

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

PAULETTE HARRIS

v.

THE RATNER COMPANIES, INC.

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\* Civil No. JFM-04-1992  
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MEMORANDUM

Presently pending are a motion to dismiss the “Ratner Companies” as a defendant, a motion to dismiss counts II and III of the amended complaint and to dismiss the punitive damage prayer of count one, and plaintiff’s “opposition to petition for removal,” which I will treat as a motion to remand. I will treat the motion to dismiss the “Ratner Companies” as a motion for summary judgment, and I will grant it as such. I will grant the motion to dismiss counts II and III and the punitive damage prayer of count I. I will deny the motion to remand.

A.

An affidavit submitted in connection with the motion to dismiss the “Ratner Companies” as a defendant establishes that Ratner Companies has no ownership interest in the other corporate defendant Creative Hairdressers, Inc. (“CHI”), and is not the parent corporation of CHI. Plaintiff has submitted no counter affidavit or proffered any contrary information. Accordingly, Ratner Companies is not a proper defendant in this action.

B.

Counts II and III are both claims for negligent infliction of emotional distress. Maryland law does not recognize such a tort. *See Bagwell v. Peninsula Reg’l Med. Ctr.*, 106 Md. App., 470, 517, 665 A.2d 297, 320 (1995); *Hamilton v. Ford Motor Credit Co.*, 66 Md. App. 46, 63, 502 A.2d 1057, 1065-66 (1986); *Miller v. Bristol-Meyers Squibb Co.*, 121 F. Supp.2d 831, 839

(D. Md. 2000). Likewise, in order to assert a cognizable claim for punitive damages, a plaintiff must “allege, in detail, facts that, if proven true, would support the conclusion that the act complained of was done with ‘actual malice’. Nothing less will suffice.” *Scott v. Jenkins*, 345 Md. 21, 37, 690 A.2d 1000, 1008 (1997). Here, plaintiff has not alleged such facts.

C.

Defendants removed the case to this court on the basis of diversity of citizenship. In opposing removal, plaintiff alleges that the Maryland citizenship of “Theresa High,” an employee of CHI who plaintiff alleges made racially derogatory remarks to her, must be taken into account. CHI has submitted an affidavit in which it is stated that there is no Theresa High who is employed at the CHI facility in question. Plaintiff counters that her investigator was advised that Ms. High is employed at the facility.

If that were the only matter in issue, I might be inclined to grant the motion to remand because whatever the actual name of the employee of CHI who allegedly made the racially derogatory remarks, presumably that person is a Maryland citizen and her identity can be ascertained during the course of discovery. However, as noted above, count III, the only count in which Ms. High is named as a defendant, does not state a cognizable claim. Accordingly, I will not consider the citizenship of “Ms. High” in determining whether the case was properly removed. If plaintiff subsequently seeks to amend her amended complaint, states a cognizable claim against one or more employees of CHI, and establishes that these employees are citizens of Maryland, I will consider whether the action should be remanded to the Circuit Court for Baltimore City. *See Mayes v. Rapoport*, 198 F.3d 457, 462 (4<sup>th</sup> Cir. 1999) (quoting *Gum v. General Electric Co.*, 5 F. Supp. 2d 412, 414 (S.D.W.Va.) 1998)).

A separate order effecting the rulings made in this memorandum is being entered  
herewith.

Date: August 9, 2004

/s/ \_\_\_\_\_  
J. Frederick Motz  
United States District Judge

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ORDER

For the reasons stated in the accompanying memorandum, it is, this 9th day of August  
2004

ORDERED

1. Plaintiff's "opposition to petition for removal" is treated as a motion to remand and is denied as such;
2. The motion to dismiss "Ratner Companies" as defendant is granted; and
3. The motion to dismiss counts II and III and to dismiss the "punitive damages" prayer of count I of the amended complaint is granted.

/s/ \_\_\_\_\_  
J. Frederick Motz  
United States District Judge