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CITY OF
MIDDLE DISTRICT COURT
FLORIDA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

TINA LAWLER,)	
)	
Plaintiff,)	
v.)	
)	CASE NO.: 99-65-CIV-OC-10C
)	
SUMTER ELECTRIC COOPERATIVE, INC.,)	
)	
Defendant.)	

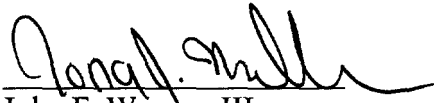
**DEFENDANT’S MOTION TO PARTIALLY DISMISS, OR,
ALTERNATIVELY, MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Sumter Electric Cooperative, Inc. (“Defendant” or “Sumter”) moves this Court to dismiss that portion of Plaintiff’s Complaint which seeks recovery for sexual/gender harassment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., (“Title VII”) and the Florida Civil Rights Act of 1992, §§ 760.01 et seq., Fla. Stat. (“FCRA”). As set forth in the Memorandum attached to this Motion, Plaintiff cannot state a claim for sexual/gender harassment that allegedly occurred in 1992 because the alleged harasser, Jon Perry, was discharged in 1993 and died in 1995. Since Plaintiff did not file an administrative charge until September 1997, the applicable statutes of limitations under Title VII and the FCRA bar her sexual/gender harassment claim as a matter of law.

Defendant has attached as Exhibits A and B to its supporting Memorandum the Affidavit of Tina Wallace (Sumter’s Director of Human Resources and Corporate Services) and the charge of discrimination that Plaintiff purports to have filed with the

Equal Employment Opportunity Commission. Defendant realizes that because Defendant has submitted documents outside the pleadings for the Court's review, it may choose to treat Defendant's Motion to Dismiss as a Motion for Summary Judgement pursuant to Federal Rule of Civil Procedure 56. The untimely filing of Plaintiff's sexual/gender harassment claim likewise makes dismissal appropriate under Rule 56.

Respectfully submitted,



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Attorneys for Defendant

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TINA LAWLER,)
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 Plaintiff,)
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) CASE NO: 99-65-CIV-OC-10C
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 SUMTER ELECTRIC COOPERATIVE, INC.,)
)
 Defendant.)
 _____)

**MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION TO PARTIALLY DISMISS, OR, ALTERNATIVELY,
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Tina Lawler ("Plaintiff") has sued Sumter Electric Cooperative, Inc. ("Defendant" or "Sumter") for sexual/gender harassment and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. ("Title VII") and the Florida Civil Rights Act of 1992, §§ 760.01 et seq., Fla. Stat. ("FCRA"). Because Plaintiff cannot state a claim for sexual/gender harassment under Title VII or the FCRA, Defendant moves the Court to dismiss that claim as a matter of law pursuant to Federal Rule of Civil Procedure 12(b)(6). Alternatively, Defendant asks that Plaintiff's sexual/gender harassment claim be dismissed as a matter of law pursuant to Federal Rule of Civil Procedure 56(c).

I. ARGUMENT AND CITATION OF AUTHORITY

A. Plaintiff's Sexual/Gender Harassment Claim is Appropriate for Resolution Under the Standards of Rule 12(b)(6).

Dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6) is appropriate if it is clear "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Because a motion to dismiss questions the legal sufficiency of a complaint, in deciding such a motion a court must accept the facts pleaded as true and construe them in the light most favorable to the plaintiff. Digirol v. Pall Aeropower Corp., 19 F. Supp. 2d 1304, 1306 (M.D.Fla. 1998). However, when on the basis of a dispositive issue of law, no construction of the factual allegations of a complaint will support the cause of action, dismissal is appropriate. Id. Conclusory allegations and unwarranted deductions of fact need not be accepted as true; nor must a court accept a plaintiff's legal conclusions. Hull v. Case Corp., No. 93-1209-CIV-KING, 1993 U.S. Dist. LEXIS 21164, at *3 (S.D.Fla. December 13, 1993).

Assuming only for the purpose of this Motion that all of Plaintiff's factual assertions with regard to her sexual/gender harassment claim are true, that claim must still be dismissed as a matter of law under Rule 12(b)(6).

