

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

VIVIAN J. PITTS,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
THE CHESTER COUNTY	:	No. 99-2488
HOSPITAL,	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

February 24, 2000

Presently before the Court is the Motion for Certification to File an Immediate Appeal of Defendant Chester County Hospital. Defendant's Motion is DENIED because this Court finds that its earlier Order denying Defendant's Partial Motion to Dismiss does not involve a controlling question of law, and that an appeal would not materially advance the ultimate termination of the litigation.

I. BACKGROUND

Plaintiff's employment with Defendant was terminated on May 14, 1997. On May 14, 1999, Plaintiff filed the instant action, contending that her race was a motivating factor in Defendant's termination of her employment. Plaintiff also contends that she was paid less and received smaller raises than similarly situated employees of a different race in violation of Title 42 U.S.C. § 1981.

Defendant responded via its Partial Motion to Dismiss, contending that the statute of limitations for a Section 1981 claim is two years, and as a result, Plaintiff's allegations of unequal pay and unequal raises are time-barred. At this time, Defendant has not disputed Plaintiff's termination claim under Section 1981.

Pursuant to Defendant's Partial Motion to Dismiss Plaintiff's Complaint, on January 11, 2000, this Court entered an Order and Memorandum denying Defendant's Motion. That Order and Memorandum found that the Civil Rights Act of 1991 created the right of an individual to sue for the very reason that Plaintiff brought suit in this case, i.e., unequal pay and unequal pay raises in violation of Section 1981. This Court concluded that because the statute of limitations for such civil actions is four years, as opposed to the Pennsylvania period of two years, Plaintiff's claims remained ripe for adjudication.

Defendant has moved this Court to certify the January 11, 2000 Order for immediate interlocutory appeal pursuant to 28 U.S.C. § 1292(b). For the reasons stated below, the Order is denied.

II. DISCUSSION

The denial of a motion to dismiss is interlocutory and generally not appealable, however, federal law permits immediate appeals in certain circumstances. The statutory provision permitting a district court to certify an order for interlocutory appeal, 28 U.S.C. § 1292(b), provides for certification where

such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

The United States Court of Appeals for the Third Circuit has instructed that before an order can be certified for interlocutory appeal, all three factors identified in the statute must be satisfied. See Katz v. Carte Blanche Corp., 496 F.2d 747, 754 (3d Cir.), cert. denied, 419 U.S. 885 (1974). “The decision to certify an order for appeal under § 1292(b) lies within the sound discretion of the trial court and a district court should exercise its discretion mindful of the strong policy against piecemeal appeals.” In re Orthopedic Bone Screw Prods. Liab. Litig., No. MDL 1014, 1998 WL 254038, at *8 (E.D. Pa. May 5, 1998) (Bechtle, J.) (internal quotations and citation omitted); see also Link v. Mercedes-Benz of N. Am., Inc., 550 F.2d 860, 863 (3d Cir.) (“we cannot sanction an erosion of the prohibition against ‘piecemeal’ appellate review”), cert. denied, 431 U.S. 933 (1977). The district court has discretion in the certification decision, however, “certification is appropriate only in ‘exceptional’ circumstances.” Federal Deposit Insurance Corp. v. Parkway Executive Office Center, 1997 WL 611674, *2 (E.D.Pa. Sept. 24, 1997); see Piazza v. Major League Baseball, 836 F.Supp. 269, 270 (E.D.Pa. Oct. 14, 1993). The moving party bears the burden of showing such that “exceptional circumstances justify a departure from the basic policy against piecemeal litigation and of postponing appellate review until after the entry of a final judgment.” Id.; see Rottmund v. Continental Assurance Co., 813 F.Supp. 1104, 1112 (E.D.Pa. 1992).

A. Controlling Question of Law

The Third Circuit has stated that a controlling issue of law is one that “would result in a reversal of a judgment after final hearing.” Id. at *3;Piazza, 836 F.Supp. at 270. In order to determine if an issue presents a controlling question of law, the focus is on whether a different resolution of the issue would eliminate the need for trial. Id.; see Giansante v. Allan Kanner & Associates, P.C., No.94-1770, 1994 WL 630209, at *2 (E.D.Pa. Nov. 3, 1994). In the case at bar, had this Court granted the Partial Motion to Dismiss, the decision would not have been dispositive of the entire case. Therefore, because some of the Plaintiff’s claims would have survived, the triability of the case would not have been affected. See Id. (“The availability of the [Statute of Limitations] defense does not affect the triability of the case and contrary resolution of the issue would not result in a ‘reversal of judgment after final hearing.’”).

B. Substantial Grounds for Difference of Opinion

As was noted in the Memorandum Opinion dated January 11, 2000, this Court’s decision came in direct conflict with recent decisions made by courts within this Circuit. Therefore, it is clear that there are substantial grounds for a difference of opinion in this case.

C. Materially Advance the Ultimate Termination of the Litigation

“A review of Third Circuit cases reveals that the time from the district court’s certification or the appellate court’s allowance of appeal in Section 1292(b) cases to the decision may approach or exceed one year.” Piazza, 836 F.Supp. 269, at 271 (citations omitted). The discovery deadline is in four months and the case is scheduled to enter the trial pool the following month. Therefore, it is likely that the case would be ready for trial substantially before the Court of Appeals makes a decision on this limited issue.

As was stated previously, a reversal of the issue would only limit the triable issues--all of Plaintiff's Section 1981 claims based upon conduct occurring after May 14, 1997 would remain active. Therefore, granting certification on this issue would put the case on hold until well after the discovery deadline, and if the appeal was decided in Defendant's favor, all parties would still have the burden of resuming trial preparation under new discovery deadlines. This is not enough to meet the threshold for this Court to rule in favor of certification. See Id.; see also McNulty v. Borden, Inc., 474 F.Supp. 1111, 1122 (E.D.Pa.1979) (declining to certify the denial of a motion to dismiss antitrust and breach of contract claims, where defamation claims would still proceed to trial).

III. CONCLUSION

For the foregoing reasons, Defendant's motion seeking certification of an interlocutory appeal is DENIED. An appropriate order follows.

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THE CHESTER COUNTY	:	No. 99-2488
HOSPITAL,	:	
Defendant.	:	

ORDER

AND NOW, this 24th day of February, 2000, upon consideration of the Motion for Certification to File an Immediate Appeal of Defendant Chester County Hospital and Plaintiff Vivian J. Pitts' response thereto, it is hereby ORDERED that Defendants' motion is DENIED, in accordance with the accompanying memorandum.

BY THE COURT:

RONALD L. BUCKWALTER, J.