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United States District Court,
D. Minnesota.

Christopher MODTLAND, for himself and all other similarly situated, Plaintiffs,
v.
MILLS FLEET FARM, INC., Defendant.

No. Civ.04-3051 PAM/RLE. | Nov. 28, 2004.

Attorneys and Law Firms

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Opinion

MEMORANDUM AND ORDER

MAGNUSON, J.

*1 This matter is before the Court on Defendant's Motion for Summary Judgment.¹ For the reasons that follow, the Motion is denied.

BACKGROUND

This is a putative class action filed by Plaintiff Christopher Modtland, filed on behalf of him and all other similarly situated individuals who sought employment at Defendant Mills Fleet Farm, Inc. ("Mills Fleet Farm"). On July 24, 2001, Modtland applied for a job at Mills Fleet Farm in Lakeville, Minnesota. Like all other applicants, he was required to complete the "Reid Report." The Reid Report, designed by Pearson Reid London House ("Reid"), is an assessment that "measures tastes, preferences, attitudes, habits, behaviors, and personality traits." (Arnold Aff. ¶ 3.) When an applicant completes the Reid Report, it is transmitted to Reid to be scored. Based on the applicant's responses to the questions, the applicant is rated as "recommended," "recommended with qualifications," or "not recommended." Modtland received a "not recommended" rating, and pursuant to Mills Fleet Farm company policy, was denied employment. (See Mills Aff. ¶ 13, Ex. E.)

Prior to January 22, 2002, the Reid Report required that the Mills Fleet Farm employee who was administering the assessment note the applicant's race and gender. (*Id.* ¶ 7.) Mills Fleet Farm submits that this information was used solely to assess whether any disparate impact resulted from the use of the test. (Arnold Aff. ¶ 20.) On January 22, 2002, Mills Fleet Farm stopped requiring that its interviewing employees note the race and gender of the applicant. (Mills Aff. ¶ 8.)

Because Mills Fleet Farm failed to hire him, Modtland filed a charge of discrimination based on race with the Minnesota Department of Human Rights ("MDHR") on December 27, 2001. (Harristhal Aff. Ex. A.) This charge was cross-filed with the Equal Employment Opportunity Commission ("EEOC") on January 25, 2002. (*Id.* Ex. B.) On September 18, 2002, the MDHR issued its finding "that probable cause exists to believe that an unfair discriminatory practice was committed." (*Id.* Ex. C.) Specifically, this finding pertained to Mills Fleet Farm's practice of noting an applicant's race and gender in the Reid Report. (*Id.*) The MDHR further concluded, however, that Modtland's race was not a "discernible, discriminatory and causative factor" in Mills Fleet Farm's employment decision. (*Id.*)

On April 22, 2003, the MDHR amended this finding. (*Id.* Ex. D.) The MDHR upheld the underlying probable cause

determination, opining that the pre-offer Reid Report and the practice of noting an applicant's race and gender was not in compliance with the MHRA. The MDHR then concluded that probable cause existed to show that Modtland was "discriminatorily denied employment due to [Mills Fleet Farm's] hiring process." (*Id.*)

On May 14, 2004, the MDHR concluded that "additional use of the [MDHR's] limited litigation resources on this case would not serve public policy and is therefore not warranted." (*Id.* Ex. E.) Nonetheless, it issued Modtland a notice of his right to sue and expressly acknowledged that its dismissal of the charge "does not relate to the merits" of its previous probable cause determinations. (*Id.*)

*2 On June 28, 2004, Modtland filed this lawsuit, claiming that Mills Fleet Farm engaged in discriminatory hiring practices² in violation of (1) the Minnesota Human Rights Act ("MHRA"), Minn.Stat. § 363A.01 *et seq.*;³ (2) 42 U.S.C. § 1981; and (3) Title VII, 42 U.S.C. § 2000e *et seq.* (*See* Am. Compl.) On September 24, 2004, the parties met and conferred pursuant to Fed.R.Civ.P. 26(f). One week later, Mills Fleet Farm filed this Motion for Summary Judgment.

