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COURT OF APPEALS
DIVISION II

No. 45110-7-II

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STATE OF WASHINGTON

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**IN THE COURT OF APPEALS, DIVISION II
FOR THE STATE OF WASHINGTON**

LEON PEOPLES,

Appellants,

v.

PUGET SOUNDS BEST CHICKEN, INC., et al.,

Respondents.

RESPONDENTS' RESPONSE BRIEF

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I. INTRODUCTION

This case involves a straightforward application of two universally accepted principles of law. The first one is enshrined in Article I of the United States Constitution, the Federal Enclave Doctrine. The second is the doctrine of failure to exhaust administrative remedies. The trial court below applied these doctrines to this case correctly.

More particularly, the trial court correctly held the Federal Enclave Doctrine barred the claims asserted by the appellant, Leon Peoples (“Peoples”). It is undisputed that the alleged wrongful conduct – alleged employment discrimination – occurred on a federal enclave, Joint Base Lewis McChord (“Base”). Federal (not state) discrimination law applies to federal enclaves. Because Peoples asserted only state law claims, the trial court dismissed those claims under Civil Rule 56.

Peoples did not assert federal discrimination law claims in the lawsuit. Although the Federal Enclave Doctrine permits such claims, it is undisputed that Peoples had not exhausted his administrative remedies. Specifically, he had not shown that he had filed a charge of discrimination with the EEOC and obtained a “right to sue” letter from the federal agency. Thus, rather than permit Peoples to amend his complaint, the trial court correctly dismissed the lawsuit under Civil Rule 12(b)(1) because it lacked subject matter jurisdiction. It did so without prejudice to allow Peoples (if he so chose) to litigate federal discrimination claims in another forum.

In this appeal, Peoples focuses on the trial court’s interpretation of the Federal Enclave Doctrine. Peoples’ primary argument is that dismissal was inappropriate because a Washington state court has “concurrent

jurisdiction” under the Federal Enclave Doctrine. But this misinterprets and conflates the trial court rulings. The trial court did not rule, as Peoples claims, that it lacked subject matter jurisdiction under the Federal Enclave Doctrine. It held instead that the state law claims failed as a matter of law because of the applicability of the Federal Enclave Doctrine. It then concluded that it lacked subject matter jurisdiction to hear any federal law claims Peoples might want to assert because Peoples had not exhausted his administrative remedies. And Peoples does not dispute that he failed to exhaust his administrative remedies.

Because the trial court ruled correctly, Respondents Puget Sounds Best Chicken, Inc. d/b/a Popeye’s Restaurant, Bennie Martin and Jane Doe Martin (collectively “Popeyes Restaurant”) respectfully request that the trial court order be affirmed.

II. ASSIGNMENTS OF ERROR

Popeyes Restaurant makes no assignments of error because it believes the trial court correctly ruled in this case.

III. STATEMENT OF THE CASE

Popeyes Restaurant operates a restaurant on the Base. Clerks Papers (“CP”) at 24. The Base is the United States Defense Department’s premier military installation on the West Coast. CP at 16. It provides support to more than 40,000 active, Guard, and Reserve Service members for Army, Navy, Air Force, and Marines, along with about 15,000 civilian workers. *Id.*

The land for the Base was ceded in 1917 by the state of Washington to the federal government. *Id.* The terms of the cession provides:

Pursuant to the constitution and laws of the United States, and especially to paragraph seventeen of section eight of article one of such constitution, the consent of the legislature to the State of Washington is hereby given to the United States to acquire, by donation from Pierce county, title to all lands herein intended to be referred to,...and the consent of the State of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels or land so conveyed to it...

Laws of 1917, ch. 3. § 20, p. 14 (emphasis added). *See also* Const. art. 25, § 1; RCW 37.16.180.

For approximately four months, Peoples worked as a crew member at the Popeyes Restaurant on the Base. CP at 24. In late 2012, he commenced this lawsuit, alleging discrimination based on his sexual orientation. CP at 1-6. He asserted claims against Popeyes Restaurant under the Washington Law Against Discrimination, for negligent hiring, training, supervision, and retention, and for intentional infliction of emotional distress. CP at 4-5. Peoples asserted no claims under federal law.

