

2002 WL 181709  
United States District Court, S.D. New York.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, Plaintiff,

v.

Venator GROUP, Specialty, Inc. F/K/A F.W.  
Woolworth Co., Inc., Defendants.

No. 99 CIV. 4758(AGS). | Feb. 5, 2002.

## Opinion

### MEMORANDUM ORDER

SCHWARTZ, District J.

\*1 Plaintiff Equal Employment Opportunity Commission brings the above entitled action alleging violations of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § § 621-634. Defendant now moves for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, dismissing the action because of plaintiff’s failure to comply with the applicable statute of limitations. For the reasons stated below, defendant’s motion is denied.

#### Background

During 1996 and 1997, fifty-four former employees of defendant filed complaints with the Equal Employment Opportunity Commission (“EEOC”), the plaintiff in this action (Defendant’s Statement Pursuant to Rule 56.1 (“Defs.56.1”) ¶ 1). The complaints arose out of layoffs that occurred at various Woolworth stores throughout the country in 1995, 1996, and 1997. During the latter half of 1997 and the first half of 1998 the EEOC issued right to sue letters and reasonable cause determination letters for different groups of these individual Woolworth plaintiffs. (Defs. 56.1 ¶ 5-7). On August 13, 1998, the EEOC sent a letter to defendant indicating the Commission’s desire to conciliate the case on behalf of a nationwide class of aggrieved employees (as opposed to one or more of the aggrieved groups). (Defs. 56.1 ¶ 14; Affidavit of Patrick Brady in Support of the Motion (“Brady Aff.”), Exh. L). On August 26, 1998, the EEOC issued a letter to defendant stating that conciliation efforts had failed and the Commission was “forwarding the case to our legal unit for possible litigation.” (Def. 56.1 ¶ 18; Brady Aff. Exh. N; Pl. 56.1 ¶ 18). Between October 23 and November 19, 1998, the EEOC issued reasonable cause determination letters with respect to 12 additional

plaintiffs; these letters were addressed to defendant and the individual former employees. (Def. 56.1 ¶ 19; Brady Aff. Exh. O). On July 2, 1999, the EEOC filed this action alleging that defendant engaged in unlawful age discrimination at its stores throughout the country. (See Complaint ¶ 8).

#### Discussion

According to the language of the ADEA, a civil action for age discrimination may be brought by “a person defined in section 630(a) of this title ... within 90 days” after receiving notice that the EEOC has either declined to sue on the charging individual’s behalf or has otherwise terminated its proceedings. 29 U.S.C. § 626(e). Section 630(a) defines a “person” as “one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.” 29 U.S.C. § 630(a). Defendant argues that this definition includes the EEOC, and as a result the 90-day statute of limitations should apply to the Commission. And since the EEOC filed this action more than seven months after issuing notice that conciliation efforts in the case had failed, defendant argues that this action should be dismissed on account of plaintiff’s untimely filing of the complaint.

\*2 To support this argument, defendant first cites *EEOC v. Colgate Palmolive*, 586 F.Supp. 1341 (S.D.N.Y.1984), which held that the EEOC is indeed a “person” under section 630(a). However, that case did not address the issue of the EEOC’s “personhood” in the context of the statute of limitations; rather, it decided the issue in order to determine whether the Commission was entitled to a jury trial under the ADEA. *See Colgate Palmolive* 586 F.Supp. at 1346. *Colgate Palmolive* was also decided seven years before Congress added the 90-day statute of limitations to the ADEA,<sup>1</sup> so the court in that case could not have considered how its holding would affect this issue. Accordingly, this Court declines to find that the limited holding in *Colgate Palmolive* determined that the statute of limitations in section 626(a) applies to the EEOC.

<sup>1</sup> Prior to 1991, the ADEA did not contain its own statute of limitations but rather incorporated the two-year limitations period of 29 U.S.C. § 255.

Defendant also relies on *McConnell v. Thomson Newspapers*, 802 F.Supp. 1484, 1499-1500 (E.D.Tex.1992), which held that the 90-day statute of limitations applies to both private litigants and the EEOC. In response, plaintiff cites two cases which held that the Commission is *not* subject to the limitations period. *See*

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*EEOC v. A.T. & T Co.*, 36 F.Supp.2d 994, 995-97 (S.D.Ohio 1998); *Wilkerson v. Martin Marietta Corp.*, (875 F.Supp. 1456, 1459-60 (D.Colo.1995). None of these cases represents controlling authority, but the Court agrees with the reasoning found in *A.T. & T .* and *Wilkerson*. Both cases examine the legislative history of the 1991 amendments to the ADEA, which grew in part out of the Age Discrimination Claims Acts of 1988 and 1990. Those Acts were passed to address the difficulties that the EEOC had been having prosecuting age discrimination claims in a timely manner, see Pub.L. No. 101-504, 104 Stat. 1298 (1990); Pub.L. No. 100-283, 102 Stat. 78 (1988), *cited in Wilkerson* 875 F.Supp. at 1459, so it would hardly stand to reason that Congress sought to alleviate those difficulties by imposing a shorter statute of limitations than had existed previously. Also, if the limitations period were applicable to the EEOC, the Commission itself could control the operation of the statute simply by withholding the notice that triggers the running of the 90 days. As the *A.T. & T.* court stated, it is

doubtful that Congress intended to place the EEOC in this “most anomalous” position. *See A.T. & T.*, 36 F.Supp.2d at 997. Accordingly, the Court finds that the statute of limitations contained in section 626(a) of the ADEA applies only to private litigants, and not to the EEOC.

**Conclusion**

For the reasons stated above, the defendant’s motion is denied.

SO ORDERED.

**Parallel Citations**

88 Fair Empl.Prac.Cas. (BNA) 157