

Latuga v. Hooters, Inc.

United States District Court for the Northern District of Illinois, Eastern Division
July 27, 1995, Decided ; July 28, 1995, DOCKETED
Case No. 93 C 7709, Case No. 94 C 6338

Reporter: 1995 U.S. Dist. LEXIS 10713

SAVINO LATUGA and DAVID GONZALEZ, individually and as representatives of a plaintiff class of similarly situated persons, Plaintiffs, v. HOOTERS, INC. d/b/a Hooters, individually, and HOOTERS OF ORLAND PARK, INC. d/b/a Hooters, individually and as a representative of a defendant class of similarly situated entities, Defendants. JOHN GINTER and PATRICK SALISBURY, individually and as representatives of a plaintiff class of similarly situated persons, Plaintiffs, v. HOOTERS, INC. d/b/a Hooters, individually, and HOOTERS OF ORLAND PARK, INC. and HOOTERS OF DOWNERS GROVE, INC., each d/b/a Hooters, individually and as a representative of a defendant class of similarly situated entities, Defendants.

Subsequent History: [*1] Adopting Order of March 29, 1996, Reported at: 1996 U.S. Dist. LEXIS 4169. Counsel Amended October 29, 1996.

Counsel: For SAVINO LATUGA, individually and as a representative of a class of similarly situated persons, plaintiff: John G. Jacobs, Robert Plotkin, Jonah Orlofsky, Plotkin & Jacobs, Ltd., Chicago, IL. Jeffrey Grant Brown, Shannon & Brown, Ltd., Chicago, IL. Stephen G. Seliger, Mary Lane Mikva, Seliger & Mikva, Ltd., Chicago, IL. Robert D. Allison, Chicago, IL. Steven I. Saltzman, Law Offices of Steven Saltzman, Chicago, IL. Joshua Karsh, Plotkin & Jacobs, Ltd., Chicago, IL. For DAVID GONZALEZ, individually and as representatives of a plaintiff class of similarly situated persons, plaintiff: Steven P. Schneck, Robert D. Allison & Associates, Chicago, IL.

For HOOTERS OF ORLAND PARK, INC. dba Hooters, defendant: John B. Simon, Barry A. Hartstein, Catherine Patricia Wassberg, Patricia Lee Refo, Andrew Malen Spangler, Jr., Jenner & Block, Chicago, IL.

Judges: W. Thomas Rosemond, Jr., United States Magistrate Judge. Judge Blanche M. Manning

Opinion by: W. Thomas Rosemond, Jr.

Opinion

TO: The Honorable Blanche M. Manning

United States District Judge

REPORT AND RECOMMENDATION

W. Thomas Rosemond, Jr., Magistrate Judge

BACKGROUND.

Plaintiffs, Savino Latuga, David Gonzalez, John Ginter, and Patrick Salisbury ("Plaintiffs"), commenced this action against defendants, Hooters, Inc., Hooters Management Corporation, Hooters of Orland Park, Inc., and Hooters of Downers Grove, Inc. ("Defendants"), seeking relief under 42 U.S.C. § 2000e-2(a)(1) of the 1991 Civil Rights Act. In their complaint, plaintiffs charge defendants with enforcing an unlawful nationwide policy of exclusively hiring women for server, bartender, and host positions. Defendants contend that its policy is a bona fide occupational qualification ("BFOQ"). Plaintiffs seek class certification so they may represent all men who applied to Hooters and were rejected and all men who were deterred from applying because of this policy. In response, defendants claim that the named plaintiffs are not adequate representatives of the class they seek to represent, [*2] and in the alternative that if a class is certified it should only include men who applied to and were rejected by the Hooters of Orland Park and the Hooters of Downers Grove. ***Plaintiffs' motion for class certification is granted in its entirety.***

FACTS.

On or about January 5, 1993, plaintiffs Savino Latuga and David Gonzalez applied for positions as waiters and were rejected by Hooters of Orland Park. Latuga and Gonzalez filed simultaneous and timely charges of discrimination with the EEOC against Hooters on February 12, 1993, alleging unlawful refusal to hire on the basis of gender because Hooters "does not hire male waiters."

