UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Equal Employment Opportunity Commission, et al.,

Plaintiffs

Case No. 1:03cv662

v.

Judge Michael H. Watson

Jeff Wyler Eastgate, Inc., et al.

Defendants.

OPINION AND ORDER

Before the Court are the following:

1. The October 8, 2004 Motion of Defendants Jeff Wyler Eastgate, Inc. (a.k.a. Jeff Wyler Chevrolet, Inc.) (hereinafter "Defendant") and Jeff Wyler Automotive Family, Inc., Jeff Wyler Colerain, Inc., Jeff Wyler Fairfield, Inc., Jeff Wyler Hillcrest, Inc., Jeff Wyler Springfield, Inc., Jeff Wyler Trotwood, Inc., Jeff Wyler Alexandria, Inc., Jeff Wyler Florence, Inc., Jeff Wyler Ft. Thomas, Inc., and Jeff Wyler Clarksville, Inc. (hereinafter collectively "New Defendants") to Dismiss Plaintiff's, Equal Employment Opportunity Commission (hereinafter "EEOC" or "Plaintiff"), Second Amended Complaint (Doc. 48). The EEOC filed a Memorandum Contra on November 5, 2004 (Doc. 58). Defendant and New Defendants filed a Reply Memorandum on December 16, 2004 (Doc. 62).

2. The October 8, 2004 Motion of New Defendants to Dismiss the First Amended Complaint of Intervenor Plaintiffs Patricia Cameron-Lytle

(hereinafter "Cameron-Lytle"), Sha'quila Mathews (hereinafter "Mathews") and Bonnie Finns (hereinafter "Finns") (hereinafter collectively "Intervenor Plaintiffs") (Doc. 49). Intervenor Plaintiffs filed a Memorandum in Opposition on November 5, 2004 (Doc. 57). New Defendants filed a Reply Memorandum on December 16, 2004 (Doc. 61).

3. The October 8, 2004 Motion of Defendant to Dismiss the First Amended Complaint of Plaintiffs (Doc. 50). Intervenor Plaintiffs filed a Memorandum in Opposition on November 5, 2004 (Doc. 56). Defendant filed a Reply Memorandum on December 16, 2004 (Doc. 61).

These matter are now ripe for review. For the foregoing reasons, the October 8, 2004 Motion of Defendant to Dismiss EEOC's Second Amended Complaint (Doc. 48) is **DENIED**; the October 8, 2004 Motion of New Defendants to Dismiss the First Amended Complaint of Intervenor Plaintiffs (Doc. 49) is **DENIED**; the October 8, 2004 Motion of Defendant to Dismiss the First Amended Complaint of Plaintiffs (Doc. 50) is **DENIED.**

A. FACTS

On September 25, 2003, the EEOC filed a Complaint (Doc. 1) against Defendant, which alleged Defendant violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 by failing to hire female sales persons, including Ms. Cameron-Lytle, because of their sex. On February 20, 2004, Ms. Cameron-Lytle filed an Intervening Complaint (Doc. 16), alleging she applied for a sales position with Defendant, on more than one occasion from Summer 2000 to Summer 2001, and was denied employment because of her sex.

The EEOC filed a Second Amended Complaint on August 9, 2004 (Doc. 30) to

name New Defendants. Moreover, on August 9, 2004, Ms. Cameron-Lytle amended her Complaint and added two parties, Ms. Mathews and Ms. Finns (Doc. 29). The Amended Compliant alleges Ms. Mathews applied for a sales position with Defendant in 2001 and was not hired due to her sex. Ms. Finn contends she also applied for a sales position with Defendant in the Fall of 2003 and was not hired because of her sex.

