UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Elisena Philemond v. Boca Lakes Condominium Association, Inc., et al.

Case No. 25-CV-81389-EA (S.D. Fla. May 13, 2026) (report and recommendation) · No. 25-CV-81389-EA · Decided May 13, 2026

SUMMARY

This Report and Recommendation addresses motions to dismiss claims arising from alleged workplace sexual harassment, retaliation, constructive discharge, negligent hiring and supervision, and sexual assault and battery. The court recommends granting Phoenix Management Services, Inc.’s motion in part and denying it in part, and granting Boca Lakes Condominium Association, Inc.’s motion. The document discusses shotgun pleading, the employer relationship, Title VII and Florida Civil Rights Act claims, and related Florida tort claims.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Bruce E. Reinhart
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	May 13, 2026
DOCKET	25-CV-81389-EA
DISPOSITION	other
PROCEDURAL POSTURE	Report and recommendation on defendants' motions to dismiss a complaint asserting federal and Florida sexual-harassment, retaliation, constructive-discharge, negligent hiring, retention and supervision, and sexual-assault-and-battery claims.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations and attachments as true, draws plausible inferences in the plaintiff's favor, and asks whether the complaint states a plausible claim for relief. A shotgun-pleading determination is governed by Federal Rule of Civil Procedure 8(a)(2) and whether the pleading gives defendants adequate notice of the claims and grounds supporting them.

PRECEDENTIAL VALUE	nonprecedential

TOPICS

motions to dismiss | pleadings | civil procedure | sexual harassment | employment discrimination

PRACTICE AREAS

civil procedure | employment law | employment discrimination | torts

QUESTIONS PRESENTED

1. Whether the complaint plausibly alleged that Phoenix was Philemond's employer for purposes of her federal and Florida employment-discrimination claims.
2. Whether combining negligent hiring, retention, and supervision in one count constituted a shotgun pleading.
3. Whether the complaint plausibly stated negligent hiring and negligent supervision claims against Phoenix.
4. Whether the complaint plausibly alleged that Vito's alleged sexual assault and battery could fall within the scope of his employment or be assisted by the employment relationship.
5. Whether the complaint was a shotgun pleading against Boca Lakes because it inadequately identified which defendant was responsible for particular conduct and combined distinct negligence theories.
6. Whether Philemond should be allowed to amend the complaint.

HOLDINGS

1. The complaint plausibly alleged an employment relationship between Philemond and Phoenix because Phoenix allegedly controlled or affected her daily work, compensation, supervision, and hours.
2. Combining negligent hiring, retention, and supervision in a single count constituted a shotgun pleading because those are distinct causes of action with different elements requiring separate factual findings.
3. The complaint failed to state plausible negligent hiring and negligent supervision claims against Phoenix.
4. The complaint plausibly alleged a factual question concerning whether Vito used his supervisory role and the employment relationship to further the alleged sexual assault and battery; dismissal of those claims was not warranted at this stage.
5. The complaint was a shotgun pleading as to Boca Lakes because it sometimes failed to identify which defendant was responsible for alleged acts and inconsistently used singular and plural references to the defendants.
6. Philemond should be permitted to file an amended complaint without a separate motion for leave to amend.

KEY QUOTATIONS

> *"Shotgun pleadings violate Rule 8(a)(2), by "fail[ing] to one degree or another . . . give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.""* (5)

> *"When a supervisor requires sexual favors as quid pro quo for job benefits, the supervisor, by definition, acts as the company."* (9)

> *"Accordingly, this Court RECOMMENDS that the District Court GRANT in part and DENY in part Phoenix's Motion and GRANT Boca Lakes' Motion, with leave to file an amended complaint."* (25)

FACTUAL BACKGROUND

Philemond, a Haitian woman who was not fluent in English, performed janitorial work at Boca Lakes beginning in February 2023. Her supervisor, Joseph Vito, an employee of Phoenix, allegedly made repeated sexual demands, comments, and unwanted physical contacts, threatened to alter her hours or fire her if she refused, and ultimately threatened physical violence. Philemond resigned on June 12, 2023, reported the conduct to police, and alleged that Vito later pleaded guilty to criminal charges. The complaint alleged that Phoenix and Boca Lakes jointly controlled aspects of her employment, including work scope and compensation.

