

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ERIKA MARTINEZ	:	CIVIL ACTION
v.	:	
McNAMARA TRADING COMPANY	:	04-5528

MEMORANDUM

Baylson, J.

August 24, 2005

In this case in which Plaintiff sues Defendant McNamara Trading Co. under Title VII of the Civil Rights Act, Plaintiff also originally named Defendant Albert Perry as a Defendant in Counts One and Three, charging Title VII violations, and also in Count Five, charging sexual harassment under the Pennsylvania Human Rights Act, and Count Six, a common law claim for intentional infliction of emotional distress.

Plaintiff previously consented to the dismissal of Albert Perry on Counts One and Three because Title VII does not apply to individuals. Defendant Perry pressed his Motion to Dismiss Counts Five and Six, asserting that the Court should not exercise supplemental jurisdiction under 28 U.S.C. § 1367 over the pendent state law claims, arguing inter alia that the state law claims predominated over the remaining federal claims.

Plaintiff asserted that the Motion to Dismiss Albert Perry should be denied because supplemental jurisdiction was proper under 28 U.S.C. § 1367, and that the state claims did not substantially predominate over the Title VII claims against Defendant McNamara Trading Co.

Although the Court initially advised counsel it was likely to dismiss Perry as a Defendant because the only claims against him were state law claims, following the Supreme Court's decision in Exxon Mobil Corp. v. Allapattah Services, Inc., 125 S. Ct. 2611 (2005), this Court asked counsel to supplement their legal arguments on the issue of supplemental jurisdiction. In that case, the Supreme Court held that a federal court in a diversity action may exercise supplemental jurisdiction over additional plaintiffs whose claims do not satisfy the minimum amount in controversy requirement, provided the claims are part of the same case or controversy as the claims of plaintiffs that do allege a sufficient amount in controversy. In doing so, the Supreme Court overruled its prior decision in Finley v. United States, 490 U.S. 545 (1989), which held that original jurisdiction over claims involving particular parties did not itself confer supplemental jurisdiction over additional claims involving other parties. In view of the holding that § 1367 is a "broad grant of supplemental jurisdiction over other claims within the same case or controversy, as long as the action is one in which the district courts would have original jurisdiction," and that the last sentence of 1367(a) makes it clear that the grant of supplemental jurisdiction extends to claims involving joinder or intervention of additional parties, 125 S. Ct. at 2621, Plaintiff asserts that Exxon Mobil provides authority, if not discretion, to this Court to deny Perry's Motion to Dismiss.

The defendants assert that Exxon Mobil is not controlling because its holding is limited to its facts. The Court believes plaintiff presents the better interpretation, but in any event, the Court also rejects Defendants' arguments that the state law claims would substantially predominate over the federal claims and could prejudice defendants in this action. The Court finds no basis for prejudice, and is unable to find that the state law claims

predominate. Indeed, given the usual emphasis by a plaintiff to pursue a corporate defendant, rather than an individual, for reasons of collection on a judgment if nothing more, the Court doubts that this case will proceed with the state law claims predominating. Also, given the relatively easier burden of proof under Title VII than under the pendent state law claims, the Court cannot find that the pendent law claims will prejudice the Defendants.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ERIKA MARTINEZ : CIVIL ACTION

v. :

McNAMARA TRADING COMPANY : 04-5528

ORDER

AND NOW, this 24th day of August, 2005, the Motion of Defendant Albert Perry to Dismiss Counts Five and Six of the Complaint is DENIED for the reasons stated in the foregoing Memorandum.

BY THE COURT:

/s/ Michael M. Baylson

Michael M. Baylson, U.S.D.J.