B. Plaintiff's Sexual/Gender Harassment Claim is Time-Barred Under Title VII and the FCRA.

Plaintiff's sexual/gender harassment claim must be dismissed pursuant to Rule 12(b)(6) because that claim is time-barred under the filing requirements of both Title VII and the FCRA. Because Florida is a deferral state, an administrative charge of

discrimination under Title VII must be filed within 300 days of the alleged violation. See Digirola, 19 F. Supp. 2d at 1309; Paldano v. Althin Medical, Inc., 974 F. Supp. 1441 (S.D. Fla. 1996); Burger v. City of Daytona Beach, No. 94-1245-CIV-ORL-22, 1996 U.S. Dist. LEXIS 15945, at *18-19 (M.D.Fla. October 9, 1996), aff'd, 135 F.3d 143 (11th Cir. 1998). Under the FCRA, a plaintiff must file a complaint with the Florida Commission within 365 days of the alleged violation. Id.; See also § 760.11(1), Fla. Stat.

In her Complaint, Plaintiff bases her sexual/gender harassment claim on the following allegations:

- (a) Plaintiff was touched against her will by her supervisor, Jon Perry;
- (b) Plaintiff was forced to sit on the lap of Jon Perry; and
- (c) Plaintiff was forced to model dresses in front of Jon Perry.

Complt. ¶¶ 11, 18. The alleged sexual harassment occurred in 1992. See Affidavit of Tina Wallace ¶ 3.¹ Sumter discharged Jon Perry, the only alleged harasser in this case, on August 2, 1993. Wallace Aff. ¶ 4. Furthermore, Mr. Perry died on May 6, 1995. Wallace Aff. ¶ 5. Plaintiff, however, did not file a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) until on or about September 16, 1997.² Any alleged sexual harassment occurring before November 20, 1996 (300 days) is time-barred under Title VII, and any harassment occurring before September 16, 1996 (365 days) is time-barred under the FCRA. Having died in 1995, it is axiomatic that Perry could not have sexually harassed Plaintiff during the limitations periods under Title

¹ Tina Wallace is Sumter’s Director of Human Resources and Corporate Services and her Affidavit is attached as Exhibit A. Citations to her Affidavit will be indicated by “Wallace Aff. ¶ _____.”

² The only charge of discrimination that Defendant is aware that Plaintiff filed is attached as Exhibit B.

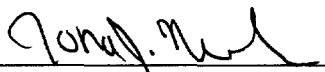
VII or the FCRA. Consequently, Plaintiff's sexual/gender harassment claim must be dismissed as a matter of law. See King et al. v. Auto, Truck, Industrial Parts and Supply, Inc., 21 F. Supp. 2d 1370 (N.D.Fla. 1998) (the filing of a charge of discrimination within the prescribed time limits is a prerequisite to a Title VII action); Weaver v. Florida Power and Light, No. 95-8519-CIV-RYSKAMP, 1996 U.S. Dist. LEXIS 13403, at *24-25 (S.D.Fla. July 16, 1996) (claims based on acts which took place more than 365 days before the filing of the FCRA charge are time-barred); Williams v. Eckerd Family Youth Alternative, 908 F. Supp. 908, 910 (M.D.Fla. 1995) (failure to file a timely complaint with the FCRA is fatal); United Air Lines v. Evans, 431 U.S. 553, 558 (1977) (a "discriminatory act which is not made the basis of a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed.").

Because Defendant has submitted the Affidavit of Tina Wallace and the charge of discrimination that Plaintiff purportedly filed with the EEOC in support of its Motion to Dismiss, the Court may treat the Motion as a Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(c). See Fed. R. Civ. P. 12(b). The only determination for the Court in a summary judgment motion is whether there exist genuine and material issues of fact to be tried. See Fed. R. Civ. P. 56(c). All evidence and inferences from the underlying facts must be viewed in the light most favorable to the nonmovant. Earley v. Champion Int'l. Corp., 907 F.2d 1077, 1080 (11th Cir. 1990). Because the undisputed evidence demonstrates that Plaintiff's sexual/gender harassment claim is untimely under both Title VII and the FCRA, her claim likewise must be dismissed as a matter of law under Rule 56(c).

