

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

MATTHEW STEPHENS, ET AL. : CIVIL ACTION  
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 v. :  
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 SEVEN SEVENTEEN HB PHILADELPHIA :  
 CORP. NO.2 t/a ADAM'S MARK HOTEL, ET AL. : NO. 99-4541

**ORDER - MEMORANDUM**

**Ludwig, J.**

AND NOW, this 10<sup>th</sup> day of January, 2001, the motion of defendants Seven Seventeen HB Philadelphia Corp. No. 2 t/a Adam's Mark Hotel and HBE Corp. to dismiss plaintiffs' 42 U.S.C. § 2000a claim is granted. Fed. R. Civ. P. 12. Jurisdiction is federal question. 28 U.S.C. § 1331.

This is a public accommodations discrimination class action based on race. Defendants operate the Adam's Mark Hotel in Philadelphia, and plaintiffs are African Americans who were patrons of Quincy's, a nightclub located in the hotel. According to count one, defendants intentionally discriminated against plaintiffs "with racial animus" and refused to enter into contracts of sale with them in violations of 42 U.S.C. §§ 1981, 1982, and 2000a. Second amended cmplt. ¶¶ 30-33. Defendants move to dismiss the public accommodations claim, citing plaintiffs' failure to comply with the jurisdictional notice requirement of 42 U.S.C. § 2000a-3 – the giving of written notice of discrimination to the

Pennsylvania Human Relations Commission or to the Philadelphia Commission on Human Relations at least 30 days before the action was filed.<sup>1</sup>

Plaintiffs as individuals do not dispute their lack of notice. They maintain, instead, that notice was effectuated via certain administrative charges of employment discrimination that make reference to public accommodation discrimination at Quincy's. These charges were submitted to the PHRC and EEOC by Richard Pawlak and Arnold Williams, former employees of Adam's Mark, whose subsequent actions against defendants were consolidated for discovery with the present action, Order, March 14, 2000. Plaintiffs assert that their § 2000a-3 notice obligation was satisfied by virtue of the "single-filing rule."

As applied in our Circuit, the single-filing rule waives the exhaustion requirement for individual class members where a class representative has

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<sup>1</sup> Section 2000a-3(c):

In the case of an alleged act or practice prohibited by this subchapter which occurs in a state, or political subdivision of a state, which has a state or local law prohibiting such act or practice and establishing or authorizing a state or local authority to grant or seek relief from such practices or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) of this section before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate state or local authority by registered mail or in person . . . .

42 U.S.C. § 2000a-3(c). By statute, Pennsylvania prohibits discrimination in places of public accommodation, 43 Pa. Stat. Ann. § 953. It established the Pennsylvania Human Relations Commission, in part, to grant relief for public accommodations discrimination, 43 Pa. Stat. Ann. § 956.

previously filed an administrative complaint.<sup>2</sup> See Whalen v. W.R. Grace & Co., 56 F.3d 504, 506 (3d Cir. 1995); McNasby v. Crown Cork & Seal Co., 888 F.2d 270, 282 (3d Cir. 1989). Here, Pawlak and Williams are not named plaintiffs in this action, or even class members – they do not claim to have been subject to the alleged public accommodation discrimination. Therefore, their administrative filings cannot fulfill the public accommodations class plaintiffs’ notice requirement.<sup>3</sup> Moreover, the purpose to be served by the notice – to afford a state agency “opportunity to remedy the situation” – could not have been achieved in these circumstances. See Harris v. Ericson, 457 F.2d 765, 766 (10th Cir. 1972).

Accordingly, plaintiffs’ § 2000a claim must be dismissed for non-compliance with the jurisdictional notice prerequisite of 42 U.S.C. § 2000a-3(c).

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Edmund V. Ludwig, J.

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<sup>2</sup> While recognizing the applicability of the single-filing rule to ADEA and ADA actions, our Court of Appeals has declined to extend the rule beyond class actions. Whalen v. W.R. Grace & Co., 56 F.3d 504, 507 (3d Cir. 1995) (citing Lockhart v. Westinghouse Credit Corp., 879 F.2d 43 (3d Cir. 1989) and Lusardi v. Lechner, 855 F.2d 1062, 1078 (3d Cir. 1988)).

<sup>3</sup> The question of whether the single-filing rule should be extended to a public accommodations claim will not be reached. Given that a 30-day notice letter is much less onerous than filing a complaint with the EEOC, as required in other discrimination cases, the efficiencies of allowing a single-filing may not be appropriate or necessary in the public accommodations context.