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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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MINUTE ENTRY
SHUSHAN, M.J.
APRIL 26, 2000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

CIVIL ACTION

VERSUS

NO: 99-2884

LAKESIDE IMPORTS, INC.
dba LAKESIDE TOYOTA

SECTION: "S" (1)

HEARING ON MOTION

APPEARANCES: Submitted on briefs

MOTION: MOTION OF LAKESIDE IMPORTS, INC. TO COMPEL DISCOVERY

DISMISSED AS MOOT IN PART, GRANTED IN PART.

Before the court is the motion of Lakeside Imports, Inc. (Lakeside) to compel the United States Equal Employment Opportunity Commission (EEOC) to produce the administrative files of seven persons who have filed administrative charges with the EEOC alleging racially discriminatory practices in Lakeside's used car department. The instant lawsuit was instituted by the EEOC on behalf of claimant, Eddie Boyd, and other African-American employees. In addition to Boyd,

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For _____
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Lakeside is aware that at least seven other used car department employees (Greg Quirk, Marcus Morris, Denoid Moran, Jonathan Jones, Damian Duplessis, Darren Morris and David Oseng) have filed charges with the EEOC, all of which Lakeside believes are "open" administrative files. (Lakeside's memorandum in support, pp. 2-3).

Lakeside propounded to the EEOC a broad set of requests for production of documents to which the EEOC objected on various grounds including:

Plaintiff also notes that, to the extent the instant requests would seek information contained in any administrative charge file of any person other than Eddie Boyd, they are confidential under Title VII of the Civil Rights Act of 1964, they are not discoverable, and they will not be produced.

(EEOC's response to first set of requests for production of documents, general statement and objections, ¶ 4; Exhibit "2" to Lakeside's memorandum in support). Lakeside moved to compel production of the administrative files of Mr. Boyd and the seven other employees listed above.¹ Since the time of the filing of the motion to compel, the EEOC has amended its complaint to add five of the charging parties as claimants to this proceeding² and the motion to compel as to those parties is dismissed as moot.³

¹ Lakeside has attached to its motion to compel the charges of discrimination filed against it by Messrs. Boyd, Quirk, M. Morris, Moran, D. Morris, Oseng, Jones and Duplessis. (Exhibit "4", memorandum in support).

² Duplessis, D. Morris, M. Morris, Moran and Jones.

³ The EEOC has advised the court that it will produce the "discoverable portions" of the administrative files for the newly-added claimants.

The EEOC has objected to production of any "open" administrative files of charging parties who are not claimants in this proceeding.⁴ The objection is based on the provisions of Section 709(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-8(e), which states in pertinent part:

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information.

Lakeside argues that the EEOC has instituted a proceeding "involving such information;" that is, this lawsuit. Lakeside also argues that it is not a member of the "public" for purposes of the confidentiality provision since it is a party to this proceeding and to the administrative proceedings. The EEOC contends that it "cannot disclose the contents of any case file before a lawsuit has been filed in connection with such charge," therefore arguing that a specific lawsuit must have been instituted by or on behalf of Quirk and Oseng in order for the administrative files to be produced.⁵ (Memorandum in opposition, p. 5).

The issue presented is whether, after litigation has been filed by the EEOC and other claimants, the defendant may obtain the administrative charge files of charging parties who may be material witnesses in the litigation but who are not parties to the lawsuit. In this case, the defendant

⁴ The EEOC defines open files as "all case files except those for which a Notice of Right to sue has expired without suit being filed." Citing the EEOC Compliance Manual, § 83.1. (Memorandum in opposition, p. 2).

⁵ Both Quirk and Oseng are former white employees of the Lakeside used car department. (See Exhibit "4", memorandum in support). The EEOC does not consider Quirk and Oseng to be persons "similarly situated" to claimants and therefore it does not foresee seeking relief on their behalf. (Memorandum in opposition, p. 3).

is seeking information about two charges in which it is a respondent, but about which the charging parties have not filed suit.⁶ Lakeside relies principally on the holding in National Electric Contractors Assoc. v. Walsh, 1976 WL 600 (D.D.C. 1976), where the EEOC took the position that:

Materials relating to other charges against the same respondents may be released as long as such charges are 'like and related' to the Title VII plaintiffs' allegations of discrimination. Id. at *2.

