

A. Motions filed by the Wilfong Plaintiffs

Pending are the following motions filed by the proposed class representatives in the Wilfong Case (“the Wilfong Plaintiffs”): (1) Motion to Oppose Preliminary Approval of Stipulation and Settlement Agreement, Settlement, Conditional Certification of Settlement Class and Any Action on Such Proposed Settlement (Doc. #84); (2) Motion to Stay or Abstain, Motion to Reject on its Face the Joint Motions for Certification of Class and Approval of Settlement, Alternative Motion for Discovery and Hearing on Class Certification (Doc. #88) and the Corresponding Motion for Excess Pages (Doc. # 90); (3) Motion to Intervene for the Limited Purpose of Litigating the Proposed Settlement (Doc. #89); (4) Motion for Reconsideration of Court’s November 13, 2001 Order (Doc. # 93); (5) Motion to Change/Transfer Venue (Doc. # 94); and (6) Motion to Lift Protective Order (Doc. # 102).

Before addressing the merits of the Wilfong Plaintiffs’ pending motions, the Court must first determine whether they should be allowed to intervene. The Court has reviewed the Wilfong Plaintiffs’ Motion to Intervene and Rent-A-Center’s opposition to their intervention. The Motion is predicated on Fed. R. Civ. P. 24(a), which provides that “anyone shall be permitted to intervene . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicants ability to protect that interest.” Here, the Wilfong Plaintiffs’ are parties in a concurrent lawsuit in the Southern District of Illinois. As part of the Joint Motion for Preliminary Approval of the Stipulation and Settlement Agreement, Plaintiffs and Defendant seek to enjoin all other efforts to certify a class that involves claims of gender discrimination against Rent-A-Center. This directly affects to the rights and interests of the Wilfong Plaintiffs. The Wilfong Plaintiffs also contend that they should be allowed to intervene to raise issues in opposition to the settlement agreement and class certification. However, these issues do not immediately affect the interest of the Wilfong Plaintiffs’ and are more appropriately be addressed in a later

hearing for final approval of class certification and the settlement agreement during which the Wilfong Plaintiffs, as class members, will be permitted argue in opposition to the settlement. Thus, the Wilfong Plaintiffs will be allowed to intervene for the limited purpose of challenging the preliminary injunction but they will not be allowed to intervene for the purpose of opposing class certification and the settlement agreement. Accordingly, the Motion to Intervene (Doc. # 89) is GRANTED IN PART, and Rent-A-Center's Motion to Strike the Wilfong Plaintiffs' Motions (Doc. # 99) on the basis that the Wilfong Plaintiffs' are not a party to the case and have not been granted leave to intervene, is DENIED.

The Wilfong Plaintiffs' have requested that the Court reconsider its Order dated November 13, 2001. This order allowed the joinder of additional plaintiffs and vacated the Court's July, 2001 order that referred the Plaintiffs' to arbitration. As stated above, the Wilfong Plaintiffs' have been permitted to intervene for the limited purpose of opposing proposed preliminary approval of the class and settlement agreement. Thus, the propriety of the Court's November 13, 2001 order is beyond the scope of the Wilfong Plaintiffs' limited intervention. Nonetheless, the Court has reviewed the Motion for Reconsideration as well as the motions in opposition to the joint motion for approval of the settlement agreement. Although the Wilfong Plaintiffs' and the EEOC have objected to the joinder of the additional plaintiffs because, for example, they have not exhausted their administrative remedies, the Wilfong Plaintiffs' and the EEOC have no standing to raise such defenses. Defendant Rent-a-Center has raised no defenses in opposition to the joinder, and, in fact, has consented to the joinder, so the Court will not prevent the addition of plaintiffs. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 398 (1982) ("the filing of a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling."). The Court will not vacate or alter its order of November 13, 2001. The Wilfong Plaintiffs' Motion for Reconsideration (Doc. # 93) is DENIED.

The Wilfong Plaintiffs have filed two motions opposing the proposed settlement and requesting a hearing before preliminary approval and certification of the class.

The Court will first address the Wilfong Plaintiffs' opposition to the parties' joint request for a preliminary injunction. The Court believes that such an injunction is excessive to protect the Court's jurisdiction. Therefore, the Court will not enjoin members of the settlement class from filing, commencing, prosecuting, maintaining, intervening or participating in any lawsuit, administrative or regulatory proceeding based on or relating to the claims of the instant matter.

The Wilfong Plaintiffs' remaining arguments in opposition to the preliminary approval, however, are beyond the scope of their limited intervention. Be that as it may, the Court will still address some of the issues raised. The Wilfong Plaintiffs' primary argument is that the Fed. R. Civ. P. 23 class certification requirements have not been met. Specifically, they contend that Plaintiffs Bunch and Levings cannot fairly and adequately protect the interest of the class because they were referred to arbitration in July, 2001. However, on November 13, 2001, the Court vacated its July order referring Bunch and Levings to arbitration. Also, the Court has allowed the joinder of additional Plaintiffs with various claims that seem to satisfy the typicality requirements of Rule 23. The Court believes, preliminarily, that the certification requirements of Rule 23 have been met.

The Wilfong Plaintiffs' also argue that there are other "fatal flaws" that should prevent preliminary approval of the settlement. These arguments, however, raise issues of arms length bargaining, fairness of the settlement, and the general substance of the settlement agreement. The issues are better addressed at a final approval hearing to determine the lawfulness, reasonableness, adequacy and fairness of the settlement. Finally, the Wilfong Plaintiffs' request a preliminary "pre-notification" hearing. Such a hearing is usually held to "determine whether the proposed settlement is 'within the range of possible approval'. . . [and] to ascertain whether there is any reason to notify the class members of the proposed settlement." Armstrong v. Board of Sch. Directory, 616 F.2d 305, 314 (1980). In this case, the Wilfong Plaintiffs' have raised no viable arguments which suggest that notification should not be sent out to the class members. The arguments they have advanced could be adequately addressed at a later fairness hearing. Their request for a "pre-notification" hearing is denied. The

Wilfong's Plaintiffs' Motion to Oppose Preliminary Approval of Stipulation and Settlement Agreement, Settlement, Conditional Certification of Settlement Class and Any Action on Such Proposed Settlement (Doc. #84) and Motion to Stay or Abstain, Motion to Reject on its Face the Joint Motions for Certification of Class and Approval of Settlement, Alternative Motion for Discovery and Hearing on Class Certification (Doc. #88) are DENIED. The Motion for Excess Pages (Doc. # 90) is GRANTED.

The Wilfong Plaintiffs' have filed a motion to transfer this case to the Southern District of Illinois. The Court does not find compelling the argument that the case should be transferred because the Wilfong Case has progressed further than the instant matter. Nor does the Court believe that the interests of justice justify transfer of the case. Therefore, the Wilfong Plaintiffs' Motion to Transfer Venue (Doc. # 94) is DENIED.

Finally, pending is the Wilfong Plaintiffs' Motion to Lift Protective Order. In December, 2000, the Court entered an Agreed Protective Order covering employment records and Rent-A-Center's proprietary business practices, trade secrets and business procedures. The Wilfong Plaintiffs' seek to lift the protective order to evaluate the discovery Plaintiffs and Rent-A-Center believe justify settlement of the claims - discovery that the Wilfong Plaintiffs contend is inadequate. The Court believes that the documents subject to the protective order are, by their nature, confidential and are not defined broadly enough to encompass "all discovery produced." Furthermore, at this time, the Court fails to see how disclosure of this information will assist the Wilfong Plaintiffs' in determining the adequacy of discovery or uncovering any conflict of interest or impropriety among the parties or attorneys. Accordingly, the Motion to Lift Protective Order (Doc. # 102) is DENIED.

B. Opposition filed by the EEOC

Also pending is an opposition to the proposed settlement filed by the Equal Employment Opportunity Commission. The EEOC, while an intervener in the Wilfong Case, has not filed a motion to intervene in this matter. Therefore, the Court will not entertain its opposition to the proposed settlement at this time. However, even if the EEOC's opposition is considered, the Court finds most of the arguments advanced therein unpersuasive. The Court has already addressed several of the EEOC's arguments above, namely, the exhaustion of administrative remedies, the typicality of the class representative's claims, and the class representatives' ability to fairly and adequately protect the interests of the class. The EEOC's other arguments, such as the inadequacy of the injunctive and monetary relief, are related to the substance and fairness of the settlement agreement and most appropriately addressed in the final approval hearing to determine the lawfulness, reasonableness, adequacy and fairness of the settlement. However, as discussed above, the Court does find compelling the EEOC's and Wilfong Plaintiffs' argument in opposition to the parties' joint request for a preliminary injunction and will not grant an injunction as part of the preliminary approval of the Stipulation and Settlement Agreement.

C. Conclusion

Based on the above, the Wilfong Plaintiffs' (1) Motion to Oppose Preliminary Approval of Stipulation and Settlement Agreement, (2) Motion to Stay or Abstain and Motion to Reject on its Face the Joint Motion for Certification of Class and Approval of Settlement, (3) Motion to Transfer Venue, (4) Motion for Reconsideration and (5) Motion to Lift Protective Order are denied. The Wilfong Plaintiffs' Motion for Excess Pages is granted and their Motion to Intervene is granted in part. Finally, Rent-A-Center's Motion to Strike the Wilfong Plaintiffs' Motions is denied.

IT IS SO ORDERED.

DATE: November 29, 2001

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT