

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**

SEP - 1 2000

COLUMBIA DIVISION

LARRY W. PROPPS, CLERK  
COLUMBIA, S.C.

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

AUGUSTA FIBERGLASS COATINGS,  
INC.,

Defendant.

**ENTERED**

9-1-00

C.A. No. 3:00-1255-19BC

**ORDER**

This case is before the Court on several pretrial motions.

**1. Motion for Leave to Withdraw as Counsel [12]**

The Court finds the motion should be granted. The defendant has hired substitute counsel, and the substitute counsel has entered an appearance.

**2. Motion to Amend Complaint [13]**

The plaintiff seeks to add John Boyd ("Boyd") as a defendant and seeks to assert that the proper recovery period should begin on November 21, 1991, the effective date of the Civil Rights Act of 1991. The defendants responded, and the plaintiff replied.

As for adding Boyd, the plaintiff claims that he is the alter ego of the corporate defendant Augusta Fiberglass Coatings, Inc. ("AFC"). The plaintiff alleges that AFC is a mere facade used for Boyd's own personal benefit.

The plaintiff's proposed amended complaint seems somewhat inconsistent with the

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purported rationale of its motion. The amended complaint asserts that AFC and Boyd created a racially hostile work environment. However, Boyd (as AFC correctly argues) cannot be held liable under Title VII in his individual capacity. If the plaintiff seeks to add Boyd as the alter ego of AFC, the amended complaint should more appropriately allege that AFC or Boyd, as its alter ego, created a racially hostile work environment.

Because the proposed amended complaint can be read to assert liability against Boyd in his individual capacity rather than as the alter ego of AFC, the Court shall deny the motion to amend as to the allegations against Boyd. However, the plaintiff shall be allowed 14 days after the entry of this Order to replead its alter ego claim against Boyd.

By allowing the plaintiff to replead, the Court does not suggest that the plaintiff will ultimately be allowed to pierce the AFC corporate veil. This ruling merely allows the plaintiff to allege such a claim.

Next, the plaintiff seeks to extend the scope of damages. In the original complaint, the plaintiff alleged wrongful conduct going back to October 1, 1994. Now the plaintiff seeks to allege wrongful conduct going back to November 21, 1991.

The Court finds it appropriate to allow the plaintiff to amend its complaint to extend the time frame for damages which it now seeks. Although the plaintiff originally sought damages dating back to 1994, it alleged generally that AFC had created a racially hostile work environment since 1979. As such, AFC was on notice from the start of this case that damages could be sought back to as early as 1991, since the plaintiff alleged wrongful conduct dating back to 1979. Moreover, the plaintiff has not demonstrated prejudice.

### **3. Plaintiff's Motion for a Protective Order [20]**

The plaintiff seeks an Order prohibiting AFC from deposing the plaintiff's litigation

attorneys and calling them as witnesses as trial. AFC made no response.

The Court finds that a protective Order should be granted. AFC has made no showing why the attorneys in question should be deposed or called as witnesses.

However, pursuant to the Court's inherent power to oversee its cases, the Court finds it proper to require plaintiff's counsel to provide information relating to Rosalyn Singleton ("Singleton"). On May 31, 2000, plaintiff's counsel wrote a letter to Singleton identifying her as a potential victim of hostility and discrimination at AFC.

Plaintiff's counsel shall inform the Court of all information it was privy to regarding Singleton prior to May 31, 2000. This filing shall be done *ex parte*. The Court shall review the information *in camera*.

**4. Motion to Continue and Enlargement of Time for Discovery [36]**

The EEOC began investigating claims against AFC in 1996. In the four intervening years, the plaintiff claims that it has "identified many victims." Memorandum in Support, p. 1. Its Rule 26.03 Interrogatories and Complaint, however, identify only four individuals.

The plaintiff seems to suggest in its filings that it should have a virtually unlimited amount of time to do discovery in this case in light of the fact that no statute of limitations exists. The Court does not agree.

The Court will extend the discovery schedule and shall continue the trial date for a short time only. The Court does not anticipate granting any further extensions. The plaintiff should have completed its investigation by now. The plaintiff must make the claims it wants to make and do the discovery it intends to do by the newly established deadlines.

**5. Defendant's Motion for Protective Order [38]**

The plaintiff has noticed the depositions of Abdelaal A. Abdelaal ("Abdelaal") and

Albert Bryan ("Bryan"). It appears that the plaintiff seeks to elicit testimony from these deponents regarding Boyd's alleged alter ego status.

