

Hyman v. First Union Corp.

United States District Court for the District of Columbia
August 12, 1997, Decided ; August 12, 1997, Filed
Civil Action No. 94-1043 (RCL)

Reporter: 1997 U.S. Dist. LEXIS 18009

SONDRA W. HYMAN, et al., Plaintiffs, v. FIRST UNION CORP., et al., Defendants.

Disposition: [*1] Plaintiffs' motion for leave to file their seventh amended complaint granted in part and denied in part.

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For FIRST AMERICAN METRO CORPORATION, defendant: Filiberto Agusti, Jeffrey Gans, STEPTOE & JOHNSON, L.L.P., Washington, DC.

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C. KIM, plaintiffs: Timothy Brian Fleming, Jane Lang, SPRENGER & LANG, P.L.L.C., Washington, DC.

Judges: Royce C. Lamberth, United States District Judge.

Opinion by: Royce C. Lamberth

Opinion

MEMORANDUM & ORDER

This matter comes before the court on plaintiffs' motion for leave to file their seventh amended complaint. Upon consideration of the submissions of counsel and the relevant law, the court will grant in part and deny in part [*6] plaintiffs' motion.

I. Background

The procedural and factual background of this case is set forth in the opinion issued today which grants plaintiffs' motion to maintain two collective actions. Briefly, plaintiffs have sued defendants alleging employment discrimination and breach of contract claims. Shortly after filing their motion to maintain their claims as class, collective, and consolidated actions, plaintiffs moved the court for leave to file a seventh amended complaint. Plaintiffs stated that they wished to file the amended complaint in order to: 1) conform the definitions of the alleged classes and collective actions to those asserted in the class motion; 2) assert hiring discrimination claims on behalf of two plaintiffs and delete such claims on behalf of one former plaintiff; 3) delete all claims against First American Metro Corp., with any claims being asserted against defendant First Union Corporation, into which Metro was merged; 4) correct or supplement allegations about names, citizenship, and residence; and 5) incorporate the changes caused by the Fifth Amended Complaint, Sixth Amended Pleading, and Seventh Amended Complaint into one document.

In their [*7] opposition to the motion, defendants raise only three objections. Defendants contend that: 1) plaintiffs' proposal to modify their breach of contract claims and to designate class representatives for the class action is untimely and prejudicial; 2) plaintiffs' proposal to add hiring claims for Michael Bunt and Paula Wein is untimely and that both these amendments would be futile; and 3) plaintiffs' proposal to remove class representative designations within the proposed collective exempt line group would interfere with the court's review of the proposed collective action and delay progress of the case.¹

II. Analysis

¹ Defendants initially opposed the addition of Alfred Woodsen and Robert Jones as plaintiffs, but later withdrew the opposition.

Federal Rule 15 of Civil Procedure permits amendment to a complaint when justice so requires. The Supreme Court has stated that in the absence of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies [*8] by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment," amendments should generally be allowed. Foman v. Davis, 371 U.S. 178, 182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962).

Although the court is not ruling today on the appropriateness of the proposed class action involving the contract claims, the court will allow plaintiffs to file a modified complaint changing the scope of the proposed class and naming class representatives for the proposed action. Defendants oppose this change stating that they will suffer prejudice because any change would be untimely. However, the change in scope is not as significant as defendants have argued. Up until this point, plaintiffs have alleged contract claims on behalf of all those included in the proposed discrimination class claims. As plaintiffs state, the breach of contract claims were asserted on behalf of classes of employees; they just were not asserted on behalf of a separate class. Thus, there is no element of surprise or lack of notice in the amendment, and the court concludes that defendants will not suffer any prejudice as a result of the amendment.

[*9] Having decided to allow the amendment, the court will grant defendants' request to redepose the plaintiffs that are now named as class representatives. The parties will have the opportunity to submit supplemental briefing if relevant information is discovered before the court makes a final decision on class certification.

The court will not grant plaintiffs leave to add the hiring claims of Paula Wein because this amendment would be futile. Wein alleges that she contacted an employment agency and was told that First Union would not be interested in hiring her. Wein never states that First Union took any employment action against her, and she never had any contact with a First Union employee. If in fact the employment agency discouraged plaintiff from applying to First Union because of her age, she may have a claim against the employment agency. However, she has not stated a claim against First Union. As a result, her claim would not withstand summary judgment, and the court will not allow the amendment.

The court will allow the addition of Michael Bunt as a plaintiff. Unlike Paula Wein, Bunt did communicate his

interest in employment with a First Union employee, and was told that [*10] he was overqualified for a position. Bunt alleges that he was told this because of his age, and thus he has stated a claim for which relief could be granted. Therefore, the court concludes the amendment adding his name would not be futile. Finally, plaintiffs adequately explained the reasons for delay in asking for the amendment, and the court concludes defendants will not be unduly prejudiced.

While not challenging plaintiffs' proposal to remove the designation of representatives from the complaint, defendants argue that for the purposes of analyzing whether the exempt line plaintiffs are similarly situated, the designations should stand. While plaintiffs challenge the necessity of this because of the different standards which are applied to collective actions, the court will allow the designations to stand for purposes of the class motion. Defendants organized their discovery and class briefs according to the designations, and it would be unfair to disregard the designations at this point. However, plaintiffs will be allowed file a seventh amended complaint that drops the designations.

III. Conclusion

For these reasons, it is hereby

ORDERED that plaintiffs' motion to [*11] file the proposed seventh amended complaint is GRANTED in all regards except for the proposed addition of Paula Wein, and it is further

ORDERED that plaintiffs may file a seventh amended complaint in compliance with this memorandum and order, and it is further

ORDERED that defendants may redepose the plaintiffs identified as representatives for the proposed contracts claim class action.

SO ORDERED.

Royce C. Lamberth

United States District Judge

Date: 8-12-97