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United States District Court, E.D. California.

Martha RIVERA, et al., Plaintiffs,
v.
NIBCO, INC., et al., Defendants.

No. CVF99-6443AWISMS. | Dec. 21, 2001.

Opinion

ORDER RE MOTION FOR RECONSIDERATION

ISHII, J.

*1 On June 18, 2001, the Magistrate Judge entered an Order Granting Plaintiff's Motion for Protective Order. On June 26, 2001, Defendants filed a motion for reconsideration of the Magistrate Judge's ruling, pursuant to Rule 72(a), Federal Rules of Civil Procedure, and Local Rule 72-303. Plaintiffs oppose the motion for reconsideration. Oral argument was heard on the motion on October 1, 2001, after which the court requested further briefing on pertinent sections of the Immigration Reform and Control Act. The briefing was received from the parties and further oral argument was heard on December 10, 2001.

Rule 72(a), Federal Rules of Civil Procedure, provides as follows:

(a) Nondispositive Matters. A magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made. The district judge to whom the case is assigned shall consider such objections and shall modify or set

aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

Local Rule 72-303 provides in part as follows:

The standard that the assigned Judge shall use in all such requests is the "clearly erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A). See Fed.R.Civ.P. 72(a).

Defendants first contend that the Magistrate Judge erred in preventing them from determining Plaintiffs' places of birth. See *Espinoza v. Farah Mrg. Co.*, 414 U.S. 86, 88, 94 S.Ct. 334 (1973) ("[t]he term 'national origin' on its face refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came"). Defendants claim that, "[t]he Magistrate Judge basically has ruled that because the Plaintiffs have responded to interrogatories stating their ancestry, the issue as to their national origin is no longer relevant." Request for Reconsideration, 5:4-7. Defendants argue that this ruling is clearly erroneous and contrary to law.

Defendants misstate the Magistrate Judge's ruling. Rather than ruling that the issue as to Plaintiffs' national origin is no longer relevant, the Magistrate Judge ruled that because each Plaintiff has identified his or her national origin through responses to interrogatories and because there is no dispute that each Plaintiff is a member of a protected class, further questions as to where each Plaintiff was born have no relevance to this action. The court finds that this ruling is neither clearly erroneous nor contrary to law.

Second, Defendants contend that the Magistrate Judge erred in barring discovery concerning Plaintiffs' work status, presenting several separate arguments. The court notes at the outset that neither party has cited the court to controlling Ninth Circuit authority on this issue.

*2 Initially, Defendants argue that the Magistrate Judge, in adopting the reasoning of *Massey v. Trump's Castle*, 828 F.Supp. 314, 321 (D.N.J.1993), adopted reasoning that was rejected in *McKennon v. Nashville Banner Publishing Co.*, 513 U.S. 352 (1995). Defendants, however, ignore the discussion of *McKennon*'s application to *Massey* found at pages 9 through 10 of the Magistrate Judge's Order. The court finds Defendants' argument to be meritless.

Next, Defendants argue that the Magistrate Judge was mistaken in stating that, "[t]he defendant employer is not placed in an adverse position because but for the lawsuit the employer never would have had reason to pursue such an inquiry." This statement obviously refers to

Rivera v. Nibco, Inc., Not Reported in F.Supp.2d (2001)

Defendants' position as to determining Plaintiff's employment status, which is now no worse than it was before this lawsuit was filed. It does not refer, as Defendants imply, to Defendants' present position in litigating this lawsuit as compared with their position before the Magistrate Judge ruled on the discovery dispute.

Further, Defendants argue that the Magistrate Judge mistakenly held that Defendants should have engaged in an independent investigation regarding Plaintiffs' immigration status at the time of hiring, not post-discrimination. Defendants claim that the Immigration Reform and Control Act ("IRCA") has no such language and that the Magistrate Judge attempts to read into the IRCA a requirement that does not exist. The court finds that Defendants misconstrue the Magistrate Judge's statement, which in no way refers to the IRCA.

Furthermore, Defendants argue that the Magistrate Judge was mistaken in basing her decision in part "on the partial immunity granted to undocumented employees regarding their standing to bring a Title VII claims as granted by *Hacienda Hotel* and *Tortilleria*," claiming that neither case extends any form of discovery immunity to a plaintiff claiming discrimination. The court again finds that Defendants misconstrue the Magistrate Judge's

statement, which does not refer to immunity from discovery, but clearly refers to standing granted to undocumented employees under Title VII.

Finally, Defendants take issue with the Magistrate Judge's reference to the possible serious ramifications to Plaintiffs, including possible deportation and criminal prosecution, of allowing Defendants their requested discovery. The court finds that the Magistrate Judge correctly considered the ramifications to all parties of her resolution of this discovery dispute.

The court has considered the further briefing provided by the parties and finds it informative, but not dispositive. Based on all of the above, the court concludes that Defendants have not demonstrated that the Magistrate Judge's ruling on discovery concerning Plaintiffs' work status is either clearly erroneous or contrary to law.

Accordingly, Defendants' motion for reconsideration is **HEREBY DENIED**.

IT IS SO ORDERED