



## Netherland Antilles Employee Allowed to Continue Gender Bias Suit against Employer's U. S. Sister Company

Insights

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In a case that will certainly be of interest to multi-national companies with subsidiaries and affiliates in numerous countries, a New York Federal Court recently allowed a U.S. company to be sued by an employee of its sister affiliate in St. Maarten, Netherlands Antilles. On August 7, 2013, in *St. Jean v. Orient-Express Hotels Inc.*, the U.S. District Court for the Southern District of New York held that a former manager of a St. Maarten luxury property could continue her discrimination and retaliation lawsuit against a New York company she alleged was her joint employer along with her employer in St. Maarten.

The plaintiff was a U. S. citizen who maintained a permanent residence in Connecticut. Orient-Express Hotels, Ltd. ("OEHLtd.") is a Bermuda-based company which manages luxury properties in the leisure and tourism sector. OEHLtd. has 42 subsidiaries, including Orient-Express Hotels Inc. ("OEHI") and Cupecoy Village Development N.V. ("Cupecoy"). OEHI, according to the plaintiff, is a Delaware Corporation with a principal place of business in the State of New York, which employs over fifteen people. However, according to the defendant, OEHI employs only twelve people.

Cupecoy is a subsidiary of OEHLtd., and is located in St. Maarten, Netherland Antilles. Cupecoy is incorporated under Dutch law and manages Porto Cupecoy, a luxury residential marina in St. Maarten.

Plaintiff alleged that a Cupecoy manager engaged in behavior she claimed to be sexually harassing, and complained to two managers of OEHLtd. She alleged that OEHLtd. managers met with her about the complaints, but no corrective action was taken, and she shortly thereafter received a notice of her employment termination from OEHI.

Plaintiff filed a complaint against OEHI, alleging Title VII discrimination and retaliation. OEHI responded by filing a motion to dismiss the complaint. Plaintiff alleged that OEHI controlled Cupecoy through "the interrelation of operations, common management, and centralized control of labor relations, common ownership and financial control" and that at all relevant times, OEHI and Cupecoy were her joint employers from the time she began her employment. Among her allegations were: 1) she was required to answer to and deal with a number of OEHI employees based in the United States, on a daily basis, even though she was in St. Maarten at Cupecoy; 2) the Managing Director and Vice President of Real Estate for OEHI was responsible for hiring, terminating and deciding payroll income for many Cupecoy employees; 3) the OEHI Managing Director had final authority for

payroll income for many Cupecoy employees; 3) the OEHL Managing Director had final authority for all major employment decisions and pay rates for Cupecoy employees; 4) OEHL and Cupecoy had shared operations and management through the Director of Real Estate Marketing, an OEHL employee who also ran all of Cupecoy's marketing, advertising and sales materials; 5) plaintiff reported to the OEHL managers on budget items, finances, invoicing, sales results and reports, and weekly traffic logs; 6) she was required to submit reports and budgets to OEHL; 7) new email accounts for Cupecoy employees were created by OEHL's New York office; 8) OEHL and Cupecoy regularly shared employees; and 9) when plaintiff was out of the office, an OEHL manager flew to Cupecoy to perform her duties in her absence.

Plaintiff filed the lawsuit against OEHL with this company as the sole defendant, but not Cupecoy or its parent company, OEH Ltd., and appeared to make two arguments under the single employer and joint employer doctrines: 1) that OEHL was her joint employer, along with Cupecoy, which provides for Title VII liability; and 2) that OEHL, through its management, controlled the manner and means by which Cupecoy's employees work was accomplished. The court found that plaintiff appeared to apply the single employer doctrine in which Cupecoy was a foreign corporation that was controlled by OEHL, a U.S. company.

The court denied OEHL's motion to dismiss, stating that although OEHL and Cupecoy may have a common corporate parent, that fact standing alone was insufficient to establish the two entities were a single employer. The court found that the plaintiff presented facts that, "if true, plausibly demonstrate that Cupecoy may be controlled by OEHL, and that the entities may act as a single employer." The court noted, however, that as the litigation advances, OEHL might demonstrate that Cupecoy is not a foreign corporation controlled by OEHL.

Regardless of the eventual outcome of this case, U.S. multi-national companies with subsidiaries, divisions or other entities outside of this country should learn from this case that courts will conduct close scrutiny of the many aspects of corporate entities' management control for the purpose of assessing litigation possibilities.