UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States Equal Employment Opportunity Commission,

Plaintiff,

v.

Federal Express Corporation,

Defendant.

Civil No. 99-1477 (DWF/AJB)

MEMORANDUM OPINION AND ORDER

Introduction

Plaintiff Equal Employment Opportunity Commission ("EEOC") commenced the present action under § 107(a) of the Americans with Disabilities Act ("ADA"). The matter is currently before the Court pursuant to the Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment. The Defendant argues that because the EEOC charge of discrimination was signed by the complainant's attorney, rather than by the complainant, the charge was defective and the claim must be dismissed.

Because the document in question was signed under oath, in accordance with the relevant statutes and regulations, and because the statutes and regulations allow charges to be filed "by or on behalf of" an aggrieved party, the Defendant's Motion is denied.

In addition, both parties have filed motions for leave to file sur-reply briefs. The Court finds no justification for the submission of memoranda in excess of the standard motion practice, and both Motions are denied.

Background

On November 13, 1997, Paul B. Hummel, through his attorney, filed EEOC Charge No. 264980200. (Affidavit of David Jordan-Huffman, Ex. 1.)

The document, titled "Charge of Discrimination," contained two signature boxes. The first signature box stated, "I declare under penalty of perjury that the foregoing is true and correct," under which the attorney signed, "Joni M. Thome, Attorney for Complainant, on behalf of Paul B. Hummel." The second signature box stated, "I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief," under which the attorney signed, "Joni M. Thome, for Paul B. Hummel." The signature in the second signature box was notarized.

On September 28, 1999, the EEOC commenced the present action based upon Mr. Hummel's charge of discrimination.

Discussion

A. Standard of Review

The Defendant has moved for dismissal, pursuant to Fed. R. Civ. P. 12(b)(6), or in the alternative, for summary judgment, pursuant to Fed. R. Civ. P. 56.

A complaint shall be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6) only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would demonstrate an entitlement to relief. Springdale Educ. Assn. v. Springdale School Dist., 133 F.3d 649, 651 (8th Cir. 1998); Parnes v. Gateway 2000, Inc., 122 F.3d 539, 546 (8th Cir. 1997), citing Fusco v. Xerox Corp., 676 F.2d 332, 334 (8th Cir. 1982). The allegations in the complaint must be treated as true and must be construed in the plaintiff's favor. Duffy v. Landberg, 133 F.3d 1120, 1122 (8th Cir. 1998). The complaint should not be dismissed merely because there is some doubt that a plaintiff will be able to prove all of the necessary factual

allegations. Parnes, 122 F.3d at 546. That a plaintiff may indeed fail to prove the allegations of the complaint at trial is irrelevant to the consideration of a motion to dismiss. Hafley v. Lohman, 90 F.3d 264, 267 (8th Cir. 1996). Instead, dismissal is proper only when the complaint on its face reveals "some insuperable bar to relief." Duffy, 133 F.3d at 1122, quoting Frey v. City of Herculaneum, 44 F.3d 667, 671 (8th Cir. 1995).

Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Enterprise Bank v. Magna Bank, 92 F.3d 743, 747 (8th Cir. 1996). The court must view the evidence and the inferences which may be reasonably drawn from the evidence in the light most favorable to the nonmoving party. Enterprise Bank, 92 F.3d at 747. However, as the Supreme Court has stated, "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to 'secure the just, speedy, and inexpensive determination of every action.'" Fed. R. Civ. P. 1. Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed. 2d 265 (1986).

The moving party bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Enterprise Bank, 92 F.3d at 747. The nonmoving party must then demonstrate the existence of specific facts in the record which create a genuine issue for trial. Krenik v. County of Le Sueur, 47 F.3d 953, 957 (8th Cir. 1995). A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986); Krenik, 47 F.3d at 957.

B. EEOC Charge

The ADA incorporates by reference the statutory prerequisites to suit embodied in Title VII. McSherry v. Trans World Airlines, Inc., 81 F.3d 739, 740, n.3 (8th Cir. 1996).

Title VII requires a charge of discrimination to be filed with the EEOC as follows:

> Whenever a charge is filed by *or on behalf of* a person claiming to be aggrieved . . . the Commission shall serve a notice of the alleged charge (including the date, place and circumstances of the alleged unlawful employment practice) . . . within ten days, and shall make an investigation thereof. *Charges shall be in writing under oath or affirmation* and shall contain such information and be in such form as the Commission requires.

42 U.S.C.A. § 2000e-5(b) (emphases added).

In accordance with the requirements of the statute, the corresponding regulations provide as follows:

> A charge that any person has engaged in or is engaging in an unlawful employment practice within the meaning of Title VII or the ADA may be made by *or on behalf of* any person claiming to be aggrieved. A charge on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization.

29 C.F.R. § 1601.7(a) (emphasis added).

> A charge shall be in writing and signed and shall be verified.

29 C.F.R. § 1601.9.

The Defendant correctly notes that the Eighth Circuit has repeatedly held that unsigned or unverified documents filed with the EEOC do not constitute valid charges of discrimination for purposes of 42 U.S.C.A. § 2000e-5(b). See, e.g., Shempert v. Harwick Chemical Corp., 151 F.3d 793 (8th Cir. 1998); Diez v. Minnesota Mining and Manufacturing Co., 88 F.3d 672 (8th Cir. 1996); Hodges v. Northwest Airlines, Inc., 990 F.2d 1030 (8th Cir. 1993).

However, both the statute and the corresponding regulations explicitly also state that the charge may be filed on behalf of the aggrieved party. This allowance does not, of course, vitiate the requirement that the charge be made under oath or affirmation.

In the present matter, the charge was indeed signed under oath. The attorney signed the document twice, once under the statement, "I declare under penalty of perjury that the foregoing is true and correct," and again, under the statement, "I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief." The signatures also explicitly state that they are made on behalf of Paul B. Hummel. Finally, the second signature is notarized. Therefore, the document comports with the requirement that the charge of discrimination be made under oath or affirmation.

As both the statute and the corresponding regulations explicitly allow the charge of discrimination to be made on behalf of the aggrieved party, the attorney's signature under oath complies with the statute.

Conclusion

Although a charge of discrimination under Title VII or the ADA must be signed under oath, the charge of discrimination may be filed by or on behalf of an aggrieved party. The charge of discrimination in the present matter was signed under oath by the complainant's attorney. Therefore, as the charge of discrimination was filed under oath on behalf of the aggrieved party, the charge was not defective.

For the reasons stated, **IT IS HEREBY ORDERED:**

1. The Defendant's Motion to Dismiss or, in the alternative, for Summary Judgment (Doc. No. 3) is **DENIED**.

2. The Motion by EEOC for leave to file sur-reply brief (Doc. No. 9) is **DENIED**.

3. The Motion by Defendant for leave to file sur-reply brief (Doc. No. 10) is **DENIED**.

Dated: Feb 11, 2000

DONOVAN W. FRANK
Judge of United States District Court