The second set of named plaintiffs include Patrick Salisbury, who on or about February 17, 1994 also applied for a position as a waiter at Hooters of Orland Park and was rejected. Finally, on or about February 24, 1994 plaintiff John Ginter applied for a position as a waiter and was rejected by Hooters of Downers Grove. On April 8, 1994 plaintiffs Ginter and Salisbury also filed similar charges with the EEOC.

It is undisputed that defendants have a policy of only hiring and employing women for their "front of the house"

positions - servers, [*3] bartenders, and hosts - to the exclusion of men. Defendants refused to hire the named plaintiffs or any other men for these positions in any of its stores nationwide to this date.

ANALYSIS.

Plaintiffs' motion for class certification is reasonable because plaintiffs are men who seek to represent other men who have suffered from similar unfair treatment by Hooters based entirely on their sex. Defendants admit that Hooters restaurants have a policy of strictly hiring women for "front of the house" positions - servers, bartenders, and hosts - to the exclusion of men. In its defense, Hooters contend that this practice is a bona fide occupational qualification ("BFOQ"). Whether or not a policy of only hiring women is legitimate has no bearing on class certification, but is a matter for trial. This court may not focus on the merits of the case; rather it must determine the appropriateness of class certification as a separate issue.

Class membership, including deterred applicants, begins 300 days before plaintiffs Latuga and Gonzalez filed their claim with the EEOC. Due to the large class plaintiffs seek to represent, joinder is impracticable. ¹ The commonality and typicality [*4] requirements are met simply because plaintiffs are men who applied and were rejected for "front of the house" positions at a Hooters restaurant. Arguments by defendants that named plaintiffs are not credible have no relevance in determining class certification.

Similarly, defendants' contentions that the named plaintiffs applied to Hooters for the purpose of being rejected are irrelevant. Plaintiffs have standing for a claim of discrimination whether they truly sought employment or applied knowing they would be rejected, as an evidentiary function to this litigation. ²

[*5] Finally, defendants claim that the structure of Hooters, Inc. does not hold them responsible for the 127 stores licensed to and run by Hooters of America is not determinative to the decision for class certification. The named plaintiffs are men who have been discriminated against by the Hooters policy against hiring men for "front of the house" positions and seek to represent all men who have suffered or have been deterred from applying to Hooters as a result.

Recommendation: Plaintiffs have established that they are adequate representatives for class certification. Accordingly, plaintiffs' **Motion for Class Certification** should be granted in its entirety. ³

[*6] **So Recommended.**

Dated: July 27, 1995

W. Thomas Rosemond, Jr.

United States Magistrate Judge

¹ *Fed. R. Civ. P. 23(a)*.

² *C.f. Havens Realty Corp. v. Coleman*, 455 U.S. 363, 374-75, 71 L. Ed. 2d 214, 102 S. Ct. 1114 (1982) (testers in a case involving racial "steering" by real estate brokers had standing because the testers suffered injury according to the statute even if they knew they were going to receive false information and had no intention of buying a home); *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1526 (7th Cir. 1990) (court questions testers standing, but nonetheless, follows *Havens*).

³ Pursuant to Rule 72(a) of the Federal Rules of Civil Procedure, the parties are given 10 days after being served with a copy of the Report and Recommendation to file exceptions thereto with The Honorable Blanche M. Manning. Failure to file objections within the specified time period waives the right to appeal the Magistrate Judge's report. *Video Views, Inc. v. Studio 21, Ltd.*, 797 F.2d 538 (7th Cir. 1986). *See also The Provident Bank v. Manor Steel Corp.*, 882 F.2d 258, 261 (7th Cir. 1989) (when a matter has been referred to a Magistrate Judge, acting as a special master or § 636(b)(2) jurist, a party waives his right to appeal if he has not preserved the issues for appeal by first presenting them to the District Judge as Objections to the Magistrate Judge's report).