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United States District Court,
E.D. Pennsylvania.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

v.

U.S. STEEL-FAIRLESS WORKS, USX Corporation
Marcia MILLER

v.

U.S. STEEL-FAIRLESS WORKS, USX Corporation

No. Civ.A. 01-CV-582, Civ.A. 01-CV-888. | Jan. 4,
2002.

Attorneys and Law Firms

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Opinion

MEMORANDUM AND ORDER

KAUFFMAN, J.

*1 These two cases arise from Marcia Miller’s allegations of sex discrimination by U.S. Steel-Fairless Works, USX Corporation (“U.S.Steel”).¹ Now before the Court are two motions: (1) Marcia Miller’s Motion to Intervene as a Matter of Right Pursuant to Federal Rule of Civil Procedure 24(a) and to Consolidate Actions;² and (2) Defendant’s Motion for an Extension of Time to Respond to Miller’s Motion to Intervene and to Consolidate.³ For the reasons stated below, the Court will not treat Miller’s Motion as uncontested under Local Rule 7.1(c) and will consider Defendant’s Response as if timely filed. After consideration of Defendant’s Response, the Court will also grant Miller’s Motion to Intervene and to Consolidate.

¹ In *Equal Employment Opportunity Commission v. U.S. Steel-Fairless Works, USX Corporation* (No. 01-CV-582) (“EEOC suit”), the Equal Employment Opportunity Commission (“EEOC”) brings suit against U.S. Steel pursuant to federal law based upon

allegations contained in a charge against U.S. Steel that Miller had filed with the EEOC. In *Marcia Miller v. U.S. Steel-Fairless Works, USX Corporation* (No. 01-CV-888) (“Miller suit”), Miller brings her own action against U.S. Steel under federal law and other state law claims.

² Miller seeks to intervene as a matter of right in the EEOC suit and to consolidate the Miller suit with the EEOC suit.

³ Defendant proffers an explanation for its failure to file a timely response and opposes Miller’s Motion on grounds that it exceeds the permissible scope of intervention and attempts to consolidate actions that do not involve common questions of law or fact.

BACKGROUND

On July 13, 1999, Marcia Miller filed a charge (“First Charge”) with the EEOC claiming that her employer, U.S. Steel, had discriminated against her on the basis of sex. Specifically, Miller alleged hostile work environment and retaliatory actions.⁴ On August 25, 2000, Miller filed another charge (“Second Charge”) with the EEOC claiming that U.S. Steel had engaged in sex discrimination. In this Second Charge, Miller alleged that she was retaliated against in her employment because she had complained about a hostile work environment.⁵ Miller subsequently received two separate “Notice of Right to Sue” letters from the EEOC that were issued on April 5, 2001 and September 26, 2001 with regard to the First Charge and Second Charge respectively. (Pl.’s Resp. Def.’s Mot. Dismiss, 01-CV-888, at Ex. A; Pl.’s Supplemental Mem. Def.’s Mot. Dismiss, 01-CV-888.)

⁴ According to Miller, numerous offensive pictures were hung up around her workplace. She alleged that after she complained, a co-worker deliberately bumped a scooter into a piece of equipment located next to where she was standing, thereby causing her physical injury, and her work area and tools were sabotaged. (Def.’s Resp. Pl.’s Mot. Intervene, 01-CV-888, at Ex. A.)

⁵ Specifically, Miller claimed that she was temporarily assigned to a pipefitter position but never received a salary increase, that the promotion to a pipefitter job that she had requested was given instead to men with less experience and qualifications, and that she was

transferred to monotonous work in the Roll Shop. (Def.'s Resp. Pl.'s Mot. Intervene, 01-CV-888, at Ex. C.)

On February 5, 2001, the EEOC initiated its civil action (*i.e.*, the EEOC suit) against U.S. Steel pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.* ("Title VII"), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a). In its Complaint, the EEOC alleges that U.S. Steel discriminated against Miller when it subjected her to a hostile work environment. The statement of claims is based on the allegations of hostile work environment that Miller had made in the First Charge. (Compl., 01-CV-582, at ¶ 7.)

