

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

Case Number: 04-CV-70420-DT

v.

HON. GEORGE E. WOODS

MEADE LEXUS,

Defendant.

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ORDER DENYING DEFENDANT'S MOTION TO DISMISS

FILED  
2004 AUG -21 A 12:23  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

This matter having come before the Court on Defendant's motion to dismiss [Doc. No. 3];

The Court having reviewed the pleadings submitted herein, and being otherwise fully informed in the matter;

IT IS HEREBY ORDERED that Defendant's motion to dismiss shall be, and hereby is, DENIED; and

IT IS HEREBY FURTHER ORDERED that this action is STAYED, until October 31, 2004, so that the parties can engage in earnest conciliation efforts. The parties will report to Magistrate Judge Whalen for a status conference in November 2004. In the event that conciliation has not been achieved, and no further progress would be achieved, the Court will lift the stay and issue a Scheduling Order.

## I. BACKGROUND

Plaintiff Equal Opportunity Commission ("the EEOC") instituted this action against Defendant Meade Lexus ("Meade") on behalf of five individuals: Melissa Angotti ("Angotti"), Isabella Ziemer ("Ziemer"), Katie Olsen ("Olsen"), Lauren Rosinski ("Rosinski") and Lana Jaddou-Mio ("Jaddou-Mio"). The EEOC contends that these women were subject to unlawful sexual harassment by a Meade employee, Armand Hasanaj ("Hasanaj").<sup>1</sup> The Court will not engage in a lengthy discussion of the factual background. Instead, the Court focuses on the facts necessary to resolve the instant motion.

The following facts are undisputed. Angotti and Ziemer filed their charges of discrimination with the EEOC on February 7, 2003 alleging sexual harassment and retaliation. Olsen, Rosinski and Jaddou-Mio filed their charges of discrimination alleging sexual harassment on July 14<sup>th</sup>, July 15<sup>th</sup> and July 30<sup>th</sup>, respectively. The parties agree that the EEOC commenced an investigation into the charges. Both parties argue, however, that the other party did not zealously participate in the investigatory stage of these five charges. In particular, Meade complains that the EEOC prematurely issued cause determinations for the five charging parties. On the other hand, the EEOC submits that Meade was afforded ample time to provide information prior to the determination.

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<sup>1</sup> Armand Hasanaj was a co-worker to some of the women, and a supervisor to others. See Def.'s Br. at 2-3; Plf.'s Br. at 1-2.

The EEOC issued its cause determinations, along with its conciliation proposal, for all five charging parties on September 24, 2003. See Def.'s Ex. 9. Both parties point to the following volley of letters to substantiate their respective positions on whether the EEOC fulfilled its statutory duty to conciliate prior to instituting this federal action. Following the EEOC's cause determinations and conciliation proposal, Meade transmitted a letter, dated October 7, 2003, informing the EEOC that it did not receive the September 24<sup>th</sup> letters until October 3<sup>rd</sup>. See Def.'s Ex. 11. Meade opted to "postpone our response to the proposed conciliation" because Meade wanted to revisit the cause determinations. See id. Thereafter, in an October 9, 2004 letter, the EEOC indicated that although cause determinations had already been made, the investigator, Diane M. Roberson ("Roberson"), remained "willing to review any additional information [Meade] wish[ed] to send prior to any formal conciliation discussions." Def.'s Ex. 12. On October 16, 2003, Meade submitted a letter in response to Roberson's, stating, in part, "[a]ssuming that you [Roberson] are unwilling to revisit the cause findings as requested, [Meade is] prepared to move to conciliation." Def.'s Ex. 13. Meade complained that the determination letters were conclusory. See id. Meade proceeded to reiterate the reasons why it believed that the EEOC should not have issued its cause determinations. See id. In an October 29<sup>th</sup> correspondence, the EEOC confirmed that it received and considered the information

contained in Meade's October 16<sup>th</sup> letter. See Def.'s Ex. 14. The EEOC indicated, however, that the cause determinations would not be altered. See id. The EEOC expressed an interest in entertaining a counteroffer to its proposed conciliation package, and requested that Meade make its offer by November 5, 2003. See id. Also on October 29th, Meade issued a responsive letter asserting that it could not supply a meaningful counteroffer without an explanation "of the reasonable cause for the EEOC's belief that Title VII has been violated in each of these cases." Def.'s Ex. 15. As a result of Meade's letter, the EEOC determined that any further conciliation efforts would be futile and thus issued its formal notice that it deemed the conciliation efforts unsuccessful. See Def.'s Ex. 16. These notices were dated November 7<sup>th</sup> for Jaddou-Mio, November 10<sup>th</sup> for Angotti, Olsen and Ziemer, and November 13<sup>th</sup> for Rosinski. See Def.'s Ex. 16.

