

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION)
)
Plaintiff,)
v.) 1:05CV744
)
GREAT STEAKS, INC. and CLIPPER)
SEAFOOD RESTAURANT, INC.)
d/b/a AUSTIN'S RESTAURANT)
)
Defendant.)
_____)

ORDER

BEATY, Chief District Judge.

This matter is currently before the Court on a Motion for Attorney's Fees [Doc. #111] filed by Defendant Great Steaks, Inc. ("Defendant") against Plaintiff U.S. Equal Employment Opportunity Commission ("Plaintiff"). This civil action came before the Court for a trial by jury during a session of court beginning October 5, 2009. The jury returned a verdict on October 7, 2009 in favor of Defendant, finding no liability for sexual harassment under Title VII of the Civil Rights Acts of 1964 and 1991 ("Title VII"), and the Court entered an Order and Judgment dismissing all claims against Defendant.

In its Motion for Attorney's Fees, Defendant contends that it is entitled to an award of attorney's fees pursuant to 42 U.S.C. § 2000e-5(k), and 28 U.S.C. §§ 1927 & 2412(b). In relevant part, 42 U.S.C. § 2000e-5(k) provides that "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee . . . , and the Commission and the United States shall be liable for costs the same as a private person." The Supreme Court has interpreted this language

to permit the Court to award attorney's fees to a prevailing party if the Court finds that an action was "frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." Christiansburg Garment Co. v. Equal Employment Opportunity Commission, 434 U.S. 412, 421, 98 S. Ct. 694, 700, 54 L. Ed. 648 (1978). In making these determinations, "[t]he fixing of attorneys' fees is peculiarly within the province of the trial judge, who is on the scene and able to assess the oftentimes minute considerations which weigh in the initiation of a legal action." Arnold v. Burger King Corp., 719 F.2d 63, 65 (4th Cir. 1983).

Defendant argues that Plaintiff "should have seen that its case was frivolous, unreasonable, and lacked foundation" on account of various developments that took place prior to and during trial, including that a former defendant, Clipper Seafood, was dismissed from the case, that several of Plaintiff's initial class members withdrew from the suit, and that the testimony at trial provided by Plaintiff's witness was not accepted by the jury. However, the Court notes that this matter survived Defendant's motions for summary judgment and judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50. Further, the issue of whether Defendant committed a violation of Title VII was ultimately submitted to the jury, which returned a verdict in favor of Defendant. Although the jury's verdict suggests that it may not have accepted the evidence or testimony offered by Plaintiff, the Court finds nonetheless that Plaintiff's case raised justiciable issues of fact that were proper for consideration and decision by the jury. A court may not award attorney's fees to a defendant "solely because the plaintiff did not ultimately prevail on the merits of the lawsuit. Since the results of many lawsuits are not predictable, plaintiffs are not to be discouraged from bringing suit just because it is less than

airtight.” Glymph v. Spartanburg Gen. Hosp., 783 F.2d 476, 479 (4th Cir. 1986) (citing Christiansburg Garment, 434 U.S. at 422, 98 S. Ct. at 700). Therefore, the Court does not find that considering the standards laid out above, the claims asserted by Plaintiff were frivolous, unreasonable, or without foundation.

In addition, Defendant also seeks an award of attorneys’ fees pursuant to 28 U.S.C. § 1927, which provides that “[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” This section “imposes a continuing obligation in the conduct of litigation,” and “requires a finding of counsel’s bad faith as a precondition to the imposition of fees.” Brubaker v. City of Richmond, 943 F.2d 1363, 1382 n.25 (4th Cir. 1991) (citing Blair v. Shenandoah Women’s Center, Inc., 757 F.2d 1435, 1438 (4th Cir. 1985)). Here, Defendant argues that Plaintiff’s counsel acted in bad faith and vexatiously multiplied the proceedings through its motions practice and by proceeding to trial with only one class member remaining. However, § 1927 must be construed narrowly by the courts, since it is penal in nature, “so as not to stifle the enthusiasm or chill the creativity that is the very lifeblood of the law.” Mone v. C.I.R., 774 F.2d 570, 574 (2d Cir. 1985); see, e.g., Monk v. Roadway Express, Inc., 599 F.2d 1378, 1382 (5th Cir.1979), *aff’d*, Roadway Express, Inc. v. Piper, 447 U.S. 752, 100 S. Ct. 2455, 65 L. Ed.2d 488 (1980); United States v. Ross, 535 F.2d 346, 350 (6th Cir. 1976). The Court, having presided over the proceedings throughout the course of the present action, does not find that Plaintiff’s counsel has engaged

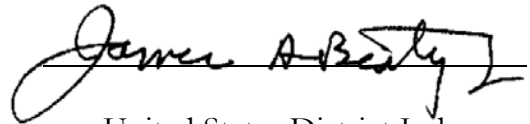
in bad faith conduct or vexatiously multiplied the proceedings at any point during the litigation of this matter.

Finally, Defendant claims that an award of attorney's fees is proper pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, on the grounds that Plaintiff's position was not substantially justified. The EAJA provides that "a court shall award to a prevailing party other than the United States fees and other expenses incurred by that party in any civil action . . . brought by or against the United States . . . unless the court finds that the position of the United States was substantially justified[.]" 28 U.S.C. § 2412(d)(1). A position is "substantially justified" if it is "justified in substance or in the main-that is, justified to a degree that could satisfy a reasonable person." Morris v. Wachovia Securities, Inc., 448 F.3d 268, 279 (4th Cir. 2006)(quoting Pierce v. Underwood, 487 U.S. 552, 565, 108 S. Ct. 2541, 2550, 101 L. Ed. 2d 490 (1988)). Again, in support of its claim, Defendant maintains that Plaintiff's position was not substantially justified on the grounds that Plaintiff proceeded to trial with only one claimant and that the jury did not accept the testimony provided by Plaintiff's witness at trial. The Court notes that although Plaintiff did not prevail at trial, this matter reached the jury on the issue of Defendant's Title VII liability, surviving dispositive motions at each preceding stage. The Court finds that Plaintiff's position in this case was substantially justified, in that a reasonable person would be satisfied by Plaintiff's position, namely that Defendant would have been liable for violating Title VII had the issues of fact in question been resolved in favor of Plaintiff by the jury. For these reasons, the Court concludes that Plaintiff had a "substantial justification" for its position in this case. Therefore, Defendant's Motion for Attorney's Fees

will be denied.

For the reasons set forth above, IT IS ORDERED that Defendant's Motion for Attorney's Fees [Doc. #111] is DENIED.

This, the 2nd day of June, 2010.


United States District Judge