2005 WL 309770
United States District Court,
S.D. New York.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, et al., Plaintiffs,
v.
PLAZA OPERATING PARTNERS, LTD. d/b/a The Plaza Hotel, et ano, Defendants.
Tulun AHMED, et al., Plaintiff-Intervenors,
v.
THE PLAZA HOTEL and Fairmont Hotels and Resorts, Inc., Defendants.

No. 03CIV7680(LTS)(FM). | Feb. 7, 2005.

Opinion

MEMORANDUM DECISION

MAAS, Magistrate J.

I. ***Introduction***

***1** In this lawsuit, the Equal Employment Opportunity Commission ("EEOC") and Intervening Plaintiffs allege that defendant Plaza Operating Partners, Ltd., d/b/a the Plaza Hotel ("Hotel"), created a hostile work environment for its Muslim, Middle Eastern and South Asian employees after September 11, 2001. Pursuant to Judge Swain's Pretrial Scheduling Order, the deadline to add parties was April 16, 2004, and the deadline for fact discovery was January 21, 2005. (*See* Docket No. 15).

Three issues are presented by the parties' recent letter submissions to the Court. First, by letter dated January 14, 2005, the Hotel objects to the EEOC's "belated attempt ... to add two Claimants, Waheed Gill and Mohammed Azad, ... approximately two and one-half weeks prior to the [fact discovery deadline]." Second, by letter dated January 26, 2005, the Intervening Plaintiffs seek "clarification" that all of the defendants named in the EEOC complaint are also defendants in the Intervening Plaintiffs' complaint, or, if they are not, seek leave to add them now. Finally, by letter dated January 28, 2005, the Hotel objects to the EEOC's attempt to add yet another claimant, Sayed Rahmani, when he appeared for a deposition that evidently was being taken out of time by agreement among counsel.

For the reasons set forth below, the EEOC is granted leave to add the first two claimants (subject to certain conditions), but not the third claimant. Furthermore, the request for clarification is granted, but the Court finds that the defendants in question are not defendants in the intervenor complaint, and the request to add them at this late stage is denied.

II. ***Discussion***

A. ***Additional Claimants***

When the issue of additional claimants was raised during a recent telephone conference, the EEOC's repeated mantra was that it has a statutory mandate to seek out deserving claimants and secure relief on their behalf. To be sure, the EEOC's mission has expanded over the years to include this role. When Title VII of the Civil Rights Act of 1964 initially was enacted, the agency was limited to efforts at conciliation; only the person actually aggrieved could bring a lawsuit in federal court against the employer. *Gen. Tel. Comp. of the Northwest, Inc. v. EEOC,* 446 U.S. 318, 325 (1980). "The 1972 amendments to § 706 [of Title VII] ... expanded the EEOC's enforcement powers by authorizing the EEOC to bring a civil action in federal district court against private employers reasonably suspected of violating Title VII." *Id.* As a result of the change, the EEOC has a duty to "identify all the claimants affected by discrimination, and ... [to] 'investigat[e], litigat[e], and, if possible settl [e] claims." ' *EEOC v. Mr. Gold, Inc.,* 223 F.R.D. 100, 103 (E.D.N.Y.2004) (quoting *EEOC v. Venator Group,* No. 99 Civ. 4758(AGS) (KN), 2001 WL 246376, at *5 (S.D.N.Y. Mar. 13, 2001)). In this manner, "Congress sought to implement the public interest as well as to bring about more effective enforcement of private rights." *Gen. Tel.,* 446 U.S. at 326.

***2** Nevertheless, the EEOC's mandate is not unlimited, nor are "[t]he courts ... powerless to prevent undue hardship to the defendant." *Mr. Gold,* 223 F.R.D. at 103 (quoting *EEOC v. Carrols Corp.,* 215 F.R.D. 46, 51 (N.D.N.Y. Feb. 18, 2003)). For example, even though a suit is brought in the name of the EEOC, the employer defendant is clearly entitled to reasonable disclosure concerning the claims of the individual claimants whose interests the EEOC represents. *Venator Group,* 2001 WL 246376, at *5. Ultimately, it is up to the Court to strike the necessary balance between the EEOC's right to vindicate the claims of adversely affected employees and the defendant's right to secure reasonable discovery. *Id.* As part of this process, it is "reasonable and appropriate ... to limit the universe of potential claimants" so that the defendants may complete their discovery and prepare their defense. *Id.* at *3 (quoting order of K. Fox, Mag. J.); *see also Mr. Gold,* 223 F.R.D. at 102 (directing the EEOC to identify the claimants and facts on which it intends to

rely as "[d]efendants are entitled to know what specific claims they must defend against").

The pretrial scheduling order in this case, entered nearly one year ago, directed that any additional "parties" be joined by April 16, 2004, and that all non-expert discovery be concluded by January 21, 2005. (Docket No. 15 at 1). Although the additional claimants may not be "parties" in the strict sense of the term, *see EEOC v. Northwest Airlines, Inc.,* No. C85-36W, 1987 WL 59590, at *7 (W.D.Wa. Nov. 9, 1987), "[t]he absence of any formal designation of the individual claimants as parties ... does not change the nature of the EEOC's role as the individuals' representative." *Vines v. Univ. of La. at Monroe,* 398 F.3d 700, ___, 2005 WL 189713, at *7 (5th Cir.2005) (quoting *EEOC v. U.S. Steel Corp.,* 921 F.2d 489, 496 (3d Cir.1990)). Accordingly, the EEOC has an obligation to comply with this Court's directives concerning scheduling.

