UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HAZEL S. DELGADO, ET AL.:		
Plaintiffs,	:	
	:	
vs.	:	CASE NO. 3:01CV1633 (JCH)
	:	
CRAGGANMORE ASSOCIATES	:	
LIMITED PARTNERSHIP, ET AL.	:	
Defendants.	:	

RULING
ON PLAINTIFF'S APPLICATION FOR PREJUDGMENT REMEDY

On October 23, 2001, this Court conducted a hearing on the plaintiffs' application for a prejudgment remedy ("PJR") of attachment in the amount of $200,000.00 [Doc. # 3]. This civil action was commenced on August 27, 2001, alleging violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, et seq., the Connecticut Fair Employment Practices Act ("CFEPA"), Conn. Gen. Stat. §§ 46a-60, et seq., and, apparently, the common law of the State of Connecticut, for "employment discrimination on the basis of race, color, religion, sex or national origin." [Compl., First Count, ¶ 4.] As a practical matter, however, the plaintiffs' claims are essentially for sexual harassment (including damages for emotional distress) which allegedly occurred while the plaintiffs were employed at Chancellor Gardens of Southington ("Chancellor Gardens"), which is owned by the

defendants.[1] These claims relate primarily to the actions of Mr. Edward Mitchell ("Mitchell"), while he was the plaintiffs' supervisor.[2]

Despite being served with all relevant documents, the defendants have not filed an appearance in this action, did not appear at the October 23 hearing, and, based on the representations of the plaintiffs' counsel, have expressed the intention not to defend either the action or the application for PJR.[3] At the hearing, the plaintiffs' counsel informed the Court that the plaintiffs would rely mainly on the application and affidavits, though he did call both plaintiffs as witnesses to reaffirm the statements averred to in their affidavits and to answer several questions from counsel and the Court. Therefore, in ruling on this application, the Court considered the papers submitted by the plaintiffs, including the two affidavits, and the limited testimony

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[1] The defendant Careplex of Southington, Inc. ("Careplex") is the general partner of defendant Cragganmore Associates Limited Partnership ("Cragganmore") (collectively, "defendants"). The defendants owned and operated Chancellor Gardens. [See Compl., First Count, ¶¶ 2-3.]

[2] Mitchell was employed by the defendants as the Director of Property Management and Housekeeping/Maintenance of Chancellor Gardens.

[3] Plaintiffs' counsel informed the Court during an October 11 telephone conference that Joseph Vitale - agent for service for Cragganmore - informed him that the defendants would not defend this action in any way, including any participation in that telephone conference.

presented at the October 23 hearing.

For the reasons stated below, the Court finds probable cause to believe that judgment will be rendered in this matter in favor of plaintiff. However, as discussed below, the Court finds the appropriate amount to be $150,000, rather than $200,000. Therefore, **plaintiff's application [Doc. # 3] is GRANTED in part**.

STANDARD

In addressing a motion for prejudgment remedy of attachment, the Court must make a finding of "probable cause" pursuant to Connecticut General Statute § 52-278c(a)(2).[4] This statute requires that the application include:

> An affidavit sworn to by the plaintiff or any competent affiant setting forth a statement of facts sufficient to show that there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought, taking into account any known defenses, counterclaims or set-offs, will be rendered in the matter in favor of the plaintiff.

Conn. Gen. Stat. § 52-278c(a)(2). Thus, in order for the Court to issue a PJR, the plaintiffs must establish probable cause that a judgment in an amount equal to or greater than the sought PJR will be

[4] This statute was amended during the January 1993 Regular Session of the General Assembly and became effective on January 1, 1994. 1993 Conn. Legis. Serv. P.A. 93-431 (S.H.B.7329).

rendered. "Probable cause" in the context of a PJR has been defined by Connecticut courts as "a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it." Three S. Development Co. v. Santore, 193 Conn. 174, 175 (1984).

In other words, in addressing PJR applications, the "trial court's function is to determine whether there is probable cause to believe that a judgment will be rendered in favor of the plaintiff in a trial on the merits." Calfee v. Usman, 224 Conn. 29, 36-37 (1992) (citation omitted). A probable cause hearing for the issuance of a PJR "is not contemplated to be a full scale trial on the merits of the plaintiff's claim." Id. The plaintiffs need only establish that "there is probable cause to sustain the validity of the claim." Id. Probable cause "is a flexible common sense standard. It does not demand that a belief be correct or more likely true than false." New England Land Co., Ltd. v. DeMarkey, 213 Conn. 612, 620 (1990). “The court’s role in such a hearing is to determine probable success by weighing probabilities.” Id.

Moreover, after a hearing, the Court has the responsibility “to consider not only the validity of the plaintiff’s claim but also the amount that is being sought.” Calfee, 224 Conn. at 38. "[D]amages need not be established with precision but only on the basis of

evidence yielding a fair and reasonable estimate." Burkert v. Petrol Plus of Naugatuck, Inc., 5 Conn. App. 296, 301 (1985) (citation omitted); Giordano v. Giordano, 39 Conn. App. 183, 208 (1995) ("[t]he very nature of some civil claims makes the amount of a prejudgment remedy award a reasonable estimation rather than a estimation of reasonable certainty").

