UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EEOC, et al.	:	**CASE NO.** C-1-03-662
	:	
Plaintiffs,	:	**Judge:** Susan Dlott
	:	
vs.	:	**Magistrate:**
	:	
JEFF WYLER EASTGATE, INC.	:	**PLAINTIFF PATRICIA CAMERON**
Formerly Known As	:	**LYTLE'S MOTION FOR**
JEFF WYLER CHEVROLET, INC.	:	**CONSOLIDATION OF ACTIONS**

Plaintiff Patricia Cameron-Lytle moves the Court pursuant to Rule 42(a) of the Federal Rules of Civil Procedure for an Order consolidating before this Court this case and the case of Richard W. Higgins v. Jeff Wyler Eastgate, Inc., Case No. C-1-04-84, which is pending in the Southern District of Ohio, Western Division before Judge Sandra Beckwith. Consolidation into one action is sought on the ground that the two cases involve common questions of law and fact and a consolidation of these cases is necessary for reasons of judicial economy, to avoid duplication of evidence, unnecessary costs and delay. Consolidation is not opposed by the EEOC. This motion is supported by the following Memorandum and Affidavit of Counsel Bruce Meizlish.

Respectfully submitted,

S/Bruce H. Meizlish
Bruce H. Meizlish #0033361

S/Deborah R. Grayson
Deborah R. Grayson, #0062777
Meizlish & Grayson
Attorneys for Plaintiff
830 Main Street - Suite 999
Cincinnati, OH 45202
Telephone: (513) 345-4700
Fax: (513) 455-473
dgrayson@winstarmail.com

MEMORANDUM

I. STATEMENT OF THE CASES

A. Case 1:03-CV-662

On September 25, 2003, the EEOC filed a Complaint, amended on October 7, 2003, alleging that the Defendant has engaged in unlawful employment practices at its facilities in Batavia, Ohio by failing to hire women, including Patricia S. Cameron-Lytle, as salespersons because of their sex. Patricia S. Cameron-Lytle filed a Motion to Intervene on October 16, 2003 and filed her Complaint on February 20, 2004 adding state law claims of discrimination under Ohio Rev. Code §§4112.02(a) and 4112.99. The case was originally assigned to Judge Herman Weber but was reassigned to Judge Dlott on January 6, 2004. An Order scheduling discovery matters was issued on March 11, 2004.

B. Case 1:04-CV-84

On February 6, 2004, Plaintiff Richard W. Higgins filed his Complaint, alleging that he was terminated by Defendant on July 18, 2001 for his refusal to participate in Defendant's discriminatory practice of refusing to hire women to sell cars. The Complaint alleges that this discriminatory practice began 1997 after a woman salesperson employed at Defendant's Batavia, Ohio facility made complaints of sexual harassment and subsequently quit her job. After she left, Higgins was instructed by Defendant not to hire any women to sell cars and threatened that the next person who hired a woman would be fired. Higgins was fired on July 12, 2001, one month after hiring a woman as a salesperson. The answer has not yet been filed in this case.

The civil cover sheet filed with this case reflects that it is related to the pending case filed against the same Defendant by the EEOC and Patricia S. Cameron Lytle. Counsel for Plaintiff Higgins, who also represents Cameron-Lytle, anticipated his case would also be assigned to be heard by the same judge. The case, however, was assigned to Judge Beckwith.

II. BASIS OF THIS MOTION

Federal Rule of Civil Procedure 42(a) provides that when actions involving a common question of law or fact are pending before the Court, the Court may, at its discretion, consolidate the matters for pretrial proceedings, trial or both. Plaintiff Cameron-Lytle submits that the Court's discretion should be exercised to consolidate these matters at the earliest stage possible since the allegations are interrelated, involve common questions of law and fact, and consolidation will avoid unnecessary costs and delay and achieve judicial economy.

III. ARGUMENT

A. There are common issues of fact and law.

The cases filed by the EEOC, Patricia Cameron-Lytle and Richard Higgins involve related legal and factual issues, witnesses and evidence. The EEOC has filed a pattern and practice complaint alleging that the Defendant failed to hire women, including Patricia S. Cameron-Lytle as salespersons because of their sex. The EEOC seeks injunctive relief, prospective implementation of policies providing equal opportunities for women, and make-whole remedies for Cameron-Lytle and similarly situated females.

The complaint filed by Cameron-Lytle alleges that she applied for the position of

salesperson commencing in the Summer of 2000 through the Summer of 2001 and was denied employment because of sex. Counsel anticipates that witnesses in this case will include Ms. Cameron-Lytle and Defendant's managers, including Richard W. Higgins, to show that Defendant had a policy and practice of refusing to hire women as car salespersons. Mr. Higgins was a General Sales Manager at the Defendant's Eastgate Automall in Batavia where Ms. Cameron Lytle applied for employment. He will testify that following a complaint of sexual harassment made by a woman salesperson in 1997 he was instructed not to hire women to sell cars and threatened that the next manager to hire a woman to sell cars would be fired. It is anticipated that at least two other managers and two salespersons will corroborate the existence of this policy and practice. [1] Counsel anticipates that the documentary evidence in Ms. Cameron-Lytle's case will concern Defendant's hiring records and practices, applications and its workforce profile and documents concerning the 1997 complaint of sexual harassment. [2]

Counsel anticipates that Mr. Higgins' testimony supporting his own complaint will be substantially the same as his testimony in support of the pattern and practice case with the addition of testimony concerning the pretextual reason of poor production given for his discharge. The same managers and salespersons will support the existence of the unlawful policy and Ms. Cameron Lytle's testimony will illustrate the operation of the policy. [3] The same documentary evidence concerning the hiring practices of Defendant and its genesis in the sexual harassment complaint will be used to support the existence of the unlawful policy.

Both cases present around a common central issue: Whether Defendant maintained an unlawful policy of refusing to hire women for sales positions. The two cases simply involve different aspects of the operation of that policy; whether women applicants, including Ms. Cameron-Lytle, were denied employment due to the policy and whether Mr. Higgins was terminated because he opposed this policy by hiring a woman to sell cars.

The situation is factually similar to that presented in EEOC v. HBE Corp.[4] There, the court consolidated a race discrimination action brought by a terminated employment manager with a retaliatory discharge action brought by the terminated personnel director who was fired for refusing to fire the employment manager. Both terminated managers sought to present evidence about a climate of racial hostility at the hotel and events preceding and following the employment manager's discharge. The common evidence was relevant to establish both why the employment manager had been fired and why the personnel director believed his termination was due to race and his refusal to fire the employment manager. The court concluded it would have been inefficient to have separate trials involving related parties, witnesses and evidence.

B. Convenience and judicial economy would be achieved by consolidation.

If common questions of law or fact exist, the court has broad discretion to order consolidation. The matters of convenience and economy of administration are important

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[1] (Affidavit of Meizlish, Para. 3)

[2] (Affidavit of Meizlish, Para 4)

[3] (Affidavit of Meizlish, Para 5)

[4] EEOC v. HBE Corp., 135 F.3d 543 (8th Cir. 1998).

considerations in determining whether to consolidate actions presenting a common issue of law or fact.[5]

If these matters are not consolidated, it will be necessary to present the testimony of Richard Higgins and other managers concerning Defendant's exclusionary hiring policy in both cases. It will be necessary to present the documentary and statistical information about hiring practices in both proceedings. Two different judges may be called upon to decide whether the discriminatory policy existed and was enforced and two different jury panels may consider the common issues after the conclusion of the evidence with possible inconsistent verdicts.

Two separate proceedings will cause duplication in discovery and trial and also cause inconvenience to the witnesses. Witnesses will be deposed and testify about the same matters twice. Plaintiff Higgins resides in Florida and would have to travel to Cincinnati to testify to the same facts and circumstances in both cases. This violates principles of judicial economy.[6]

Both of these cases are in the preliminary state of proceeding. The matter before this Court, however, was filed first and the proceedings are more advanced. Hence, consolidation should occur before this Court. Counsel intended to pursue the two cases in tandem as the allegations were so interrelated but administrative processing delayed the filing of the complaint in the Higgins' case. Both cases were docketed by the EEOC on October 5, 2001.[7] The EEOC filed the complaint in the pattern and practice case on September 25, 2003, nearly two months before the Notice of Right to Sue was issued to Richard Higgins.[8]

Plaintiff submits that all parties would benefit from consolidation and valuable court time and effort would be saved. Savings will be maximized by an early consolidation. Consolidation will not be prejudicial to any substantial right of Defendant. Plaintiff EEOC does not oppose this motion.[9] The motion is timely as a motion to consolidate may be made as soon as the issues that justify consolidation become apparent, even though they are not joined formally between the parties in one or more of the actions.[10]

IV. CONCLUSION

It is apparent that there are common issues of law and fact in Case Nos. 1:03-662 and 1:04-84. The Court has broad discretion to consolidate cases in these circumstances and the exercise of this discretion is warranted since there are common issues of law and fact and

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[5]Grimes v. Keco Industries, Inc., 1976 U.S. Dist. LEXIS 16195, March 11,1976 (Hogan), citing 9 C. Wright & A. Miller, *Federal Practice and Procedure*; Civil §2383 at 259 (1971).

[6]Schnellbaecher v. Baskin Clothing Co. , 1990 U.S. Dist. LEXIS 3840 (N.D. Ill., W.Div.) Claims of two plaintiffs alleging denial of promotion consolidated at defendant's request where common issues of law and fact and some of defendant's witnesses resided outside the state.

[7] EEOC Complaint, para. 7, Higgins' Complaint, para. 6.

[8] Higgins' Complaint, para. 7. (Affidavit of Meizlish para. 7)

[9]Affidavit of Meizlish, para. 9

[10]9 C. Wright & A. Miller, *Federal Practice & Procedure*, Civil 2nd §2383 at 446 (1995).

common witnesses and evidence in these two cases. Plaintiff Cameron-Lytle respectfully requests that the Court issue an order consolidating the matters for all further proceedings, including discovery, summary judgment and trial.

Respectfully submitted,

S/Bruce H. Meizlish
Bruce H. Meizlish #0033361

Deborah R. Grayson, #0062777
Meizlish & Grayson
Attorneys for Plaintiff
830 Main Street - Suite 999
Cincinnati, OH 45202
Telephone: (513) 345-4700
Fax: (513) 455-4703
dgrayson@winstarmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2004, I electronically filed the foregoing motion, memorandum, and affidavit with the Clerk of the Court, using the CM/ECF system which will send notification of such filing to the following:

W. Breck Weigel
Vorys Sater Seymour and Pease LLP
221 East Fourth Street
Suite 2000 - Atrium 1
Cincinnati, OH 45202

Scott A. Carroll
Vorys Sater Seymour and Pease LLP
221 East Fourth Street
Suite 2000 - Atrium 1
Cincinnati, OH 45202

Solvita A. McMillan
Equal Employment Opportunity Commission
Cleveland District Office
Skylight Office Tower
1660 West Second Street, Suite 850

Cleveland, Ohio 44113-1412

Deborah R. Grayson