B. ANALYSIS

1. Standard of Review

When considering a Rule 12(b)(6) motion to dismiss, this Court is limited to evaluating whether the plaintiff is "entitled to offer evidence to support the claims, rather than whether the plaintiff will ultimately prevail." *Burr v. Burns*, 2005 WL 1969532 at *2 (S.D. Ohio 2005) (citing *Schuer v. Rhodes*, 416 U.S. 232, 236 (1974)). A complaint should not be dismissed using Rule 12(b)(6) "unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Lillard v. Shelby County Bd. of Educ.*, 76 F.3d 716, 724 (6th Cir. 1996) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). This Court must "construe the complaint liberally in the plaintiff's favor and accept as true all factual allegations and permissible inferences therein." *Id.* (quoting *Gazette v. City of Pontiac*, 41 F.3d 1061, 1064 (6th Cir. 1994)). The complaint does not need to specify every detail of a plaintiff's claim, however, it must give the defendant "fair notice of what the defendant's claim is and the grounds upon which it rests." *Gazette*, 41 F.3d at 1064. The primary function of pleadings under the Federal Rules of Civil Procedure "is to give adequate notice to the parties of each side's claims and to allow cases to be decided on the merits after an adequate development of the facts." *Lewis v. ACB Business Services*, 135 F.3d 389,

405 (6th Cir. 1998).

However, this Court "need not accept as true legal conclusions or unwarranted factual inferences." *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987); *see Scheid v. Fanny Farmer Candy Shops*, 859 F.2d 434, 436-37 (6th Cir. 1988). Therefore, a 12(b)(6) motion to dismiss will not be granted "unless there is no law to support the claims made, the facts alleged are insufficient to state a claim, or there is an insurmountable bar on the fact of the complaint." *Burr v. Burns*, 2005 WL 1969532 at *2 (S.D. Ohio 2005). While this Court "need not accept as true legal conclusions," it has the authority and responsibility to determine if the plaintiff can prove any facts in support of his legal conclusions. *Morgan*, 829 F.2d at 12; *Conley*, 355 U.S. at 45-46. Legal conclusions that are minimally supported with a factual basis are properly pled if they provide the defendant "fair notice of [the plaintiff's claim] ... and the grounds upon which it rests." *Gazette*, 41 F.3d at 1064; *see Lawrence E. Jaffe Pension Plan v. Household Intern.*, 2004 WL 574665 at *3 (N.D. Ill. 2004) (finding that courts need not accept as true legal conclusions alleged in the complaint, though a plaintiff may plead conclusions if they "provide the defendant with at least minimal notice of the claim.").

2. The October 8, 2004 Motion of Defendant and New Defendants to Dismiss EEOC's Second Amended Complaint (Doc. 48)

a. Public Records

Normally, when conducting a review of a 12(b)(6) motion to dismiss, the Court cannot consider facts outside of the pleadings. However, the Sixth Circuit holds district courts can take judicial notice of public records, such as public filings of private corporations and unreported judicial proceedings. *Passa v. City of Columbus*, 123 Fed.

Appx. 694, 697 (6th Cir. 2005). However, the Court should only take notice of public records "whose existence or contents prove facts whose accuracy cannot reasonably be questioned." *Id.* Moreover, its judicial notice privilege should only be utilized when the opposing party is not deprived an opportunity to review the public records and formulate an objection prior to this Court's opinion. *Id.* In sum, the Court "must only take judicial notice of facts which are not subject to reasonable dispute." *Id.*

In the present case, the Court may take judicial notice of the public records relied upon by the EEOC. The public records are official documents from the Ohio, Kentucky, and Indiana Secretary of State and therefore, possess the requisite level of reliability. In addition, Defendant and New Defendants were timely notified of the EEOC's intent to rely upon these documents. Accordingly, New Defendants were afforded the opportunity to formulate an objection to the records' authenticity and accuracy. However, they chose not to directly respond to these issues. As such, the Court concludes the public records are sufficiently reliable and the New Defendants received notice of the records and had an opportunity to formulate an objection. Therefore, the Court may review the public records relied upon by the EEOC.

b. Integrated Enterprise Claim

The Second Amended Complaint adequately placed Defendant and New Defendants on notice of the integrated enterprise theory of party inclusion. Admittedly, the Second Amended Complaint explains the integrated enterprise theory in one sentence, concluding Defendant and New Defendants "have operated as an integrated enterprise and have continuously been a single employer...." (Doc. 30 ¶15) However, the Second Amended Complaint adequately notifies New Defendants of the integrated

enterprise theory of inclusion. More importantly, Plaintiff's Memorandum (hereinafter "Memorandum") (Doc. 58) includes supplemental facts to support its legal conclusion.

