

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	Case No.: 1:06-CV-02337
)	1:08-CV-01326
Plaintiff,)	1:08-CV-01542
)	
v.)	
)	JUDGE ANN ALDRICH
SPITZER MANAGEMENT, INC., et al.,)	
)	
Defendants.)	
)	<u>MEMORANDUM AND ORDER</u>
)	
)	

Before this court is a motion to intervene [Doc. No. 23] in this matter filed by Dean Okafor (“Okafor”) and Hakim Nuriddin (“Nuriddin”). Okafor and Nuriddin seek to intervene pursuant to Federal Rules of Civil Procedure 24(a)(1) and 24(b)(1). Plaintiff Equal Employment Opportunity Commission (“EEOC”) does not object to the intervention. Defendants Spitzer Management, Inc., Spitzer Motor City, Inc., and Spitzer Autoworld Cleveland, LLC (collectively “Spitzer”) have not responded and the time for filing a response has run. For the following reasons, this court grants the motion to intervene pursuant to Rule 24(a)(1).

I. Background

The EEOC filed three suits in this court against Spitzer in September 2006,¹ May 2008,² and June 2008.³ The suits allege that Spitzer discriminated against some of its employees, including

¹Case number 1:06-CV-2337

²Case number 1:08-CV-1326

³Case number 1:08-CV-1542

Okafor and Nuriddin, on the basis of national origin and ethnicity and retaliated against them for filing charges with the EEOC. Spitzer terminated Okafor on July 10, 2008 and Nuriddin on August 13, 2008. On September 22, 2008, this court consolidated the three cases.⁴ On that same day, Spitzer filed a civil suit against Okafor and Nuriddin in the Cuyahoga County Court of Common Pleas. On December 10, 2008, the EEOC found probable cause that Okafor and Nuriddin were discharged in retaliation for filing charges of discrimination and for participating in the Title VII enforcement actions.

II. Standard

Rule 24(a)(1) provides “[upon] timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute” *See* Fed. R. Civ. P. 24(a)(1). Title VII of the United States Code provides that “[t]he person or persons aggrieved shall have the right to intervene in a civil action brought by the [EEOC].” *See* 42 U.S.C. § 2000e-5(f)(1).

“Whether intervention be claimed of right or as permissive, it is at once apparent, from the initial words of both Rule 24(a) and Rule 24(b), that the application must be ‘timely,’” *NAACP v. New York*, 413 U.S. 345, 365 (1973). A determination as to the timeliness of a motion to intervene “should be evaluated in the context of all relevant circumstances.” *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990). The Sixth Circuit has determined that five factors should be considered in determining timeliness:

- (1) the point to which the suit has progressed;
- (2) the purpose for which intervention is sought;
- (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case;
- (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and
- (5) the existence of unusual circumstances militating against or in favor of

⁴Case number 08-CV-02337 was designated as the lead case.

intervention.

Stupak-Thrall v. Glickman, 226 F.3d 467, 473 (2000) (quoting *Jansen*, 904 F.2d at 340).

III. Discussion

Okafor and Nuriddin have shown that they are aggrieved persons in these lawsuits filed on their behalf by the EEOC. Therefore, Okafor and Nuriddin have a right to intervene if their motion is timely.

This court finds that Okafor and Nuriddin's intervention is timely. The suit has not progressed significantly, as discovery is not complete, no dispositive motions have been filed, and trial is not scheduled for eight more months. Okafor and Nuriddin seek intervention for the purpose of protecting their legal rights, specifically by bringing additional claims under Ohio state law. Although the case is no longer in its nascent stage, Okafor and Nuriddin have nonetheless promptly intervened; they were fired in July and August 2008, Spitzer filed a civil suit against them in state court in September 2008, and the EEOC issued a determination on the retaliation charges in December 2008. Spitzer will not be prejudiced by Okafor and Nuriddin's intervention because discovery is still underway, and Spitzer will be required to defend a retaliatory termination claim even if intervention is disallowed.

"The right to intervene, however, is not coextensive with the assertion of additional claims." *EEOC v. Pitt-Ohio Express, Inc.*, 2006 WL 2265543, No. 1:06 CV 0747, *1 (N.D. Ohio Aug. 8, 2006). Thus, this court must address the appropriate scope of Okafor and Nuriddin's intervention and whether the complaint asserts cognizable claims for which they have standing.

Okafor and Nuriddin assert four counts in their complaint: (I) discrimination and retaliation in violation of Title VII; (II) discrimination and retaliation in violation of 42 U.S.C. § 1981; (III)

