

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 22, 2002, Kmart filed a voluntary petition in the United States Bankruptcy Court for the Northern District of Illinois. On May 9, 2002, during the pendency of Kmart's bankruptcy petition, Juanita Mattingly was terminated from her employment at one of the Kmart stores in St. Thomas. On April 23, 2003, the Bankruptcy Court entered an order confirming Kmart's plan of reorganization ["confirmation order"]. On July 25, 2003, Juanita Mattingly filed a complaint against Kmart, alleging discrimination and wrongful discharge arising out of her termination on May 9, 2002.¹ Kmart has filed a motion to dismiss Mattingly's complaint. Kmart's arguments, as well as Mattingly's arguments in opposition to the motion to dismiss, are discussed below.

II. ANALYSIS

In its motion to dismiss, Kmart argues that, because the plaintiff's claims arose after commencement, but before discharge, of its bankruptcy case, they should be handled administratively under the Bankruptcy Code and according to the confirmation order. Kmart also argues in its memorandum in

¹ The plaintiff filed her complaint in Territorial Court. Kmart filed a notice of removal in this Court on September 18, 2003.

support of the motion to dismiss that the plaintiff failed to file an administrative expense claim with the Bankruptcy Court; however, Kmart dropped this argument in its reply brief after it discovered that the plaintiff had in fact filed such a claim with the Bankruptcy Court.²

Paragraph eleven of the Bankruptcy Court's April 23, 2003 order explicitly incorporates and gives legal effect to Article 12.2 of Kmart's plan of reorganization. Article 12.2 states:

Pursuant to section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in this Plan or the Confirmation Order, the distributions and rights that are provided in this Plan shall be in complete satisfaction, discharge, and release, effective as of the Confirmation Date (but subject to the Effective Date), of Claims and Causes of Action, whether known or unknown, against liabilities of, liens on, obligations of, rights against, and Interest in the Debtors or any of their assets or properties . . . including, but not limited to, Claims and Interests that arose before the Confirmation Date

Because the plaintiff alleges she was wrongfully fired on May 2, 2002, her claims fall squarely within the above-cited provision, as they are "claims or causes of action" against Kmart that arose during the pendency of Kmart's bankruptcy petition and before the

² Kmart's confusion on this issue was actually created by the plaintiff's misspelling of her own name. In her filings before this Court, the plaintiff spells her last name "Mattingly." In her filings with the Bankruptcy Court, however, the plaintiff spells her name "Mattingley." Thus, when Kmart initially searched its records in preparing its motion to dismiss, it found no record that anyone with the plaintiff's name had presented claims to the Bankruptcy Court.

entry of the confirmation order.³ The confirmation order, at paragraph twelve, effectuates Article 12.2 by providing that:

all Persons who have held, hold or may hold Claims and Interests . . . shall be precluded and permanently enjoined on and after the Effective Date⁴ from (a) commencing or continuing in any manner any Claim, action or other proceeding of any kind with respect to any Claim, Interest or any other right or Claim against [Kmart], which they possessed or may possess prior to the Effective Date . . . , and (d) asserting any Claims that are released hereby.

The plaintiff's arguments in opposition do not refute Kmart's claim, made in reference to the above-cited provisions, that she must pursue this matter administratively in Bankruptcy Court.⁵

In fact, the plaintiff's only reference to Kmart's argument that the confirmation order precludes litigation in this Court is her concluding comment that "this Court has to first make a preliminary determination as to whether this Creditor's sole relief lies in the Bankruptcy Court in the Norther District of Illinois."

As the terms of the confirmation order and accompanying reorganization plan show that this matter may only proceed as an

³ Article 1.31 of the Reorganization Plan defines "Confirmation Date" as "the date of entry of the Confirmation Order" by the Bankruptcy Court.

⁴ The effective date is May 6, 2003.

⁵ Plaintiff instead focuses her arguments on Kmart's other argument that she never filed an administrative expense claim with the Bankruptcy Court. As Kmart admitted this argument was incorrect in its reply brief, this issue need not be discussed here.

administrative expense claim before the Bankruptcy Court, and as the plaintiff has already subjected herself to the jurisdiction of the Bankruptcy Court through her July 30, 2002 administrative filing, I will grant Kmart's motion to dismiss, without prejudice. The plaintiff may file with the Bankruptcy Court a motion for relief from the confirmation order which, if granted, would allow the plaintiff to proceed before this Court. An appropriate order follows.

ENTERED this 25th day of February, 2004.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

cc: Hon. G.W. Barnard
Mrs. Jackson
Jacqueline A. Drew, Esq.
Bennet Chan, Esq.
Jeffrey Corey, Esq.

By: _____/s/_____
Deputy Clerk