

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PRISCILLA HARE, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
H & R INDUSTRIES, INC., :  
Defendant. : NO. 00-CV-4533

MEMORANDUM & ORDER

J.M. KELLY, J.

JUNE , 2001

At a Final Pretrial Conference in this matter, the parties disagreed as to whether Plaintiff, Priscilla Hare ("Hare"), had waived her right to a jury trial in this matter. The Court allowed Hare to file a Memorandum of Law addressing her right to a jury trial, to which Defendant, H & R Industries, Inc. ("H&R") responded.

BACKGROUND

Hare filed the present Complaint alleging sexual harassment pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17 (1994) and the Pennsylvania Human Relations Act, 43 Pa. Con. Stat. Ann. §§ 951-963 (West 1991). It is undisputed that her Complaint did not contain a demand for a jury trial. Hare did, however, check the jury trial box on her case information statement. Twenty one days following H & R's filing of its Answer, Hare commenced the practice of stating "Jury Trial Demanded" in the caption of almost every piece of discovery served and document filed in this

case.

### DISCUSSION

The right to a jury trial in civil matters arises from the common law and is a constitutional right. U.S. Const. amend. VII; Fed. R. Civ. P. 38(a). A party seeking a jury trial must make a timely demand for a jury trial within ten days of the last pleading that addresses the issue. Fed. R. Civ. P. 38(b). The jury trial demand must be filed with the Court. Id. 5(d). Failure to make a timely demand for a jury trial results in waiver of the right. Id. 38(d). A party that has failed to make a timely demand for a jury trial may still be granted a jury trial, upon a motion to the court and in the court's discretion. Id. 39(b).

Here, Hare has not proceeded by requesting a jury trial under Rule 39(b). Instead, Hare chose to argue that her actions in this case thus far support her position that she made a timely demand for a jury trial under Rule 38(b). There is no doubt, however, that her endorsement of a demand for a jury trial in her pleadings and discovery commenced beyond the ten days following H & R's service of an answer, as required by Rule 38(b). A party may not insert an untimely jury demand into a case by stealth; rather, the proper procedure is a motion under Rule 39(b). Walton v. Eaton Corp., 563 F.2d 66, 71 (3d Cir. 1977) (en banc) (even filing an amended complaint does not revive waived jury

demand). Likewise, a civil cover sheet that states a jury trial is demanded, attached to a complaint without a jury demand, is insufficient to demand a jury under Rule 38(b) because the cover sheet is merely an administrative tool to assist the Clerk of Court. Ballas v. City of Reading, No. C.A. 00-2943, 2001WL683805 (E.D. Pa. June 12, 2001); Personal Touch, Inc. v. Lenox, Inc., 122 F.R.D. 470, 471 (E.D. Pa. 1981). Moreover, the civil cover sheet is not a document filed with the Court. Fed. R. Civ. P. 5(d). Accordingly, Hare has waived her right to a jury trial in this case.<sup>1</sup>

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<sup>1</sup> Even if Hare were to have filed a proper Motion under Rule 39, she would face a difficult task in demonstrating that: (1) the schedule of this case would not be disrupted, as it is now in the trial pool; (2) H & R would not be prejudiced by the extra costs associated with presenting a case to a jury; and (3) her failure to make a timely jury demand was the result of some legitimate factor other than negligence or a mistake. See SEC v. Infinity Group Co., 212 F.3d 180, 195-96 (3d Cir. 2000).

