

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FILED  
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JAN 27 2000

U. S. DISTRICT COURT  
E. DIST. OF MO.  
ST. LOUIS

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
and )  
 )  
ZINA LINDSEY, et al., )  
Plaintiff-Intervenors, )  
 )  
vs. )  
 )  
BEVERLY ENTERPRISES- )  
MISSOURI, INC., )  
 )  
Defendant. )

Case No. 4:98CV1579 RWS

**MEMORANDUM AND ORDER**

This matter is before the Court on defendant's motion for partial dismissal or, in the alternative, for partial summary judgment. Defendant moves to dismiss the retaliatory harassment claims of plaintiff-intervenors Golet, Hatcher and Oris<sup>1</sup> for failure to exhaust their administrative remedies.<sup>2</sup> Defendant also moves to dismiss Golet's retaliatory harassment claim because he did not obtain a right-to-sue letter from the EEOC on this claim. Finally, defendant also contends that Golet, Hatcher and Oris have failed to state a retaliatory harassment claim under either 42

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<sup>1</sup>During the relevant time period, Susan Oris was also known as Susan Layne.

<sup>2</sup>Although the title of the motion indicates that defendant is also moving to dismiss the claims of intervenors Chisom and Taylor, these two plaintiffs are not mentioned in the body of the motion or the request for relief. Accordingly, the Court will construe the motion as one seeking dismissal of claims brought only by Golet, Hatcher and Oris.

U.S.C. § 1981 or Title VII. Golet, Hatcher and Oris oppose the motion, and the issues have been fully briefed. Defendant's motion will be denied.

**Discussion**

In late 1994 and early 1995, nine former employees of defendant's Bridgeton, Missouri nursing home filed charges of discrimination with the EEOC alleging that defendant discriminated against them on account of race and/or retaliated against them for opposing such discrimination. Golet alleged in pertinent part as follows:

I had been employed by Bridgeton Nursing Center, which is owned and operated by Beverly Enterprises, for 18 months. From January 1, 1994 to September 23, 1994, I and black employees were subjected to [] racially derogatory remarks by Danella Marley, Administrator. I complained about the remarks and was suspended for four (4) days without pay, and subsequently terminated on September 29, 1994 . . . I believe I have been discriminated against in retaliation for opposing unlawful employment practices covered by Title VII . . . .

Hatcher's EEOC charge alleges in part as follows:

I was employed by Beverly Enterprises a/k/a Beverly Enterprises Missouri, Inc. a/k/a Bridgeton Nursing Center from June 1993 until September 1993 and from December of 1993 until I was forced to resign on July 31, 1994 . . . From approximately January 1, 1994 until my constructive discharge, I protested racially derogatory comments directed toward black employees and being instructed to discipline black employees without cause . . . I believe I have been discriminated against in retaliation for opposing unlawful employment practices, race . . . in violation of Title VII . . . .

Oris' charge to the EEOC states in part as follows:

I was employed by Beverly Enterprises a/k/a Beverly Enterprises Missouri, Inc. . . . from March 3, 1993 until August 23, 1994 . . . From approximately January 1, 1994 until I was terminated, I protested racially derogatory comments directed toward black employees and being instructed to discipline black employees without cause . . . I believe I have been discriminated against in retaliation for opposing unlawful employment practices . . . in violation of Title VII . . . .

After the charges were filed, the EEOC conducted an investigation which exceeded the scope of the allegations set forth in the original charges. In September and October of 1997, the EEOC sent defendant reasonable cause determinations for each of the nine charges. All of the determinations state that "[w]itness testimony reveals that [defendant's] Administrator used racial slurs and displayed racial animus toward black employees." Moreover, the reasonable cause determination issued for Golet states that "[t]he evidence further shows that [Golet] objected to [defendant's] discrimination, and that he was discharged because of his objections." Accordingly, the EEOC concluded that Golet "[had] been discriminated against in violation of Title VII in that there is reasonable cause to believe that [Golet] was discharged in retaliation for his opposition to race discrimination."

