

NOV 19 10 48 29
UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Equal Employment Opportunity
Commission

Plaintiff,

v.

Hugh O’Kane Electric Co. LLC,

Defendant.

Civ. No.: 02-CV-2503(BEL)

**UNOPPOSED MOTION TO CONSOLIDATE FOR PURPOSES OF DISCOVERY;
POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Defendant Hugh O’Kane Electric Co. LLC, by its counsel, moves this Court to consolidate this matter and Nestor et al. v. Hugh O’Kane Electric Co. LLC, 02-CV-1786, for discovery purposes only. Both cases are pending before the same judge in the United States District Court for the District of Maryland. The parties also request a case management conference with the Court.

I. BACKGROUND

On May 23, 2002, Yemele T. William Nestor and eight other individuals filed a complaint (“Nestor Complaint”) in this Court against Hugh O’Kane Electric Co. LLC (“HOK”) alleging discrimination on the basis of race and national origin with respect to the terms and conditions of employment and termination, intentional infliction of emotional distress, negligent retention/negligent supervision and, on behalf of one plaintiff, battery. On July 30, 2002, the Equal Employment Opportunity Commission (“EEOC”), on behalf of roughly 20 former employees of HOK and “similarly situated individuals,” filed its complaint (“EEOC Complaint”)

APPROVED THIS 18TH DAY OF November, 2002

Blegg
BETT LEGG, U.S.D.J.

17
TAN

alleging discrimination on the basis of race and national origin with respect to HOK's employment practices, including harassment, discharge and retaliation. On August 9, 2002, HOK filed its Answer to the Nestor Complaint. On November 11, former HOK employee Ervin Riddick filed a motion for leave to intervene in the EEOC case. On November 14, 2002, HOK filed its Answer to the EEOC Complaint.

HOK seeks to consolidate the two cases for the purposes of discovery only. HOK is a party in each suit. Both suits allege HOK engaged in discriminatory employment practices against its employees in violation of Title VII, 42 U.S.C. §2000e et seq.

Both matters are in the early stage of litigation. Neither the Nestor Plaintiffs nor the EEOC have propounded discovery. On November 12, 2002, HOK served its interrogatories and requests for production of documents on the Nestor Plaintiffs. Consolidation will avoid duplicative and confusing depositions and responses, thus expediting the discovery process in both matters and conserving judicial resources.

HOK's counsel has advised counsel for the Nestor Plaintiffs, the EEOC and the Intervenor of HOK's intent to file this motion to consolidate. Counsel for the Nestor Plaintiffs, the EEOC and the Intervenor do not oppose consolidation for the limited purpose of discovery only.

II. LEGAL ARGUMENT

Any two cases pending before a court are appropriate for consolidation if they involve common questions of law or fact. Rule 42(a) provides:

Consolidation. 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.

The Fourth Circuit has stated under Rule 42(a) of the Federal Rules of Civil Procedure, district judges “have broad discretion . . . to consolidate causes pending in the same district.” See *Zaltzman v. Manugistics Group, Inc.*, No. S-98-1881, 1998 U.S. Dist. LEXIS 22867, *5 (D. Md. October 8, 1998), citing *A/S J. Ludwig Mowinckles Rederi v. Tidewater Constr. Co.*, 559 F.2d 928, 933 (4th Cir. 1977). District courts should “make good use of Rule 42(a). . . in order to expedite the trial and eliminate unnecessary repetition and confusion.” *Id.*, citing *In re Air Crash Disaster at Florida Everglades on Dec. 29, 1972*, 549 F.2d 1006, 1013 (5th Cir. 1977).

Here, the Nestor Complaint and the EEOC Complaint were filed within months of one another. Discovery in the Nestor matter is in the very early stage. The fundamental allegations are similar, the alleged conduct took place relatively during the same time period and involves the same HOK managers. Both cases allege race and national origin discrimination. Consolidation of these matters will eliminate unnecessary repetition of discovery and will only expedite the resolution of both matters.

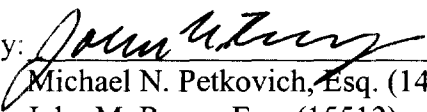
All parties agree a case management conference with the Court would be beneficial to the efficient scheduling of this consolidated discovery and request that the Court schedule a case management conference as soon as possible.

III. CONCLUSION

For the foregoing reasons, defendant’s motion to consolidate actions for the purpose of discovery only should be granted.

Respectfully submitted,

JACKSON LEWIS LLP

By: 
Michael N. Petkovich, Esq. (14985)
John M. Remy, Esq. (15512)
Daria E. Neal (*application pending*)
1156 Fifteenth Street, N.W.
Suite 250
Washington, D.C. 20005
(202) 347-5200
Counsel for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies on November 15, 2002, a copy of the foregoing *Unopposed Motion to Consolidate for Purposes of Discovery* was served upon the following via first-class mail:

Cecile Quinlan
Senior Trial Attorney
Equal Employment Opportunity Commission
Baltimore District Office
10 S. Howard Street, S 3000
Baltimore, Maryland 21201

Donald M. Temple, Esq.
Temple Law Offices
1200 G Street, N.W. Suite 370
Washington, D.C. 20005

Stephen B. Mercer, Esq.
Rene Sandler, Esq.
Sandler & Mercer, P.C.
27 West Jefferson Street, Suite 201
Rockville, Maryland 20850



John M. Remy