UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHELE SAVALLE, Plaintiff,	:	
vs.	:	CASE NO. 3:00CV675 (WWE)
KOBYLUCK, INC., ET AL. Defendants.	:	

RULING
ON PLAINTIFF'S APPLICATION FOR PREJUDGMENT REMEDY

On July 18, 2001, this Court conducted a hearing on plaintiff's application for a prejudgment remedy ("PJR") of attachment in the amount of $1,000,000 [Doc. # 50].[1] This civil action was commenced on April 12, 2000, 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 the common law of the State of Connecticut for acts related to sexual harassment, infliction of emotional distress and false imprisonment. These claims relate primarily to the actions of one defendant, Mark Kobyluck ("defendant"), while he was plaintiff's supervisor.

During the July 18 argument, counsel for the parties agreed that the court could rule on the PJR based on affidavits submitted

[1] Plaintiff indicated at the hearing that, in the event the court granted her application, she would not be opposed to defendants posting a bond in satisfaction of the PJR rather than the attachment of specific property.

with the papers. Neither side called any witnesses at the hearing or submitted any additional evidence. Therefore, in ruling on this application, the Court considered the papers submitted by both sides, as well as two affidavits submitted by plaintiff [Doc. ## 52, 61, Exhibit B], a damage analysis submitted by defendants [Doc. # 58, Exhibit A], the transcript of plaintiff's January 31, 2001 deposition [Doc. # 58, Exhibit B], a partial transcript from Matthew Kobyluck's deposition on August 22, 2000 [Doc. # 61, Exhibit A], and a psychological evaluation of plaintiff [Doc. # 61, Exhibit C].

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 at this stage of the case to be $350,000. Therefore, **plaintiff's application [Doc. # 50] 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).[2] This statute requires that the application include:

> An affidavit sworn to by the plaintiff or any

[2] 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).

> 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 prejudgment remedy, the plaintiff must establish probable cause that a judgment in an amount equal to or greater than the prejudgment remedy sought will be rendered. "Probable cause" in the context of a prejudgment remedy 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 prejudgment remedy "is not contemplated to be a full scale trial on the merits of the plaintiff's claim." Id. The plaintiff 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 the following:

1. Plaintiff commenced this action on April 12, 2000, 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, infliction of emotional distress, and false imprisonment.

2. Plaintiff was employed as a cement truck driver by defendant Kobyluck Corp. from the spring of 1996 until May 3, 1999.

3. In the spring of 1998, Mark Kobyluck ("defendant") became plaintiff’s direct supervisor.

4. After defendant began supervising plaintiff, she alleges that he began making inappropriate sexual comments to her.

5. In particular, plaintiff alleges that defendant would refer to her as "Mother Jugs" over the radio and that defendant repeatedly requested that she perform oral sex on him.

6. On a separate occasion, plaintiff alleges that defendant blocked her from leaving his office, locked the door, and forced plaintiff to place her hand on his penis. During this occurrence, plaintiff testified in her deposition that she repeatedly told defendant to stop and to open the door. Plaintiff stated that she did not feel that she was in danger but, rather, she felt angry and uncomfortable.

7. Plaintiff stated that on another occasion defendant threw a cup of water on her chest and that he made a comment about a wet t-shirt contest. During this incident, plaintiff testified that the office manager was present.

8. On another occasion plaintiff stated that defendant told her

that he would take the "heat off" of her if she would perform oral sex on him. Plaintiff stated that she complained to Matt Kobyluck about these comments and asked him to tell defendant to stop making those comments. Plaintiff testified that she complained directly to Matt Kobyluck on one other occasion about the way defendant treated her.[3] Matt Kobyluck is also a defendant in this case.

9. Plaintiff also alleges that defendant sexually harassed other women who worked for the Kobyluck Corp., and that Matt Kobyluck, another supervisor and defendant in this case, had knowledge of those incidents.

10. Plaintiff alleges that defendant sexually assaulted her while they were in a company vehicle on May 3, 1999.

11. Plaintiff testified that defendant told her that "[she] just put me in a very serious situation" and that "[she] better not tell anyone about this; swear to God and on [her] kids life [sic]." Plaintiff stated that during this trip she felt threatened and was scared for her safety.

12. After plaintiff and defendant returned to the plant that day, she asked defendant on several occasions if she could leave for the day and defendant refused her request.

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[3] Matt Kobyluck was plaintiff's supervisor prior to the spring of 1998, and is defendant's brother.

13. Plaintiff stated that during this time she was in shock, and immediately upon returning to the plant she went to her truck, where she was crying and eventually blacked out.
14. Plaintiff did not tell anyone at work that afternoon what had occurred earlier between her and defendant.
15. Later in the afternoon on May 3, plaintiff became aware that a scheduled concrete pour was not going to take place and she left work.
16. Plaintiff testified that, after leaving work the afternoon of May 3, 1999, she felt that she could never return to work there.
17. On May 4, 1999, plaintiff reported defendant's conduct to the Police Department of Montville, Connecticut.
18. On May 26, 1999, plaintiff filed a complaint with the Connecticut Commission on Human Rights and Opportunities and the Equal Employment Opportunities Commission.
19. State criminal proceedings based on the events of May 3, 1999, are currently pending against the defendant.
20. Defendant has not entered a plea in the criminal matter and a trial date has not been set.
21. In his deposition, Matt Kobyluck testified that defendant told him that he and plaintiff had had numerous conversations of a sexual nature and that, on this particular day, defendant asked

plaintiff to perform oral sex on him in the truck and that plaintiff refused.

22. Plaintiff's total undisputed economic loss is approximately $52,302.

23. Plaintiff began seeing a psychologist on May 11, 1999, and continued to seek treatment through October 2000, the date of the psychologist's evaluation. Although plaintiff's counsel represented that she continues to receive counseling, there is no evidence before the court of current treatment.

24. There is no evidence that defendants or defendant companies carry an insurance policy which would be sufficient to cover any judgment rendered in this case.

25. Plaintiff seeks an award of attorney's fees and costs in the amount of $200,000.

DISCUSSION

The Court finds that there is probable cause to believe that the jury would award plaintiff at least $350,000 on her claims. The court reaches this conclusion after consideration of a variety of factors. First, it is undisputed that plaintiff suffered approximately $50,000 in economic losses.

Next, plaintiff also sought $200,000 as a portion of the attachment for attorney's fees and costs. The Court declines to

award this amount as plaintiff did not submit an affidavit detailing costs and fees incurred to date. Defendants argue that attorney's fees in a case such as this would be no more than $100,000 to $150,000. Given the complexity of the issues involved in this case, the Court finds it reasonable to award $150,000 for attorney's fees as part of the prejudgment attachment. However, this decision is without prejudice to plaintiff filing a motion for modification of the PJR, attaching affidavits supporting an increase in the attorney's fees allocation.

Finally, the court must consider the issue of non-economic and punitive damages. Plaintiff submitted a report from her psychologist which details the emotional distress plaintiff continues to suffer as a result of the events giving rise to this case. The facts alleged, if proven, are egregious, and could result in an enormous verdict. However, the Court is not prepared to make such an award at this preliminary stage. On both issues of non-economic and punitive damages, any jury award will turn primarily on the credibility of the witnesses. At the hearing neither side presented live testimony, requiring the court to base its decision entirely upon affidavits and reports submitted with the pleadings. Although the court is able to render a decision on the PJR motion on the basis of this evidence, it is unable to make the credibility assessments necessary to determine whether there is probable cause to believe a jury would award

specific amounts for non-economic and punitive damages.

However, the Court finds that plaintiff has presented sufficient evidence that there is probable cause to believe that a jury would award plaintiff $150,000 in non-economic damages. The court bases this decision on the report submitted by plaintiff's psychologist, plaintiff's deposition testimony, the egregious nature of the allegations, and similar awards given for emotional distress in sexual harassment cases. See 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).

The Court declines to increase the PJR award to encompass punitive damages, as there is no evidence pertaining to the defendants' intent or willfulness, and no basis upon which the court could predict what a jury would award on these grounds.

CONCLUSION

For the reasons discussed above, **the Court concludes that plaintiff has shown that there is probable cause to believe that she will prevail on her claims against the defendants and that a jury would award her at least $350,000 for her claims against defendants**.

In light of the foregoing, defendants are enjoined from directly or indirectly selling, removing, assigning, concealing, transferring, encumbering, hypothecating or otherwise disposing of or alienating all or any portion of their assets, except as may be necessary for the payment of reasonable and necessary living and business expenses, during the pendency of these proceedings unless a bond is posted to cover the amount of the PJR within 30 days. If defendants choose not to post a bond to satisfy this amount, plaintiff must submit a proposed Order for Prejudgment Remedy of Attachment, in which she details the particular assets she seeks to encumber by the attachment.

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.

While a ruling on a PJR is not a dispositive motion (GOETTEL), because of the injunctive component of this order, the parties are free to seek the district judge's review of this ruling. See 28 U.S.C. § 636(b)**(written objection to ruling must be filed within ten**

days after service of same); Fed. R. Civ. P. 6(a), 6(e) & 72; Rule 2 of the Local Rule for United States Magistrate Judges, United States District Court for the District of Connecticut; Small v. Secretary of HHS, 892 F.2d 15, 16 (2d Cir. 1989)**(failure to file timely objection to Magistrate Judge's recommended ruling may preclude further appeal to Second Circuit)**.

SO ORDERED at Bridgeport this ____ day of September, 2001.

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HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE