

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

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CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA, FLORIDA

TINA LAWLER,

Plaintiff,

CASE NO.: 99-65-CIV-OC-10C

vs.

SUMTER ELECTRIC
COOPERATIVE INC.,

Defendant.

_____ /

**PLAINTIFF TINA LAWLER'S RESPONSE TO DEFENDANTS'
MOTION TO DISMISS OR MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Tina Lawyer, responds to the Defendants Motion as follows:

1. Plaintiff has alleged a violation of §760.10 F.S., (Count I) and violation of Title VII.
2. Plaintiff is seeking damages due to gender discrimination, retaliation and harassment. As part of this claim, Plaintiff asserts that Jon Perry engaged in certain behavior that is in violation of 760.10 and Title VII.
3. Plaintiff concedes that harassment by John Perry directed toward Plaintiff (paragraph 11, Complaint) standing alone,, is time-barred.
4. Plaintiff, however, seeks to establish that the behavior of Jon Perry is part of a continuing violation of 760 and Title VII by the

Defendant. In such a situation, Summary Judgment is inappropriate.

5. It should be noted that no discovery has been undertaken whatsoever. In fact no case management conference between the parties has been held.
6. The harassment of Plaintiff continued because of her willingness to testify on behalf of Eddie Swistack. Eddie Swistack brought suit against the Defendant for a violation of his rights under Title VII because of the harassment by John Perry, toward Plaintiff.

MEMORANDUM OF LAW

Plaintiff agrees with Defendant that any purported harassment by Jon Perry is time-barred if it was not part of a continuing violation of Title VII. Once a Plaintiff has adduced sufficient facts to support the use of a continuing violation theory, she may then offer evidence of, and recover for, the entire continuing violation. West v. Philadelphia Electric, Co., 45 F.3d 744, 755 (3rd Cir. 1995). In the case at hand, Plaintiff is complaining of a "serial violation". A serial violation has been defined as a number of discriminatory acts emanating from the same discriminatory animus, each act constituting a separate wrong actionable under Title VII. Jensen v. Frank, 912 F.2d 517, 522 (1st Cir. 1990).

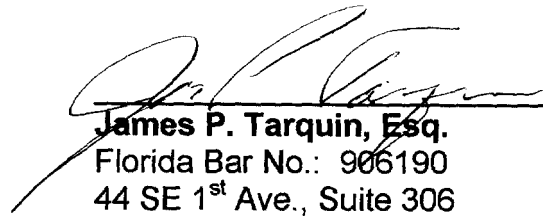
Plaintiff's claim of sexual harassment, and retaliation stem from the same animus, the original harassment by Jon Perry and Plaintiff's willingness to testify about it on behalf of Eddie Swistack. Berry v. Board of Supervisors of L.S.U., 715 F.2d 971 (5th Cir. 1983); Sabree v. Carpenters & Joiners, 921 F.2d 396 (1st

Cir. 1990). Plaintiff is seeking the opportunity to conduct discovery, which is specifically permitted by Rule 56 (e), Fed.R.Civ.P. It is premature to grant the Defendants' Motion for Summary Judgment. Vining v. Rynton, 99 F.3d 1056, (11th Cir. 1996). Since there are genuine fact issues, the Defendants' Motion should be denied.

WHEREFORE Plaintiff, Tina Lawler, requests this Court to enter an Order denying the Defendants' Motion to Dismiss.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing to John F. Wymer, Esquire 191 Peachtree Street, NE, 16th Floor, Atlanta, GA 30303 this 5th day of May, 1999.


James P. Tarquin, Esq.
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Attorney for Plaintiff

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
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TINA LAWLER,
Plaintiff,

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SUMTER ELECTRIC
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Defendant.

AFFIDAVIT OF TINA LAWLER

STATE OF FLORIDA


COUNTY OF MARION

My name is Tina Lawler. I am over the age of eighteen (18) and am fully competent to testify to the matters set forth in this Affidavit. This Affidavit is based upon my own personal and direct knowledge. I am employed by Sumter Electric. Since 1992, I have been subject to sexual harassment and retaliation. My former supervisor, John Perry, sexually harassed me up until July, 1993. A fellow employee, Eddie Swistack filed suit due to retaliation against him for complaining of the harassment by John Perry toward myself. I testified on his behalf. Subsequent to and as a result of this I have been subjected to continued harassment and retaliation. I filed timely sworn statements with the Florida Commission on Human Relations and the EEOC in July 1997, for harassment continuing from until May 8, 1997. (See Exhibit #1).

Further your affiant sayeth naught.


Tina Lawler

Sworn to and subscribed before me this 5 day of April, 1999.


Notary Public
State of Florida
My commission expires:

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