Because the Court has ruled that Boyd may be added as an alter ego defendant, the Court finds that the proposed depositions may proceed. The plaintiff shall be allowed to depose each deponent for no more than four hours.

**6. Defendant's Motion to Quash Subpoena [41]**

This motion refers to three boxes of documents in the possession of Abdelaal's lawyer. AFC claims the boxes contain documents relating to internal production matters and financial documents.

None of the internal production documents <sup>is</sup> ~~are~~ relevant, and they should not be produced. The motion to quash is granted as to these documents.

As for the financial records, AFC argues they should not be produced because they are not relevant to the allegations of discrimination.<sup>1</sup> However, because the Court has ruled that the plaintiff may pursue its alter ego claim, the financial records should be produced.<sup>2</sup>

If AFC claims any other privileges as to any of these documents, it should raise them to the Magistrate Judge immediately.

**7. Plaintiff's Motions to Compel [18] [29]**

These motions are referred to the Magistrate Judge for disposition.

**8. Class Certification**

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<sup>1</sup>AFC also argues that Abdelaal signed a confidentiality agreement wherein he agreed not to divulge the documents. This Order supercedes the confidentiality agreement. AFC also argues that Abdelaal stole some of the documents in question. If Abdelaal wrongfully took possession of AFC's documents, AFC may pursue a remedy directly against Abdelaal.

<sup>2</sup>Plaintiff's counsel should be mindful that the financial records should not be put to any unauthorized use. The Court shall impose sanctions if the records are misused.

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The plaintiff seeks to obtain relief on behalf of four named individuals and a class of similarly situated individuals. Despite having had more than four years to investigate, the plaintiff even now has not identified more than four alleged victims.

Federal Rule of Civil Procedure 23(c) requires the Court, as soon as practicable after commencement of suit, to determine if the case should be maintained as a class action. Rule 23(a) provides, among other things, that a class action may be brought if the class is so numerous that joinder of all members is impracticable.

The instant suit does not meet the requirements of a class action. There is no indication that the potential class is so numerous that joinder of all of them would be impracticable. Moreover, as the plaintiff itself has argued, there is no indication that any former employees have left the area or are unavailable. Reply to Defendant's Response to EEOC's Motion to Amend, p. 6.

**9. Plaintiff's Withdrawal of Pay Discrimination Claim**

The plaintiff has notified the Court that it has decided not to pursue its pay discrimination claim. As such, this claim shall be dismissed with prejudice.

**IT IS THEREFORE ORDERED** this the 1<sup>st</sup> day of September, 2000, at Columbia, South Carolina, that the Motion to Withdraw as Attorney [12] be **GRANTED**, the plaintiff's Motion to Amend [13] be **GRANTED** in part and **DENIED** in part and plaintiff shall be allowed fourteen days to replead its alter ego claim, plaintiff's Motion for Protective Order [20] be **GRANTED**, plaintiff's Motion to Continue and Enlargement of Time for Discovery [36] be **GRANTED**, defendant's Motion for Protective Order [38] be **DENIED**, defendant's Motion to Quash Subpoena [41] be **GRANTED** in part and **DENIED** in part, plaintiff's Motions to Compel [18] and [29] be **REFERRED** to the Magistrate Judge

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for disposition, and plaintiff's pay discrimination claim be **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that this case shall not be maintained as a class action.

**IT IS ALSO ORDERED** that the Scheduling Order entered July 29, 2000 be **AMENDED** and the following time limits shall govern this case:

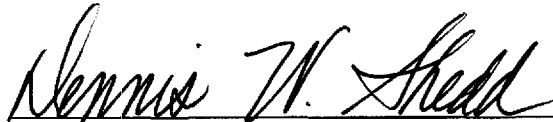
1. Motions to join other parties and motions to amend the pleadings shall be filed on or before **OCTOBER 13, 2000**.

2. The parties must comply with Local Rule 26.09 by no later than **SEPTEMBER 8, 2000**.

3. Discovery shall be completed by no later than **NOVEMBER 10, 2000**.  
Discovery shall be deemed completed within this time only if discovery is initiated at such time as to afford the responding party the full time provided under the applicable procedural rule in which to respond to the date set forth in this paragraph.

4. All other motions, except those relating to the admissibility of evidence at trial and those to compel discovery shall be filed by no later than **DECEMBER 1, 2000**.

5. This case is subject to be called for trial on or after **JANUARY 2, 2001**, unless otherwise ordered by the Court.



**DENNIS W. SHEDD**  
**UNITED STATES DISTRICT JUDGE**