The Memorandum illustrates Plaintiff can prove facts in support of its legal conclusion that Defendant and New Defendants constitute an integrated enterprise. *See Conley*, 355 U.S. at 45-45 (finding that a complaint should not be dismissed under Rule 12(b)(6) "unless it appears beyond doubt that the [p]laintiff can prove no set of facts in support of his claim which would entitle him to relief."). Further, the Memorandum includes information from the Ohio, Indiana, and Kentucky Secretary of State which identify each New Defendants' business addresses as 829 Eastgate South Drive, Cincinnati, OH 45245, which is the address at which Defendant received the EEOC notice. These documents also illustrate that at least nine, and possibly all ten, New Defendants have the same president, Mr. Jeff Wyler, who is also Defendant's president. The Court concludes the public records sufficiently display that Plaintiff can prove facts to support their integrated enterprise theory of relief. *See Lillard*, 76 F.3d at 724. This conclusion reflects the Sixth Circuit's view that a "broad interpretation should be provided the employer and employee provisions of Title VII to effect its remedial purpose." *Baetzel v. Home Instead Senior Care*, 370 F.Supp. 2d 631, 640 (N.D. Ohio 2005) (citing *Armbruster v. Quinn*, 711 F.2d 1332, 1336 (6th Cir. 1983).

Due to information provided by the public records, it would be inappropriate to grant New Defendant's Motion to Dismiss without conducting more extensive discovery. *See EEOC v. Alford*, 142 F.R.D. 283, 288 (E.D. Va. 1992) (ruling that discovery should be permitted to ascertain the exact relationship between a parent corporation and its subsidiary even though the plaintiff had only minimal evidence under the integrated

enterprise theory). An examination of Sixth Circuit case law reveals cases which have dismissed integrated enterprise claims have done so on summary judgment, and after discovery was completed, not before discovery even commenced. *See Baetzel*, 370 F. Supp. 2d 631; *EEOC v. Wooster Brush Co.*, 727 F.2d 566 (6th Cir. 1984). Even opinions which dismiss integrated enterprise claims, pursuant to 12(b)(6), leave the door open for party inclusion if discovery reveales additional information. *Schumacher v. J.P. Morgan & Co.*, 1999 WL 58554 (N.D. Ill. 1999) (concluding that the party would be dismissed, but if the plaintiff discovered information during discovery to support his integrated enterprise claim, the court would "entertain a motion to rejoin [the dismissed party]."); *Coraggio v. Time Inc. Magazine Co.*, 1995 WL 242047 (S.D. N.Y. 1995) (dismissing the plaintiff's integrated enterprise claim but permitting the plaintiff to submit an amended complaint if facts supporting the claim are discovered).

On a related topic, New Defendants chose to file a Motion to Dismiss the Second Amended Complaint, which was not the only possible course of action. New Defendants could have filed a motion for a more definite statement under Fed. R. of Civ. Pro. 12(e). Moreover, denying the Motion to Dismiss does not preclude New Defendants from making this argument again in a motion for summary judgment once discovery has been substantially concluded. *Swierkiewicz v. Sorema*, 534 U.S. 506, 514 (2002).

c. Identity of Interest

As New Defendants properly argue, a party must be named in the original EEOC charge before that party may be sued in federal court under Title VII. *Alexander v. Local 496*, 177 F.3d 394 (6th Cir. 1999), citing *Romain v. Kurek*, 836 F.2d 241, 244 (6th

Cir. 1987). However, if a plaintiff can show a clear identify of interest between a party named in the EEOC complaint and the unnamed party subsequently added to a Title VII lawsuit, the unnamed party can be properly included in the federal suit. *Id.*; *Romain*, 836 F.2d at 245 ("It is well settled that a person not named in an EEOC charge may not be sued under Title VII unless there is a clear identity of interest between it and a party named in the EEOC charge.").

