UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

LISA T. JACKSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CV412-139
	)	
PAULA DEEN, PAULA DEEN ENTERPRISES, LLC, THE LADY & SONS, LLC, THE LADY ENTERPRISES, INC., EARL W. "BUBBA" HIERS, and UNCLE BUBBA'S SEAFOOD AND OYSTER HOUSE, INC.,	)	
	)	
Defendants.	)	

THE HIERS DEFENDANTS' MOTION FOR RULE 11 SANCTIONS

Comes now, Earl W. "Bubba" Hiers and Uncle Bubba's Seafood and Oyster House, Inc. (collectively the "Hiers defendants"), and file this their Motion for Rule 11 Sanctions against Plaintiff and her two counsel and show the Court the following:

1. Rule 11 of the Federal Rules of Civil Procedure

Rule 11 of the Federal Rules of Civil Procedure now provides in pertinent part that by filing a pleading an attorney is certifying that to the best of his knowledge or information the filing "is not being presented for any improper purpose, such as to harass" and that "the allegations and other factual contentions have evidentiary support

. . ." Rule 11 (b)(1) and (3).

Despite having knowledge of the falsity of their core race based claims against the defendants, Plaintiff and her counsel have blindly insisted on pursuing those claims, which makes the earlier conduct of counsel relevant under a Rule 404 (b) analysis. In Doe v. Fulton-DeKalb Hosp. Auth., 2006 WL 2990442 at *2 (N.D. Ga. 2006), counsel was sanctioned for stubbornly and recklessly pursuing a tactic that "continued his campaign of vilification against the [] Defendants" in his court pleadings on the disqualification issue, "made no effort to address the requirements of the Georgia Rules of Professional Conduct," said nothing about controlling authority, and "made no attempt to show that he had standing to make the motion by demonstrating a violation of the rules sufficiently severe to call in question the fair and efficient administration of justice." Id. at *4.

In this case counsel has repeatedly trumpeted their race based claims in virtually every pleading all the while knowing the infirmities in this case both legally and factually. The Hiers Defendants served this pleading on Plaintiff's counsel on Friday, May 3, 2013 notifying them that they had a 21 day safe harbor under Rule 11 in which to dismiss the relevant allegations of her Second Amended Complaint and to dismiss all of her race based claims against these defendants. See Motion for Sanctions attached hereto as Exhibit "C." It was served via hand delivery on Mr. Woolf, via U.S. Mail on

Mr. Billips and via email on both Mr. Woolf and Mr. Billips. See email attached hereto as Exhibit "D."

2. Jackson's Second Amended Complaint

Jackson alleges in her Second Amended Complaint that her nieces are bi-racial, with an African-American father, so "derogatory remarks regarding African Americans are even more personally offensive to Ms. Jackson than they would be to another white citizen." Doc # 47, pp. 17, 21-22, ¶¶ 59, 78.

Jackson also makes specific allegations about Paula Deen - that Deen used the N word in referring to servers at her brother's wedding in 2007. Id, at ¶ 61-62.

3. The Facts

To put a point to Jackson's falsities in her allegations (and testimony for that matter), here's the rub - Jackson alleges that her nieces are bi-racial, with an African-American father, so "derogatory remarks regarding African Americans are even more personally offensive to Ms. Jackson than they would be to another white citizen." Second Am C., pp. 17, 21-22, ¶¶ 59, 78. At her deposition, however, Jackson conceded that the nieces were those of her partner, Ms. Sumerlin. See excerpt of Jackson Deposition, pages 22-23 attached hereto as Exhibit "A." Jackson proceeded to testify consistent with the allegation in the complaint that the niece (there is a single niece of Ms. Sumerlin) had a father who was "Puerto Rican African American" and that she was "very close" to the

nieces. Id., pp. 23-24. Sumerlin, however, flatly refuted Jackson's claim testifying that the young child's father was Hispanic, not African American, and that she hadn't seen her sister's children for years and had absolutely no relationship with them in the past five years! See excerpt of Sumerlin Deposition, pages 17, 19, 21, attached hereto as Exhibit "B."

