

1994 WL 401572
United States District Court, D. Kansas.

SAUL ZAPATA, et al., Plaintiffs,
v.
IBP, INC., Defendant.

Civ. A. No. 93-2366-EEO.
|
July 25, 1994.

Attorneys and Law Firms

John L. Hampton, David W. Hauber, Glenn B. Brown, Boddington & Brown, Chtd., P. John Brady, R. Lawrence Ward, Shughart, Thomson & Kilroy, Kansas City, MO, for plaintiffs.

Paul S. Greathouse, Pamela L. Falk, IBP, Inc., Emporia, KS, Nancy M. Landis, Jack L. Whitacre, Spencer, Fane, Britt & Browne, Kansas City, MO, John N. Badgerow, Michaela M. Warden, Spencer, Fane, Britt & Browne, Overland Park, KS, for defendant IBP Inc.

MEMORANDUM AND ORDER

EARL E. O'CONNOR, Senior District Judge.

*1 This matter is before the court on plaintiffs' Motion For Consolidation of this action with Case No. 93-2533-KHV, *Pedro Lira v. IBP, Inc.*; Case No. 93-2338-EEO, *Martha Garcia v. IBP, Inc.*; and Case No. 94-2004-EEO, *Elida Rosas v. IBP, Inc.* (Doc. # 61). Defendant opposes the motion. For the reasons set forth below, the motion is denied.

Under Federal Rule of Civil Procedure 42(a), when actions involving a common question of law or fact are pending before the court, the court may order the actions consolidated. The decision whether to order cases consolidated is committed to the discretion of the trial court, and such decision will not be reversed on appeal absent clear error or exigent circumstances. *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir.1978).

Plaintiffs urge this court to order consolidation on the grounds that the cases involve many common issues and facts, and that much of the discovery in the instant case would be duplicative of discovery required in the other cases. Defendant opposes the motion, and contends that the cases present substantially different issues of fact and law, and that the actions are at various stages of pretrial proceedings.

Case No. 93-2366-EEO, the above-captioned case, is an action by Saul Zapata and fifteen other named plaintiffs against their employer, the defendant IBP, in which plaintiffs allege they were discriminated against in terms and conditions of their employment based upon their race and national origin.¹ One aspect of the alleged discrimination involves claims based upon workers' compensation retaliation.

In Case No. 93-2533-KHV, the plaintiff alleges violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and retaliation for filing workers' compensation claims. Case No. 93-2533-KHV does not allege discrimination based on race or national origin. Case No. 93-2338-EEO is a case limited to allegations of retaliation based on the fact plaintiff's husband received worker's compensation. The complaint does not allege discrimination based on race or national origin. Similarly, Case No. 94-2004-EEO solely involves allegations of workers' compensation retaliation. The complaint does not allege discrimination based on race or national origin.

The claims asserted in the above-captioned case involve allegations of race and national origin discrimination, whereas Case No. 93-2533-KHV, Case No. 93-2338-EEO, and Case No. 94-2004-EEO seek redress for claims of workers' compensation retaliation. The court concludes that any common issues which may exist are outweighed by the different issues of law and fact. The mere fact that employment with IBP, Inc., is a common fact in all the cases does not predominate over the disparate issues in the separate claims of workers' compensation retaliation and the above-captioned case. Plaintiffs have not sufficiently alleged the existence of common issues of law and fact to warrant consolidation. Moreover, the court believes that consolidation could result in confusion for the jury and would unduly complicate the resolution of the issues raised in this case.

*2 Furthermore, the court finds that plaintiffs' motion should be denied because the cases are at different stages of discovery and preparedness for trial, and consolidation could result in undue delay. In the above-captioned case, discovery on the merits is not set to close until March 1, 1995. On the other hand, Case No. 93-2338-EEO is set

for trial on September 6, 1994; Case No. 93–2533–KHV is set for trial November 15, 1994; and Case No. 94–2004–EEO is set for trial March 6, 1995, with discovery to close July 15, 1994. Courts have held that delay constitutes sufficient grounds for denial of a motion for consolidation. *See, e.g., Mills v. Beech Aircraft Corp., Inc.*, 886 F.2d 758, 762 (5th Cir.1989) (consolidation may be denied where the cases are at different stages of preparedness for trial); *Henderson v. National R.R. Passenger Corp.*, 118 F.R.D. 440, 441 (N.D.Ill.1987) (subsequent case had just been filed, while in prior case discovery almost complete, therefore constituting further grounds for denial of consolidation); *Prudential Ins. Co. of America v. Marine Nat'l Exchange Bank*, 55 F.R.D. 436, 437 (E.D.Wis.1972) (although both cases were filed more than two years before motion, the two actions were at substantially different stages of preparation, with one ready for disposition).

The court is of the opinion that, at this time and on the present showing, the interests of judicial economy, as well as that of the litigants, will continue to be best served if the cases are not consolidated.

IT IS THEREFORE ORDERED that the motion of the plaintiffs to consolidate Cases Nos. 93–2366–EEO, 93–2533–KHV, 93–2338–EEO, and 94–2004–EEO (Doc. # 61) is denied.

All Citations

Not Reported in F.Supp., 1994 WL 401572, 3 A.D. Cases 916, 5 NDLR P 310

Footnotes

- ¹ Plaintiffs have filed a motion for extension of time to file a motion for class certification; that motion is currently pending in Magistrate Judge Rushfelt's court.