The Sixth Circuit acknowledges two tests for determining whether a named party shares an identity of interest with an unnamed party. *Romain*, 836 F.2d at 246. One, established in *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130*, 657 F.2d 890 (7th Cir. 1981), recognizes an identity of interest "when the unnamed party possesses sufficient notice of the claim to participate in voluntary conciliation proceedings." *Alexander*, 177 F.3d at 411, citing *Romain*, 836 F.2d at 245; see also *Eggleston*.

The second, the *Glus* test, uses four factors for defining the relationship between the named and unnamed party at the time of the EEOC filing:

1. [W]hether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the EEOC complaint;

2. [W]hether, under the circumstances, the interests of a named [party] are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be unnecessary to include the unnamed party in the EEOC proceedings;

3. [W]hether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party;

4. [W]hether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party.

Glus v. G.C. Murphy Co., 562 F.2d 880 (3rd Cir. 1977) (cited in *Romain*, 836 F.2d at 246)

The *Romain* and *Alexander* courts acknowledge that the identity of interest exception evolved from the reality "that laymen, unassisted by trained lawyers, initiate the process of filing a charge with the EEOC, and accordingly [the exception does not require] procedural exactness in stating the charge." *Id.* at 245. Therefore, the application of the *Eggleston* or *Glus* identity of interest tests should not frustrate the remedial goals of Title VII by necessitating "procedural exactness." *Id.*; *see Armbruster*, 711 F.2d at 1336 (1983) ("The primary purpose of the Civil Rights Act, and Title VII in particular, is remedial. The aim is to eliminate employment discrimination by creating a federal cause of action to promote and effectuate its goals.").

Currently, the *Eggleston* test adequately identifies an identity of interest between Defendant and New Defendants. As previously discussed, the public records identified by Plaintiff illustrate that Mr. Wyler is the president of nine, if not all ten, New Defendants. In addition, all New Defendants possess the same business address, which is the same address at which Mr. Wyler received notification of the original EEOC action. As such, even if New Defendants were named in the original EEOC complaint, those notifications would have been delivered to Mr. Wyler at the same address. Therefore, it can hardly be argued that New Defendants and their president Mr. Wyler were not placed on notice of the EEOC charges. Because Mr. Wyler is the president of New Defendants, he clearly was in position to participate, and apparently has been participating, in voluntary conciliation proceedings. *See Alexander*, 177 F.3d at 412 (noting that because the international union had actual notice of the EEOC complaint

against its local union, the international union held an identity of interest under the *Eggleston* test).

Similarly, the *Glus* test recognizes an identity of interest between Defendant and New Defendants. New Defendants' absence from the EEOC proceedings did not result in prejudice. As previously mentioned, New Defendants share a common president with Defendant. Therefore, New Defendant's representative during the EEOC complaint stage would likely have been the same person. Moreover, the interests of Defendant and New Defendants are likely the same, "achieving voluntary conciliation with the plaintiffs during EEOC proceedings." *Alexander*, 177 F.3d at 412. At the very least, this Court should not dismiss the case based on a lack of identity of interest before the record is fully developed and all of the *Glus* factors can be equitably weighed. *See Fletcher v. Columbus Bd. of Edcuation*, 2003 WL 21799944 (S.D. Ohio 2003) (denying motion to dismiss based on a lack of identity of interest because the record was not fully developed and the court could not adequately apply either of the two accepted tests).

Accordingly, the October 8, 2004 Motion of Defendant and New Defendants to Dismiss the EEOC's Second Amended Complaint (Doc. 48), is hereby **DENIED**.

