

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

AMOS STINNEY, et al. : CIVIL ACTION
v. :
THE HERTZ CORPORATION, et al. : NO. 98-6175

MEMORANDUM AND ORDER

FULLAM, Sr.J. MAY , 2000

Plaintiffs in this civil rights action, African-American customers of the Hertz Corporation, claim that Hertz's Philadelphia Airport office unlawfully discriminated against them with regard to car rentals, primarily by accepting bank debit cards with credit card company logos (known as "check cards") from white customers but not black ones. Defendants have filed a motion for summary judgment.

As a preliminary matter, plaintiffs do not respond to defendants' arguments concerning their claims pursuant to 42 U.S.C. §1985(3), 42 U.S.C. §1986, and the Pennsylvania Human Relations Act (PHRA), effectively conceding that defendants are entitled to judgment on these claims. Remaining are plaintiffs' claims pursuant to §1981 and §1982. Plaintiffs are Amos Stinney, Daphne Rhodes, and Vernon and Mildred Roberts.

Plaintiff Rhodes is an employee of Wachovia Bank who traveled to Philadelphia

on business. She had reserved a car through Hertz and presented her manager's corporate credit card along with a letter authorizing her use of the card. A Hertz manager, defendant Kenneth Grannum, refused to accept the card. The counter clerk was finally prevailed upon to telephone Ms. Rhodes' manager, who verbally approved Ms. Rhodes' use of the corporate card, but Grannum continued to refuse to accept it. A Hertz employee, Anthony Watts, testified in deposition that a white customer by the name of Hoffman had attempted to rent a car with an expired card, and this same manager had approved the rental when the man's assistant, sight unseen, phoned in her credit card number. Plaintiffs' response also contains a signed statement from Mr. Hoffman concerning this transaction; defendants however, seek to have this document struck, along with other statements, primarily from Hertz employees or former employees, concerning differences in the way black and white customers were treated. While the statements were signed, they do not comport with the requirements of 28 U.S.C. §1746, relating to unsworn declarations. While defendants argue that the Hoffman situation is not sufficiently similar to the incident involving Ms. Rhodes, I disagree, and find that the deposition testimony of Mr. Watts, standing alone, is enough to create a dispute of material fact.

Plaintiff Stinney claims that he was not permitted to rent a car with a check card. Defendants have come forward with evidence that the two cards proffered by Mr. Stinney (which apparently looked like credit cards on their faces) were swiped, but both were denied for insufficient funds. Plaintiffs have not come forward with any evidence to rebut defendants' non-discriminatory reason for their actions in this instance, and in fact do not address this contention at all in their response. Defendants are entitled to judgment on this claim.

Plaintiffs Mr. and Mrs. Roberts were not permitted to rent a car with a check card.

Defendant Joseph McGough, a Hertz manager who has since been fired, told them that it was company policy not to accept check cards, when in fact he had accepted a debit card from a white customer two days earlier, on Christmas Day. Defendants have produced an affidavit from McGough, wherein he states that he accepted the debit card from the white customer in violation of company policy because it was Christmas, and all of the other car rental offices at the airport were closed. He states that he did not make an exception for the Robertses two days later because Enterprise, which accepts check cards, was open. The Robertses did in fact rent a car from Enterprise. Plaintiffs' evidence consists of the generalized and unsworn statements of employees that exceptions were made for white customers but not black ones, and of the deposition testimony of Anthony Watts to that effect. While there is no evidence bearing specifically on the Robertses that would indicate that McGough's explanation is pretextual, and the issue is a close one, I conclude that the better course is to err on the side of caution and permit the jury to make any determinations concerning the credibility of the witnesses. Mrs. Roberts' claim, however, must fail, because only Mr. Roberts attempted to rent a car -- Mrs. Roberts was simply with him at the time -- and she lacks standing to bring an action under §1981 or §1982.

Next, plaintiffs concede that they have not properly served defendant McGough, and the claims against him will be dismissed. And finally, there is no evidence that defendant Thomas Hutchinson, a Hertz manager, had any personal involvement in the incidents at issue (apart from investigating the events involving McGough and subsequently firing him), entitling him to judgment as well.

An Order follows.

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ORDER

AND NOW, this day of April, 2000, IT IS ORDERED:

1. Defendants' motion for summary judgment is GRANTED IN PART.
2. All claims against defendant McGough are DISMISSED WITH PREJUDICE, for insufficient service of process.
3. Judgment is entered against all plaintiffs and in favor of defendant Hutchinson on all claims asserted against him.
4. Judgment is entered against all plaintiffs and in favor of defendants on plaintiffs' claims pursuant to 42 U.S.C. §1985(3), 42 U.S.C. §1986, and the Pennsylvania Human Relations Act (PHRA), 43 P.S. §951 *et seq.*
5. Judgment is entered against plaintiff Stinney and in favor of defendants on this plaintiff's remaining claims.
6. Judgment is entered against plaintiff Mildred Roberts and in favor of defendants on her remaining claims.

7. Trial of the claims of plaintiffs Daphne Rhodes and Vernon Roberts pursuant to 42 U.S.C. §1981 and 42 U.S.C. §1982, against defendants the Hertz Corporation (a/k/a the Hertz Rent-A-Car Company) and Kenneth Grannum, will commence on July 24, 2000.

Fullam, Sr.J.