IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

JAMIE WAZELLE; TAY AUNG; ELIZABETH CASEL; MANIVANH CHANTHANAKHONE; MANUEL CONTRERAS; REBECA CORRAL; PATRICIA COSSEY; JOZETTE ESCOTO; CRUZ GARCIA, SR.; SHERYL GARDNER; DENETRIA GONZALEZ; RENE GUTIERREZ; BRIAN HALL; BRANDON IVORY; NINI AYE KAYAHPHU; KO LATT; ARMANDO LIRA; DERESTIA LIRA; MYA LIRA; VALARIE LIRA; AUNG MOE; BIAK MORRIS; MALEAK RECTOR; MARICELA RIOS; NATASHA RIOS; GUADALUPE RONDAN; MIGUEL RONDAN; JAVIER RUBIO; IGNACIO RUIZ; SYLVIA RUIZ; MITCHELL SANCHEZ; BILLY SHAW; KYAW SOE; NYEIN SOE; THIDA SOE; BREANA SOLIS; LADONNA TRULL; AND TIN SOE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MAUNG MAUNG TAR,	§	
Plaintiffs,	§	
vs.	§	
TYSON FOODS, INC.; ERNESTO SANCHEZ; KEVIN KINIKIN; and FARREN FERNANDEZ,	§	**NO. 2:20-cv-00203-Z**
Defendants.	§	

DEFENDANTS ERNESTO SANCHEZ, KEVIN KINIKIN AND FARREN FERNANDEZ'S MOTION TO DISMISS

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CASES

MOTION

Defendants Ernesto Sanchez, Kevin Kinikin, and Farren Fernandez (collectively the "Employee Defendants") join Tyson Foods, Inc.'s Motion to Dismiss, and respectfully request dismissal of the claims asserted against them on the grounds set forth in that motion.

In addition, the Employee Defendants move for dismissal with prejudice under Rule 12(b)(6) on the additional ground that Texas law permits workplace safety claims to be asserted only against an employer, not against co-employees.

INTRODUCTION

Plaintiffs allege that Tyson Foods, Inc. ("Tyson") failed to provide a safe work environment at Tyson's Amarillo meat processing facility. Under Texas law, that claim can only be alleged against Tyson itself—not against individual Tyson employees. *See, e.g.*, *Leitch v. Hornsby*, 935 S.W.2d 114, 117 (Tex. 1996) ("When the employer is a corporation, the law charges the corporation itself, not the individual corporate officer, with the duty to provide the employee a safe workplace.").

Despite this clear rule, in a transparent attempt to defeat diversity jurisdiction, Plaintiffs have also asserted claims against three Tyson employees—Ernesto Sanchez, Kevin Kinikin, and Farren Fernandez. Those claims are improper under Texas law, and should be dismissed.

BACKGROUND

Plaintiffs filed this lawsuit in the District Court of Potter County, Texas in July 2020, originally naming only the Employee Defendants and alleging claims for negligence and gross negligence. [Dkt. 1-3] Plaintiffs later filed a First Amended Petition and added Tyson as a defendant. [Dkt. 1-14] All Defendants then timely removed to federal court based on federal officer and federal question jurisdiction. [Dkt. 1]

The First Amended Complaint makes substantially identical allegations against Tyson and the Employee Defendants:

> Upon information and belief, Defendants Tyson, Inc.; Ernesto Sanchez; Kevin Kinikin; and Farren Fernandez failed to fulfill their job duties to provide a safe working environment to Plaintiffs. Defendants failed to issue masks to employees, institute six feet barriers between employees, limit contact between employees, and create rideshare alternatives to the Plant's bus system. As a direct result of the negligence and gross negligence of Defendants, Plaintiffs contracted COVID-19 at the Amarillo, Texas meatpacking plant and have experienced significant injuries as a result.

[Dkt 1-14 ¶ 55; *see also id.* ¶ 60 (alleging that "Defendants are negligent and grossly negligent for the following reasons").] The First Amended Complaint likewise alleges that the alleged conduct at issue was "effectuated through both Tyson Foods and the named Defendants." [*Id.* ¶ 58]

Aside from allegations that identify names and job titles, the First Amended Complaint fails to assert any substantive allegations against the Employee Defendants that are not also asserted in identical terms against Tyson.

ARGUMENT

This case is not about any particular action taken by Ernesto Sanchez, Kevin Kinikin, or Farren Fernandez. Instead, Plaintiffs have asserted claims related to workplace safety and the duty to "provide a safe working environment."

Under Texas law, those claims cannot be asserted against the Employee Defendants. Instead, because workplace duties are "nondelegable" and belong "solely" to the employer, such claims can only be brought against Tyson. *See, e.g.*, *Leitch*, 935 S.W.2d at 117 ("When the employer is a corporation, the law charges the corporation

itself, not the individual corporate officer, with the duty to provide the employee a safe workplace."); *see also In re Butt*, 495 S.W.3d 455, 467 (Tex. App.—Corpus Christi 2016, no pet.) (holding that liability "cannot be imposed on employees where the employer and the employees committed the identical negligent acts or omissions").

The reason for this rule is simple: Texas law places responsibility for workplace safety on the company—but not on co-employees—to "ensure[] that the party with the duty is the one with the ability to carry it out." *Gen. Elec. Co. v. Moritz*, 257 S.W.3d 211, 216 (Tex. 2008).

Applying these principles, Texas courts (and federal courts applying Texas law) routinely hold—on facts similar to this case—that individual co-employees cannot be liable where the duty alleged to have been breached is the duty to keep the workplace safe. *See, e.g.*:

- ***Leitch v. Hornsby***, 935 S.W.2d 114 (Tex. 1996).
  - In *Leitch*, the plaintiff sued his employer and two corporate officers, alleging that he was injured at work because "all three defendants did not provide a safe work place and equipment, did not provide proper equipment, did not provide a protective lift belt, and did not give safety instructions and training." *Id.* at 116.
  - The Texas Supreme Court, reversing the lower court, held that the corporate employees "had no individual duty as corporate officers to provide [the plaintiff] with a safe workplace," and therefore could not be liable as a matter of law. *Id.* at 118.
  - Instead, the Supreme Court clarified that the "duty to provide a safe workplace was a nondelegable duty imposed on, and belonging solely to" the plaintiff's employer. *Id.*

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