Mills Fleet Farm first challenges whether Modtland exhausted his administrative remedies and whether the allegations in the Amended Complaint sufficiently state a claim upon which relief can be granted. It also contends that the Reid Report and the notation about an applicant's race do not violate either federal or state law. Alternatively, Mills Fleet Farm submits that information about an applicant's race was used for lawful purposes, and that all applicants were treated the same way. Finally, Mills Fleet Farm submits that a legitimate, nondiscriminatory reasons supported its decision to not hire Modtland. Modtland seeks a continuance pursuant to Fed.R.Civ.P. 56(f). He further argues that a genuine issue of material fact exists on his claims, precluding summary judgment.

DISCUSSION

A. Sufficiency of the Allegations

1. Disparate Impact

Mills Fleet Farm first disputes the sufficiency of the allegations in the Amended Complaint. It argues that Modtland's claims are premised only on the theory of disparate treatment, and that any claim premised on disparate impact should be dismissed. Particularly, Mills Fleet Farm contends that Modtland's administrative charge of discrimination only referenced a disparate treatment claim, and therefore he failed to exhaust his administrative remedies on his disparate impact claims.

Modtland filed his charge of discrimination with the MDHR, which cross-filed with the EEOC. The allegations in the charge of discrimination asserted that Modtland believed that he was denied employment because of his race. (Harristhal Aff. Ex. A.) Modtland asserted that Mills Fleet Farm hired a friend of his who was white and less qualified for the position. (*Id.*) Modtland asserts that when he followed up with Mills Fleet Farm following the application process, Mills Fleet Farm told him that there were no available positions. (*Id.*) However, according to Modtland, Mills Fleet Farm was still seeking employees in local newspapers. (*Id.*) Mills Fleet Farm insists that this one page charge only asserts a discrimination claim premised on disparate treatment.

However, the Court is not limited to the charge, but rather may examine the entire administrative record. *See Montgomery v. Indep. Sch. Dist. No. 709*, 109 F.Supp.2d 1081, 1100 (D.Minn.2000) (Tunheim, J.) (charge of discrimination filed with MDHR only constituted a "limited portion" of the administrative file, and court was permitted to evaluate all parts of the administrative record). Although Modtland plainly alleges that he was not hired because of his race, the MDHR evaluated his claim from both a disparate treatment and disparate impact analysis. Indeed, the MDHR considered both whether Modtland's race was an "attributable factor" in the hiring process, and whether Mills Fleet Farm's hiring process itself "discriminatorily denied" Modtland employment. (*See* Harristhal Aff. Exs. C–D.) Thus, the Court disagrees with Mills Fleet Farm and finds that Modtland sufficiently exhausted his administrative remedies on his disparate impact discrimination claim.

*3 Mills Fleet Farm further argues that the Amended Complaint makes no reference to disparate impact claims. The Court disagrees. The Amended Complaint alleges that Mills Fleet Farm engaged in discriminatory hiring practices, in violation of the MHRA, Title VII and 42 U.S.C. § 1981. Although the Amended Complaint references "disparate treatment" claims under the MHRA, the underlying allegations of this claim articulate a discrimination claim premised both on disparate impact and disparate treatment. (*See* Am. Com pl. ¶¶ 27–31.) Indeed, the allegations assert that the hiring practices "adversely affected" Modtland because of his race, and that "lesser qualified non-minority individual(s) applied for and subsequently received employment." Similarly, Modtland's Title VII allegations articulate a claim premised on disparate impact. (*See* Am. Compl.

¶ 43.) Thus, the Court declines to dismiss Modtland's disparate impact claims. Examining the Amended Complaint, Modtland sufficiently alleges that Mills Fleet Farm's hiring practices are discriminatory in nature and that Mills Fleet Farm failed to hire Modtland because of his race. (*Id.* ¶ 19.)

