

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:16-cv-00654-BO

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
BOJANGLES' RESTAURANTS, INC.,)
)
Defendant.)
_____)

**PLAINTIFF EEOC'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56(c), Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC") respectfully moves this Court for partial summary judgment against Defendant Bojangles' Restaurants, Inc. ("Defendant") as to Defendant's third, fourth, sixth, seventh, eighth, ninth, tenth, and twelfth affirmative defenses. As described more fully in EEOC's accompanying Memorandum in Support of Plaintiff EEOC's Motion for Partial Summary Judgment, there is either no basis for or no genuine issue of material fact with regard to these defenses, and EEOC is therefore entitled to judgment as a matter of law.

As grounds for its Motion, EEOC states the following:

1. EEOC filed its Complaint on July 6, 2016. [ECF 1].
2. Defendant filed its Answer on September 5, 2016. [ECF 6].
3. Defendant's Answer articulated numerous affirmative defenses, including the

following affirmative defenses that are the subject of EEOC's motion:

- a. **THIRD DEFENSE**: To the extent that the EEOC seeks to assert claims under Title VII based upon alleged acts of discrimination or harassment occurring more than 180 days prior to the filing of a relevant, valid and timely charge of

discrimination with the EEOC, such claims are barred by the applicable statute of limitations.

b. **FOURTH DEFENSE**: The EEOC's claims are barred to the extent that they were not referred to in or developed in the course of the EEOC's reasonable investigation of any relevant, valid and timely filed charge of discrimination on which the EEOC bases this action and to the extent [Jonathan] Wolfe has otherwise failed to exhaust her administrative remedies as required by law.

c. **SIXTH DEFENSE**: The EEOC's claims are barred because the conduct alleged (which is expressly denied), even if true, was consensual and not unwelcome to Wolfe.

d. **SEVENTH DEFENSE**: The EEOC's claims are barred to the extent Wolfe failed to make reasonable efforts to mitigate her damages, and the EEOC's claims for lost earnings on behalf of Wolfe must be reduced by compensation she has received or should have received.

e. **EIGHTH DEFENSE**: To the extent that Wolfe has suffered damages from the conduct alleged in the EEOC's complaint, which Bojangles' denies, Bojangles' and/or its former or current agents were not the legal or proximate cause of such damages.

f. **NINTH DEFENSE**: If Wolfe has been damaged as alleged, which is denied, her damage has been caused by her own intentional or negligent actions or omissions.

g. **TENTH DEFENSE**: The EEOC's claims are barred by the doctrines of laches, estoppel and waiver.

h. **TWELFTH DEFENSE**: Subject to a reasonable opportunity for investigation and discovery, the EEOC's claims are barred or limited by the doctrine of after-acquired evidence as it applies to Wolfe.

4. Defendant has not withdrawn or struck the challenged affirmative defenses, and continues to pursue the same.

5. The challenged affirmative defenses are either conclusory allegations, are not supported by law, and/or not supported by the factual record.

In support of its Motion, EEOC submits, and incorporates as if repeated verbatim herein, its statement of material facts and supporting memorandum, filed contemporaneously herewith.

WHEREFORE, Plaintiff U.S. Equal Employment Opportunity Commission respectfully moves the Court to grant its Motion for Partial Summary Judgment and dismiss with prejudice Defendant's third, fourth, sixth, seventh, eighth, ninth, tenth, and twelfth affirmative defenses.

Filed this the 27th day of July, 2017.

Respectfully submitted:

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2017, I electronically filed the above **PLAINTIFF EEOC'S MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system, which automatically sends notification of such filing to counsel of record at the email addresses listed below:

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