

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KENNETH S. TAYLOR,)	CASE NO. 5:01-CV2893
)	
Plaintiff,)	JUDGE SOLOMON OLIVER
)	
vs.)	UNOPPOSED MOTION TO
)	CONSOLIDATE
ROYAL CHEMICAL CO., LTD.,)	
)	
Defendant.)	
_____)	

Kenneth Taylor, Plaintiff in the above-captioned case, initially filed the action against Royal Chemical Co. Ltd. (“Royal”) in this case *pro se*. Then, on or about March 13, 2002, the undersigned entered a Notice of Appearance as Mr. Taylor’s counsel, and also filed a Motion to File a First Amended Complaint, which was granted.

The bases for Mr. Taylor’s federal claims are found in four separate charges filed with the Equal Employment Opportunity Commission (“EEOC”). Mr. Taylor is the charging party in each the four charges, numbered 220A10284, 220A10872, 220A00762 and 220A01184. The EEOC issued right to sue letters on the first two charges. On the latter two charges, however, rather than issue a right to sue letters, the EEOC filed its own suit in *EEOC v. Royal Chemical Co., Ltd.*, Case 02CV2501 on December 20, 2002. (Mr. Taylor’s case pending before Judge Oliver includes pendant state claims based on all four charges pursuant to Ohio Revised Code § 4112.99.) That case was assigned to the docket of the Honorable David D. Dowd, Jr. The essence of the claims pending before this Court and pending before Judge Dowd are the same.

Northern District of Ohio Local Rule 3.1 (b)(3), Reassignment, Related Cases, reads as follows:

A case may be re-assigned as related to an earlier assigned case with the concurrence of both the transferee and the transferor District Judges, with or without a motion by counsel.

Federal Rule of Civil Procedure 42 (a), Consolidation, reads as follows:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Therefore, Mr. Taylor now moves this Court, pursuant to Federal Rule of Civil Procedure 42 (a) and Northern District of Ohio Local Rule 3.1 (b)(3) to reassign and to consolidate Case No. 02CV2501 with the earlier filed Case No. 5:01CV2893, and to have both cases assigned to the earlier District Judge, Judge Solomon Oliver. This motion is unopposed by counsel for both Royal and the EEOC, per prior and recent conversations between Mr. Taylor's counsel and counsel for Royal, Mr. Kenneth Stark, Esq. and counsel for the EEOC, Ms. Donna Williams-Alexander, Esq. Counsel in both of these cases have their offices in the Greater Cleveland area.

Plaintiff attaches a Memorandum in Support to be made a part of this motion, setting forth more fully the facts and grounds for this Motion, as well as a proposed order.

Respectfully submitted,

s/ Dennis J. Niermann
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KENNETH S. TAYLOR,)	CASE NO. 5:01-CV2893
)	
Plaintiff,)	JUDGE SOLOMON OLIVER
)	
)	
vs.)	MEMORANDUM IN SUPPORT OF
)	UNOPPOSED MOTION TO
ROYAL CHEMICAL CO., LTD.,)	CONSOLIDATE
)	
Defendant.)	
_____)	

The two cases under consideration for consolidation contain common issues of fact and law. The factual issues in both cases are intertwined as to whether Royal discriminated against Mr. Taylor with regard to the terms and conditions of his employment based on race, claims of disparate treatment, racially hostile work environment, disparate training and promotion opportunities, retaliation, and discriminatory discharge based on race/retaliation.

Legal issues in both cases are also common, because both cases were brought pursuant to Title VII. In addition, Mr. Taylor's pendent state claims also involve legal issues common to claims raised by the EEOC pursuant to Title VII, because the Ohio Supreme Court has ruled that "...federal case law interpreting Title VII of the Civil Rights Act of 1964, Section 2000(e) *et seq.*, Title 42, U. S. Code, is generally applicable to cases involving alleged violations of R. C. Chapter 4112." *Plumbers & Steamfitters v. Ohio Civil Rights Commission, et al.*, 66 Ohio St. 2d 192, 196; 421 N.E.2d 128.