2. Minn.Stat. § 363A.08 subd. 4(1)

The Amended Complaint specifically alleges that Mills Fleet Farm violated Minn.Stat. § 363A.08 subd. 4(1), which declares that it is an unfair employment practice for an employer, prior to an offer of employment, to "require or request the person to furnish information that pertains to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age." Mills Fleet Farm submits that because the interviewing employee "observed" the applicant's race and gender, Mills Fleet Farm did not "require or request" such information. Thus, Mills Fleet Farm argues that this claim must be dismissed.

The Court disagrees. Mills Fleet Farm's characterization that it "observed" this information does not preclude application of the statute. According to Mills Fleet Farm, prior to January 2002, all employment applicants who qualified were required to take the Reid Report. This Reid Report specifically included a section that required the Mills Fleet Farm employee administering the assessment to note the applicant's race and gender. This notation was submitted to Reid along with the applicant's responses to the Reid Report. Based on the results of the Reid Report, the applicant was either offered or denied employment. Although the applicant did not expressly provide this information, this information was nonetheless required in the Reid Report, which was required for employment consideration. Mills Fleet Farm's argument that it did not require or request such information is unavailing, and Modtland has sufficiently articulated a claim under Minn.Stat. § 363A.08 subd. 4(1).

B. Fed.R.Civ.P. 56(f)

Mills Fleet Farm has moved for summary judgment pursuant to Rule 56. However, the Court notes that this Motion was filed one week after the parties' Rule 26(f) meeting and before the parties met for a scheduling conference with Magistrate Judge Erickson. Modtland contends that the information it needs to properly defend against this Motion is in the possession of Mills Fleet Farm. The Eighth Circuit has noted that the "[r]elative availability of evidence to the parties is a circumstance to be considered in determining what should be required for making a submissible case." *Spencer v. Kroger*, 941 F.2d 699, 704 (8th Cir.1991). The success or failure of Modtland's claims depends on what discovery will disclose. Although summary judgment can be "an effective device to protect parties from burdensome discovery," it should not be used to prevent a party from presenting its case. *Costello, Porter, Hill, Heisterkamp & Bushnell v. Providers Fid. Life Ins. Co.*, 958 F.2d 836, 839 (8th Cir.1992). Indeed, the "Supreme Court has been careful to state that the rules regarding the proper opposition to a summary judgment motion apply only after adequate time for discovery has been allowed." *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). In this case, the Court finds that Modtland has been denied the opportunity to conduct discovery, particularly the discovery of evidence that is in the possession of Mills Fleet Farm. See *Anderson v. Liberty Lobby*, 477 U.S. 242, 257, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Modtland has submitted a detailed affidavit describing "what specific facts further discovery might unveil," and thus the Court concludes that Modtland has satisfied his burden under Rule 56(f). (See *Klassen* 56(f) Aff.); *Dulany v. Carnahan*, 132 F.3d 1234, 1238 (8th Cir.1997). If, after discovery proceeds and sufficient facts cannot be articulated to support a genuine issue of material fact, then the Court may again entertain Mills Fleet Farm's Motion for Summary Judgment.

CONCLUSION

*4 Accordingly, based on all the files, records and proceedings herein, IT IS HEREBY ORDERED that Defendant Mills Fleet Farm's Motion for Summary Judgment (Clerk Doc. No. 4) is DENIED.

Footnotes

¹ The Court denied the request for oral argument and entertained this Motion on the parties' submissions.

² Modtland concedes that his filings with the MDHR and EEOC were based on race discrimination only, and voluntarily withdraws his claims for gender discrimination. Pls.' Mem. in Opp'n to Summ. J. at 26 n. 4. Therefore, Modtland's claims pertain only to race

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discrimination.

- 3 The Amended Complaint refers to Minn.Stat. § 363.03 *et seq.* However, this chapter was recently renumbered and is now referenced as Minn.Stat. § 363A.01 *et seq.*