UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

ELDORADO STONE, LLC, et al.,

Defendants.

CASE NO. C03-2768JLR

ORDER

I. INTRODUCTION

This matter comes before the court on two motions for summary judgment from Defendants Eldorado Stone, LLC ("Eldorado Stone") and Eldorado Stone Operations LLC ("ESO"). For the reasons stated below, the court grants Defendants' second motion (Dkt. # 62) and denies Defendants' first motion (Dkt. # 33) as moot.

II. BACKGROUND

The Equal Opportunity Employment Commission ("EEOC") brought this suit on behalf of six plaintiff-intervenors who were employees at ESO's Carnation, Washington manufacturing plant. The Plaintiffs brought claims under Title VII of the Civil Rights Act of 1964 ("Title VII") seeking redress for ESO's discriminatory and otherwise wrongful conduct as an employer.

ESO is a wholly-owned subsidiary of Eldorado Stone. Eldorado Stone is a holding company with seven other wholly-owned subsidiaries. The combined number of employees in the parent company and its eight subsidiaries (hereinafter the "combined

Eldorado entities") is well over 500. It is undisputed, however, that at all relevant times, ESO had 100 or fewer employees. It is also undisputed that ESO and Eldorado Stone together had 100 or fewer employees at all relevant times.

Eldorado Stone acquired ESO on June 30, 2000. Before that, ESO or its predecessors had been operating independently in Carnation since 1969. ESO had its own human resources staff at all relevant times, although it appears that ESO managers outside the human resources department made most substantive employment decisions, including the ones at issue. Through at least August 2002, ESO handled its human resources needs without assistance from Eldorado Stone. Until May 2002, when Eldorado Stone hired Elizabeth Roche from one of its subsidiaries to act as a human resources director, Eldorado Stone had no human resources employees. It is undisputed that all of the allegedly wrongful acts of ESO took place by September 6, 2002.

Because the intricacies of the corporate structure of Eldorado Stone and its subsidiaries in 2002 are critical to the resolution of Defendants' motions, the court reserves a review of those facts for the relevant sections of its analysis, infra.

III. ANALYSIS

ESO's two summary judgment motions seek related relief. The first motion seeks summary judgment that ESO and Eldorado Stone are not a "single employer," and thus the number of employees in the two entities cannot be aggregated for assessing damages under Title VII. The second motion seeks summary judgment that even if ESO and Eldorado Stone are a single employer, ESO, Eldorado Stone, and the seven other subsidiaries of Eldorado Stone are not a single employer.

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56©). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the opposing party must show that there is a genuine issue of fact for trial. Matsushita Elect. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586

(1986). The opposing party must present significant and probative evidence to support its claim or defense. Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991). Reasonable doubts as to the existence of material facts are resolved against the moving party and inferences are drawn in the light most favorable to the non-moving party. Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000).

A. The "Single Employer" Test and an Overview of the Eldorado Entities.

Congress has capped certain damages under Title VII depending on the size of the employer's workforce. Under 42 U.S.C. § 1981a(b)(3):

> The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party –
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> (A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000[.]

The statute sets increasing damage caps, reaching its maximum for employers with over 500 employees, whose damages are capped at $300,000. 42 U.S.C. § 1981a(b)(3)(D). It is undisputed that ESO and Eldorado Stone together employ fewer than 100 people, and that more than 1,000 people work for the combined Eldorado entities.

The "single employer" test, sometimes called the "integrated enterprise" test, is an inquiry into whether legally distinct entities (such as the parent and subsidiary corporations here) nonetheless function as one employer for purposes of Title VII.[1] A

[1]The Plaintiffs make two additional arguments. The first is that the court cannot entertain a motion on the single employer issue until after a trial verdict. The court notes that many courts disagree. E.g., Frank v. U.S. West, Inc., 3 F.3d 1357, 1364 (10th Cir. 1993) (affirming summary judgment); Cellini v. Harcourt Brace & Co., 51 F. Supp. 2d 1028, 1035 (S.D. Cal. 1999) (granting summary judgment). The second argument is that the Defendants' motion, because it seeks to limit their financial exposure and facilitate settlement, "represents the height of cynicism and is frankly insulting to both the process and the court." The court disagrees. Every defendant who seeks summary judgment on any issue is seeking to limit damages and to perhaps assist in resolving the case without trial. Such efforts are neither cynical nor insulting.

four-factor test governs the inquiry. The court must consider: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations; and (4) common ownership or financial control among the entities in question. Kang v. U. Lim Amer., Inc., 296 F.3d 810, 815 (9th Cir. 2002). Common ownership and some degree of common management and interrelated operations are to be expected between a parent company and its subsidiary. For that reason, the most important factor in the four-factor test is "centralized control of labor relations." Id. at 815; Vance v. Union Planters Corp., 279 F.3d 295 (5th Cir. 2002) ("we have consistently focused, almost exclusively, on one question: which entity made the final decisions regarding employment matters relating to the person claiming discrimination?"); Romano v. U-Haul Int'l, 233 F.3d 655, 666 (1st Cir. 2000).[2]

As to the three less important factors in the test, the facts in this case are unremarkable. It is undisputed that all of the entities in question have a common owner, Eldorado Stone. It is also undisputed that Eldorado Stone's current President, Michael Lewis, was at one time the President of three of Eldorado's subsidiaries (but not ESO). John Bennett, the President of ESO, is also a "Vice-President of Research Development and Franchising" at Eldorado Stone. As ESO president, he reports to Mr. Lewis. Some other ESO managers report directly to officers at Eldorado Stone. Finally, it is undisputed that Eldorado Stone has made various public statements about the combined Eldorado entities. In a "Company Overview" prepared by its outside financial advisers, the company stated that "As of June 30, 2002, Eldorado employed 985 individuals, none of whom are unionized." Another company statement proclaimed that Eldorado Stone was created "to take what was a fragmented franchise organization and put that organization under the umbrella of a platform company . . . ." Plaintiffs point to several other corporate statements of a similar nature.

