UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

Case No.: 3:00-cv-1084-J-20TEM

and

THERESA McWILLIAMS,

Plaintiff-Intervener

v.

THOMPSON & WARD LEASING CO., INC., and PHYSICIANS LEASING CO., INC. d/b/a PHYSICIANS LEASING CO. OF OHIO,

Defendants.

ORDER

This cause is before the Court on the following Motions:

1) Defendants' Motion for Summary Judgment on Plaintiff's Complaint (Doc. No. 31, filed November 1, 2001) and Plaintiff's Response in Opposition (Doc. No. 51, filed November 16, 2001);

2) Defendants' Motion for Summary Judgment on Plaintiff-Intervener's Complaint (Doc. No. 33, filed November 1, 2001) and Plaintiff-Intervener's Memorandum of Law in Opposition (Doc. No. 53, filed November 16, 2001);

3) Intervening Plaintiff's and Plaintiff's Joint Motion for Partial Summary Judgment and Request for Oral Argument (Doc. No. 41, filed November 2, 2001) and Defendants' Memorandum in Opposition (Doc. No. 52, filed November 16, 2001); and

65

4) Plaintiffs' Joint Motion for Leave to File Amended Complaints to Conform with the Evidence and Accurately Reflect the Name of One of the Defendants (Doc. No. 49, filed November 13, 2001) and Defendants' Memorandum in Opposition (Doc. No. 54, filed November 19, 2001).

All of the motions are now ripe for resolution.[1]

I. Background

The facts as stated herein are not in dispute unless otherwise noted, and are drawn from the pleadings, depositions, affidavits, answers to interrogatories, and other record evidence submitted by the parties in conjunction with their motions. This is an employment discrimination action brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., by the United States Equal Employment Opportunity Commission ("EEOC") on behalf of Theresa McWilliams.[2] McWilliams, who claims that she was sexually harassed by her former supervisor, was employed by the Florida Physicians Leasing Co., Inc. ("FPLC") from approximately December 1997 to January 2000. The circumstances surrounding her departure from the company are in dispute, and are not relevant to the resolution of the instant Motions.

FPLC is a Florida corporation using an unregistered "doing business as" name of Physicians Leasing Co., Inc. ("PLC"). Both the Complaint and the Intervener's Complaint name as Defendants

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[1]Tragically, Mr. Donald Weidner and Mr. Thomas Bowden, who represented the Defendants in this matter, were recently killed in an aviation accident. While the aforementioned motions have been pending for some time and are ripe for adjudication, in light of the circumstances the Court will entertain a motion to continue the pretrial conference, which is currently set for February 1, 2002.

[2]Ms. McWilliams has subsequently intervened as a plaintiff in this action, and she and the EEOC are collectively referred to throughout this Order as "Plaintiffs".

Thompson & Ward Leasing Co., Inc. and Physicians Leasing Co. Inc., d/b/a Physicians Leasing Co. of Ohio. The Plaintiffs did not name FPLC as a Defendant in this action. Thompson & Ward Leasing Co., Inc. ("T & W") is an Ohio corporation whose stock is entirely owned by two individuals, Edward Thompson and Jim Ward. Thompson and Ward also own all of the stock in FPLC, McWilliams' former employer. Both T & W and FPLC are in the business of leasing automobiles to physicians and arranging financing for the leases.

Plaintiffs now seek to amend their Complaint(s) by substituting FPLC for PLC. While acknowledging that they should have named FPLC in their Complaint(s) instead of PLC, Plaintiffs claim that the error was not unreasonable under the circumstances, and that the Defendants would not be prejudiced by the amendment. Defendants oppose an amendment, arguing that any eleventh hour substitution would be unwarranted and in bad faith, and futile because FPLC did not employ fifteen or more employees during the dates in question and is therefore not an "employer" within the meaning of Title VII.[3] Plaintiffs do not dispute that FPLC alone would not be considered an "employer" under Title VII, however they contend that T & W and FPLC should be treated as an "integrated" or "single" employer. Both parties agree that were the Court to treat the two companies as integrated, they would have collectively employed enough employees to satisfy Title VII's jurisdictional prerequisites with respect to "employer" status. Thus, all of the current motions essentially address two issues: first, whether Plaintiffs should be permitted to substitute FPLC for PLC, and second, assuming that they may, whether FPLC and T & W formed a single or integrated

[3]Title VII defines "employer" as "a person engaged in an industry affecting commerce who had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person." 42 U.S.C. § 2000e(b) (1998),

employer for purposes of establishing subject matter jurisdiction.

II. Analysis

A. Plaintiffs' Motion to Amend Complaint

The Federal Rules of Civil Procedure permit a party to amend its complaint to change the name of a defendant, provided that the substituted defendant has received notice of the action such that it will not be prejudiced, and that the substituted party knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the substitute. Fed. R. Civ. P. 15(c). One common scenario where such substitution is often permitted is where a corporate subsidiary is substituted for a parent, or vice versa. See, e.g., Andrews v. Lakeshore Rehabilitation Hosp., 140 F.3d 1405, 1408 n. 5 (noting that if subsidiary had notice of suit, parent holding 100% of subsidiary is deemed to have had notice).

In this case, there is little doubt that FPLC had notice of Plaintiffs' lawsuit and was aware that, but for a mistake, it would have been originally named as a defendant. As noted above, PLC is a d/b/a for FPLC. Moreover, the record demonstrates that the Defendants themselves contributed to the confusion surrounding the proper names of parties involved in this action. In an affidavit dated March 24, 1999, FPLC's General Manager stated that McWilliams was employed by "Physicians Leasing Co., Inc." Then, on March 26, 1999, in response to the underlying EEOC Charge of Discrimination, Mr. Bowden wrote a detailed letter with supporting documentation "on behalf of Thompson & Ward Leasing Co., Inc. and Physicians Leasing Co., Inc. (collectively 'PLC')." Doc. No. 29, Exh. "E".

Under the circumstances, the Court fails to see how Plaintiffs' request to substitute FPLC for

PLC constitutes bad faith. While Plaintiffs arguably could have been more thorough in discovering the proper names of the Defendants, fortunately for them the Federal Rules of Civil Procedure do not demand perfection. FPLC suffered no apparent prejudice from the oversight and under the circumstances justice requires that Plaintiffs be allowed to amend their Complaints.

B. Cross Motions for Summary Judgment

Having determined that FPLC should be a defendant in this action, the Court must next resolve whether FPLC and T & W formed a single employer for purposes of meeting Title VII's jurisdictional threshold. Both the Plaintiffs and the Defendants have cross-moved for summary judgment on this issue, claiming that there is no material issue of fact with respect to the Defendants' status under Title VII.

Before addressing the substantive issues noted above, however, the Court must first consider the appropriate standard of review to apply to the cross-motions.[4] In Scarfo v. Ginsberg, 175 F.3d 957 (11th Cir. 1999), a case involving similar facts to this one, the Eleventh Circuit clarified that whether two companies constitute a single "employer" within the definition of Title VII is a threshold jurisdictional issue, as opposed to an element of the underlying cause of action. Id. at 960.[5]

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[4]Although the parties did not brief this issue in their cross-motions, the Court believes that it merits some discussion.

[5]Although Scarfo attempted to distinguish other Eleventh Circuit precedent holding that employer status did implicate the underlying claim by noting differences between issues of employee versus employer status, the distinction has been criticized as illusory, and Scarfo for all intents and purposes appears to have eviscerated the former rule in this Circuit. See, e.g., Scarfo, 175 F.3d at 963 (Barkett, J., dissenting) (criticizing the majority for overlooking "squarely applicable" precedent); Scelta v. Delicatessen Support Servs., Inc., 1999 WL 1053121 (M.D. Fla. 1999) (Kovachevich, Ch. J.) (noting "a direct conflict" between Scarfo and the Eleventh Circuit's prior holdings on the issue).

Consequently, determinations regarding employer status under Title VII are for the Court alone to decide, not the jury. Id. Moreover, because the issue implicates the district court's subject matter jurisdiction– its very power to hear the case before it– the Court of Appeals directed that the question of employer status be resolved under Fed. R. Civ. P. 12(b)(1) as opposed to a Rule 56 summary judgment motion. The principal difference is that in the case of a 12(b)(1) motion, "no presumption of truthfulness attaches to plaintiff's allegations and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of the jurisdictional claim." Id.

Scarfo bears on this case in two important respects: First, the Court examines that part of Defendants' summary judgment motions contesting employer status as a factual attack[6] on subject matter jurisdiction under Rule 12(b)(1) as opposed to a Rule 56 motion for summary judgment. Consequently, this Court is free to weigh all evidence, as opposed to construing all material facts in favor of the non-moving party as it would on a Rule 56 motion. Secondly, because Defendants' employer status is a threshold jurisdictional question rather than an underlying element of Plaintiffs' Title VII claim, the entry of judgment on the issue would appear improper regardless of how the Court rules with regard to jurisdiction. Accordingly, the Court construes both parties' summary judgment motions under the rubric of a 12(b)(1) motion to dismiss for lack of subject matter jurisdiction.

Turning to the substantive issue of whether T & W and FPLC may be aggregated pursuant

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[6]A factual attack challenges "the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered." Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1989). In contrast, a "facial" attack "require[s] the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in [plaintiff's] complaint are taken as true for the purposes of the motion." Id.

to the single employer doctrine, courts in this Circuit view four factors as highly relevant: 1) interrelation of operations; 2) centralized control of labor relations; 3) common management; and 4) common ownership or financial control. Lyes v. City of Riviera Beach, 166 F.3d 1332, 1341 (11th Cir. 1999). In weighing these factors, courts accord a liberal construction to the term "employer" and therefore "sometimes look beyond the nominal independence of an entity." Id.

Viewing the relationship between T & W and FPLC under these criteria, the Court finds that the two companies formed a single employer during the relevant time period. While the Court agrees with the Defendants that common ownership (which Defendants concede existed in this case) itself does not necessarily give rise to single employer status, there are other factors at work here that separate this case from those where courts declined to treat commonly owned corporations as a single employer. See, e.g., Lusk v. Foxmeyer Health Corp., 129 F.3d 773, 778 (5th Cir. 1997) (rejecting single employer argument due to absence of nexus between parent's and wholly owned subsidiary's daily employment decisions). For example, Mr. Thompson himself acknowledged during his deposition that the same individual oversaw human resources functions for both T & W and FPLC. Personnel files for FPLC employees were kept at T & W's offices in Ohio. Another individual processed payroll for both T & W and FPLC, and checks issued to FPLC employees were issued by T & W. Both companies at times used a letterhead containing the names of both T & W and FPLC. Clearly, these facts point to substantial interrelationship of operations and centralized control of at least some labor functions.

Regarding the second factor, common management, much of the record evidence suggests that the companies were managed relatively separately in terms of their day to day operations. However, Mr. Thompson and Mr. Ward possessed ultimate management authority over each

company, and routinely shuttled back and forth between the two. Although it is difficult to disprove Defendants' assertion that when Thompson and Ward made decisions regarding T & W they were acting solely in their capacity as owners of T & W, and vice versa, the fact remains that the same two individuals simultaneously oversaw management of both companies, both of which engaged in the same business. Neither can the Court ignore that in responding to the EEOC Charge of Discrimination, the Defendants appeared to hold themselves out as a single entity and did not dispute that T & W was McWilliams' employer. Even applying Rule 12(b)(1)'s more rigorous standard of review, the Court concludes that Plaintiffs' have adequately demonstrated a basis for treating T & W and FPLC as a single employer for purposes of this action.

However, for the reasons noted above, the Court does not consider this an issue upon which judgment may be entered in favor of the Plaintiffs. Accordingly, while the Court's ruling effectively vindicates the position adopted in Plaintiffs' Motion for Partial Summary Judgment, the Motion is denied.

III. Conclusion

For the reasons stated herein, it is **ORDERED** that:

1) Defendants' Motion for Summary Judgment on Plaintiff's Complaint (Doc. No. 31, filed November 1, 2001) is **DENIED**;

2) Defendants' Motion for Summary Judgment on Plaintiff-Intervener's Complaint (Doc. No. 33, filed November 1, 2001) is **DENIED**;

3) Intervening Plaintiff's and Plaintiff's Joint Motion for Partial Summary Judgment (Doc. No. 41, filed November 2, 2001) is **DENIED**, however for purposes of this action the Court rules

as a matter of law that T & W and FPLC formed a single employer during the relevant time periods. The request for oral argument is **DENIED**; and

4) Plaintiffs' Joint Motion for Leave to File Amended Complaints to Conform with the Evidence and Accurately Reflect the Name of One of the Defendants (Doc. No. 49, filed November 13, 2001) is **GRANTED**. The Clerk is directed to docket Plaintiffs' Amended Complaints, attached to the Motion as Exhibits "A" and "B".

DONE AND ENTERED at Jacksonville, Florida, this 7th day of January, 2002.

HARVEY E. SCHLESINGER
United States District Judge

Copies to:

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Date Printed: 01/09/2002

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