

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

BARRY D. ADELMAN : CIVIL ACTION
 :
 v. :
 :
 GMAC MORTGAGE CORP. : NO. 97-0691

MEMORANDUM AND ORDER

HUTTON, J.

May 27, 1998

Presently before the Court is the Defendant's Motion for Attorneys' Fees (Docket No. 40). For the reasons stated below, the defendant's motion is **DENIED**.

I. BACKGROUND

The plaintiff, Barry Adelman, was hired by the defendant, GMAC Mortgage Corporation, on April 3, 1995, as a Quantitative Financial Analyst. The plaintiff's employment lasted until October 5, 1995, when he was discharged. On January 30, 1997, the plaintiff initiated the instant action. In Count I of his complaint, the plaintiff alleged that he was terminated in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-2. In Count II, the plaintiff asserted that the defendant violated the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. §§ 951-63 (1991). Trial began on February 2, 1998, and concluded on February 4, 1998, with a jury verdict in favor of the defendant. On February 12, 1998,

the defendant filed the instant Motion for Attorneys' Fees under Title VII. A hearing regarding this Motion was held on April 23, 1998.¹

II. DISCUSSION

A. Standard for Granting a Motion Requesting Attorneys' Fees

Title VII provides that:

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

42 U.S.C. § 2000e-5(k). "The 'prevailing party' can be either the plaintiff or the defendant." EEOC v. L.B. Foster Co., 123 F.3d 746, 750 (3d Cir. 1997), cert. denied, 118 S. Ct. 1163 (1998).

In Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421 (1978), the Supreme Court defined the standard that must be applied to a prevailing defendant's fee petition. The Supreme Court held that "a district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in

1. The complete facts of this case are set out in this Court's Memorandum and Order denying the defendant's Motion for Summary Judgment, Adelman v. GMAC Mortgage Corp., No. CIV.A.97-691, at 1-5 (E.D. Pa. Dec. 30, 1997).

subjective bad faith." L.B. Foster Co., 123 F.3d at 751 (quoting Christiansburg Garment Co., 434 U.S. at 421) (emphasis added). Thus, a district court may award fees to a prevailing defendant only where the plaintiff's action was "groundless or without foundation, rather than simply that the plaintiff has ultimately lost his case." Christiansburg Garment Co., 434 U.S. at 421.

Recently, the Third Circuit reviewed the standard a district court must apply when deciding whether to award attorney's fees to a prevailing defendant. In L.B. Foster Co., the Third Circuit restated the Supreme Court's reasoning behind its decision to apply a tougher standard on requests by prevailing defendants:

In Christiansburg [Garment Co.], 434 U.S. at 416-17], the Court recognized that while a liberal fees standard should be used for those parties whose suits Congress wished to encourage, and who needed this encouragement to bring the suits, a stricter standard was appropriate for defendants, who needed no encouragement to defend suits against them and who were not vindicating an important public policy.

L.B. Foster Co., 123 F.3d at 750 (quoting Dorn's Transp., Inc. v. Teamsters Pension Trust Fund, 799 F.2d 45, 49 (3d Cir. 1986)).

The Third Circuit further explained that:

Prevailing plaintiffs "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." [Christiansburg Garment Co., 434 U.S. at 416-17] (internal quotations omitted). The rationale for this rule is twofold. First, "the plaintiff is the chosen

instrument of Congress to vindicate 'a policy that Congress considered of the highest priority.'" Id. at 418. Second, "when a district court awards counsel fees to a prevailing plaintiff, it is awarding them against a violator of federal law." Id.

These considerations are wholly absent when the prevailing party is a defendant, and, therefore, a higher standard applies.

L.B. Foster Co., 123 F.3d at 750-51.

Using the Supreme Court's guidance in Christiansburg Garment Co., the Third Circuit in L.B. Foster Co. continued by warning:

"[I]t is important that a district court resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." [Christiansburg Garment Co., 434 U.S.] at 421-22. Such post hoc reasoning "would substantially add to the risks inhering in most litigation and would undercut the efforts of Congress to promote the vigorous enforcement of the provisions of Title VII." Id. at 422. Thus, we have previously stated "It is clear from Christiansburg that attorney fees [to a prevailing Title VII defendant] are not routine, but are to be only sparingly awarded." Quiroga v. Hasbro, Inc., 934 F.2d 497, 502 (3d Cir.), cert. denied, 502 U.S. 940 (1991)].

Several courts of appeals have reversed fee awards to prevailing defendants in lawsuits brought by the EEOC where these guiding principles have been misapplied. In contrast, "[c]ases where findings of 'frivolity' have been sustained typically have been decided on a motion for summary judgment or a . . . motion for involuntary dismissal. In these cases, the plaintiffs did not introduce any evidence to support their claims. [On the other hand, i]n cases

where the plaintiffs introduced evidence sufficient to support their claims, findings of frivolity typically do not stand." Sullivan v. School Bd., 773 F.2d 1182, 1189 (11th Cir. 1985) (citations omitted).

L.B. Foster Co., 123 F.3d at 751 (citations omitted).

When deciding whether a prevailing defendant is entitled to an award of attorney's fees, a court should consider: "(1) whether the plaintiff established a prima facie case; (2) whether the defendant offered to settle; and (3) whether the trial court dismissed the case prior to trial or held a full-blown trial on the merits." Id. (quoting Sullivan, 773 F.2d at 1189). However, these considerations are "not hard and fast rules," and district courts must consider frivolity on a case-by-case basis. Id.

In L.B. Foster Co., the Third Circuit applied this analysis to a sex discrimination and illegal retaliation claim, unsuccessfully presented by the EEOC. L.B. Foster Co., 123 F.3d at 752. The Third Circuit found that the "EEOC presented a classic pretext-based case of sex discrimination." Id. Further, the court stated that "a reasonable fact finder could conclude from this evidence that [the defendant] discriminated against [the employee] on the basis of sex." Id. The Third Circuit concluded that "[i]t can hardly be concluded that the EEOC's claim was frivolous merely because the court (sitting as a fact finder) rejected the EEOC's evidence." Id. "On the contrary,"

the Third Circuit reasoned, "the EEOC's proof, if credited, would have been sufficient to support a verdict in favor of the EEOC." Id. at 752-53. Thus, the Third Circuit refused to find "that the [sex discrimination] claim was frivolous or without foundation." Id. at 753 (citation omitted). Likewise, because the EEOC offered "enough [evidence] to establish a prima facie case of retaliatory discrimination," "there was some factual basis for the EEOC's retaliation claim" and, therefore, the EEOC's claim was not groundless. Id. at 755.

B. Defendant's Motion

In the instant action, the defendant does not dispute that: 1) the plaintiff established a prima facie case of discrimination; 2) GMAC did not offer to settle; and 3) the trial court held a full-blown trial on the merits. Def.'s Reply at 1. Instead, the defendant contends that the plaintiff "lied and misrepresented the facts, thereby creating material issues of facts that precluded summary judgment." Id. More specifically, the defendant asserts that the plaintiff offered false testimony: 1) that he never received criticism from his supervisors while employed at GMAC and 2) that GMAC fabricated documents which were critical to his performance in order to disguise its religious discrimination. Id. at 3-4.

As explained in the Court's Memorandum and Order denying the defendant's Motion for Summary Judgment, the

plaintiff presented a prima facie case of religious discrimination. Moreover, the plaintiff offered evidence at trial to rebut the defendant's proffered, non-discriminatory reason for the plaintiff's discharge. Further, "a reasonable fact finder could conclude from this evidence that [the defendant] discriminated against [the plaintiff] on the basis of [his religion]." L.B. Foster Co., 123 F.3d at 752. Thus, "[i]t can hardly be concluded that the [plaintiff's] claim was frivolous merely because the [jury] rejected the [plaintiff's] evidence." Id. "On the contrary, the [plaintiff's] proof, if credited, would have been sufficient to support a verdict in favor of the [plaintiff]." Id. at 752-53. Thus, this Court cannot find "that the claim was frivolous or without foundation." Id. at 753 (citation omitted).

In L.B. Foster Co., the Third Circuit repeatedly emphasized that a district court must "heed the Supreme Court's warning in Christiansburg against the 'temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his actions must have been unreasonable or without foundation.'" L.B. Foster Co., 123 F.3d at 753 (quoting EEOC v. Bruno's Restaurant, 13 F.3d 285, (9th Cir. 1993); Christiansburg Garment Co., 434 U.S. at 421-22). In the instant action, the Court must avoid such a result by denying the defendant's motion.

An appropriate Order follows.

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O R D E R

AND NOW, this 27th day of May, 1998, upon
consideration of Defendant's Motion for Attorneys' Fees (Docket No.
40), IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.