The Court may order consolidation of actions pursuant to Rule 42(a) of the Federal Rules of Civil Procedure when common issues of law or fact are involved. Consolidation is permitted as a matter of convenience and economy in administration. *Miller v. U.S. Postal Service*, 729 F.2d 1033 (5th Cir. 1984). It is within the Court's discretion to decide whether or not to order consolidation. *U.S.E.P.A. v. City of Green Forest*, 921 F.2d 1394, 1402 (8th Cir. 1990).

However, the courts have viewed consolidation with favor. *Ikerd v. Lapworth*, 435 F.2d 197 (7th Cir. 1970); *Masterson v. Atherton*, 223 F. Supp. 407 (D.C. Conn. 1963), *aff'd*, 328 F.2d 106 (2nd Cir. 1964). Consolidation provides the Court with the opportunity to expedite trials and avoid inconsistent adjudication of similar issues. *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492 (11th Cir. 1985). Consolidation also acts to conserve time and effort for the Court and parties involved in the litigation. *Cruz v. Robert Abbey, Inc.*, 778 F. Supp. 605 (E.D.N.Y. 1991); *Waste Distillation Tech., Inc. v. Pan Amer. Resources, Inc.*, 775 F.Supp. 759 (D.Del. 1991).

Both cases arise out of the same conduct and incidents alleged to have occurred. Moreover, both cases will use the same witnesses, exhibits and documents. The parties to both cases have agreed that the taking of depositions shall not be duplicated and that each deposition may be used in both cases. These circumstances indicate an appropriateness for consolidation. *Waste Distillation Tech., Inc. v. Pan Am.Resources, Inc.*, 775 F. Supp. 759 (D. Del. 1991).

The legal issues in both actions are whether Mr. Taylor was discriminated and/or retaliated against in violation of Title VII, and if so, what are the remedies to which Mr. Taylor is entitled. Both cases include a jury demand. Even if some issues were slightly different, the fact that all issues are not identical should not defeat the motion for consolidation. Actions may be consolidated even though they present individual issues in addition to common issues. *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492 (11th Cir. 1985).

Consolidation may be denied if it would result in prejudice to the parties, if it would cause undue delay, or if consolidation would not result in a savings of time or expense. *American Employers' Ins. Co. v. King Resources Co.*, 545 F.2d 1265 (10th Cir. 1976); *Petromanagement Corp. v. Acme-Thomas Joint Venture*, 835 F.2d 1329 (10th Cir. 1987); *Flint-kote Co. v. Allis-Chalmers Corp.*, 73 F.R.D. 463 (S.D.N.Y. 1977). None of these factors is operative here. No prejudice will result from consolidation as the common issues of law and fact are central to both cases, and each witness will testify in the trial of the other's lawsuit.

As to discovery, while Mr. Taylor and Royal have engaged in some paper discovery (Interrogatories and Request for Documents), no depositions have yet been taken, so Mr. Taylor, Royal and the EEOC will, with reassignment and consolidation, be able to all attend the depositions taken by other parties. Therefore, no undue delay will arise from consolidation. Avoiding the cost of two separate trials will result in a savings of time and expense for all parties involved. Judicial economy also dictates that the cases be consolidated, since they can easily be tried in one trial, rather than two. In addition, all counsel in both cases have their offices in the Greater Cleveland area, and the granting of this motion would eliminate round trip driving time from Cleveland to Akron on counsel in the *Equal Employment Opportunity Commission v. Royal Chemical Co., Ltd.*, Civil Action No. 02CV2501 case.

Accordingly, Mr. Taylor respectfully requests that this Court, with the concurrence of Judge Dowd, issue an order consolidating *Equal Employment Opportunity Commission v. Royal Chemical Co., Ltd.*, Civil Action No. 02CV2501 with the above-captioned action.

Respectfully submitted,

s/Dennis J. Niermann
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CERTIFICATE OF SERVICE

A true copy of the foregoing was electronically served on Defendant's counsel via the electronic filing system, and upon counsel for the EEOC by sending same via regular U.S. Mail, this 23rd day of January, 2003 to:

Donna Williams-Alexander, Esq.
U. S. Equal Employment Opportunity Commission
Cleveland District Office
850 Skylight Office Tower
1660 West Second Street
Cleveland, Ohio 44113-1454

s/ Dennis J. Niermann
DENNIS J. NIERMANN