IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 98-PWG-0774-NW
ESTES OIL COMPANY, INC.,	)	
Defendant.	)	

ORDER

This matter is before the court for consideration of two separate but related motions. Ms. Sonya Morris has filed a pleading styled as an "Application to Intervene" made pursuant to Rule 24 of the *Federal Rules of Civil Procedure*. (Document #14). After the application for intervention was filed, defendant Estes Oil Company, Inc. filed a motion to "... enforce [a] settlement agreement." (Document #15). The litigation is before the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b); Rule 72(b); *Federal Rules of Civil Procedure*; L.R. 72.1(c); and the General Orders of Reference dated July 23, 1996, as amended May 8, 1998.

On March 31, 1998 the Equal Employment Opportunity Commission (EEOC) initiated this action by filing a complaint pursuant to Title VII of the Civil Rights Act of 1991. The complaint stated that the suit was filed "... to correct unlawful employment practices ... and to make whole Jenny Walthall and Sonya Morris...." (Document #1). On June 25, 1998 Jenny Walthall (Walthall-Forsythe), through counsel Mr. Timothy Davis, filed an application to intervene pursuant to Rule 24 of the *Federal Rules of Civil Procedure*. (Document #4/2). The court directed defendants to file a response to the proposed intervention. (Document #3). The application to intervene was granted

on August 28, 1998. At that time in the litigation, attorneys for EEOC represented the interests of the workers at Estes Oil under the statutory mandate of Title VII. Ms. Sonya Morris was a person aggrieved within the meaning of the statute.

Viewed in a light most favorable to Estes Oil, the history of this dispute is as follows.[1/] In December of 1998 EEOC attorney Mr. Debra Hawes Crook spoke with Ms. Sonya Morris regarding her individual claims in order to assess the damages Morris incurred from the alleged unlawful employment practices described in the complaint. Ms. Crook asked Ms. Morris to provide wage data and other information which would permit the EEOC to make an offer of settlement to Estes Oil to resolve Ms. Morris's individual monetary claims. (Ms. Crook's statements of record from the July 13, 1999 proceeding before the undersigned magistrate judge). Ms. Crook stated that she spoke with Ms. Morris several times from January through March of 1999 in her attempts to calculate Ms. Morris's monetary claims. Ms. Crook told Ms. Morris that backpay was a primary component of the normal individual Title VII claim. Ms. Crook had spoken with the attorney for Estes Oil in February and March concerning the possibility of settlement. During that period, Estes Oil and the EEOC had also agreed to mediate all claims. The mediation was scheduled for April 6, 1999. On March 25, 1999 Ms. Crook wrote to the attorney for Estes Oil that "... Plaintiff submits the amount of $14,530.00 as a monetary settlement for Ms. Sonya Morris." (Document #15, Exhibit #3). The letter noted the demands of the intervenor Jenny Walthall-Forsythe would be made separately through her own attorney. Prior to April 6, Ms. Crook and the attorney for Estes Oil reach a compromise agreement as to the settlement of the individual monetary claims of Ms. Morris. Ms. Crook and Estes's counsel agreed to settle Ms. Morris's claims for the amount of $12,000.00. On

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1/ A subsequent hearing may develop additional facts or require reassessment of matters set out here.

the morning of April 6, Ms. Crook spoke with Ms. Morris in order to determine whether the $12,000 proposed settlement would satisfy Ms. Morris's individual claims. Ms. Morris told Ms. Crook that she would accept $12,000 in settlement of her monetary claims.[2/] After Ms. Morris told Ms. Crook that she would accept $12,000 in satisfaction of her claims, Ms. Crook told Morris that she would not be required to attend the mediation. The attorney for Estes confirmed the settlement by letter dated April 6, 1999. (Document #15, Exhibit #4). The April 6, 1999 mediation apparently resulted in an agreement by EEOC and Estes Oil to implement certain training procedures. The individual claims of Ms. Walthall-Forsythe were not resolved during the April 6, 1999 mediation. On April 6 Estes Oil, through its attorney, prepared a release and confidentiality agreement to be signed by Ms. Morris. These documents were sent to Ms. Crook at EEOC. Ms. Crook forwarded the documents to Ms. Morris. On or about May 7, 1999 Estes Oil and the EEOC were told that Ms. Morris had decided that she did not want to settle her case for the agreed amount. She refused to execute the release and confidentiality agreement. Thirty days later, Ms. Morris, after consultation with an attorney, filed the present application to intervene.[3/]