II. CONCLUSION

In her Complaint, Plaintiff alleges that Jon Perry sexually harassed her and discriminated against her because of her gender. Although Sumter discharged Mr. Perry in August 1993 and he died in 1995, Plaintiff did not file an administrative charge of discrimination with the EEOC until September 1997. Because Plaintiff's sexual/gender harassment claim is untimely under Title VII and the FCRA, the Court must dismiss that claim as a matter of law under Rule 12(b)(6). Alternatively, summary judgment is appropriate with regard to Plaintiff's sexual harassment/gender claim pursuant to Rule 56.

Respectfully submitted,



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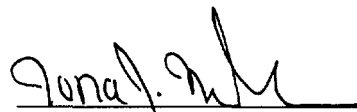
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Defendant.)	
_____)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with a copy of **DEFENDANT’S PARTIAL MOTION TO DISMISS, OR ALTERNATIVELY, PARTIAL MOTION FOR SUMMARY JUDGEMENT** properly addressed envelope with adequate postage thereon as follows:

James P. Tarquin, Esq.
44 S.E. 1st Avenue, Suite 306
Ocala, Florida
34471

This 23rd day of April, 1999.



Jona J. Miller

Attorney for Defendant

A

I have read the foregoing Affidavit, and to the best of my knowledge and belief, it is true and correct.

This 22nd day of April, 1999.

Tina Wallace

Tina Wallace

STATE OF FLORIDA
COUNTY OF SUMTER

Sworn to and subscribed before me this
22nd day of April, 1999, by Tina Wallace,
who is personally known to me.

Christine T. Green

Christine T. Green
Notary Public

1/17/2003

My Commission Expires



Christine T. Green
MY COMMISSION # CC776208 EXPIRES
January 17, 2003
BONDED THRU TROY FAIN INSURANCE, INC.

B

Florida Comm. on Human Relations and EEOC
State or local Agency, if any

97 SEP 16 PM 12:01

NAME (Indicate Mr., Ms., Mrs.) **Ms. Tina Lawler** HOME TELEPHONE (Include Area Code) **(352) 726-8599**

STREET ADDRESS **1180 S. Hickory Hill Way, Inverness, FL 34450** CITY, STATE AND ZIP CODE **INVERNESS, FL 34450** DATE OF BIRTH **09/15/65**

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME **Sumter Electric Cooperative** NUMBER OF EMPLOYEES, MEMBERS **Cat C (201-500)** TELEPHONE (Include Area Code) **(904) 793-3801**

STREET ADDRESS **P O Box 301, Sumterville, FL 33585-0301** CITY, STATE AND ZIP CODE **SUMTERVILLE, FL 33585-0301** COUNTY **083**

NAME _____ TELEPHONE NUMBER (Include Area Code) _____

STREET ADDRESS _____ CITY, STATE AND ZIP CODE _____ COUNTY _____

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

RACE COLOR SEX RELIGION NATIONAL ORIGIN

RETALIATION AGE DISABILITY OTHER (Specify) _____

DATE DISCRIMINATION TOOK PLACE
EARLIEST **05/08/97** LATEST **05/08/97**

CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

On May 8, 1997, I received a low performance evaluation. I have been constantly harassed because of a previous sexual harassment case I was involved in. I am being subjected to a hostile environment. My position is that of Construction Support Rep. I in Engineering and I was hired on January 9, 1984. I am a female with a known disability.

I was told that the action taken against me was due to my sick time record, my poor job performance and my disability.

I believe that I have been retaliated against, because of my sex, female, in violation of section 704(a) of Title VII of the Civil Rights Act of 1964. I have also been denied a reasonable accomodation in violation of the Americans with Disabilities Act (ADA) of 1990, as amended.



Theodore C. Morris
MY COMMISSION # CCS57472 EXPIRES
May 27, 2000
BONDED THRU TROY FAIR INSURANCE, INC.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Tina Lawler
Date **9/9/97** Charging Party (Signature)

SIGNATURE OF COMPLAINANT
Tina Lawler
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year) **9/9/97** **Theodore C. Morris**