

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

v.

GLEN W. SMITH & ASSOCIATES, INC.

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Civil Action No. DKC 99-2985

MEMORANDUM OPINION

This case has been referred to me for resolution of Plaintiff EEOC's Motion to Join Environmental Preservation Associates, Inc. as Defendant. On September 7, 2001, a notice that the motion was served on the proposed defendant (EPAI) was docketed. (Paper No. 21). EPAI has not responded, and the motion is thus now ready for resolution.

A corporation may be joined as a defendant under circumstances warranting successor liability. Successor liability is found where there is substantial continuity between the predecessor's and the successor's business. This occurs where the successor 1) acquires substantial assets of the predecessor, 2) continues the predecessor's operations without interruption or change, and 3) has notice of actions for which it may be liable. *Golden State Bottling Co., Inc. v. N.L.R.B.*, 414 U.S. 168, 171 (1973). In Title VII actions, successor liability has been found where 1) the successor had notice of the claim against the predecessor, 2) the predecessor is unable to provide relief, and 3) there is sufficient continuity. *EEOC v. MacMillan Bloedel Containers, Inc.*, 503 F.2d 1086, 1094 (6<sup>th</sup> Cir. 1974). Successors can be liable and can be joined even where judgment has already been entered. Fed. R. Civ. P. 25(c); *Explosives Corp. of Am. v. Garlam Enter. Corp.*, 817 F.2d 894, 907 (1<sup>st</sup> Cir. 1987).

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Here, the EEOC's undisputed evidence shows that the successor business, EPAI, is essentially the same as Glen W. Smith & Associates, Inc. (GWS), the predecessor, that the successor owner had notice of this action, and that the predecessor is unable to provide the relief sought. For these reasons, joinder of EPAI as defendant is proper and will, by separate order filed today, be ordered.

Date: Oct 5, 2001

  
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JILLYN K. SCHULZE  
United States Magistrate Judge