FINDINGS

Based upon the evidence before it, the Court finds that there is probable cause to believe the following:

1. Plaintiffs commenced this action on August 27, 2001, bringing claims against defendants under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Connecticut Fair Employment Practices Act, and the common law of the State of Connecticut, alleging acts of sexual harassment and the infliction of emotional distress.
2. Plaintiff Delgado was employed as a dining assistant and housekeeper by defendants from July 21, 1997 until April 6, 1999.
3. Plaintiff Frasco was employed as housekeeper by defendants from July 21, 1997 until June 3, 1999.
4. On or about September 16, 1998, Mitchell became the plaintiffs' immediate supervisor.

5. After Mitchell began supervising plaintiffs, they allege that he began touching and making inappropriate sexual advances and comments. [See Delgado Aff. at ¶ 9; Frasco Aff. at ¶ 9.]

6. In particular, Mitchell made comments about plaintiff Delgado's "naked body" and also told Delgado that she looked like she was "wild in bed," that she "should become a stripper," that she "must want" her lesbian friend. [Delgado Aff. at ¶¶ 12, 13, 14, 20.]

7. On other occasions, Mitchell, blew kisses to Delgado, put his arm around her while calling her "honey," and grabbed Delgado and started pulling her towards him, causing her to resist and fall to the ground. [Delgado Aff. at ¶¶ 15, 16, 21.]

8. Similarly, Mitchell made several comments about Frasco's and other women's "naked bodies," told Frasco that she "should wear a G string" for a male employee, suggested to Frasco that a female employee was screaming because she was "having an orgasm," and suggested that a certain man, who had a photograph of Frasco, was doing something inappropriate with the photograph. [Frasco Aff. at ¶¶ 11, 12, 13, 14, 18.]

9. Mitchell also sexually harassed other women who worked for Chancellor Gardens. [See, e.g., Delgado Aff. at ¶ 10; Frasco Aff. at ¶ 13.]

10. Mitchell has admitted to making "inappropriate or

unprofessional" comments. [See Delgado Aff. at ¶ 23.]

11. The executive director was informed of these incidents, but, despite such information, the harassment resumed. [See, e.g., Delgado Aff. at ¶¶ 17, 19; Frasco Aff. at ¶¶ 17, 19.]

12. In fact, the only responses to plaintiffs' complaints were threats, adverse employment actions and, eventually, the plaintiffs' termination. [See Delgado Aff. at ¶¶ 17, 25; Frasco Aff. at ¶¶ 20, 21, 22, 29, 30.]

13. Plaintiff Delgado was terminated on April 6, 1999 and plaintiff Frasco was terminated on June 3, 1999.

14. The plaintiffs' damages result from unpaid vacation, medical bills that would have been covered by the defendants' health plan if they had remained employed, loss of wages, increased health insurance costs, emotional distress and attorney's fees and costs.

15. The plaintiffs' damages specifically include the following.

    a. Plaintiff Delgado was deprived of one week of vacation pay. She was earning $8.00 per hour and had a forty (40) hour work week. Thus, she is entitled to $320.00.

    b. Plaintiff Delgado incurred 2 medical bills that would have been covered by the defendants' health plan, totaling $2,090.50. [See Hearing Exs. 2A, 2B.]

    c. Plaintiff Delgado was out of work for twenty-seven (27)

weeks, from April 6, 1999 to September 26, 1999. She would have earned $8,640.00 during that time.

d. Plaintiff Delgado pays $80/week more for health insurance at her new job than she would have paid being employed by the defendants. Thus, she has incurred $6,800 in these increased health insurance expenses since September 26, 1999.

e. During subsequent employment, plaintiff Frasco earned $1.33/hour less for approximately seventy-eight (78) weeks and $1.25/hour less for approximately forty-seven (47) weeks. Those damages total $6,499.60.

f. Plaintiff Frasco incurred $125.00 in medical charges that would have been covered by the defendants' health plan. [See Hearing Ex. 4.]

g. Plaintiff Frasco pays approximately $4.00/week more for health insurance since her termination, totaling approximately $440.00.

h. The plaintiffs' counsel has also spent in excess of 140 attorney hours on this case, at $150/hour, for a total attorney's fees cost of $21,000.00.

16. The plaintiffs' economic damages therefore total $45,915.10, including attorney's fees.

17. The Plaintiffs have also suffered some degree of stress and/or

emotional distress. They have not, however, sought medical or other professional therapeutic assistance; and they have not attempted to place a dollar value on such distress (other than plaintiffs' counsel's argument that the economic damages plus emotional distress equals or exceeds $200,000.00).

18. The plaintiffs' counsel has received at least some information that the defendants are attempting to sell the real property that the plaintiffs seek to attach to secure a judgment.

19. Plaintiff seeks a total PJR in the amount of $200,000, in the form of an attachment on the property where Chancellor Gardens is located.