On February 22, 2001, Miller filed her suit (*i.e.*, the Miller suit) against U.S. Steel based on claims of sex discrimination in violation of Title VII and the Pennsylvania Human Relations Act, 43 Pa.C.S.A. § 951 *et seq.*, as well as claims under state law for intentional infliction of emotional distress, negligent supervision, and negligent retention. The allegations raised in the Complaint in the Miller suit (01-CV-888) largely mirror those contained in both her First Charge and Second Charge with the EEOC.⁶

⁶ According to Miller's Complaint, she was subjected to a hostile work environment and discriminated against on the basis of sex with respect to work assignments, compensation, and promotion in her employment as a welder at U.S. Steel. (Compl., 01-CV-888, at ¶¶ 8, 11-22, 30-34.) Miller asserts, among other things, that she also suffered ongoing retaliatory actions after she complained about the hostile work environment, and that no disciplinary actions were taken against the foreman, team leader, or other workers for the offensive pictures, sabotaging of her work area, or the scooter incident. (Compl., 01-CV-888, at ¶¶ 21-29, 30-34.)

ANALYSIS

I. Defendant's Motion for an Extension of Time to Respond to Marcia Miller's Motion to Intervene and to Consolidate

Defendant requests an extension of time to respond to Miller's Motion to Intervene and to Consolidate. Miller's attorney filed the Motion to Intervene and to Consolidate on November 14, 2001 and enclosed a cover letter indicating that copies of the motion had been provided both to lead counsel for U.S. Steel in Pittsburgh and to local counsel for U.S. Steel in Philadelphia. According to Defendant, a copy of the motion was not provided to lead

counsel until more than fourteen days after service on local counsel. In light of these facts, the Court will not treat Miller's motion as uncontested under Local Rule 7.1(c) and will grant Defendant's Motion for an Extension of Time. Accordingly, Defendant's Response to Miller's Motion to Intervene and to Consolidate, which is attached to its Motion for an Extension of Time, will be considered as if timely filed.

II. Marcia Miller's Motion to Intervene as a Matter of Right Pursuant to Federal Rule of Civil Procedure 24(a) and to Consolidate Actions

*2 Miller seeks to intervene as a matter of right in the EEOC suit. Federal Rule of Civil Procedure 24(a) permits intervention in an action "when a statute of the United States confers an unconditional right to intervene." Fed.R.Civ.P. 24(a). The EEOC suit raises claims under Title VII, the enforcement provision of which entitles an "aggrieved" person to intervene as a matter of right in a civil action brought by the EEOC. *See* 42 U.S.C. § 2000e-5(f)(1). The EEOC brought its action against U.S. Steel "to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Marcia Miller, who was adversely affected by such practices." (Compl., 01-CV-888, at 1.) Pursuant to Title VII and Federal Rule of Civil Procedure 24(a), Miller therefore is entitled to intervene in the EEOC suit because it is based on a charge of discrimination that had originally been filed by Miller with the EEOC. *See EEOC v. DPCE, Inc.*, Civ. A. No. 89-8696, 1990 WL 54995, at *1 (E.D.Pa. Apr.25, 1990).⁷

⁷ Defendant contends that Miller's motion to intervene should be denied because it exceeds the permissible scope of intervention, in that Miller would be including allegations beyond the charges of hostile work environment on which the Complaint in the EEOC suit is based and other state law claims. Defendant's argument, however, has little merit under the circumstances of this case.

Miller's claims regarding Defendant's alleged retaliatory actions are sufficiently related to her First Charge with the EEOC to allow her to include them. "[Intervenor] is not limited in her complaint to the specific allegations of her charge to the EEOC; nor is she limited by the scope of the EEOC's actual investigation of her charge." *EEOC v. West Co.*, Civ. A. No. 85-3342, 1986 WL 1239, at *2 (E.D.Pa. Jan.27, 1986) (citations omitted). The Third Circuit has held that the parameters of a civil action by a private litigant under Title VII are "defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination, including new acts which occurred during the pendency of proceedings before the [EEOC]." *Ostapowicz v. Johnson Bronze Co.*, 541 F.2d 394, 398-99 (3d Cir.1977). Citing *Ostapowicz*, the court in *West Co.* stated that the broadened scope for private suits allowed in

Ostapowicz should also apply in cases in which an employee seeks to intervene in an EEOC suit. See *West Co.*, 1986 WL 1239, at *2 (allowing intervenor complaint to include expanded claims related to the original EEOC charge).