THE MOTION TO INTERVENE

Under Title VII, once an individual files a charge alleging unlawful employment practices, the EEOC must investigate the charge and determine whether there is "reasonable cause"

2/ Ms. Morris admitted telling Ms. Crook that she would accept $12,000 in settlement of her claims. She also stated however that she had never spoken with Ms. Crook prior to April 6 concerning a dollar value for her claims. While Ms. Morris's statements appear incredible they are accepted as true for the purposes of this order as the court is primarily concerned with the undisputed concession that Ms. Morris agreed to settle her claim for $12,000.

3/ Ms. Crook stated during the hearing on July 13 that she had informed Ms. Morris of her "right to intervene" and "to hire her own attorney." It is not clear, however, when Ms. Morris was told of her right of intervention.

to believe that it is true. See 42 U.S.C. § 2000e-5(b) (1998). By filing a charge, an individual does not file a complaint seeking relief, but merely informs the EEOC of possible discrimination. *See EEOC v. Shell Oil Co.*, 466 U.S. 54, 68, 104 S.Ct. 1621, 80 L.Ed.2d 41 (1984). If the EEOC cannot secure an acceptable conciliation agreement from the employer, it "may be bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge." 42 U.S.C. § 2000e-5(f) (1998).

While allowing the EEOC to bring suit against employers in federal court, Title VII retains a private cause of action – apart from any action the statute entitles the EEOC to bring – for individual victims of employment discrimination. An individual may not, however, file suit under Title VII if she does not possess a "right to sue" letter from EEOC. *See Rivers v. Barberton Bd. of Educ.*, 143 F.3d 1029, 1032 (6th Cir. 1998). Therefore, for 180 days after the filing of a charge, the EEOC retains "exclusive" jurisdiction over the subject matter of that charge. *General Tel. Company v. EEOC*, 446 U.S. 318, 100 S.Ct. 1698, 64 L.Ed.2d 319 (1980). During that period, the EEOC may distinguish between those cases in which it believes it may vindicate the public interest by filing suit itself, and those in which it choose not to file suit and instead leaves to the individual aggrieved the decision of whether to file the suit in order to advance her own interests. Indeed, it is only at the termination of the 180-day period of exclusive jurisdiction that "a complainant whose charge is not dismissed or promptly settled or litigated" may bring a lawsuit. *See Occidental Life Ins. v. EEOC*, 432 U.S. 355, 361, 97 S.Ct. 2447, 53 L.Ed.2d 402 (1977). Significantly, not only does Title VII bar an aggrieved individual from suing a private employer in federal court during that period without authorization from the EEOC, *see, e.g., EEOC v. Hearst Corp.*, 103 F.3d 462, 466 (5th Cir. 1997), it bars an aggrieved individual from ever bringing such a suit should the EEOC choose to sue on its

own. In such cases, the only right Title VII reserved to an aggrieved individual is the right to intervene in the EEOC's action. *See* 42 U.S.C. § 2000e-5(f)(1) (1998).

It is undisputed that Jenny Walthall-Forsythe exercised her right to intervene 90 days after EEOC filed the instant lawsuit. It is also undisputed that Ms. Morris did not file her motion to intervene until EEOC's attorney had specifically tendered a settlement offer of Ms. Morris's individual claims to Estes Oil with the assurance provided by Ms. Morris that an agreement had been reached.

Title 42 U.S.C. § 2000e-5(f)(1) provides in pertinent part that "the person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission ...." Rule 24(a) provides that "upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; ...." Rule 24(b) provides that "upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene." The intervention provisions of 2000e-5(f)(1) appear to require intervention as a matter of right. A Rule 24(a) intervention may, nonetheless, be refused because it is untimely. The timeliness of a motion to intervene is determined from the totality of the circumstances. *NAACP v. New York*, 413 U.S. 345, 366, 93 S.Ct. 2591, 2603, 37 L.Ed.2d 648 (1973). Whether Ms. Morris's application to intervene is measured by Rule 24(a) or Rule 24(b), it is clear that the timeliness of her application is inextricably linked to her apparent authorization for Ms. Crook to resolve her claims. For the purposes of determining the timeliness of the motion to intervene the court notes that (1) while the EEOC and Estes Oil have indicated that an agreement in principal has been reached in satisfaction of EEOC's public obligations, no conciliation agreement, settlement agreement or consent decree has been executed; (2) the

individual claims of Jenny Walthall-Forsythe have not been resolved; and (3) Ms. Morris has refused to execute a release or to ratify a confidentiality agreement. An application for leave to intervene as right under Rule 24(a) must of course be "timely" and the question of whether a given application is timely must be answered in light of all relevant facts and circumstances in the particular case. Ultimately the question addresses itself to the judicial discretion of the judge to whom the application is made, and even in those cases in which judgment has been entered, intervention is not necessarily precluded. *See, e.g., Nevilles v. EEOC*, 511 F.2d 303 (8th Cir. 1975).

The application to intervene in the present case is subject to the cautionary restrictions of the Court of Appeals for the Eleventh Circuit as set out in *Riddle v. Cerro Wire and Cable Group, Inc.*, 902 F.2d 918 (11th Cir. 1990). While *Riddle* is not directly on point, the Circuit Court's holding is relevant to a consideration of Ms. Morris's application to intervene. In *Riddle* EEOC received a charge of sexual discrimination filed by Nora Elaine Riddle. After attempts at conciliation failed, EEOC filed suit against Cerro Wire. Ms. Riddle did not intervene as a plaintiff in the suit. Shortly before trial EEOC and Cerro Wire negotiated a settlement agreement. The agreement provided for the payment of $1,500.00 to Ms. Riddle in satisfaction of her claims. Ms. Riddle was unhappy with the terms of the settlement and retained an attorney. EEOC told Ms. Riddle by letter that if she was not satisfied she could request a right to sue letter and institute an individual action against Cerro Wire. In the letter, EEOC noted that Riddle would not be bound by the settlement unless she signed a release and thereby received money from Cerro Wire. The district court entered a consent decree ending the litigation between EEOC and Cerro Wire. The next day EEOC issued Riddle a right to sue letter. After Riddle sued, Cerro Wire sought to bar the suit on grounds of *res judicata* or claim preclusion, arguing that Riddle was bound by the consent decree in the prior litigation. The circuit

court observed that the interests of Riddle and the EEOC were not the same in pursuing litigation against Cerro Wire. Citing *General Telephone Company of the Northwest, Inc. v. EEOC*, 446 U.S. at 326, the circuit court concluded that the interests of the EEOC and individual victims of discrimination are not always identical. The court noted that the EEOC is primarily interested in securing equal employment opportunities in the work place and that interest is often most completely advanced through conciliation agreements or consent decrees where the employer agrees to take broad remedial steps to eradicate discrimination. The court acknowledged that the aggrieved individual is primarily interested in securing personal relief of the kind Riddle sought in her private action for damages and injunctive relief. The panel recognized that the differing interests of EEOC and aggrieved individuals are not necessarily compatible. In directing the district court to reinstate Riddle's private cause of action the Eleventh Circuit held that because Riddle had refused to sign a release, she was not bound by the "settlement" reached by EEOC and Cerro Wire. As the EEOC correctly stated in Riddle, it was then required to issue the right to sue letter once her dissatisfaction was made clear and the consent decree was reached. While Riddle did not authorize EEOC's lawyers to settle her claims nor did she consent to the decree the principle remains that EEOC and an individual claimant may have different goals and that the individual's interests may continue after the EEOC has extinguished the public interest issues.

In the present case, Ms. Morris's application to intervene is an attempt to further advance her individual interests. The only issue raised with regard to the motion to intervene is whether a discrete act has rendered her motion untimely or otherwise barred her entry into this lawsuit. The court concludes that it has not and the motion to intervene is due to be and the same is hereby GRANTED.

MOTION TO ENFORCE SETTLEMENT AGREEMENT

Ms. Morris's intervention into an ongoing lawsuit is not dispositive, however, of the question of whether the agreement to resolve the individual claims is due to be enforced against her. Unlike *Riddle v. Cerro Wire* discussed above, there is credible evidence that Ms. Morris expressly consented to the resolution of her claims for a specific dollar amount. The mere fact that she later refused to execute a release does not absolve her of her obligation to adhere to her bargain. Settlement of claims brought before courts is favored as a means of resolving disputes. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). Indeed, a settlement agreement is "as binding, final and conclusive of the rights as a judgment" when the settlement was not illegal or against public policy and was fairly arrived at and properly entered into, that is knowingly and voluntarily and not by fraud or coercion. *Thomas v. State of Louisiana*, 534 F.2d 613, 615 (5th Cir. 1976); *United States v. City of Alexandria*, 614 F.2d 1358, 1362 (5th Cir. 1980). Without question, a federal district court has jurisdiction to enforce a settlement agreement reached in a case pending before it. *Cia Anon Venezolana de Nadegacion v. Harris*, 374 F.2d 33, 35 (5th Cir. 1967).

In *Eatmon v. Bristol Steel & Iron Works, Inc.*, 769 F.2d 1503, 1516-17 (11th Cir. 1985) the Eleventh Circuit explained that federal common law should be used to determine the scope and validity of settlement agreements in Title VII cases. *See also United States Anchor Mfg., Inc. v. Rule Indus., Inc.*, 7 F.3d 986, 993 n.11 (11th Cir. 1993) (Federal common law determines affects of settlement with respect to federal anti-trust claims), *cert. denied*, 515 U.S. 1221, 114 S.Ct. 2710, 129 L.Ed.2d 837 (1994); *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981) ("We conclude that federal law determines the validity of oral settlement agreements in employment discrimination actions brought pursuant to Title VII."). In this circuit, however, state law governs

the scope of an attorney's authority to enter into a settlement agreement. *Murchison v. Grand Cypress Hotel Corporation,* 13 F.3d 1483, 1487 (11th Cir. 1994); *Ford v. Citizens and Southern National Bank,* 928 F.2d 1118, 1120 (11th Cir. 1991). In Alabama the general rule is that "an attorney cannot settle a client's action or claim or prejudice a client's right without authorization from the client." *Daniel v. Scott,* 455 So.2d 30, 32 (Ala. Civ. App. 1984). By statute, however, Alabama permits the enforcement of a settlement agreement which is reached prior to trial whether or not signed by the party if the attorney had authority to bind that client. *Spurlock v. Pioneer Financial Services, Inc.*, 808 F. Supp. 782 (M.D. Ala. 1992). Section 34-3-21 *Alabama Code* (1975) states that "an attorney has the authority to bind his client in any action or proceeding, by any agreement in relation to such a case, made in writing, or by entry to be made of the minutes of the court." The Alabama Supreme Court has several times enforced settlement agreements against the party where the agreement was entered into by the party's attorney and not signed by the party. *See, e.g. Beverly v. Chandler*, 564 So.2d 922, 923 (Ala. 1990).

The motion of Estes Oil is premised upon a reasonable assumption. Estes contends that Ms. Debra Crook, the attorney for EEOC, entered into a binding agreement on behalf of Ms. Morris and that Ms. Morris is bound by that agreement because she "... authorized [her] attorney to settle the dispute." (Document #15, p.2). When an employee knowingly and voluntarily releases an employer from liability under Title VII with a full understanding of the terms of the agreement he is bound by that agreement. *Alexander v. Gardner v. Denver Co.*, 415 U.S. 36, 52 n.15, 94 S.Ct. 101 1, 1021 n.15, 39 L.Ed.2d 147 (1974); *Freeman v. Motor Convoy, Inc.*, 700 F.2d 1339, 1352 (11th Cir. 1983). In determining whether a release was knowingly and voluntarily made, the court looks to a totality of the circumstances. *Beadle v. City of Tampa*, 42 F.3d 633, 635 (11th Cir.), *cert. denied,*

___ U.S. ___, 115 S.Ct. 2600, 132 L.Ed.2d 846 (1995); *see also Gormin v. Brown-Forman Corp.*, 963 F.2d 323, 327 (11th Cir. 1992).