DISCUSSION

The Court finds probable cause to believe that the jury would award plaintiffs at least $150,000 on their claims. The Court reaches this conclusion after considering a variety of factors. First, the plaintiffs presented evidence that they have suffered approximately $45,915.10 in economic losses, including $21,000.00 in attorney's fees. Although the plaintiffs did not submit an affidavit detailing costs and fees incurred to date, the Court considers counsel's in-court representations regarding his hourly rate ($150), and hours spent (140), to be reasonable, given that some future attorney time is also required and that the plaintiffs first were

required to proceed before the CHRO. Of course, because the plaintiffs' application was unopposed, the plaintiffs' showings regarding economic damages and the reasonableness of attorney's fees are undisputed.

Next, the Court must consider the issue of non-economic and punitive damages. The plaintiffs have submitted nothing that would support a PJR of $154,084.90 for emotional distress and/or punitive damages (which is essentially what they seek given the $200,000 request and a showing of only $45,915.10 in other damages). The facts alleged, while serious, do not rise to the level of outrageousness underlying recoveries of that magnitude in other cases. While there is probable cause to believe that the plaintiffs' work environment was hostile, there were no specific demands for sexual favors, no specific quid pro quo suggestions, and generally no infliction of force or fear. Moreover, the "emotional effect" of these events, to which the plaintiffs testified, included increased smoking, less sleep, loss of appetite, loss of weight, increased walking, and a general disappointment in losing an otherwise good job.[5]

The plaintiffs essentially seek a PJR for emotional distress of $77,042.45 each. This amount is not unreasonable for very serious

[5] With respect to the latter effect, Frasco testified that she like really liked her job at Chancellor Gardens, but just could not work there under those conditions (i.e., given Mitchell's behavior).

discrimination cases. Cf. Oliver v. Cole Gift Centers, Inc., 85 F. Supp.2d 109 (D. Conn. 2000) (compensatory damage award of $100,000 in Title VII action claiming emotional and mental distress); Ikram v. Waterbury Bd. of Educ., 1997 WL 597111 (D. Conn. Sept. 9, 1997) ($100,000 compensatory damage award in Title VII claim for emotional and mental distress); Gonzalez v. Bratton, 147 F. Supp. 2d 180 (S.D.N.Y. 2001) (jury awarded $250,000 for emotional distress in Title VII, New York State and City Human Rights Laws and on state common law claims); Phillips v. Bowen, 115 F. Supp. 2d 303 (N.D.N.Y. 2000) (in sexual harassment and retaliation case jury awarded $400,000 in emotional distress damages).

On the other hand, the United States District Court for the Eastern District of New York has recently noted that reasonable emotional distress awards for sexual harassment claims with facts and symptoms similar to the instant case range from $5,000 to $65,000. See Walia v. Vivek Purmasir & Assocs., Inc., 160 F. Supp. 2d 380, 391 (E.D.N.Y. 2000) (and cases cited within). Cf., e.g., Anderson v. Yarp Restaurant, Inc., No. 94 Civ. 7543 (CSH)(RLE), 1997 WL 27043, *8 (S.D.N.Y. Jan. 23, 1997) (jury awarded, and court upheld, emotional distress damage award of $65,000 where plaintiff suffered sexual harassment for over six months, and sought counseling from a therapist who testified that plaintiff suffered from a sense of powerlessness, panic attacks, sleeping problems, and problems

maintaining employment); Town of Lumberland v. New York State Div. of Human Rights, 644 N.Y.S.2d 864, 869-70 (N.Y. App. Div., 3d Dept. 1996) (jury awarded $150,000 for emotional distress and humiliation to plaintiff who testified that she was "a mess," but did not present any other evidence of the severity and consequences of her condition; court ultimately reduced the award to $20,000); Port Washington Police Dist. v. State Div. of Human Rights, 634 N.Y.S.2d 195, 196 (N.Y. App. Div. 2d Dept. 1995) (finding award of $200,000 for compensatory damages for mental anguish to be excessive and reducing the award to not exceed $5,000).

Because the Court believes that the instant case is more analogous to the emotional distress claims described in Walia, the Court will enter a PJR of $150,000, which would necessarily include $52,042.45 for emotional distress for each plaintiff. As this amount tends towards the higher end of the range of emotional distress awards analyzed in Walia, the Court believes it to be fair. Furthermore, the plaintiffs presented no evidence at the hearing that would demonstrate that punitive damages are available or are warranted, or how they would be measured. Therefore, the Court does not take that possibility into account for purposes of this PJR.

CONCLUSION

For the reasons discussed above, **the Court concludes that plaintiffs have shown probable cause to believe that they will prevail on their claims against the defendants and be entitled to at least $150,000 for their claims against the defendants**.

The plaintiffs have submitted a proposed Order for Prejudgment Remedy, in which they detail the particular assets they seek to encumber by the attachment. That Order will hereby enter in the amount of $150,000.00.

This ruling is made without prejudice. The parties may file a motion with the Court asking for a modification of the PJR pursuant to Conn. Gen. Stat. § 52-278k, if warranted by the circumstances.

SO ORDERED at Bridgeport this ____ day of October 2001.

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HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE