

**MINUTES OF THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

*McBeath v. University of Alaska and Carole Lewis*

Case No. 3:08-cv-00008 TMB

By: THE HONORABLE TIMOTHY M. BURGESS

PROCEEDINGS: ORDER FROM CHAMBERS

At Docket 13, Defendant Carol Lewis moves for dismissal of Plaintiff Jennifer McBeath's claim for damages and injunctive relief under Title VII of the Civil Rights Act of 1964 ("Title VII").<sup>1</sup> The Plaintiff has not opposed the motion.

Under Fed. R. Civ. P. 12(b)(6), a party may move to dismiss an opposing party's claim for relief on the ground that it is not based on a cognizable legal theory or does not allege facts sufficient to support a cognizable legal theory.<sup>2</sup> In reviewing a Rule 12(b)(6) motion, the court must assume the truth of all factual allegations and must "construe them in the light most favorable to the nonmoving party."<sup>3</sup> The court will dismiss a claim only if it is beyond doubt that the party pleading the claim will not be able to prove facts that would entitle it to relief.<sup>4</sup>

Defendant Lewis asserts that Ninth Circuit law requires the Court to dismiss the discrimination claim because the definition of "employer" under Title VII does not encompass individual supervising employees. The Court agrees. As noted by Lewis, the Ninth Circuit in *Miller v. Maxwell's International, Inc.*, affirmed a district court's dismissal of the plaintiff's discrimination claim for damages on this ground, stating that: "If Congress decided to protect small entities with limited resources from liability, it is inconceivable that Congress intended to allow civil liability to run against individual employees."<sup>5</sup>

The Court's conclusion applies to Plaintiff's claim for both damages and injunctive relief. *Miller* did not expressly address the availability of injunctive relief. But as Lewis points out, a

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<sup>1</sup> 42 U.S.C. §§ 2000e-2000e-17 (2003).

<sup>2</sup> *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

<sup>3</sup> *Gompper v. VISX, Inc.*, 298 F.3d 893, 895 (9th Cir. 2002).

<sup>4</sup> *Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir. 1997).

<sup>5</sup> 991 F.2d 583, 587 (9th Cir. 1993).

court in this district has interpreted both *Miller* and an earlier case, *Padway v. Pulches*,<sup>6</sup> as barring injunctive relief against individual employees.<sup>7</sup> The Court agrees with this approach.

Accordingly, the motion at Docket 13 is GRANTED. The Title VII claim against Lewis in Plaintiff's first claim for relief is DISMISSED.

**IT IS SO ORDERED.**

Entered at the direction of the Honorable Timothy M. Burgess, United States District Judge.

DATE: February 13, 2009

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<sup>6</sup>665 F.2d 965, 968 (9th Cir. 1982).

<sup>7</sup> See *Mun v. Univ. of Alaska at Anchorage*, 2005 WL 846205 (D. Alaska).