[2]Because there is limited Ninth Circuit authority on the particularized issues in these motions, authority from other Circuit Courts of Appeal guides the court's analysis here.

Plaintiffs' weakest showing is on the critical "centralized control of labor relations" factor. It is undisputed that Eldorado Stone had no human resources personnel until it hired Ms. Roche in May 2002. It is also undisputed that prior to Ms. Roche's hiring, there was no effort to centralize human resources decisions or policies across the combined Eldorado entities. Although Ms. Roche was hired to begin the process of integrating human resources across the combined entities, she started slowly. She did not visit ESO until August 2002. While there she made general suggestions to ESO managers. Plaintiffs do not attempt to show that any of those general suggestions impacted the wrongful conduct at issue in this case. It is undisputed that Ms. Roche was not informed about any of the allegedly wrongful acts that took place at ESO on or before September 6, 2002. No one at ESO consulted with Ms. Roche or anyone at Eldorado Stone before the last of the allegedly wrongful acts.

After the Plaintiffs made their initial complaints,[3] ESO informed Ms. Roche, and she became heavily involved in directing ESO's response to the allegations. She hired outside counsel, conducted an on-site investigation of Plaintiffs' complaints, and made reinstatement offers to several of the terminated Plaintiffs.

As to the rest of the Eldorado Stone subsidiaries, Plaintiffs make no showing of centralized control of labor relations, other than to claim generally that Ms. Roche visited each of the subsidiaries in June and August of 2002. Ms. Roche's deposition testimony shows only that she visited one other subsidiary in June 2002, and was a human resources employee at another subsidiary before assuming her position at Eldorado Stone.

[3]It is not clear from the parties' briefing whether these were complaints to the EEOC or another regulatory body.

B. Plaintiffs Have Not Offered Sufficient Evidence that the Combined Eldorado Entities Are a "Single Employer."

The court finds that Plaintiffs have not made any showing of centralized labor control across the combined Eldorado entities at the time of the wrongful acts. As Defendants point out, in order to treat the combined Eldorado entities as a single employer, the court must apply the four-factor test to the relationship between each subsidiary and Eldorado Stone. Plaintiffs have largely failed to provide evidence about Eldorado Stone's relationship with each subsidiary.

Although Plaintiffs provide some evidence that Eldorado Stone has made great strides toward integrating human resources control over its subsidiaries, those strides came after the alleged wrongful conduct at ESO. The four-factor "single employer" test should be applied to the corporate enterprise as it existed when the alleged discrimination occurred. Vance, 209 F.3d at 446; Alberter v. McDonald's Corp., 70 F. Supp. 2d 1138, 1142 (D. Nev. 1999). The focus on the corporate relationship at the time of the wrongful conduct recognizes that the Title VII damage caps exist, in part, because smaller workplaces usually lack the financial resources to sustain full-scale human resources departments. Vance v. Union Planters Corp., 209 F.3d 438, 446 (5th Cir. 2000). Plaintiffs ask the court to combine each of the seven non-ESO subsidiaries, but offer no evidence that these entities were an integrated enterprise with respect to labor relations on or before September 6, 2002.

Plaintiffs succeed in showing that the combined Eldorado entities are under the same corporate umbrella, but this is to be expected in any parent-subsidiary relationship. Courts require something more before declaring that corporate entities are an integrated enterprise. Frank v. U.S. West, Inc., 3 F.3d 1357, 1362 (10th Cir. 1993) (discussing "strong presumption that a parent company is not the employer of its subsidiary's employees"); Lusk v. Foxmeyer Health Corp., 129 F.3d 773, 778 (5th Cir. 1997) (noting same "strong presumption" and that "[c]ommon management and ownership are ordinary aspects of a parent-subsidiary relationship."). Plaintiffs paint a picture of a parent

corporation with unremarkable relationships with its subsidiaries, while failing to provide evidence from which a jury could find in its favor on the crucial element, centralized control of labor relations across the combined entities. For that reason, the court finds that the combined Eldorado entities are not a "single employer" as a manner of law.

C. The Defendants' First Motion is Moot.

The court's ruling that the combined Eldorado entities are not a "single employer" determines Defendants' second summary judgment motion, and in turn moots their first motion. The relief that Defendants seek is a ruling that places them within Title VII's lowest damage cap category. 42 U.S.C. § 1981a(b)(3)(A). Because the combined Eldorado entities are not a "single employer," the largest potential "single employer" is the combination of Eldorado Stone and ESO. That combination had less than 100 employees at the time of the alleged wrongful conduct, and thus would fall under the lowest damage cap. For that reason, the court need not decide whether Eldorado Stone and ESO are a "single employer, and thus it need not reach Defendants' first motion. The motion is denied as moot.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS Defendants' motion for summary judgment. (Dkt. # 62). Defendants' second motion (Dkt. # 33) is DENIED as moot.

Dated this 1st day of November, 2004.

s/James L. Robart
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JAMES L. ROBART
United States District Judge