Although the court in *West Co.* declined to allow the intervenor to bring additional state law claims, this decision was made as a discretionary matter. *Id.* at *3. With respect to pendant jurisdiction, the Third Circuit has developed a three-part test, which requires a court to analyze its constitutional power to hear the pendant state claim, to determine whether exercise of pendant jurisdiction would violate a specific federal policy that limits the scope of federal jurisdiction, and to weigh practical considerations like fairness to litigants and judicial economy. See *Ambromovage v. United Mine Workers of Am.*, 726 F.2d 972, 989-90 (3d Cir.1984). The Court may exercise supplemental jurisdiction over Miller's state law claims pursuant to 28 U.S.C. § 1367, which provides that "district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). To determine whether it has the constitutional power to hear a pendant state law claim, the Court must find that the pendant state claim and the federal claim "derive from a common nucleus of operative fact." *West Co.*, 1986 WL 1239, at *3 (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966)). In the instant case, the Court finds that Miller's state law claims derive from the same facts relating to U.S. Steel's alleged employment practices that comprise the basis for the federal claims under Title VII. The Court also finds that pendant jurisdiction in this case would not violate any federal policy that specifically limits the scope of federal jurisdiction. Cf. *Ambromovage*, 726 F.2d at 990 (stating that courts must determine whether pendant jurisdiction would "violate a particular federal policy decision, such as the requirement of complete diversity or the explicit exclusion of a particular party from federal liability for the actions alleged in the complaint"). Finally, the Court finds that hearing Miller's state law claims with the Title VII claims would serve the interests of judicial economy. Accordingly, the exercise of supplemental jurisdiction in this case is appropriate.

Miller also seeks to consolidate the Miller suit with the EEOC suit. Federal Rule of Civil Procedure 42(a) states: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Fed.R.Civ.P. 42(a). The question of whether to consolidate actions is a matter of discretion for the trial court. *Bernardi v. City of Scranton*, 101 F.R.D. 411, 413 (M.D.Pa.1983). In deciding whether to order consolidation, the court "must balance the probable savings of time and effort against the likelihood that a party might be prejudiced, inconvenienced or put to extra expense." *Id.* In the instant case, both the EEOC suit and the Miller suit are based only on the actions allegedly taken by U.S. Steel against Miller in her employment. U.S. Steel is the sole defendant in both suits. Furthermore, the EEOC has filed no objection to Miller's Motion to Intervene and to Consolidate. Accordingly, the Court finds that it would serve the interests of judicial economy to grant consolidation.

An appropriate Order follows.

ORDER

AND NOW, this day of January, 2002, upon consideration of Marcia Miller's Motion to Intervene as a Matter of Right and to Consolidate Actions (docket no. 6), Defendant's Motion for an Extension of Time to Respond to Miller's Motion to Intervene and to Consolidate (docket no.9), Plaintiff's Memorandum in Support of the Motion to Intervene and Consolidate (docket no. 10), and Plaintiff's Answer to Defendant's Motion (docket no. 11), IT IS ORDERED as follows:

1) Defendant's Motion for an Extension of Time to Respond to Marcia Miller's Motion to Intervene and to Consolidate (docket no.9) is GRANTED. Accordingly, Defendant's Response to Marcia Miller's Motion to Intervene and to Consolidate, which is attached to its Motion for an Extension of Time, shall be considered as if timely filed.

*3 2) Marcia Miller's Motion to Intervene as a Matter of Right and to Consolidate Actions (docket no. 6) is GRANTED. Accordingly, Marcia Miller is permitted to intervene as a party/plaintiff in the proceedings at civil action number 01-CV-582. In addition, Civil Action No. 01-CV-888 shall be consolidated with Civil Action No. 01-CV-582. The parties are directed to file all future papers under the caption of Civil Action No. 01-CV-582.