Jackson's deposition also puts the lie to her allegations regarding Paula Deen. Jackson testified that she has never heard Paula Deen make a racist remark, other than when she described the clothing she'd like the wait staff to wear at her brother's wedding. However, Jackson mentioned nothing in her deposition about Paula Deen ever using the N word, despite describing the "sum total of the conversation." See excerpt of Jackson Deposition, pages 226-227, attached hereto as Exhibit "A."

Thus, in the more than two months since Jackson and Sumerlin's testimony and despite knowing that Jackson's race based claims hung by the thinnest of threads previously, Jackson's counsel have neither corrected the Second Amended Complaint, nor any of their briefs before this Court where they held Jackson's lie up as support for her race based claims.

4. Jackson Lacks Standing to Bring Race-Based Claims

Article III standing is a "threshold question in every federal case," requiring a court to determine "whether the plaintiff has 'alleged such a personal stake in the

outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth v. Seldin, 422 U.S. 490, 498-99 (1975). In ruling on a motion to dismiss for lack of standing, the Court "must accept as true all material allegations of the complaint, and must construe the complaint in favor of" the plaintiff. Id. at 501.

The defendants assert that Jackson, a white woman, lacks standing to pursue race-based claims of discrimination under 42 U.S.C. § 1981 and Title VII as alleged in counts 6, 7, 14, and 15 of her second amended complaint. See doc # 58, pp.16-31 In doing so, the Hiers defendants pointed out that Jackson, as a white woman, lacked standing to avenge harm that (according to her assertions) was directed at others, a result countenanced by Thompson v. North Am. Stainless, LP, ___ U.S. ___, 131 S. Ct. 863 (2011), the latest pronouncement on Title VII standing by the Supreme Court.

In response, all of the cases Jackson cites pre-date Thompson. Doc # 63, pp. 17-19 This makes a difference, for Thompson backed off a prior Supreme Court decision. For instance, in Equal Emp. Oppor. Comm'n v. Mississippi College, 626 F.2d 447, 482 (5th Cir. 1980), cited at page 17 of Jackson's brief, the former Fifth Circuit relied on Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 93 S. Ct. 364 (1972), for the proposition that the term "aggrieved person" conferred "standing to the fullest extent permitted by Article III." But in Thompson, the Court found that this dicta in Trafficante

was "ill-considered," declined to follow it, and determined that "the term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." Thompson, 131 S. Ct. at 869.

A. Plaintiffs who allege "collateral damage."

Jackson asserts race-based discrimination claims under theories of disparate treatment and hostile work environment under both § 1981 (counts 6 and 7) and Title VII (counts 14 and 15).

It is telling that Jackson omits an extended discussion of Thompson, a 2011 decision of the Supreme Court about standing to pursue associational discrimination claims under Title VII. Again, Thompson involved a male plaintiff who was fired after his fiancee (and co-worker) filed a charge of sex discrimination against their mutual employer; Thompson then filed an EEOC charge, and later a lawsuit, alleging retaliation against *him* for his fiancee's charge of discrimination. Id. at 867. In addressing whether Thompson had standing to pursue this claim, the Supreme Court rejected the notion that being an aggrieved person under Title VII conferred standing to the extent recognized by Article III; if stretched to those limits, "absurd consequences" would follow. Thompson, 131 S. Ct. at 869. To prevent these "absurd consequences," the Supreme Court looked instead to whether a Title VII plaintiff fell with the "zone of interests sought to be protected by the statutory provision whose violation forms the legal basis

for his complaint." Id. at 870. This standard excludes "plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions in Title VII." Id. In finding that Thompson fell in this zone of interests, the Court noted that Thompson was "not an accidental victim of the retaliation – collateral damage, so to speak of the employer's act." Id. Instead, "injuring [Thompson] was the employer's intended means of harming [Thompson's fiancee]. Hurting him was the unlawful act by which the employer punished her." Id.

