

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

KATHLEEN ZWAAN : CIVIL ACTION
 :
 v. :
 :
 ALAN K. SILBERSTEIN, et al. : NO. 96-1662

MEMORANDUM AND ORDER

Fullam, Sr. J. July , 1997

This Court's Order of July 2, 1997 disposed of several motions. The motion of defendants Silberstein and Schneider for summary judgment on the basis of their claim of immunity was denied. As is their right, these defendants have appealed that decision to the Third Circuit Court of Appeals.

The July 2nd Order also dismissed all of plaintiff's Title VII claims, on the ground that the summary judgment record conclusively established that plaintiff was an independent contractor, and not an employee entitled to the protection of Title VII. This decision had the effect of dismissing with prejudice Counts I through V of the complaint. Plaintiff has now requested a certification pursuant to Federal Rule of Civil Procedure 54(b) so that she can immediately appeal the dismissal of her Title VII claims. The motion will be granted.

By virtue of the July 2nd Order and other stipulated dismissals and withdrawals, the only matters now pending for trial are plaintiff's claims against Silberstein and Schneider, as to which they seek an appellate ruling of immunity. The case cannot

proceed to trial until the Court of Appeals has resolved the immunity issue. Plaintiff's Title VII claims have been finally dismissed by this Court, and plaintiff has a right to appeal that dismissal eventually; it would be decidedly advantageous to all parties, and to the efficient administration of justice, to have plaintiff's appeal resolved in conjunction with the pending appeal on the immunity issues. The resolution of both sets of appeals at the same time will insure that, come what may, this case would not have to be tried more than once. If the defendants prevail on the immunity issues, there would not be any trial unless plaintiff prevails on the Title VII issues. If, on the other hand, this Court's rejection of the immunity defense is affirmed, the case will then proceed to trial of plaintiff's civil rights claims, and the appellate court should have the opportunity to decide whether the closely-related Title VII claims were erroneously dismissed, and should be included in the trial. There is, in short, no reason whatsoever to delay appellate resolution of the Title VII issues. An Order follows.

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AND NOW, this day of July 1977, in accordance with Federal Rule of Civil Procedure 54(b), the Court having determined that the July 2, 1997 dismissal of Counts I through V of plaintiff's complaint finally disposes of those claims, and that there is no just reason for delay, IT IS ORDERED:

That final judgment is entered in favor of the defendants Philadelphia Municipal Court, City of Philadelphia, First Judicial District of Pennsylvania, Administrative Office of the Pennsylvania Courts, and against the plaintiff Kathleen Zwaan, dismissing Counts I through V.

John P. Fullam, Sr. J.