2014 WL 2581201
Only the Westlaw citation is currently available.
United States District Court,
E.D. Louisiana.

Kurian DAVID, et al., Plaintiffs
v.
SIGNAL INTERNATIONAL, LLC, et al.,
Defendants
Related Cases:
Equal Employment Opportunity Commission,
Plaintiff
v.
Signal International, LLC, et al., Defendants
Lakshmanan Ponnayan Achari, et al., Plaintiffs
v.
Signal International, LLC, et al., Defendants.
Applies To: EEOC v. Signal (12-557)

Civil Action Nos. 08–1220, 12–557, 13–6218, 13–6219, 13–6220, 13–6221.
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Signed Jan. 15, 2014.

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ORDER AND REASONS

SUSIE MORGAN, District Judge.

***1** Before the Court is plaintiffs-intervenors' Motion to Reconsider the Court's Order Granting Signal's Motion for Partial Dismissal.[1] Defendant Signal International, LLC ("Signal") opposes plaintiffs-intervenors' motion.[2] Plaintiffs-intervenors also filed a reply in response to Signal's opposition.[3]

BACKGROUND

On April 20, 2011, the Equal Employment Opportunity Commission ("EEOC") brought suit against Signal under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII"), for discriminating against approximately 500 Indian national employees who worked and lived in Pascagoula, Mississippi and Orange, Texas.[4] The EEOC's claims are brought pursuant its authority under §§ 706 and 707 of Title VII on behalf of a class of the Indian employees.[5] On March 30, 2012, Signal filed a third party demand against Global Resources, Inc, a Mississippi corporation run by Michael Pol, a Mississippi citizen, and Scottsdale Insurance Company.[6]

On February 3, 2012 the plaintiffs-intervenors, Indian nationals who are H–2B workers, filed a class complaint in intervention against Signal.[7] The intervenors alleged claims against Signal for 1) hostile work environment; 2) discrimination and 3) retaliation.[8] On November 7, 2012, the plaintiffs-intervenors amended their complaint to add nine additional intervenors.[9]

The plaintiffs-intervenors sought damages for Signal's discrimination, including the amount of the recruitment fees they paid to Michael Pol, d/b/a Global Resources, Inc. ("Pol"), Malvern C. Burnett d/b/a Gulf Coast Immigration Law Center, LLC ("Burnett")[10], and Sachin Dewan d/b/a Dewan Consultants Pvt. Ltd. ("Dewan")[11] (Pol, Burnett, and Dewan collectively referred to as the "Recruiters").[12] The plaintiffs-intervenors claim Signal unlawfully discriminated against them and other Indian H–2B workers on the basis of race and national origin by requiring only the Indian H–2B workers to be hired through the Recruiters who charged expensive, non-refundable fees.[13] The plaintiffs-intervenors argue they are entitled to recover the recruitment fees paid to the Recruiters from Signal under 42 U.S.C. § 1981a, which allows the recovery of compensatory damages when a complaining party brings an action under § 706 against a respondent who engaged in discrimination prohibited under § 703.[14]

On November 21, 2012, Signal moved under Rule

12(b)(6) for partial dismissal of the plaintiffs-intervenors' discrimination claim insofar as it seeks recovery of the recruitment fees. Signal argues the recruitment fees are not recoverable because (1) 42 § U.S .C.1981a does not provide judicial relief in the form of recovery of the recruitment fees;[15] (2) the plaintiffs-intervenors failed to exhaust their administrative remedies with respect to the recruitment fees; and (3) the recruitment fee claim arises out of events occurring abroad and Title VII does not apply extraterritorially.[16]

***2** The Court granted Signal's motion for partial dismissal on September 26, 2013.[17] Treating Signal's motion as a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), the Court found the basis for plaintiffs-intervenors discrimination claim against Signal for recruitment fees arose before they were employees as defined by Title VII because they were aliens outside the United States when they incurred the fees.[18] The Court declined to apply Title VII extraterritorially and dismissed the plaintiffs-intervenors' discrimination claim for recruitment fees against Signal.[19]

The plaintiffs-intervenors move for reconsideration of the Court's September 26, 2013 order granting Signal's motion for partial dismissal, arguing the Court committed an error of law.[20] The plaintiffs-intervenors assert the Court erred by finding Title VII does not protect employees from discrimination during the hiring process (and before work tasks begin).[21] The plaintiffs-intervenors also argue that extraterritorial application of Title VII is not necessary because the plaintiffs-intervenors were at all times employed in the United States.[22]

LEGAL STANDARD

A timely filed motion to reconsider an interlocutory order is evaluated under the same standard as a motion to alter or amend a final judgment brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. *See, e.g. Castrillo v. Am. Home Mortg. Servicing, Inc.,* No. 09–4369, 2010 WL 1424398, at *3–4 (E.D.La. Apr.5, 2010) ("The general practice of this court has been to evaluate motions to reconsider interlocutory orders under the same standards that govern Rule 59(e) motions to alter or amend a final judgment.")[23]

A motion under Federal Rule of Civil Procedure 59(e) calls into question the correctness of a judgment. *In Re Transtexas Gas Corp. .,* 303 F.3d 571, 578 (5th Cir.2002). "A motion to alter or amend the judgment under Rule 59(e) must clearly establish either a manifest error of law or fact or must present newly discovered evidence and cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Schiller v. Physicians Resource Group Inc.,* 342 F.3d 563, 567 (5th Cir.2003) (citations and internal quotations omitted). In deciding motions under Rule 59(e), the Court considers the following:

> (1) whether the movant demonstrates the motion is necessary to correct manifest errors of law or fact upon which the judgment is based;
>
> (2) whether the movant presents new evidence;
>
> (3) whether the motion is necessary in order to prevent manifest injustice; and
>
> (4) whether the motion is justified by an intervening change in the controlling law.

Castrillo, 2010 WL 1424398, at *4. "A Rule 59(e) motion should not be used to relitigate prior matters that should have been urged earlier or that simply have been resolved to the movant's dissatisfaction." *SPE FO Holdings, LLC v. Retif Oil & Fuel, LLC,* No. 07–3779, 2008 WL 3285907, at *3 (E.D.La. Aug.6, 2008). "A district court has considerable discretion to grant or deny a motion for new trial under Rule 59." *Kelly v. Bayou Fleet, Inc.,* No. 06–6871, 2007 WL 3275200, at *1 (E.D.La. Nov.6, 2007).

LAW AND ANALYSIS

***3** Plaintiffs-intervenors first argue the Court committed manifest legal error because "[i]mplicit in the Court's decision is the holding that Title VII does not apply to the recruitment and hiring process."[24] Specifically, plaintiffs-intervenors take issue with a single sentence of this Court's order, which stated, "[t]he Intervenors cannot recover under Title VII for their Recruitment Claim because of *when* the claims arose, not *where* the [plaintiffs-intervenors] eventually worked."[25] Plaintiffs-intervenors argue the Court committed legal error because this sentence creates a bright line rule preventing Title VII from applying to all activities occurring during the hiring process.

The plaintiffs-intervenors' reading of the Court's order is overly broad. The Court did not rule that there may never

be recovery under Title VII for actions occurring during the hiring process. When Title VII is applicable, it clearly prohibits unlawful employment practices during the hiring process.[26] Instead, the Court highlighted when the claim for the recruitment fees arose (while the plaintiffs-intervenors, non-U.S. citizens, were abroad) to demonstrate why applying the statute in this case would have required an extraterritorial application of Title VII.

Second, the plaintiffs-intervenors argue the Court erred as a matter of law in its September 26, 2013 Order by reading "Title VII in a radical way to judicially legislate a safe harbor from Title VII for any discrimination with a foreign component."[27] Again, the plaintiffs-intervenors have misrepresented the Court's ruling, which is limited to the facts of this case and creates no safe harbor for discrimination with a foreign component.

It is important to remember that the dismissed claim is a Title VII discrimination claim for recruitment fees incurred by non-U.S. citizens, while they were outside this country, and paid to the non-defendant Recruiters rather than to the defendant Signal. The plaintiffs-intervenors have not presented any new evidence or pointed to any intervening change in controlling law. Neither have they cited to any case squarely on point reaching a conclusion different from this Court. The plaintiff-intervenors have failed to clearly establish a manifest error of law or to show that granting the motion is necessary to prevent manifest injustice. The requirements of Rule 59(e) have not been met and the Court declines to reconsider its Order granting Signal's Motion for Partial Dismissal.[28]

Accordingly, **IT IS ORDERED** that the plaintiffs-intervenors' motion to reconsider be and hereby is **DENIED.**

All Citations

Not Reported in F.Supp.3d, 2014 WL 2581201

Footnotes

1 R. Doc. 273.

2 R. Doc. 295.

3 R. Doc. 308.

4 The EEOC alleges Signal 1) created a hostile work environment for the Indian employees (in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e–2(a)); 2) discriminated against and subjected the Indian employees to disparate terms and conditions of employment based upon their race and national origin (in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e–2(a)); 3) unlawfully retaliated against two employees (in violation of § 704(a) of Title VII, 42 U.S .C. § 2000e–3(a)); and 4) engaged in a pattern or practice of subjecting the employees to a hostile work environment and disparate terms and conditions of employment based on their race and national origin. *See* R. Doc. 153.

5 Although the EEOC brought suit on behalf of a class, the term "class" or "class members" is used to collectively describe the aggrieved individuals who the EEOC represents and does not implicate Federal Rule of Civil Procedure 23.

6 R. Doc. 90. The third party demand against Scottsdale Insurance Company was later dismissed voluntarily. (*See* R.

Doc. 137).

[7] R. Doc. 45. The intervenors' motion to intervene was granted on January 23, 2012 (R. Doc. 44) while the case was pending in the Southern District of Mississippi. The plaintiffs-intervenors were originally comprised of three individual Indian employees.

[8] R. Doc. 45.

[9] R. Doc. 179. Although the intervenors originally alleged a class complaint, they did not move for class certification within 91 days as required by Local Rule 23.1(B), thereby waiving their right for class certification. The plaintiffs-intervenors amended complaint did not allege class claims but only claims on behalf of the twelve named employees.

[10] Malvern C. Burnett, the sole member of the LLC, is a Louisiana citizen.

[11] Sachin Dewan is a citizen of India. Dewan Consultants Pvt. Ltd. is an entity formed under the laws of India.

[12] *See* R. Doc. 179, pp. 16–17, 19.

[13] *See* R. Doc. 179, pp. 7–8.

[14] R. Doc. 188.

[15] Signal argued 42 U.S.C. § 1981a did not provide recovery because subsection 1981a(b)(3), which describes the cap on recovery, lists "future pecuniary losses" and not "past pecuniary losses" as compensatory damages. Signal urged the omission in the statute showed that past pecuniary losses are not recoverable.

[16] R. Doc. 184.

[17] Doc. 251.

[18] R. Doc. 251, p. 10.

[19] R. Doc. 251, p. 9. The Court did not reach the issue of whether or not the plaintiffs-intervenors failed to exhaust their administrative remedies. The Court noted Signal attached exhibits to support its arguments surrounding the exhaustion of administrative remedies. Because the Court did not consider those exhibits, it did not covert Signal's motion to a motion for summary judgment. Additionally, the Court did not consider Signal's argument that § 1981a only applies to future pecuniary losses.

[20] R. Doc. 273.

[21] R. Doc. 273, pp. 4–7.

[22] R. Doc. 273, pp. 7–19.

[23] A Rule 59(e) motion must be filed within twenty-eight days of the entry of judgment. *See* Fed.R.Civ.P. 54(b). A motion to reconsider filed outside this 28–day window is evaluated under the standards governing a motion for relief from final judgment under Rule 60(b). *Stangel v. United States* 68 F.3d 857, 859 (5th Cir.1995). Because the plaintiffs-intervenors motion was timely filed within the 28–day window, it is properly treated as a Rule 59(e) motion.

[24] R. Doc. 273–1, p. 3.

[25] R. Doc. 251, p. 8 (emphasis in original).

[26] Title VII covers "applicants for employment" and makes it an unlawful employment practice to discriminate with respect to conditions of employment. *See* 42 U.S.C. § 2000e–2(a)(2) ("Section 703")("It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or to limit, segregate, or (2) classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.")

[27] Doc. 273–1, p. 4.

[28] The Court does note that, even if exterritorial application of Title VII is not required, it is doubtful that the allegations of the complaint in intervention for recovery of recruitment fees from Signal would state a claim for relief that is plausible and capable of surviving a Rule 12(b)(6) motion to dismiss under *Bell Atl. Corp. v. Twombly*. 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 919 (2007) and *Ashcroft v. Iqbal,* 556 U.S. 662, 139 S.Ct. 1937, 173 L.Ed.2d 868 (2009). To make out a prima facie case of discrimination under Title VII, a plaintiff to show he was (1) a member of a protected class; (2) qualified for the position held; (3) subject to an adverse employment action; and (4) treated differently from others similarly situated. *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). In the Fifth Circuit, an "adverse employment action for Title VII discrimination claims ... 'include[s] only ultimate employment decisions such as hiring, granting leave, discharging, promoting, or compensating." *McCoy v. City of Shreveport* 492 F.3d 551, 559 (5th Cir.2007), quoting *Green v. Administrators of Tulane Educ. Fund,* 284 F.3d 642, 657 (5th Cir.2002). "Title VII was only designed to address 'ultimate employment decisions, not to address every decision made by employers that arguably might have some tangential effect upon those ultimate decisions." *Burger v. Central Apartment Mgmt., Inc.,* 168 F.3d 875, 878 (5th Cir.1999), quoting *Mattern v. Eastman Kodak Co.,* 104 F.3d 702, 707 (5th Cir.1997), *cert. denied,* 522 U.S. 932, 118 S.Ct. 336, 139 L.Ed.2d 260 (1997). To state an actionable discrimination claim under Title VII, the plaintiffs-intervenors' claim for recruitment fees must be based on a "tangible employment action [that] constitutes a *significant change in employment status,* such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Burlington Indus., Inc. v. Ellerth,* 524 U.S. 742, 764, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998)(emphasis added). The enormous debts at the start of their employment, mentioned by the plaintiffs-intervenors in briefs in support of their motion to reconsider (Doc. 273, p. 12), are not a significant change in their employment status with Signal. Signal's use of the Recruiters is not an "adverse employment action" with respect to the plaintiffs-intervenors' discrimination claim for recruitment fees under Fifth Circuit precedent. *See Pegram v. Honeywell, Inc.,* 361 F.3d 272, 282 (5th Cir.2004)("[A]n employment action that 'does not affect job duties, compensation, or benefits is not an adverse employment action.' ")(quoting *Banks v. E. Baton Rouge Parish Sch. Bd.,* 320 F.3d 570, 575 (5th Cir.2003), *cert. denied,* 540 U.S. 817, 124 S.Ct. 82, 157 L.Ed.2d 34 (2003)).