PROCEDURAL HISTORY

Elisena Philemond filed her complaint on November 9, 2025. Phoenix Management Services, Inc. moved to dismiss under Rules 8 and 12(b)(6), and Boca Lakes Condominium Association, Inc. moved to dismiss on shotgun-pleading grounds. The motions were referred to Magistrate Judge Bruce E. Reinhart, who recommended granting Phoenix's motion in part and denying it in part, granting Boca Lakes' motion, and allowing Philemond to amend; objections were to be filed with District Judge Ed Artau.

DISPOSITION

other

REMAND INSTRUCTIONS

The district court should permit Philemond to file an amended complaint without a separate motion for leave to amend. The amended pleading should separately state distinct causes of action and clarify which defendant is alleged to be responsible for each act or whether one defendant's conduct is being imputed to the other.

CASES CITED

- Weiland v. Palm Beach County Sheriff's Office, 792 F.3d 1313 (11th Cir. 2015)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Chaparro v. Carnival Corp., 693 F.3d 1333 (11th Cir. 2012)
- Peppers v. Cobb County, 835 F.3d 1289 (11th Cir. 2016)
- Virgo v. Riviera Beach Associates, Ltd., 30 F.3d 1350 (11th Cir. 1994)
- Lyes v. City of Riviera Beach, 166 F.3d 1332 (11th Cir. 1999)

- Monsanto v. Fleming, No. 07-cv-405-J-33HTS, 2007 WL 3521724, at *4 (M.D. Fla. Nov. 15, 2007)
- Pipkins v. City of Temple Terrace, 267 F.3d 1197, 1200 n.3 (11th Cir. 2001)
- Burlington Industries v. Ellerth, 524 U.S. 742 (1998)
- Steele v. Offshore Shipbuilding, Inc., 867 F.2d 1311 (11th Cir. 1989)
- Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986)
- Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982)
- Farley v. American Cast Iron Pipe Co., 115 F.3d 1548 (11th Cir. 1997)
- Johnson v. Booker T. Washington Broadcasting Service, Inc., 234 F.3d 501 (11th Cir. 2000)
- Reeves v. C.H. Robinson Worldwide, Inc., 594 F.3d 798 (11th Cir. 2010)
- Faragher v. City of Boca Raton, 524 U.S. 775 (1998)
- Uppal v. Hospital Corp. of America, 482 F. App'x 394 (11th Cir. 2012)
- Burlington Northern & Santa Fe Railway v. White, 548 U.S. 53 (2006)
- E.E.O.C. v. Total System Services, Inc., 221 F.3d 1171 (11th Cir. 2000)
- Crawford v. Carroll, 529 F.3d 961 (11th Cir. 2008)
- Medearis v. CVS Pharmacy, Inc., 646 F. App'x 891 (11th Cir. 2016)
- Bryant v. Jones, 575 F.3d 1281 (11th Cir. 2009)
- Hipp v. Liberty National Life Insurance Co., 252 F.3d 1208 (11th Cir. 2001)
- Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)
- Stancombe v. New Process Steel LP, 652 F. App'x 729 (11th Cir. 2016)
- Doe v. Epstein, No. 08-80993, 2009 U.S. Dist. LEXIS 16490 (S.D. Fla. Feb. 12, 2009)
- Lay v. Kremer, 411 So. 2d 1347 (Fla. 1st DCA 1982)
- Paul v. Holbrook, 696 So. 2d 1311 (Fla. 5th DCA 1997)
- Sullivan v. Atlantic Federal Savings & Loan Association, 454 So. 2d 52 (Fla. 4th DCA 1984)
- Kiefer v. Endodontics, P.A., No. 23-cv-80404, 2023 WL 11956319 (S.D. Fla. July 17, 2023)
- Yule v. Ocean Reef Community Association, No. 19-10138-CIV, 2020 WL 2051505 (S.D. Fla. June 8, 2020)
- Blount v. Sterling Healthcare Group, 934 F. Supp. 1365 (S.D. Fla. 1996)
- Wagner v. First Horizon Pharmaceutical Corp., 464 F.3d 1273 (11th Cir. 2006)
- Burgess v. Religious Technology Center, Inc., 600 F. App'x 657 (11th Cir. 2015)
- Newton v. Duke Energy Florida, 895 F.3d 1270 (11th Cir. 2018)
- Rosenberg v. Gould, 554 F.3d 962 (11th Cir. 2009)
- Posner v. Essex Insurance Co., 178 F.3d 1209 (11th Cir. 1999)
- Davidson v. Maraj, 609 F. App'x 994 (11th Cir. 2015)
- United States v. Campbell, 26 F.4th 860 (11th Cir. 2022)
- United States v. Sineneng-Smith, 590 U.S. 371 (2020)

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