sides agree in their briefs that the correct name is Gorichs Corporation.) Plaintiff alleges that Gorichs purchased the Reedsburg restaurant in January 2012, and that plaintiff will not be able to obtain reinstatement as a remedy unless Gorichs is a defendant. Second, plaintiff wishes to add a claim involving alleged sexual harassment of employee Nicole Dyke at another McDonald’s restaurant owned by defendant in Lake Delton, Wisconsin.

I am granting plaintiff’s motion with respect to the new defendant, since it is being added only for the purpose of obtaining injunctive relief. Although plaintiff could have sought to add Gorichs Corporation sooner, I see no prejudice to any party by allowing the amendment now. The deadline for filing summary judgment motions has passed, but plaintiff is not seeking to hold Gorichs liable for damages and the issue of injunctive relief will not be decided unless plaintiff prevails at trial, so Gorichs would have no reason either to move for summary judgment or prepare for a trial on liability. Further, it seems unlikely that Gorichs will need to conduct a significant amount of its own discovery.

To speed things up, I will give plaintiff until May 29, 2012 to accomplish *personal* service on Gorichs and to file proof of service with the court. Along with the summons and complaint, plaintiff must serve a copy of this order on Gorichs. Because the parties anticipate that Gorichs may object to its inclusion in the lawsuit on the ground that successor liability is not appropriate, I will give Gorichs an opportunity to file a motion seeking dismissal on the ground that it cannot be required to provide injunctive relief under the successor liability doctrine and to raise any other issues it believes are appropriate.

I am denying plaintiff's motion to expand its complaint to include new allegations of harassment at the Lake Delton restaurant. In its motion, plaintiff provides no explanation for waiting until April 2012, *after* defendant filed its motion for partial summary judgment, to seek leave to add this claim. As plaintiff should know, summary judgment is not the stage to be expanding the scope of the claims. EEOC v. Lee's Log Cabin, Inc., 546 F.3d 438, 443 (7th Cir. 2008) ("The very first mention of [the new claim] came in the EEOC's response to Log Cabin's motion for summary judgment, and the court was entitled to regard this as 'too late' to change so basic a factual premise in the case."); Bethany Pharmacal, Inc. v. QVC, Inc., 241 F.3d 854, 861-62 (7th Cir. 2001) (court did not err in denying motion to amend complaint when defendant had already filed motion for summary judgment).

In its reply brief, plaintiff suggests that it was defendant's fault for failing to produce relevant information sooner, but plaintiff does not argue that defendant violated any rules

of discovery. In any event, plaintiff admits that it received the discovery it needed on December 5, 2011, but still does not explain why it waited another four months to file a proposed amended complaint. If I allowed plaintiff to add this claim now, defendant would be prejudiced unfairly because it would not have an opportunity to file a summary judgment motion related to the claim. Under these circumstances, denial of leave to amend is proper. Carroll v. Stryker Corp., 658 F.3d 675, 684 (7th Cir. 2011) (court “reasonably denied [plaintiff’s] motion for leave to amend based on his lack of good cause for missing the deadline and the prejudice to [defendant] of allowing an amended complaint so late in the day”).

## ORDER

IT IS ORDERED that

1. Plaintiff Equal Employment Opportunity Commission’s motion for leave to amend its complaint, dkt. #26, is GRANTED with respect to its claim for injunctive relief against Gorichs Corporation. The motion is DENIED with respect to plaintiff’s new allegations of harassment and retaliation against Nicole Dyke.

2. Plaintiff may have until May 29, 2012, to: (1) file its amended complaint; (2) accomplish personal service of the summons, complaint and this order on Gorichs Corporation and; (3) file proof service with the court.

3. Gorichs Corporation may have until June 22, 2012, to file a motion seeking dismissal on the ground that it cannot be required to provide injunctive relief under the successor liability doctrine or to raise any other issues it believes are appropriate.

Entered this 17th day of May, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge