United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Mark Filip	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 6910	DATE	4/6/2006
CASE TITLE	E.E.O.C. vs. Autonation, Inc., et al.		

DOCKET ENTRY TEXT

For the reasons stated below, the motion to dismiss (D.E. 21) of Defendant, Autonation, Inc., is respectfully denied.

Mark Filip

■[For further details see text below.]

Docketing to mail notices.

STATEMENT

The motion to dismiss of Defendant, Autonation, Inc. ("Defendant") is respectfully denied. A complaint should not be dismissed for failure to state a claim under Rule 12(b)(6) unless it is clear that the plaintiff would not be entitled to legal relief under any set of facts that could be proven consistent with the allegations of the complaint. *See*, *e.g.*, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). In evaluating a motion to dismiss, the court must accept as true all facts alleged in the complaint and make all reasonable inferences in favor of the plaintiff. *See*, *e.g.*, *Singer v. Pierce & Assocs., P.C.*, 383 F.3d 596, 597 (7th Cir. 2004); *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002).

Accepting as true all facts alleged in the complaint, the plaintiff has stated a claim upon which relief can be granted. Defendant contends as a matter of fact that it has never had fifteen employees and therefore is not an employer for purposes of Title VII. (D.E. 23 at 4.) However, in evaluating the motion to dismiss, the Court must accept the allegations of the complaint as true. The complaint specifically alleges that Defendant "has continuously had at least fifteen (15) employees." (D.E. 17, Ex. A ¶ 4.) Therefore the complaint sufficiently alleges a Title VII allegation. Moreover, any disputed factual issue in this regard does not go to the subject matter jurisdiction of the court, but rather relates to whether the EEOC ultimately can prove its case as a matter of fact. *See Arbaugh v. Y & H Corp, Inc.*, 126 S. Ct. 1235, 1245 (U.S. Feb. 22, 2006). Such subjects are not resolved via Rule 12(b)(6), at least where there are averments consistent with a conclusion in favor of the plaintiff. (Again, in this instance, the EEOC specifically alleges that Defendant has always employed the requisite number of employees.)

The affidavit submitted by Defendant is support of its motion is outside the pleadings and cannot be considered on a motion to dismiss. (D.E. 23, Ex. C.) A motion to dismiss is not the vehicle for resolving factual disputes. *See*, *e.g.*, *Walker v. Nat'l Recovery, Inc.*, 200 F.3d 500, 503-04 (7th Cir. 1999); *Johnson v. Revenue Mgm't Corp.*, 169 F.3d 1057, 1059 (7th Cir. 1999) ("[A] claim may fail on the facts, but assessing

factual support for a suit is not the office of Rule 12(b)(6).”). Materials outside of the pleadings, such as affidavits submitted to prove or disprove the veracity of allegations, are not considered in connection with a Rule 12(b)(6) motion. *See*, *e.g.*, *Albany Bank & Trust Co. v. Exxon Mobil Corp.* 310 F.3d 969, 971 (7th Cir. 2002); 2-12 Moore’s Federal Practice § 12.34[2] (2006).

Defendant’s principal objection appears to be that it never employed fifteen employees. (D.E. 23 at 4.) That may (or may not) be true, but the EEOC has specifically alleged that Defendant has always had at least fifteen employees for purposes of Title VII, and that allegation must be credited at this stage. Defendant cites *EEOC v. K&J Mgm’t, Inc.*, No. 99 C 8116, 2000 WL 34248366 (N.D. Ill. June 8, 2000), in support of its contention that the claims against Defendant can properly be resolved via Rule 12(b)(6). *K&J Mgm’t*, however, involved a materially different scenario, as the plaintiff-intervenors in that case conceded that the defendant did not employ fifteen people. *Id.*, 2000 WL 34248366, at *6. To the extent *K&J Mgm’t* could be read to suggest that the EEOC must meet some heightened pleading standard beyond that already satisfied by the EEOC, that position cannot be squared with the Seventh Circuit’s present teaching. *See*, *e.g.*, *Higgs*, 286 F.3d at 439 (collecting authorities, including *Kirksey v. R.J. Reynolds Tobacco Co.*, 168 F.3d 1039, 1041 (7th Cir. 1999)).

Defendant also appears to argue that the complaint does not, in Defendant’s view, sufficiently allege that Defendant employed Mr. Halit Macit or any of the putative class members referenced in the complaint. (D.E. 23 at 5.) However, the EEOC is entitled to the benefit of any set of reasonable inferences and/or hypothesized facts at this stage of the litigation, so long as they are not inconsistent with the allegations in the complaint. *See*, *e.g.*, *Conley*, 355 U.S. at 45-46; *Higgs*, 286 F.3d at 439. The EEOC certainly has not “pleaded itself out of court” by offering averments that establish that Defendant did not employ Mr. Macit or the other putative class members; for purposes of Rule 12(b)(6), that is enough.

Finally, the Court notes that it has discretion to convert a Rule 12(b)(6) motion into a motion for summary judgment where the putative motion to dismiss relies on proffered factual materials outside the pleadings. *See* Fed. R. Civ. P. 12(b)(6), Advisory Committee Notes concerning 1946 Amendment. In the instant case, the Court declines to so convert the motion. Employer/employee issues under Title VII often involve detail-intensive factual development and review, and the page-and-a-half affidavit submitted in connection with the mislabeled Rule 12(b)(6) motion does not suggest that the factual record has been fully presented. Moreover, converting the 12(b)(6) motion into a Rule 56 motion likely would simply meet with a Rule 56(f) request by the EEOC, which has not had any discovery to date. Accordingly, Defendant’s Rule 12(b)(6) motion is respectfully denied, and Defendant is directed to answer the operative complaint within twenty days of this order.