Popeyes Restaurant answered the complaint, denying the allegations. CP at 7-11. It then filed a motion pursuant to Civil Rule 56 and Civil Rule 12(b)(1). CP at 13-25. It argued that, under the Federal Enclave Doctrine, the state law claims were barred, and should be dismissed as a matter of law. *Id.* It also argued that, although the Federal Enclave Doctrine did not prevent Peoples from amending his complaint to assert claims under federal law, particularly, Title VII, such claims would be premature because Peoples had not exhausted his administrative remedies by filing a charge of discrimination with the EEOC and obtaining a “right to sue” letter from the agency. *Id.* Popeyes Restaurant explained that, as a result, the trial court lacked subject matter jurisdiction

over any federal claims Peoples might want to assert and, therefore, had to dismiss the suit.

The trial court granted the motion and dismissed the lawsuit without prejudice. CP at 56-57.

IV. ARGUMENT

A. Standard of Review

On appeal of summary judgment, the standard of review is de novo, and the appellate court performs the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

Courts have held that summary judgment in discrimination cases is inappropriate when there are disputes concerning the facts, or the inferences to be taken from those facts. *Kuyper v. State*, 79 Wn. App. 732, 739, 904 P.2d 793 (1995). But “this does not mean that discrimination cases may never be disposed of on summary judgment.” *Id.*

Indeed, in a case such as the one here, where the relevant facts are not in dispute and the sole issue is the application of law to those facts, any presumption against summary judgment in employment cases is inapplicable. In this case, summary judgment is appropriate.

B. The Trial Court Properly Dismissed Peoples’ State Law Claims

1. Peoples’ Claims Are Barred by the Federal Enclave Doctrine

The “Enclave Clause” of the United States Constitution, Article I, Section 8, Clause 17, grants Congress the exclusive right to regulate land ceded to the federal government by state governments. The Clause provides:

The Congress shall have power to...exercise exclusive legislation in all cases whatsoever,...over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts,

magazines, arsenals, dockyards, and other needful buildings.

U.S. Const. art. 1, § 8 (emphasis added). Once the federal enclave is established, the state government loses the power to legislate over the federal enclave. *Allison v. Boeing Laser Technical Servs.*, 689 F.3d 1234 (10th Cir. 2012) citing *Paul v. United States*, 371 U.S. 245, 263 (1963).¹ State laws that existed at the time of cessation stay in force, unless they are replaced by applicable federal legislation. In that case, the state laws are no longer applicable:

The central principle of federal enclave doctrine is that Congress has exclusive legislative authority over these enclaves. But in the absence of applicable federal legislation displacing state law, those state laws that existed at the time that the enclave was ceded to the federal government remain in force.

Allison, 689 F.3d at 1237. State law that is adopted after the creation of a federal enclave does not apply on the federal enclave. *Id.*

The Federal Enclave Doctrine applies not only to federal employees, but to companies that operate on federal enclaves, and to employees of those companies. *Dept. of Labor v. Dirt & Aggregate, Inc.*, 120 Wn.2d 49, 837 P.2d 1018 (1992), citing *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369, 372-73 (1964).

In *Dirt & Aggregate*, the Washington Supreme Court confirmed the applicability of the Federal Enclave Doctrine to federal enclaves in Washington. There, the claims arose out of operations of another federal enclave, Mount Rainer National Park (“Park”). 120 Wn.2d at 56. The Washington Department of Labor & Industries issued citations to a company – Dirt & Aggregate – for violations of the Washington Industrial

¹ Federal enclaves include numerous military bases, federal facilities, and national parks and some national forests. See *Allison v. Boeing Laser*, 689 F.3d at 1235.

Safety and Health Act at a jobsite in the Park. The Washington Supreme Court held that Labor & Industries lacked the jurisdiction to enforce state law in the Park. The Court recognized that “[o]nce the federal government attains exclusive jurisdiction, state regulation of activities within the federal enclave may resume only with the express consent of Congress.” *Id.* at 53. The Court found no such congressional authority. *Id.* at 54. The Court held that, consequently, the federal Occupational Safety and Health Act, not state law, applied. *Id.* at 54.

Courts around the country have also made clear that the Federal Enclave Doctrine bars state law employment claims since those claims are supplanted by federal discrimination law. *See, e.g., Miller v. Wackenhut Servs, Inc.*, 808 F. Supp. 697, 699-700 (W.D. Mo.1992) (holding that state discrimination laws are inapplicable to private employee on federal enclave and explaining that nothing in Title VII provides express authorization of state legislation on federal enclaves); *Klausner v. Lucas Film Ent. Co.*, No. 09-03502 CW, 2010 WL 1038228 (N.D. Cal. Mar. 19, 2010) (dismissing discrimination claims brought under state law against an employer working within the Presidio in San Francisco, even though the area was no longer used for military purposes); *McMullen v. S. Cal Edison*, No. 08-957-VAP (PJWx), 2008 WL 4948664 (C.D. Cal. Nov. 17, 2008) (granting defendant’s motion to dismiss discrimination claims and granting plaintiff leave to amend to allege actions occurred outside of federal enclave); *Sundaram v. Brookhaven Nat. Labs*, 424 F. Supp.2d 545 (E.D.N.Y. 2006) (dismissing claims brought under New York Human Rights Law against a federal contractor operating Brookhaven National Laboratory, which is located within a federal enclave); *see also*

Brookhaven Sci. Assocs. v. Donaldson, No. 04 Civ. 4013(LAP), 2007 WL 2319141 (S.D.N.Y. 2007) (declaring that New York Human Rights law does not apply to Brookhaven National Laboratory because it is located within a federal enclave); *Lockhart v. MVM*, 175 Cal. App. 4th 1452 (2009) (dismissing plaintiff employee's state law discrimination and retaliation claims because of the Federal Enclave Doctrine).

Courts have also confirmed that the Federal Enclave Doctrine bars claims based on state law discrimination law that did not exist when the enclave was created. In *Allison*, the plaintiff was a former civilian employee of a federal contractor, Boeing, which was located on an Air Force base. *Id.* at 1236. The plaintiff was terminated by Boeing and filed suit in state court, alleging state employment claims. The Tenth Circuit affirmed the trial court's dismissal of the state law claims, stating:

In sum, none of the employment causes of action raised by Allison in his complaint existed when the federal government established Kirtland Air Force base. Allison would have no cause of action in 1954, and he has no cause of action now.

Id. at 1244.

Here, the alleged discrimination of Peoples occurred at a Popeyes Restaurant that was located on the Base. The Base is a federal enclave. The state of Washington unconditionally ceded the land to the federal government in 1917. Thus, under the Federal Enclave Doctrine, any state law that did not exist in 1917 does not apply on the Base. Additionally, applicable federal law displaces any state law that would otherwise apply to the Base. In this case, the state law claims asserted by Peoples against Popeyes Restaurant fall into one or both of these categories and, therefore, fail as a matter of law.

First, the Washington Law Against Discrimination was enacted in 1949, 30 years after the state ceded the property to the federal government. *See Rem. Supp. 1949 § 7614-20 et seq.* Thus, for this reason, Peoples' claims under the Washington Law Against Discrimination are barred by the Federal Enclave Doctrine. In addition, as the courts cited above have held, federal law governing discrimination displaces any state discrimination law that would otherwise apply to alleged discriminatory acts occurring on a federal enclave. Thus, in this case, Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C.A. § 2200e, *et seq.* applies to Peoples' claims. Under the Federal Enclave Doctrine, his claims under the Washington Law Against Discrimination fail as a matter of law for this reason, too.

Second, Washington courts did not recognize claims of intentional infliction of emotional distress until 1975. *Grimsby v. Samson*, 85 Wn.2d 52, 530 P.2d 291 (1975). In *Grimsby*, the Supreme Court of Washington adopted the definition of the tort of outrage from the Restatement (Second) of Torts § 46 (1965), allowing this tort claim in Washington for the first time. A dissenting justice who did not want the tort recognized in Washington plainly stated: "The tort of 'outrage' has never been known in the law in this state." *Id.* (Wright, J., dissenting).

In Appellants' Opening Brief, Peoples cites *Anderson v. Pantages Theater, Co.*, 114 Wn. 24, 194 P. 813 (1921) as establishing an outrage claim. This is incorrect. In *Anderson*, the issue was the damages recoverable by the plaintiff for the defendant's violation of a statute prohibiting discrimination in public places. 114 Wn. at 27-28. The court held that recoverable damages included emotional distress proximately

caused by the statutory violation. *Id.* at 31; *see also Negron v. Snoqualmie Valley Hosp.*, 86 Wn. App. 579, 587-88, 936 P.2d 55 (1997) (citing *Anderson* and stating “Damages is not a separate element of a prima facie case”). *Anderson* did not create a new cause of action for intentional infliction of emotional distress. That cause of action was not recognized in Washington until 1975. Thus, Peoples’ claim of intentional infliction of emotional distress is barred by the Federal Enclave Doctrine, and fails as a matter of law.