Here, the EEOC's notification to the Hotel regarding the first two additional claimants evidently came in early January 2005, some eight months after the deadline for adding parties. Nevertheless, in the exercise of its discretion, the Court will permit these claimants to be added for two reasons. First, the pretrial scheduling order refers to parties, not claimants, and therefore is not wholly without ambiguity. Second, although the disclosure came late, it was made before the end of discovery.

The decision to permit the addition of these two claimants at this juncture should not be seen as an endorsement of the EEOC's apparent practice of seeking to name claimants whenever it gets around to it. For that reason, the EEOC's right to add Messrs. Gill and Azad as claimants is expressly conditioned on (1) their being made available for depositions by February 28, 2005 (or such other date as counsel shall agree), and (2), in the event of an award (or settlement) in their favor, the Hotel being reimbursed for the reasonable cost of their depositions.

***3** The third proposed claimant was not disclosed until the scheduled date of his deposition, which was after the fact discovery deadline. Indeed, the EEOC evidently did not advise the Hotel of the employee's status as a claimant until the Hotel's counsel arrived at the location where the deposition was to be taken. At that time, the EEOC also turned over an affidavit that the claimant had prepared for the EEOC in April 2003, nearly two years before the EEOC made the decision to seek damages on his behalf. While the statutory mandate of the EEOC may augur in favor of inclusion, it cannot be read so liberally that the EEOC can claim the right to reopen the door whenever it deems that advisable. Accordingly, the request to add Mr. Rahmani as a claimant is denied. This denial is, of course, without prejudice to the EEOC's right to bring a separate action on behalf of Mr. Rahmani and to seek to have the two actions consolidated for trial should that be appropriate.

B. ***Additional Defendants***

By letter dated January 26, 2005, the Intervening Plaintiffs seek clarification that the defendants in the intervenor action include each of the defendants that the EEOC has named in its suit. In the alternative, the Intervening Plaintiffs seek leave to add certain of those defendants to the intervenor complaint.

The clarification that the Intervening Plaintiffs seek is somewhat mystifying. The file of this case contains an amended complaint filed by the EEOC (Docket No. 5) and an intervenor complaint filed by the Intervening Plaintiffs (Docket No. 14). The face of the two complaints plainly shows that the EEOC complaint names more defendants than are named in the intervenor complaint. Hence, the clarification that the Intervening Plaintiffs seek is clearly contrary to fact.

Turning to the request for the Intervening Plaintiffs' alternative relief, the intervenor complaint lists the defendants as The Plaza Hotel and Fairmont Hotels and Resorts, Inc. (Docket No. 14 at 2). The Intervening Plaintiffs evidently wish to modify the name of the first of these defendants to "include the more accurately named business entity of the Plaza Hotel, as 'Plaza Operating Partners Ltd. d/b/a The Plaza Hotel." ' (Letter dated Jan. 26, 2005, from Mark B. Stumer, Esq., to the Court at 2). The need for this amendment escapes me since the answer that was filed on behalf of the Hotel itself defines that defendant using the exact nomenclature requested (but for the addition of a comma). In any event, if the Intervening Plaintiffs believe that such an amendment is necessary in order to conform the intervenor complaint to the Hotel's answer, there plainly is no prejudice. Accordingly, that application is granted.

To the extent that the Intervening Plaintiffs seek to add other parties, including several "Fairmont" entities, the only asserted justification for ignoring the Pretrial Scheduling Order is that the organizational charts necessary to determine their interrelationships allegedly were not produced until January 2005. (*Id.*). As the Hotel correctly observes, however, the organization of the Fairmont entities was fully disclosed in May 2004 in the Reply Affidavit of Terence P. Badour, submitted in further support of the motion of Fairmont Hotels and Resorts, Inc., to dismiss the EEOC's amended complaint. (*See* Docket No. 27). Moreover, if the Intervening Plaintiffs had any lingering questions about Fairmont, they were free to inquire during the nearly eight months of discovery that remained after the Badour affidavit was served. Having failed to take any steps to amend the complaint during this period, they are not entitled to do so now, and their application is denied.

***4** The Intervening Plaintiffs also seek to add two entities that apparently purchased the Hotel from its previous owners in October 2004. To add those previously uninvolved entities at this late date would require the Court to reopen discovery and would likely lead to further motion practice. Moreover, this would appear to be wholly unnecessary since a successor entity, which is liable in contract or otherwise, will be bound by the judgment even if it has not been named as a defendant. *See* 7 Wright, Miller & Kane, *Federal Practice and Procedure* § 1958, at 555 (2d ed.1986); 6 *Moore's Federal Practice* § 25.30 [6] (3d ed.2000). The application to add the alleged successors as defendants consequently also is denied.

IV. *Conclusion*

For the foregoing reasons, the EEOC is granted leave to add Waheed Gill and Mohammed Azad, but not Sayed Rahmani, provided that the two new claimants are deposed prior to February 28, 2005 (or such other date as counsel shall agree) and on condition that, in the event of an award (or settlement) in their favor, the Hotel will be reimbursed for the reasonable cost of their depositions. Furthermore, the request for clarification is granted, but the Court finds that the defendants in question are not defendants in the intervenor action, and denies the request to add them now.

SO ORDERED.

Parallel Citations

95 Fair Empl.Prac.Cas. (BNA) 631