



Plaintiffs' Second Amended Complaint alleged "At all times material hereto, defendant University was an employer within the meaning of Title VII of the Civil Rights Act of 1964, et seq." Defendants' response to this averment was "Admitted." Cheyney now claims that, despite this admission, it was not an employer under Title VII, and that, therefore, this Court should now dismiss the action for lack of subject matter jurisdiction.

Defendants argue that Cheyney was not the plaintiffs' employer because Cheyney is part of SSHE. 24 P.S. § 20-2002-A. Prior to the passage of the SSHE Act, the Commonwealth was the public employer with respect to all managerial and professional employees of 14 Pennsylvania state colleges. Board of Governors of the State Sys. of Higher Educ. v. Commonwealth, 514 A.2d 223, 225 (Pa. Commw. 1986). But the Act defines "employer" as the Board of Governors of SSHE, and provides that the Board is the successor employer to the Commonwealth. 24 P.S. § 20-2001-A. Thus, Defendants argue, it was SSHE and not Cheyney who was the Plaintiffs' employer for purposes of Title VII. Further, because a verdict has already been entered in favor of the Plaintiffs' actual employer (SSHE), this Court now lacks subject matter jurisdiction of this action.

Defendants argue that no agreement of the parties can confer subject matter jurisdiction upon a federal court. It is correct that consent of the parties cannot grant jurisdiction to a federal court, "but the parties may admit the existence of facts which show jurisdiction, and the courts may act judicially

upon such an admission." Railway Co. v. Ramsey, 89 U.S. (22 Wall.) 322, 327 (1874). Judicial admissions are binding for purposes of the case in which they are made. Glick v. White Motor Co., 458 F.2d 1287, 1291 (3d Cir. 1972).

In this case, the allegation admitted was not that subject matter jurisdiction exists, but rather an assertion of fact that Cheyney was an employer for purposes of Title VII. Thus, Defendants are overlooking "the distinction between an admission that federal subject matter jurisdiction exists, and an admission of facts serving in part to establish federal subject matter jurisdiction." Ferguson v. Neighborhood Hous. Servs., 780 F.2d 549, 551 (6th Cir. 1986). In Ferguson, the plaintiff brought a claim pursuant to the Fair Labor Standards Act ("FLSA"). The defendant admitted in its answer that it was an employer within the meaning of the FLSA. Shortly before the trial was scheduled to begin, the defendant challenged the court's subject matter jurisdiction, and moved for leave to file a second answer. The court of appeals affirmed the district court's denial of the defendant's motion, holding that jurisdictional facts which are admitted by the parties may establish subject matter jurisdiction over a case. Id.

Here, the Defendants' admission that Cheyney was a Title VII employer was a factual admission that served, in part, to establish this Court's jurisdiction. Defendants' admission is now binding upon them. Therefore, Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.

An appropriate Order follows.