Finally, although the Washington Supreme Court first recognized causes of action for negligent hiring, training, supervision and retention earlier than 1975, it was not until the latter half of the twentieth century, after the Base was created. *See, e.g., La Lone v. Smith*, 39 Wn.2d 167, 172, 234 P.2d 893, 896 (1951). In *La Lone*, the Supreme Court of Washington found an employer liable to a third party for personal injuries inflicted by an employee who “knocked plaintiff down, jumped on top of him, beat him about the head and body, grabbed plaintiff’s tie and attempted to choke him, all while beating him.” *Id.* at 170. The employer was aware of a prior incident in which the same employee assaulted the plaintiff and threatened to harm him in the future, but did not discharge him. *Id.* The court in *La Lone*, citing the new cause of action, found the employer’s negligence was the proximate cause of the plaintiff’s injuries since he was aware of the employee’s violent propensities toward the plaintiff during the course of employment. *Id.* at 173.

In his appeal brief, Peoples references older cases that the *La Lone* court held were not “directly on point,” *id.* at 171, to support his argument that negligent retention and supervision claims existed in 1917. Those

older cases addressed the doctrine of *respondeat superior*, which holds that a master is liable for a servant's actions committed within the course and scope of employment. *Bratton v. Calkins*, 73 Wn. App. 492, 497, 870 P.2d 981 (1994). These cases did not address a negligent retention and supervision claim, where an employer can be held liable for injury caused by an employee that is *outside* the scope and course of employment. In the assault and battery case that Peoples cites, *Matsuda v. Hammond*, 77 Wn. 120,121, 137 P. 328, 329 (1913) the court examined whether the employer was liable for the intentional torts of his employee when that employee went to the place of business of a customer and “struck him in the face with his fist, breaking his nose, and causing it to bleed somewhat freely.” . The court in *Matsuda* ultimately found the employer was not liable for the assault and battery conducted by the employee because the employee was not acting within the scope of his employment. *Id.* at 124. If *Matsuda* were a negligent hiring and retention case, the court's analysis would have been different. The court would not have focused on the course and scope of employment, but on the employer's knowledge of the employee's violent propensities. Thus, *Matsuda* does not establish that negligent retention and supervision claim existed in 1917. Thus, Peoples' claim of negligent hiring, training, supervision, and retention is barred by the Federal Enclave Doctrine, and fails as a matter of law.

2. Peoples' Argument Regarding Concurrent Jurisdiction and His Reliance on *Mendoza* Case Cited Is Inapplicable

Peoples argues that, under the Federal Enclave Doctrine, the Washington state court has “concurrent jurisdiction” and cites *Mendoza v. Neudorfer Engineers, Inc.*, 145 Wn. App. 146, 185 P.3d 1204 (2008) as

“dispositive” on this point. Appellants’ Opening Brief at 9-10, 14. Peoples’ argument and his reliance on *Mendoza*, however, are misplaced.

Mendoza concerned personal injuries to a general laborer who was injured while working on the Base. The employee sued the private construction company in Washington state court for his injuries. The defendant construction company argued the court lacked subject matter jurisdiction under the Federal Enclave Doctrine. This Court held Washington may exercise subject matter jurisdiction over personal injury claims arising in a federal enclave where a Washington court has personal jurisdiction over the parties. *See Mendoza*, 145 Wn. App. at 156.

Mendoza is inapplicable for two reasons. One, *Mendoza* is specific to personal injury claims. Federal law does not create a cause of action for personal injury such as the one asserted by the plaintiff in *Mendoza*. Thus, unlike discrimination cases, no federal law has supplanted state law for personal injury claims. Thus, the Federal Enclave Doctrine did not bar *Mendoza*’s negligence claims. Peoples argues that employment claims are personal injury claims because both are torts. This is incorrect. Negligence claims are not employment discrimination claims. Indeed, as courts around the country have confirmed that, under the Federal Enclave Doctrine, federal anti-discrimination law applies to employment claims.