Moreover, a district court in this circuit has granted a motion for judgment on the pleadings under Rule 12(c) in a case involving similar factual circumstances. In Cochran v. Five Points Temporaries, LLC, ___ F. Supp.2d ___, 2012 WL 5492597 at *2 (N.D. Ala. Sept. 28, 2012). Cochran, a white employee, asserted that the owner of Five Points and other Five Points employees made racially derogatory remarks about Cochran's African-American co-workers and that the owner instituted racially discriminatory placement practices (e.g., honoring customers' racial preferences for temporary workers). Cochran brought a claim for racially hostile work environment under Title VII and § 1981. Id. at *3, *7. Relying on Thompson, the district court first found that Cochran fell outside the "zone of interest" of Title VII and thus lacked standing:

> Applying the Supreme Court's holding in Thompson to hostile work environment claims, an "accidental" victim of discriminatory action does not fall within the "zone of interest" of Title VII. Plaintiff might reasonably be classified as an "accidental" victim; she does not allege that Five Points

> took any discriminatory action against its African–American employees with the intent to affect her. Rather, under the allegations in the Amended Complaint, plaintiff was merely a bystander to whom no discriminatory or harassing conduct was actually directed. Thus, under the specific facts and circumstances alleged in the Amended Complaint, and in light of the Supreme Court's discussion of "zone of interest" in Thompson, plaintiff is not within the "zone of interest" sought to be protected by Title VII and therefore lacks standing to assert a claim for a racially hostile work environment.

Id. at *5. The district court found that this result was consonant with Eleventh Circuit precedent, which allowed these claims only if harassment were directed at a plaintiff because of *her* race. Id. As in Cochran, Jackson contends that the defendants treated African-American employees poorly because of *their* race. "Although the alleged derogatory slurs and discriminatory practices 'offended' plaintiff, at no time did she endure discrimination directed at her personally or based on her race or any association with African-American coworkers." Id. at *7. The district court reached a similar conclusion, for similar reasons, on Cochran's § 1981 claims. Id. at *8.

Jackson cannot enforce someone else's rights, and she has no actionable claim for feeling "uncomfortable" around discriminatory conduct directed at others; "[i]f unease on observing wrongs perpetrated against others were enough to support litigation, all doctrines of standing and justiciability would be out the window." Bermudez v. TRC Holdings, Inc., 138 F.3d 1176, 1180 (7th Cir. 1998) (affirming grant of summary judgment to employer and observing that "[a]lthough the comments of which [plaintiff]

complains reflect actionable discrimination against applicants for employment, a reasonable person in [her] position would have found them 'merely offensive,' because they posed no threat to her personally. . . .").

Of course, as mentioned above, the district court must take allegations in the Second Amended Complaint as true, but what Plaintiff has failed to acknowledge is that two of her core allegations against these defendants are false and rather than correcting the record, Plaintiff and her counsel, stubbornly and recklessly pursue those claims.

Jackson's claim in count 6, is a race based hostile work environment under § 1981 and as such she must allege:

> (1) that he [or she] belongs to a protected group; (2) that he [or she] has been subject to unwelcome harassment; (3) *that the harassment [was] based on a protected characteristic of the employee, such as [race]*; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) that the employer is responsible for such environment under either a theory of vicarious or of direct liability.

Bryant v. Jones, 575 F.3d 1281, 1296 (11th Cir. 2009). Jackson thus must show that the harassment was directed to her because she was white, but her second amended complaint clearly asserts that white employees received far more favorable treatment than African-American employees, for example:

> African-American job applicants were held to different, more stringent, standards than white applicants and, once hired, white employees were held to a less stringent standard of performance that [sic] African-American employees. . . .

[Doc 47 at ¶65]

And, sure enough, Jackson testified at her deposition that she was, in fact, treated more favorably than African Americans because she was a white female. See excerpt of Jackson Deposition, page 153, attached hereto as Exhibit "A."

Reasonable inquiry into the facts and the law here would result in the dismissal of the race based claims outlined above. The result of the stubborn pursuit of those claims has been unwarranted expansion of this case into claims that should never have been brought.

Jackson and her counsel know that certain essential allegations for her race based claims are demonstrably false, and have no support in the law, yet they have pursued those claims in a stubborn effort at the personal destruction of defendants through this litigation.

Wherefore, the Hiers Defendants respectfully request that this Motion be inquired into and that their Motion for Sanctions against Plaintiff and her counsel be granted.

Respectfully submitted this 21st day of June, 2013.

/s/ Thomas A. Withers
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CERTIFICATE OF SERVICE

This is to certify that I have on this day served all the parties in this case in accordance with the directives of the Court Notice of Electronic Filing ("NEF") that was generated as a result of electronic filing.

This 21st day of June, 2013.

/s/ Thomas A. Withers
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