Similarly, the reasonable cause determination issued by the EEOC on Hatcher's charge states that defendant "pressured [Hatcher] to treat black employees unfairly." The determination also notes that "[t]he evidence further reveals that [Hatcher] objected to [defendant's] discrimination, and that [Hatcher] was harassed and

constructively discharged because of her objections." The reasonable cause determination issued for Oris contains identical findings, except that the EEOC concluded that Oris was "harassed and discharged in retaliation for her opposition to racial employment discrimination."

On December 11, 1997, the EEOC sent defendant nine proposed conciliation agreements relating to the charges. The EEOC filed the instant complaint after conciliation efforts failed. The EEOC's amended complaint alleges in relevant part as follows:

Since on or about May 12, 1992, Defendant Beverly Enterprises has engaged in unlawful employment practices at its Bridgeton, Missouri facility in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-(3)(a), including:

- (b) Discharging Al Golet because he opposed Defendant's racial discrimination;
- (c) Harassing and constructively discharging Kelly D. Hatcher because she opposed Defendant's racial discrimination;
- (d) Harassing and discharging Susan Oris because she opposed Defendant's racial discrimination; . . . .

(EEOC First Amended Comp. at ¶ 8).

The charging parties were granted leave to intervene in this action by Order dated July 15, 1999. Count I of Golet, Hatcher and Oris' complaint alleges a claim under Title VII and states in part as follows:

7. Since on or about May 12, 1992 and continuously throughout the relevant time period, Defendant Beverly Enterprises has engaged in unlawful employment practices at its Bridgeton, Missouri

facility in violation of Title VII, 42 U.S.C. § 2000e-(3)(a), including:

- a. Harassing[,] discriminating against, and discharging Al Golet because he opposed Defendant's racial discrimination;
  - b. Harassing[,] discriminating against and constructively discharging Kelly Hatcher because she opposed Defendant's racial discrimination;
  - c. Harassing and discharging Susan Oris because she opposed Defendant's racial discrimination;  
. . .
8. As alleged herein, Plaintiff/Intervenors engaged in protective [sp] activities under the [sp] Title VII and suffered subsequent adverse employment action by Defendant. There is a causal relationship between the protective [sp] activity and subsequent adverse employment action.
  9. The conduct alleged herein constitutes racial discrimination and harassment because of race as well as retaliation for exercising protected rights all prohibited by Title VII.

(Comp. of Intervenors Golet, Hatcher, Oris, Chisom and Taylor at ¶¶ 7-9). Count II of their two-count complaint alleges violations of 42 U.S.C. § 1981.

Defendant now moves to dismiss the alleged retaliatory harassment claims of Golet, Hatcher and Oris on the ground that they failed to include these claims in their EEOC charges. Moreover, defendant argues that these claims should be dismissed because they are not "like or reasonably related to" the claims of discrimination included within their EEOC charges. Defendant also argues that Golet's retaliatory harassment claim should be

dismissed because he failed to obtain a right-to-sue letter from the EEOC on this issue. Finally, defendant moves to dismiss Golet, Hatcher and Oris' Title VII and § 1981 retaliation claims for failure to state a claim.

#### **Discussion**

In ruling on a motion to dismiss for failure to state a claim, the Court must view the allegations in the complaint in the light most favorable to the plaintiff and accept all factual allegations as true. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). A cause of action should not be dismissed for failure to state a claim unless, from the face of the complaint, it appears beyond a reasonable doubt that plaintiff can prove no set of facts in support of the claim that would entitle him to relief. Davis v. Hall, 992 F.2d 151, 152 (8th Cir. 1993). Thus, a motion to dismiss is likely to be granted "only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." Fusco v. Xerox Corp., 676 F.2d 332, 334 (8<sup>th</sup> Cir. 1982).

#### **I. Exhaustion of Administrative Remedies**

Defendant first moves to dismiss the alleged retaliatory harassment claims of Golet, Hatcher and Oris for failure to exhaust administrative remedies. In general, before bringing a suit in federal court, a plaintiff must exhaust the administrative remedies available under Title VII by timely filing with the EEOC a charge

of discrimination and receiving a right-to-sue letter. 42 U.S.C. 2000e-5(b)(c)(e); Shannon v. Ford Motor Co., 72 F.3d 678, 684 (8th Cir. 1996). Once a plaintiff exhausts administrative remedies, he may then bring a Title VII employment discrimination claim in federal court based upon "allegations that are 'like or reasonably related'" to the charges made in his charge of discrimination to the EEOC. Id. at 684. Any claim set forth in a plaintiff's complaint must be reasonably related to plaintiff's charges of discrimination with the EEOC in order to comply with Title VII by providing the EEOC with the opportunity to investigate discriminatory charges and obtain voluntary compliance or other administrative remedy for such discriminatory conduct, before adjudicating any Title VII dispute in court. Id.