Currently before this Court is Meade's motion to dismiss. Meade contends that dismissal is appropriate because the EEOC did not engage in good faith efforts at conciliation prior to filing suit as required by Title VII. See 42 U.S.C. § 2000e-5.

## II. STANDARD OF REVIEW

Defendant seeks dismissal pursuant to FED.R.CIV.P. 12(b)(1) for lack of jurisdiction. Defendant contends that Plaintiff's failure to conciliate this matter before instituting this federal lawsuit precludes this court action.

Pursuant to 42 U.S.C. § 2000e-5(b), the EEOC investigates all charges of discrimination and if it determines that there is "not reasonable cause to believe that the charge is true," the charge is dismissed. Provided there is reasonable cause to believe the charge is true, the EEOC "shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U.S.C. §2000e-5(b). If informal methods fail, the EEOC may, under 42 U.S.C. § 2000e-5(f), bring a civil action "against any respondent not a government, governmental agency, or political subdivision named in the charge."

### III. DISCUSSION

The parties agree that conciliation efforts are a prerequisite to filing an action in federal court. See 42 U.S.C. §2000e-5(b); Equal Employment Opportunity Comm'n v. Keco Indus., Inc., 748 F.2d 1097, 1101 (6th Cir. 1984). The parties also agree that the EEOC must conciliate in good faith. See Keco, 748 F.2d at 1102. The EEOC may file suit after the employer rejects the EEOC's conciliation efforts. See id. Meade urges this Court to find that the EEOC failed to conciliate, and on this basis, dismiss the instant lawsuit. The EEOC maintains that it fulfilled its statutory duty to conciliate. In the alternative, the EEOC requests this Court to stay this action to permit further

conciliation. Meade does not respond to the EEOC's alternative request.

Meade initially suggests that the conciliation efforts were inadequate because the investigation leading up to the cause determination was not satisfactory. See Def.'s Br. at 9-11. The Court will not inquire into the adequacy of the underlying investigation. As the Sixth Circuit aptly expressed, a district court commits reversible error by "inquir[ing] into the sufficiency of the Commission's investigation." Keco, 748 F.2d at 1100. This is because "the nature and extent of an EEOC investigation into a discrimination claim is a matter within the discretion of that agency. The purpose of the EEOC's investigation of a discrimination charge is to determine if there is a basis for that charge. The reasonable cause of determination issued as a result of the investigation is designed to notify the employer of the EEOC's findings and to provide a basis for later conciliation proceedings." Keco, 748 F.2d at 1100. This Court will, however, inquire into whether there has been sufficient good faith conciliation. The primary goal of Title VII is to encourage voluntary compliance. See Occidental Life Ins. Co. of Cal. v. Equal Employment Opportunity Comm'n, 432 U.S. 355, 367-68 (1977). Thus, adequate conciliation is essential. The Court thus must determine whether a genuine effort to conciliate has been made by the EEOC.

The Court recognizes that the EEOC "should be given wide latitude in shaping both the general framework of conciliation and the specific offers made" lest the Court become embroiled in the details of offers and counteroffers. See Equal Employment Opportunity Comm'n v. Sears, Roebuck & Co., 650 F.2d 14, 18 (2d Cir. 1981). The Court does, however, examine the conciliation process to determine whether the EEOC has provided a "fair opportunity" for settlement. See Sears, Roebuck & Co., 650 F.2d at 19. Courts have explained that the EEOC fulfills its statutory duty to conciliate "if it outlines to the employer the reasonable cause for its belief that Title VII has been violated, offers an opportunity for voluntary compliance, and responds in a reasonable and flexible manner to the reasonable attitudes of the employer." Equal Employment Opportunity Comm'n v. Klingler Elec. Corp., 636 F.2d 104, 107 (5th Cir. 1981)(citation omitted); accord, Equal Employment Opportunity Comm'n v. Asplundh Tree Expert Co., 340 F.3d 1256, 1259 (11th Cir. 2003). The Sixth Circuit emphasized: "The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency created to administer and enforce our employment discrimination laws and is beyond judicial review." Keco, 748 F.2d at 1102.

Meade submits that the EEOC's conciliation efforts fall "woefully short" because the EEOC simply presented proposed conciliation agreements along with what Meade characterizes as

conclusory cause determination letters and indicated a willingness to consider counter-proposals. Def.'s Br. at 11; Def.'s Ex. 9. Meade contends that the EEOC was required to do the following: "[O]utline . . . the reasonable cause for the Commission's belief that Title VII had been violated, offer an opportunity for voluntary compliance, and respond in a reasonable and flexible manner to the Company's reasonable attitudes." Def.'s Br. at 11.

Meade contends that the initial conciliation proposal was defective because the EEOC did not sufficiently notify Meade of the EEOC's findings. Meade suggests that the EEOC should have submitted a detailed explanation of its reasonable cause determination. The Sixth Circuit does not, however, require such specificity. Rather, the Sixth Circuit endorses the view the EEOC determination simply "places the defendant on notice of the charges against him." Keco, 748 F.2d at 1100 (summarizing persuasive decision).

Both parties accuse the other of failing to engage in good faith conciliation. Meade submits that it could not provide a reasonable counteroffer because it needed more information concerning precisely how it allegedly violated Title VII. The EEOC on the other hand, submits that Meade's letters were not responsive to its conciliation proposal, and despite repeated invitations to submit a counteroffer, Meade refused. The EEOC believed it had no choice but to proceed with the instant lawsuit because Meade did not submit a counteroffer by the deadline supplied in the EEOC's



October 29<sup>th</sup> correspondence. Upon review of the parties' correspondence, the Court finds that neither party communicated effectively. The Court ascribes the failure to both parties. The Court is not satisfied that the appropriate remedy is to dismiss the instant lawsuit. Rather, the Court finds that the interests of justice will be best served by the Court's continued involvement in this matter. By retaining oversight, the Court is hopeful that the parties will engage in earnest settlement discussions.

In arriving at this conclusion, the Court notes that a number of circuit court of appeals hold that the failure to conciliate is not a jurisdictional bar requiring dismissal of the complaint. See, e.g., Klingler Elec. Corp., 636 F. 2d 104, 107 (5th Cir. 1981); Sears, Roebuck & Co., 650 F.2d at 19. Instead of imposing the draconian sanction of dismissal, select courts advocate staying the action pending appropriate conciliation efforts. See Klingler, 636 F.2d at 107. The Court recognizes that at least one circuit holds that dismissal is appropriate. See Asplundh, 340 F.3d at 1261. Other courts find that although federal courts have the authority to issue a stay, a dismissal, without prejudice, is equally appropriate. See Brennan v. Ace Hardware Corp., 495 F.2d 368, 376 (8th Cir. 1974) (construing analogous conciliation efforts under the Age Discrimination and Employment Act of 1967). The Sixth Circuit is silent on this issue. The Court finds that given the current posture of the instant case, the better approach is to

stay the action, temporarily, to encourage the parties to engage in meaningful settlement discussions. Therefore, the Court will temporarily stay this action until October 31, 2004. The Court will, however, schedule a status conference with the Magistrate Judge in this case, to be held in November 2004, to ascertain the parties' progress. If the Court is not convinced that the parties have made significant progress, or that further efforts would not be productive, the Court will lift the stay and require this case to proceed on an expedited schedule. The Court will issue a Scheduling Order once the stay is lifted.

**IV. CONCLUSION**

For the reasons set forth above, Defendant's motion to dismiss for lack of subject matter jurisdiction is DENIED, and this action is temporarily STAYED consistent with the terms of this Order.

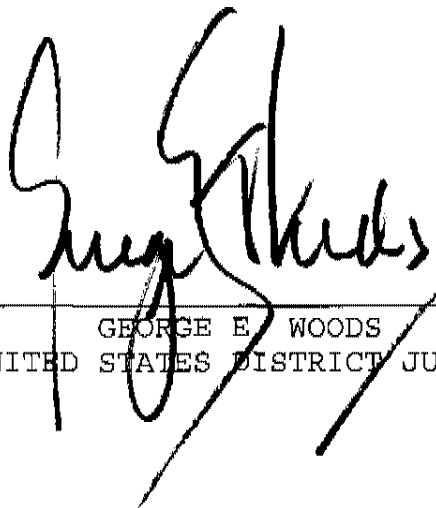
IT IS SO ORDERED.

**AUG 2<sup>nd</sup> 2004**

Dated: ~~July~~, 2004  
Detroit, Michigan

Copies mailed this date to:

Robert Y. Weller II, Esq.  
Joseph P. Shelton, Esq.

  
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GEORGE E. WOODS  
UNITED STATES DISTRICT JUDGE