Two, the defendant in *Mendoza* was making a much broader and far-reaching argument about the Federal Enclave Doctrine than what Popeyes Restaurant argues here. There, the defendant argued the Federal Enclave Doctrine deprived a state court of subject matter jurisdiction. In other words, according to that defendant, under the Federal Enclave Doctrine the plaintiff had to sue in federal court. Peoples asserts that this

is what Popeyes Restaurant has argued. That is incorrect and in so doing Peoples is conflating the two arguments made by Popeyes Restaurant (that the Federal Enclave Doctrine bars his state law claims and Title VII deprives the trial court of subject matter jurisdiction to hear federal law claims) into one. Here, again, Popeyes Restaurant argues only that Peoples' state law claims are barred by the Federal Enclave Doctrine. Popeyes Restaurant does not argue that the Federal Enclave Doctrine deprives a Washington state court of subject matter jurisdiction. In *Mendoza*, this Court correctly recognized the difference in the two arguments when it explained:

[W]here a cession of jurisdiction is made by a state to the federal government, it is necessarily one of political power and leaves no authority in the state government thereafter to legislate over the ceded territory....exclusive jurisdiction in the sense of exclusive sovereignty does not divest state courts of jurisdiction over personal injury causes of action... If Mendoza's injuries occurred in a neighboring state, there would be no question that Washington courts could exercise proper subject-matter jurisdiction over the claim. That the injuries were allegedly inflicted within a federal enclave, Fort Lewis, does not limit Washington's subject-matter jurisdiction.

Id. at 152. This Court further confirmed that distinction when it distinguished *Dirt & Aggregate* case by stating:

Dirt & Aggregate address[es] whether the State can regulate within federal enclaves, not whether Washington has subject-matter jurisdiction over personal injury claims arising in a federal enclave.

Mendoza, 145 Wn. App. at 153. In sum, *Mendoza* stands for the correct, but inapplicable, proposition that the Federal Enclave Doctrine does not deprive a court of subject matter jurisdiction. This is irrelevant here, where Popeyes did not argue – and the trial court did not rule – that the

Federal Enclave Doctrine deprived the trial court of subject matter jurisdiction.

C. The Trial Court Correctly Concluded It Lacked Subject Matter Jurisdiction Over Any Possible Federal Claims

Although the Federal Enclave Doctrine does not prevent Peoples from asserting claims under federal law in the future, the trial court correctly concluded that it lacked subject matter to consider such claims now.

Under federal law, Title VII, a plaintiff must exhaust administrative remedies with the United States Equal Employment Opportunity Commission (“EEOC”) before filing a claim in federal district court. *Lyons v. England*, 307 F.3d 1092 (9th Cir. 2002). Exhaustion of administrative remedies under Title VII requires the complainant to file a timely charge with the EEOC, thereby allowing the agency time to investigate the claim. *Id.*; *see also* 42 U.S.C. § 2000e-5. Substantial compliance with this requirement is a jurisdictional prerequisite. *Sommatino v. United States*, 255 F.3d 704, 708 (9th Cir. 2001). A complainant may not file a claim in federal district court until the EEOC either investigates and resolves the claim or issues the complainant a “right to sue” letter. *Payan v. Aramark Management Services Ltd. P’ship*, 495 F.3d 1119 (9th Cir. 2007). The Ninth Circuit has held that where the plaintiff never presented a discrimination complaint to the appropriate administrative authority, the federal district court has no subject matter jurisdiction. *Sommatino*, 255 F.3d at 709.

Before filing a lawsuit, Peoples must exhaust his administrative remedies under Title VII. No court has subject matter jurisdiction over Peoples’ claims until he exhausts administrative remedies. Peoples does

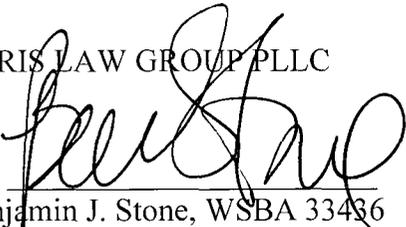
not assert that he has filed a claim with the EEOC. Peoples must substantially comply with the statutory requirements until Title VII before any court may hear his claims. Then, Peoples can file a lawsuit in the appropriate court. In the meantime, the trial court Court lacked subject matter jurisdiction over the claim alleged in the Complaint. Thus, dismissal is the only remedy.²

V. CONCLUSION

The trial court properly dismissed this case without prejudice because the state-law claims asserted by Peoples against Popeyes Restaurant are barred by the Federal Enclave Doctrine, and because Peoples has failed to exhaust his administrative remedies under Title VII. Popeyes Restaurant respectfully requests that the order be affirmed.

Dated this 10th day of February, 2014

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² In making this argument, Popeyes Restaurant does not concede that any charge of discrimination filed by Peoples would be timely or meet the standards of federal law for other reasons. Popeyes Restaurant reserves the right to make such arguments should Peoples attempt to assert federal law claims.