Initially, it is less than clear from the face of the complaint whether Golet, Hatcher and Oris are even attempting to state a separate claim for retaliatory harassment as argued by defendant. The Court could simply deny defendant's motion on this basis. Even if true, however, the Court finds that Hatcher and Oris have sufficiently exhausted their administrative remedies with respect to their claims of retaliation. The EEOC uncovered evidence of harassment during its investigation of Hatcher and Oris' charges and concluded that these plaintiffs were harassed in retaliation for opposing defendant's discriminatory conduct. These findings were subject to conciliation proceedings between the EEOC

and defendant. In addition, the EEOC's amended complaint alleges that defendant violated Title VII by harassing Oris and Hatcher in retaliation for opposing discrimination. Under these circumstances, the Court finds that Oris and Hatcher, who have exercised their statutory right to intervene in this action, have sufficiently exhausted their administrative remedies with respect to their retaliation claims.

Although Golet alleged retaliation in his EEOC charge, he is in a different position than the other intervening plaintiffs because the EEOC did not find reasonable cause to believe that Golet was subject to harassment, nor did it allege that he was harassed in its amended complaint. Based on a review of Golet's complaint and opposition to this motion, the Court is not convinced that he is attempting to state a separate claim of retaliatory harassment. In fact, some of the harassment to which he refers in his opposition -- such as the "improper review process" that he was subjected to after opposing defendant's discrimination -- was included within his EEOC charge. The other specific incidents of harassment mentioned by Golet in his opposition appear to the Court to constitute evidence of the complained-of retaliation that was the subject of administrative proceedings. While the scope of Golet's retaliation claim is limited by his EEOC charge, the Court does not believe that Golet's complaint exceeds these parameters. For this reason, the Court will deny defendant's motion to dismiss



this claim. Because it is undisputed that Golet did complain of retaliation in his EEOC charge and obtained a right-to-sue letter, defendant's motion to dismiss on that basis will be denied as well.

## **II. Failure to State a Claim**


Defendant also moves to dismiss plaintiffs' Title VII and § 1981 retaliation claims for failure to state a claim upon which relief may be granted. A plaintiff advancing a retaliation claim under Title VII must allege that: (1) the plaintiff engaged in a protected activity; (2) the plaintiff's employer subsequently took adverse action against the plaintiff; and (3) the adverse action was causally linked to the plaintiff's protected activity. Cross v. Cleaver II, 142 F.3d. 1059, 1071 (8th Cir. 1998). The elements of a retaliation claim under § 1981 are the same as those for a Title VII claim. Kim v. Nash Finch Co., 123 F.3d 1046, 1059-60 (8<sup>th</sup> Cir. 1997).

To engage in an activity protected from retaliation, employees must have "opposed any practice made an unlawful employment practice by this subchapter," or "made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a); Cross, 142 F.3d. at 1071. Applying the relevant legal standards, the Court finds that Golet, Hatcher and Oris have stated

claims for retaliation and will accordingly deny defendant's motion on this ground.

Accordingly,

**IT IS HEREBY ORDERED** that defendant' partial motion to dismiss, or in the alternative, for summary judgment directed to the complaint of plaintiff-intervenors Golet, Hatcher and Oris [#64] is denied.



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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 27<sup>th</sup> day of January, 2000.

AN ORDER, JUDGMENT OR ENDORSEMENT WAS SCANNED, FAXED AND/OR MAILED TO THE  
FOLLOWING INDIVIDUALS ON 01/28/00 by cahring  
4:98cv1579 EEOC vs Beverly Ent - MO

42:2000e Job Discrimination (Employment)

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SCANNED & FAXED BY:  
JAN 28 2000  
J. M. W.