3. The October 8, 2004 Motion of Defendant to Dismiss the First Amended Complaint of Plaintiffs (Doc. 50)

Under normal circumstances the "timely filing of an EEOC complaint is a prerequisite to a Title VII suit." *Equal Employment Opportunity v. Wilson Metal Casket Company*, 24 F.3d 836, 839 (6th Cir. 1994). This qualification places an alleged wrongdoer on notice of potential Title VII liability and allows the EEOC to attempt to

conciliate rather then proceed with litigation. *Id.* However, in *Wilson Metal Casket Company*, the Sixth Circuit, in keepig with several other circuits, adopted the "single filing rule, which constitutes an exception to the EEOC timely filing tenet. In a multiple-plaintiff, non-class action suit, this rule permits additional plaintiffs, which have not filed a timely administrative charge, to "piggyback" on a timely filed EEOC complaint. *Id.* at 839-40. The additional parties must possess individual claims "arising out of similar discriminatory treatment in the same time frame...." *Id.* at 840.

In *Holwett v. Holiday Inns, Inc.*, the Sixth Circuit pronounced a standard for "determining whether an administrative charge will suffice to support piggybacking by a subsequent plaintiff." 49 F.3d 189, 194 (6th Cir. 1995). An administrative charge is adequate to permit piggybacking under the "single filing rule" if the charge "contains sufficient information to notify prospective defendants of their potential liability and permit the EEOC to attempt informal conciliation of the claims before a lawsuit is filed." *Id.* at 195. Paramount in this analysis is the size of the work unit involved in the charge. *Id.* With a charge involving a "work unit of modest size," similar grievances within the same general time frame will support piggybacking using the "single filing rule." *Id.* Alternatively, a charge involving a larger work unit necessitates "some indication that the grievance affects a group of individuals defined broadly enough to include those who seek to piggyback on the claim." *Id.*

This Court concludes Ms. Mathews and Ms. Finns are permitted to "piggyback" on Patricia Cameron-Lytle's administrative charge. Adequate similarity and commonality in time exist between Ms. Cameron-Lytle's discrimination claim and the claims proffered by Ms. Mathews and Ms. Finns. All three claims allege the failure of

Defendant to hire female applicants as salespersons because of their gender. While the three alleged discriminatory incidents occurred at different points over a span of three years, the claims arose over the same time frame under the "single filing rule." All three claims were precipitated by Defendant's continual discriminatory practices allegedly covering at least three years. *See Wilson Metal Casket Co.*, 24 F.3d at 840 (ruling that piggybacking claims arose during the same time frame when they were caused by the defendant's continual practice of sexual harassment).

Moreover, Ms. Cameron-Lytle's Amended Charge provides an explicit "indication that the grievance affect[ed] a group of individuals defined broadly enough to include [the Intervening Plaintiffs]." *Holwett*, 49 F.3d at 195-96. The charge, filed on January 8, 2002, reads in relevant part:

> The Charged Party has a common practice of refusing to hire females as used car salespersons. I am aware of other females similarly situated who have also been denied employment because of their gender.

The language of the Amended Charge provides the EEOC a clear indication that Ms. Cameron-Lytle's allegation was not an isolated incident and may include other women. *Holwett*, 49 F.3d at 195-96. Furthermore, the language clearly defines the group as women denied employment as salespersons at Defendant's car dealership, allegedly based on their gender. Ms. Mathews and Ms. Finns unquestionably fall into this categorization. *See* Doc. 29, ¶¶ 29-35, 36-42.

Accordingly, as Ms. Mathews and Ms. Finns appropriately meet the "single filing rule" standards pronounced by the Sixth Circuit, the October 8, 2004 Motion of Defendant to Dismiss the First Amended Complaint of Plaintiffs (Doc. 50) is **DENIED**.

4. The October 8, 2004 Motion of New Defendants to Dismiss the First Amended Complaint of Intervenor Plaintiffs (Doc. 49)

As New Defendants' Motion to Dismiss raises issues already addressed above, for the reasons previously stated, the October 8, 2004 Motion of New Defendants to Dismiss the First Amended Complaint of Intervenor Plaintiffs (Doc. 49) is **DENIED.**

IT IS SO ORDERED.

MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT