

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MAURICIO CRIALES,

Plaintiff,

-against-

MEMORANDUM AND ORDER

95-CV-1709

AMERICAN AIRLINES, INC.,

Defendant.

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GLASSER, United States District Judge:

Plaintiff Mauricio Criales ("Criales") commenced this action on April 28, 1995, alleging claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and 42 U.S.C. § 1981 as well as pendent state claims for defamation and intentional infliction of emotional distress. On June 25, 1997, Defendant American Airlines, Inc. ("AA") moved for partial judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) ("Rule 12(c)") contending, *inter alia*, that the pendent state law claims – the third and fourth causes of action – are barred under the applicable statutes of limitations and that the Title VII harassment claim based on pre-November 1991 occurrences – the surviving portion of the first cause of action – must be dismissed because the relief sought by plaintiff is unavailable under the statutory scheme. Pending disposition of that motion,

United States Magistrate Judge A. Simon Chrein stayed discovery on the first, third and fourth causes of action, the subjects of AA's motion for partial judgment on the pleadings. Criales has now appealed from that determination.

For the reasons set forth below, AA's motion is granted and Criales' appeal is dismissed as moot.<sup>1</sup>

#### **FACTS**

The facts underlying this motion are set forth in this Court's November 4, 1994 Memorandum and Order ("Criales I") and Criales v. American Airlines, Inc., 1995 WL 669900 (E.D.N.Y. Nov. 6, 1995), *aff'd in part and rev'd in part*, 105 F.3d 93 (1997) ("Criales II"), familiarity with which is assumed.

In Criales II, this Court noted that the pendent state claims asserted by Criales were untimely, but dismissed the

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<sup>1</sup> One additional matter - AA's motion for sanctions - is also disposed of herein. On February 13, 1998 AA moved, pursuant to Fed. R. Civ. P. 16(f) and 41(b), for the imposition of sanctions against Criales. A hearing was held on that motion on March 27, 1998, and at the conclusion of the hearing and for the reasons stated on the record, that motion was denied. However, no formal order embodying that decision was issued at that time.

claims because of the absence of any basis for exercising supplemental jurisdiction. 1995 WL 669900, \*9-10. Because the United States Court of Appeals for the Second Circuit reversed the dismissal of one of the federal claims asserted by Criales, the pendent state claims were resurrected. In the same opinion, this Court granted summary judgment to AA on Criales' pre-November 1991 Title VII harassment claim. This latter ruling was affirmed by the Second Circuit.

On June 10, 1998 Magistrate Judge Chrein stayed discovery on the causes of action that are the subject of this motion. Criales appealed from that order on June 24, 1998.

### **DISCUSSION**

#### **A. Standard**

In deciding a Rule 12(c) motion, the applicable standard is identical to that used in conjunction with a Rule 12(b)(6) motion. Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir. 1994). Under that test, "a court must accept the allegations contained in the complaint as true, and draw all reasonable inferences in favor of the non-movant; it should not dismiss the complaint 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle

him to relief.'" Ad-Hoc Committee of the Baruch Black and Hispanic Alumni Ass'n, 835 F.2d 980, 982 (2d Cir. 1987) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). This standard is "applied with particular strictness when the plaintiff complains of a civil rights violation." Sheppard, 18 F.3d at 150.

B. First Cause of Action/Title VII Claim

AA contends that the first cause of action must be dismissed because (1) insofar as it alleges national origin discrimination,<sup>2</sup> this Court lacks jurisdiction because Criales' EEOC charge did not attribute his harassment to national origin discrimination and (2) Criales is not entitled to the relief - back pay and punitive damages - that he seeks. AA is right on both counts.

1. The EEOC Charge

First, the EEOC charge states that the discrimination took place on December 20, 1991, the date of Criales' discharge. Cerasia Aff., Ex. A. In addition, although Criales complains in his EEOC charge of harassment throughout the course of his

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<sup>2</sup> Although titled "Employment Discrimination Based upon National Origin," the first cause of action appears to attribute the alleged harassment to racial discrimination, in particular, Criales' Hispanic ancestry.

employment, the only discrimination mentioned is in the last paragraph of the charge, in connection with his discharge:

I allege that I have been discriminated against on the basis of my national origin (Colombia) in violation of Title VII of the Civil Rights Act of 1964, as amended, in that there is inconsistency in Respondent's disciplinary policy. I am aware of individuals whose infractions were considerably more serious than mine yet they were not disciplined.

Id. This fact was noted in Criales I. See Criales I at 4 ("The date of the violation complained of is December 20, 1991, the date of Criales' termination. Thus, this claim appears to be limited to a charge of wrongful termination.") and n.2 ("a reading of the supporting documents . . . would limit his Title VII claim to one for wrongful discharge, as that was the only discrimination charged in Criales' February 5, 1992 complaint").<sup>3</sup>

AA points out that "[i]t is well-settled in this Circuit that a court lacks jurisdiction over claims not included in an EEOC charge." AA Mem. at 9. Indeed, as the Second Circuit

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<sup>3</sup> The discrepancy between the EEOC charge and the Complaint - assuming that it properly alleges national origin discrimination, see n.1, *supra* - was noted by this Court in Criales II. See Criales II, 1995 WL 669900 at \*5 (noting that Criales treats the first cause of action as one based upon racial discrimination).

has noted, "[a] district court only has jurisdiction to hear Title VII claims that either are included in an EEOC charge or are based on conduct subsequent to the EEOC charge which is 'reasonably related' to that alleged in the EEOC charge." Butts v. City of New York Department of Housing Preservation and Development, 990 F.2d 1397, 1401 (2d Cir. 1993).

