

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

MICHAEL REGO	:	
	:	
Plaintiff,	:	
	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 94-3734
	:	
	:	
ARC WATER TREATMENT COMPANY	:	
OF PA.,	:	
ARC WATER TREATMENT	:	
COMPANY, INC., and	:	
ARC WATER TREATMENT COMPANY	:	
OF MARYLAND, INC.	:	
	:	
Defendants.	:	

MEMORANDUM-ORDER

Presently before the Court are the following post-trial motions: 1) defendant ARC Water Treatment Company of Maryland, Inc.’s Motion for Attorney’s Fees pursuant to the Pennsylvania Human Relations Act (“PHRA”) and the plaintiff’s Response thereto; and 2) defendant ARC Water Treatment Company of Pennsylvania’s Request for Leave to File Cross Claim Against ARC Water Treatment Company of Maryland, Inc., and defendant ARC Water Treatment Company of Maryland, Inc.’s response thereto.¹

For the following reasons, the Court will deny ARC Water Treatment Company of Maryland, Inc.’s motion for attorney’s fees, and deny ARC Water Treatment Company

¹ Also pending is plaintiff Michael Rego’s Motion for Attorney’s Fees which will be addressed separately.

of Pennsylvania's Request for Leave to File to Cross Claim against ARC Water Treatment Company of Maryland, Inc.

Discussion

a. Defendant ARC Water Treatment Company of Maryland, Inc.'s Motion for Attorney's Fees Pursuant to the Pennsylvania Human Relations Act

Plaintiff Michael Rego brought the instant action against his former employer and the employers' alleged successors claiming workplace discrimination in violation of Title VII and the PHRA. Though plaintiff had been employed by both the parent company, ARC Water Treatment Company ("ARC"), and one of the successors, ARC Water Treatment Company of Pennsylvania, Inc. ("ARC-PA"), the plaintiff had never been employed by the other alleged successor, ARC Water Treatment Company of Maryland, Inc. ("ARC-MD") Plaintiff, nonetheless named ARC-MD as a defendant, alleging that it was liable as a successor company to ARC.

At trial, after the close of plaintiff's case, the Court granted defendant ARC-MD's motion for summary judgment, thereby releasing them from the case. In granting summary judgment, the Court found that plaintiff had not produced evidence to show that either 1) ARC-MD had employed plaintiff or engaged in any discriminatory conduct towards plaintiff; or 2) ARC was liable to plaintiff such that ARC-MD could be liable under a successor liability theory. As a result of that ruling, ARC-MD now moves for attorney's fees pursuant to the PHRA.

The PHRA states in relevant part:

[i]f, after a trial held pursuant to Subsection (c) the Court of Common Pleas finds that a defendant has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this Act, the Court may award attorney's fees and costs to the prevailing defendant if defendant

proves the Complaint was brought in bad faith.

43 Pa.Cons.Stat. § 962(c.3).

In interpreting provisions of the PHRA, courts generally look to and apply the coordinate provisions of Title VII. Kelly v. Drexel University, 94 F.3d 102, 104 (3d Cir. 1996). Thus, insofar as the statutory language is similar, cases interpreting the fee provision of Title VII are equally applicable to cases arising under the PHRA. Moreover, to the extent that the statutory language on fees differs, the PHRA requires that a defendant show that the complaint was brought in bad faith, while under Title VII, a defendant need not show bad faith, but rather must only show that “the plaintiff’s action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.” Christianburg Garment Co. v. EEOC, 434 U.S. 412, 98 S. Ct. 694 (1978).

In following Christianburg Garment, the Third Circuit recently stated in EEOC v. L.B. Foster Company, 123 F.3d 746 (3d Cir. 1997), “[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.” Id. at 751.

In support of its motion, ARC-MD cites to Thunberg v. Strause, 682 A.2d 295, 301 (Pa. 1996), for the proposition that where there is no viable claim against a defendant under the facts of the case, simply bringing the case would place it within the parameters of a bad faith claim. In Thunberg, the plaintiff brought an action against the defendant driver’s estate in negligence to recover for injuries she sustained as a result of her losing control of her own car, which then crossed the median into oncoming

traffic and collided head-on with the decedent's car, thereby killing the decedent. Id. at 300. In the defendant's request for admissions, the plaintiff had admitted that she had no facts to prove that [the defendant] either caused the accident or was negligent. Id. at 301. In reinstating the defendant's award of attorney's fees, the court found that the lawsuit had been initiated without sufficient support in either law or fact. Id.

In the instant case, plaintiff had been employed by ARC from October 12, 1987 up until June 28, 1991, and then by ARC-PA from June 29, 1991 until he quit on March 12, 1992. Plaintiff had alleged that he suffered actionable discrimination from the time he started at ARC in 1987 up until the time he quit. Therefore, if the trier of fact had found that plaintiff had suffered damage at any time prior to June 28, 1991, defendant ARC would have been liable, and thus, ARC-MD might have been subject to successor liability.

At trial, however, the Court, as trier of fact regarding events prior to November 21, 1991, found that plaintiff suffered no damage during the period prior to June 28, 1991. Nonetheless, because the plaintiff had alleged a hostile working environment claim which covered the entire period of plaintiff's employment with ARC and ARC-PA, and because plaintiff had presented evidence from which a fact finder could conclude that plaintiff had been subjected to discriminatory conduct prior to June 28, 1991, plaintiff's claim was not brought in bad faith.

In particular, there was testimony at trial by the plaintiff that Edwin Goldstein, president of the predecessor ARC, knew of the alleged ethnic harassment at a time prior to June 28, 1991, while he was president of ARC, and did nothing to correct the problem. Also, there was testimony that Goldstein said nothing about the alleged

harassment at the time the assets and liabilities of ARC were being divided between ARC-MD and ARC-PA. Thus, there was a basis in fact for Rego to have named ARC-MD as a defendant in this suit. Indeed, the jury, which was only advisory as to claims arising prior to November 21, 1991, found for the plaintiff for the time period prior to June 28, 1991. Accordingly, ARC-MD's motion for attorney's fees pursuant to the PHRA will be denied, as the evidence is insufficient to establish bad faith.

b. Defendant ARC Water Treatment Company of Pennsylvania's Request for Leave to File Cross Claim Against ARC Water Treatment Company of Maryland, Inc.

Defendant ARC-PA has requested leave to file a cross claim against co-defendant ARC-MD. Referencing the same testimony discussed above about Edwin Goldstein, ARC-PA argues that if such testimony is believed by the trier of fact, it could form the basis for a finding that ARC-MD "alone is liable to plaintiff, jointly and severally liable to plaintiff and/or liable over to plaintiff by way of contribution and/or indemnity on plaintiff's cause of action." (Def. ARC-PA's Mem. in Support of its Request for Leave to File Cross Claim Against ARC-MD, at 1.)

ARC-MD argues that ARC-PA should not be permitted to file a cross claim against it because such a claim: 1) would violate the automatic stay provisions of the bankruptcy code, 2) is barred by ARC-PA's failure to file a timely claim with the bankruptcy court, and 3) is not supported by evidence that grants a right to contribution or indemnity against ARC-MD.

Generally, the filing of a bankruptcy imposes an automatic stay of all litigation

against the debtor.² 11 U.S.C. § 362(a). The purpose of the automatic stay is to protect both the debtor and his creditors. In re: Conejo Enterprises, Inc., 96 F.3d 346, 351 (9th Cir. 1996). Nonetheless, upon a showing of cause, a bankruptcy court shall grant relief from the automatic stay. Id. at 352. “Cause” is not clearly defined and is determined on a case-by-case basis. Id. (citing In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990)).

In the instant case, ARC-MD is a debtor in a pending Chapter 11 bankruptcy matter in the United States Bankruptcy Court for the District of Maryland in a case styled In re: ARC Water Treatment Company of Maryland, Inc., Bankruptcy No. 96-6-1137-JS (U.S. Bankruptcy Ct. D. Md. 1996). The Bankruptcy Judge entered an order on or about January 17, 1997 lifting the automatic stay with respect to a claim being made by the plaintiff in this action, Michael Rego.

The order lifting the stay was narrowly drawn to permit only Rego to liquidate his claim, if any, against ARC-MD. In relevant part, the order states:

The automatic Stay is lifted and modified for cause pursuant to 11 U.S.C. § 362(d)(1) for the limited purpose of permitting the District Court Action (as defined in the Motion) to proceed to trial, verdict and entry of an order of judgment in the United States District Court for the Eastern District of Pennsylvania (Civil Action No. 94-3734) so as to only allow Michael Rego to liquidate his claim, if any, against ARC Water Treatment Company of Maryland, Inc., and to take no further action thereon.

Def. ARC-MD’s Resp. To Mot. Of ARC-PA for Req. For Leave to File Cross-cl., Ex. “A.”

Thus, the narrowly drawn order cannot now be construed to allow a claim by ARC-PA against ARC-MD. Indeed, any action by a litigant against a bankruptcy action

² None of the exceptions to the automatic stay provision, listed at 11 U.S.C. § 362(b) are applicable in this case.

debtor without first receiving relief from the Automatic Stay may be subject to sanctions.

In re: Nelson, 994 F.2d 42, 44 (1st Cir. 1993). As I find ARC-MD's first argument dispositive, I need not address its alternative arguments. Accordingly, ARC-PA's motion will be denied. An appropriate order follows.

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CIVIL ACTION

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ARC WATER TREATMENT COMPANY

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ARC WATER TREATMENT

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COMPANY, INC., and ARC WATER

:

TREATMENT COMPANY OF

:

MARYLAND, INC. :
:
Defendants. :

ORDER

AND NOW on this 22nd Day of June, 1998, in consideration of ARC Water Treatment Company of Maryland, Inc.'s Motion for Attorney's Fees, and plaintiff's Response thereto, and in consideration of ARC Water Treatment Company of Pennsylvania's Motion for Leave to File Crossclaim Against ARC Water Treatment Company of Maryland, Inc., and the Response thereto by ARC Water Treatment Company of Maryland, Inc., and for the reasons stated in the accompanying memorandum, it is HEREBY ORDERED that said motions are DENIED.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.