The enforcement of the April 6, 1999 agreement is dependent upon consideration of two factors. First, whether for the purposes of the resolution of her claims, Ms. Morris had authorized Ms. Debra Crook to act as her counsel in reaching the agreement. The motion of Estes quite reasonably presupposes that Ms. Crook and Morris maintained an attorney-client relationship. As noted above, the interests of EEOC and the individual claimants are not always identical. Although the Eleventh Circuit has not expressly decided the question there is some authority for the proposition that EEOC is not in an attorney-client relationship with an aggrieved employee. *See Bratton v. Bethlehem Steel Corporation*, 649 F.2d 658, 669 (9th Cir. 1980) (EEOC is not in privity with the aggrieved employees in Title VII cases for the purposes of binding affects of consent decrees); *Williams v. United States*, 665 F. Supp. 1466, 1469, 1470 (D.C. Oregon 1987) (No attorney-client relationship between EEOC and aggrieved individual in Title VII cases so as to support a cause of action against EEOC for negligent representation in carrying out a consent decree.). "When EEOC sues in its own name, albeit at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interests in preventing employment discrimination." *Williams, supra* 665 F. Supp. at 1470, *quoting from General Telephone Company v. EEOC*, 466 U.S. at 326. In EEOC enforcement actions, as distinguished from individual suits for relief, the EEOC acts for the benefit of large groups of aggrieved individuals who may have competing and conflicting interests. The question of Ms. Crook's "representation" of Morris requires further inquiry. The second question is whether or not Ms. Crook was acting as an attorney for Ms. Morris, is Ms. Morris nonetheless bound by her agreement to resolve her case. Merely because she later concludes

that she might have done better or received more money does not relieve her of her promise. If the evidence validates the procedural history outlined above; that is, that Ms. Morris was aware in December, January, February and March of the settlement discussions and expressly agreed to accept $12,000 in resolution of her claims, she may nonetheless be bound by her bargain. Ms. Crook may have been a defacto agent for Ms. Morris or Ms. Morris may well have bound herself to accept $12,000 directly despite her later change of heart.

Accordingly, a hearing will be conducted within sixty (60) days of the date of the entry of this order to determine whether, notwithstanding her intervention in the present lawsuit, Ms. Morris remains obligated to accept the agreed upon resolution of her individual claims as a product of her own conduct. The hearing will consider *inter alia* the factors outlined in *Puentes v. United Parcel Service*, 886 F.3d 196 (11th Cir. 1996). These factors include plaintiff's education, the amount of time the plaintiff considered the agreement before signing it, the clarity of the proposed agreement, the plaintiff's opportunity to consult with an attorney, the employer's encouragement or discouragement of consultation with an attorney, and the consideration given in exchange for the waivers when compared with the benefit.[4/]

After consideration of the unusual circumstances of this case Ms. Morris's motion to intervene pursuant to Rule 24 is due to be and the same is hereby GRANTED. Ms. Morris's intervention does not preclude the enforcement of the settlement agreement previously reached prior to her motion to intervene.

The clerk is DIRECTED to serve a copy of this order upon counsel for the parties.

4/ *Puentes* involves a release of future claims executed by employees of United Parcel prior to the later filing of a lawsuit. However, the factors provide some guidance in determining whether Ms. Morris, whether or not represented by Ms. Crook, expressly agreed to resolve her claims and then attempted to renege.

DONE this the 5th day of August, 1999.

PAUL W. GREENE
UNITED STATES MAGISTRATE JUDGE