2. Availability of Relief Sought

In the alternative, AA contends that the first cause of action must be dismissed because the relief sought by Criales for the pre-November 1991 harassment is not available under the version of Title VII applicable to the claim.<sup>4</sup> Of the two elements of Criales' damages claim that can be tied to this claim,<sup>5</sup> the punitive damages claim clearly cannot be based upon the pre-November 1991 harassment alleged in the first cause of

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<sup>4</sup> The Supreme Court held in Landgraf v. USI Film Products, 511 U.S. 244, 286 (1994) that the provisions of Title VII enacted on November 21, 1991 which made available compensatory and punitive damages are not to be applied retroactively.

<sup>5</sup> The Complaint also seeks damages for "past medical expenses . . . as a direct result of the loss of . . . medical insurance coverage through his wrongful . . . termination" and "revocation of the 'no comment' letter" upon which Criales' defamation claim is based.

action. In addition, a claim for back pay and lost wages – like the one asserted by Criales – must be premised upon a denied employment opportunity or discharge. See, e.g., Tobey v. Extel/JWP, Inc., 985 F.2d 330, 332 (7th Cir. 1993) (defendant held entitled to summary judgment because reasonable factfinder could not find that plaintiff was constructively discharged and therefore entitled to relief sought); Lansgraf v. USI Film Products, 968 F.2d 427, 429 (5th Cir. 1992) (although plaintiff incontestably suffered “significant sexual harassment”, “[b]ecause she voluntarily left her employment . . . she must demonstrate that she was constructively discharged in order to recover back pay as damages”); L. Larson, 5 Employment Discrimination § 92.01 (“[s]o long as the employee – or applicant – can show that a discriminatory act took away his or her employment position or opportunity, an award of back pay will most likely be deemed appropriate”). Here, Criales has not – and cannot – claim that he was discharged or constructively discharged as a result of any pre-November 1991 harassment.<sup>6</sup>

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<sup>6</sup> Although “it need not appear that plaintiff can obtain the particular relief prayed for, as long as the court can ascertain that some relief may be granted,” Wright and Miller, 5A Federal Practice and Procedure § 1357, there is no apparent basis for any of the other

For these reasons, the first cause of action is dismissed.

C. Statute of Limitations

AA also argues that the pendent state claims for defamation and intentional infliction of emotional distress. In response, Criales argues that the statute of limitations may not be raised at this late date. Because both claims are clearly untimely – C.P.L.R. § 215(3) prescribes a one-year limitations period for both defamation and intentional infliction of emotional distress,<sup>7</sup> the last act complained of occurred on or about February 3, 1992 and this action was filed on April 28, 1995 – and AA' motion is not untimely,<sup>8</sup> these claims are dismissed.

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forms of relief normally available under Title VII.

<sup>7</sup> Although not specified in that provision, intentional infliction of emotional distress has been held subject to its constraints. See Kourkoumelis v. Arnel, 238 A.D.2d 313, 655 N.Y.S.2d 653 (App. Div. 1997).

<sup>8</sup> Fed. R. Civ. P. 12(c) prescribes that a motion for judgment on the pleadings may be made "[a]fter the pleadings are closed but within such time as not to delay the trial." There can be no serious contention here that defendant's motion will result in a delay of trial.

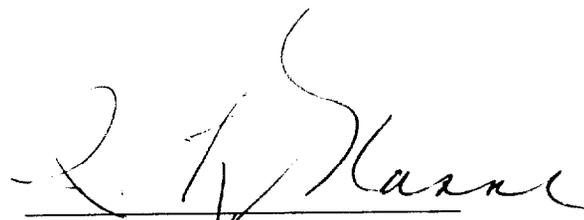
CONCLUSION

For the foregoing reasons, defendant's motion for partial judgment on the pleadings is granted and the first, third and fourth causes of action are dismissed. The second cause of action is unaffected by this decision and the parties are directed to proceed expeditiously toward the conclusion of discovery on that cause of action. The Magistrate is directed to alert this Court immediately upon the conclusion of discovery so that a trial date may be promptly scheduled.

Criales' appeal of the Magistrate's stay of discovery on the first, third and fourth causes of action is rendered moot by this decision and is dismissed. Finally, AA's February 13, 1998 motion for sanctions is denied.

SO ORDERED.

Dated: Brooklyn New York  
July 20 1998

  
I. Leo Glasser, U.S.D.J.

Copies of the foregoing Memorandum and Order were this day sent to:

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