

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 19-cv-62204-BLOOM/Valle

JENNIFER M. JANIVER

Plaintiff,

v.

SEMINOLE HARD ROCK HOTEL
CASINO,

Defendant.

ORDER

THIS CAUSE is before the Court upon Defendant Seminole Hard Rock Hotel Casino's ("Defendant") Motion to Dismiss Plaintiff's Complaint for Lack of Subject Matter Jurisdiction ("Motion"), ECF No. [4], filed on September 11, 2019. Plaintiff's response to the Motion was originally due on September 25, 2019. Plaintiff failed to file a response by that deadline, and the Court ordered her to file a response to the Motion no later than October 2, 2019. *See* ECF No. [8]. The Court advised Plaintiff that, pursuant to Local Rule 7.1(c), failure to respond to the Motion "may be deemed sufficient cause for granting the motion by default." *Id.* To date, the record reflects that Plaintiff has neither filed an opposition by the extended deadline, nor requested an extension of time by which to do so. Plaintiff's failure to respond to the Motion alone is sufficient basis to grant the Motion. The Court has nonetheless reviewed the merits of the Motion and finds that there is good cause to dismiss the instant action.

Plaintiff filed the instant action against "Seminole Hard Rock Hotel Casino" alleging racial discrimination in violation of Title VII. ECF No. [1]. The Defendant named in the lawsuit is an entity owned and operated by the Seminole Tribe of Florida. *Id.* "Seminole Hard Rock Hotel

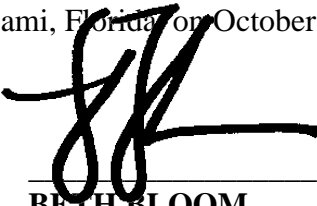
Casino,” is not a separate legal entity, nor a proper fictitious name of the Seminole Tribe of Florida. ECF No. [4], at 2. In the Motion, Defendant’s argument for dismissal is two-fold. First, Defendant argues that the instant action may not proceed because the Defendant is a federally recognized Indian tribe exempt for suit under Title VII, and further that there has been no waiver of the tribe’s sovereign immunity. ECF No. [4], at 5-7. Second, the Defendant contends that the Complaint must be dismissed because Plaintiff has failed to allege that she properly and timely exhausted her administrative remedies prior to filing this lawsuit, as required under Title VII. *Id.* at 10-12.

An “Indian tribe is only subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). Further, Congress has chosen to expressly exempt Indian tribes from Title VII’s definition of “employer.” 42 U.S.C. § 2000e(b) (“The term ‘employer’ ... does not include ... an Indian Tribe ...”). Title VII, by its own terms, does not apply to Indian Tribes, therefore, absent a showing that the Defendant has waived sovereign immunity this Court lacks subject-matter jurisdiction, and this case is due to be dismissed. *See Mastro v. Seminole Tribe of Florida*, 578 Fed. Appx. 801, 802 (11th Cir. 2014) (affirming the dismissal of case alleging gender discrimination and retaliation in violation of Title VII for lack of subject-matter jurisdiction). Because the Court finds this first argument to be dispositive, it need not address Defendant’s additional arguments for dismissal.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants’ Motion, **ECF No. [4]**, is **GRANTED by default**.
2. The above-styled action is **DISMISSED**.

DONE AND ORDERED in Chambers at Miami, Florida on October 3, 2019.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

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