In that case, the EEOC concluded that materials determined to be "like and related" to a plaintiff's allegation are by definition "involved" in the lawsuit within the meaning of Section 709(e). Id.

The EEOC counters the defendant's argument citing the authority of EEOC v. Associated Dry Goods Corp., 101 S.Ct. 817 (1981), for the proposition that the charging party is entitled to pre-litigation disclosure of his own file, although he is not entitled to disclosure of any other charging party's files. The EEOC also correctly points out that the Supreme Court did not consider or rule on the issue of whether a respondent is entitled to pre-litigation disclosure under Section 709(e). Id. at 825. In reviewing section 709(e), the Court noted that the prohibition on disclosure is to the "public." The Court stated:

The charge, of course, cannot be concealed from the charging party. Nor can it be concealed from the respondent, since the statute also expressly requires the Commission to serve notice of the charge upon the respondent within 10 days of its filing. Thus, the 'public' to whom the statute forbids disclosure of charges cannot logically include the parties to the agency proceeding. Id. at 598 (citations omitted).

No litigation had commenced in the Associated Dry Goods case. Thus, the Court was not faced with

⁶ Cf., Scott v. Leavenworth Unified School District, 78 F.Supp.2d 1198 (D.Ka. 1999) (prohibiting disclosure to current employer/respondent of charge against former employer).

the situation presented here of a pending lawsuit by the EEOC and several claimants against an employer who is the respondent in all of the administrative proceedings at issue. But the opinion does indicate that disclosure of a charge file to a respondent is not disclosure to the "public" as is prohibited by Section 709(e). And the Court also noted that the Commission has special disclosure rules permitting release to charging parties and respondents "so long as the request for the information is made in connection with contemplated litigation." *Id.* at 597 (citations omitted) (emphasis added). Thus, the Court noted that "the Commission sometimes allows a prospective litigant to see information in files of cases brought by other employees against the same employer where the information is relevant and material to the litigant's case." *Id.* (citations omitted) (emphasis added).

The EEOC discusses at length the decision in the Associated Dry Goods case following remand from the Supreme Court, Associated Dry Goods Corp. v. Equal Employment Opportunity Commission, 720 F.2d 804 (4th Cir. 1983) (Associated Dry Goods II). The EEOC argues that Associated Dry Goods II allows the EEOC to refrain from disclosure of the contents of a charge file until after suit has been filed by the charging party. The Fourth Circuit Court of Appeals did find that the Commission never significantly deviated from its rule that "disclosure to the charging party might be made after his entitlement to a right-to-sue letter had accrued, provided the disclosed material was to be used exclusively for purposes of filing a complaint and further that disclosure to the party charged should await the actual filing of suit." The Fourth Circuit explained the rationale as follows:

If ... the charging party determines... not to sue, the party charged would have no interest in securing access to any information in the Commission's file nor would it suffer any prejudice or 'impact' from the absence of access. Should, however, the charging party sue, the charging party would need access to the Commissioner's investigative file only at that time and at that time it would be entitled forthwith to access to the information in the investigative file.

Id. at 811. Again, the facts of Associated Dry Goods do not envision the facts here: a pending Title VII suit by some charging parties and the claim files being sought are those of either potential future claimants or of material witnesses to the pending litigation against the employer/respondent.

The court resolves the issue in favor of the defendant. The EEOC has filed suit alleging that Lakeside has discriminated against its African-American employees who worked in its used car department. Under section 709(e), a proceeding under Title VII has been instituted and the information sought (the administrative files for Quirk and Oseng) are "involved or related to that proceeding." While the case authority does speak in terms of disclosure after the charging party files suit, the statute is not so restrictive. It requires only a relation to the pending proceeding. The court finds that the defendant has shown the relation and the relevance and, unlike in Associated Dry Goods II, a real need of access to the information sought in order to defend the instant litigation. Accordingly, within ten (10) days of entry of this order, the EEOC is to produce to defendant, under a protective order to be prepared by counsel for the EEOC, the administrative files of Greg Quirk and David Oseng.



SALLY SHUSHAN
United States Magistrate Judge