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United States District Court, N.D. Illinois.

UNITED STATES EQUAL EMPLOYMENT COMMISSION, Plaintiff,
JAMES Ferguson, Plaintiff–Intervenor
v.
FOSTER WHEELER CONSTRUCTORS, INC., Foster Wheeler Illinois, Inc., Foster Wheeler USA, Inc., Foster Wheeler Corporation, and Pipe Fitters Association, Local Union 597 Defendant.

No. 98 C 1601. | July 6, 1999.

Opinion

MEMORANDUM OPINION AND ORDER

COAR, J.

***1** Before this court is Defendants Foster Wheeler Illinois, Inc.'s ("FW Illinois"), Foster Wheeler USA, Inc.'s ("FW USA"), and Foster Wheeler Corporation's ("FW Corp.") consolidated motion for summary judgment as to FW Illinois, FW USA, and FW Corp. pursuant to Fed.R.Civ.P. 56 and to dismiss FW Corp. pursuant to Fed.R.Civ.P. 12(b)(2). For the following reasons, the motion to dismiss is denied and the motion for summary judgment is granted.

I. Facts

A. FW Illinois and FW USA

The EEOC has agreed to voluntarily dismiss both FW Illinois and FW USA. Accordingly, the court will not address either the facts or the legal arguments regarding those two entities.

B. FW Corp.

FW Corp., its subsidiary Foster Wheeler Constructors, Inc. ("FW Const."), and Pipe Fitters Association Local Union 597 ("Union") have been sued by the EEOC pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. (Dft's 12(M) Stmt. ¶ 4.) The EEOC seeks to find FW Corp., FW Const., and the Union liable to a class of African–American and females once employed as construction and office workers at the Robbins Resource Recovery Facility construction site in Robbins, Illinois. (Dft's 12(M) Stmt. ¶ 4.) FW Const. is a Delaware corporation specializing in construction of petroleum, chemical, petrochemical, and alternative fuels facilities and related infrastructure. (Dft's 12(M) Stmt. ¶ 5.) FW Const. observes the normal corporate formalities. (Dft's 12(M) Stmt. ¶ 5.) It has its own board of directors and officers, holds annual meetings and maintains its corporate minutes and other documents required by the law of Delaware, its state of incorporation. (Dft's 12(M) Stmt. ¶ 5.) FW Const. completed the construction of the Robbins facility in late 1996 and has not been present in the state since late 1996. (Dft's 12(M) Stmt. ¶ 5.)

The Third Amendment Complaint added FW Corp. as a Defendant. (Dft's 12(M) Stmt. ¶ 4.) FW Corp. is a holding company which owns 100 percent of the shares of former co-defendants FW USA and is the 100 percent indirect parent of FW Illinois. (Dft's 12(M) Stmt. ¶ 8 .) FW Corp. has its own board and officers. (Dft's 12(M) Stmt. ¶ 8.) It holds its own shareholder meetings and observes the corporate formalities contemplated by the laws of New York, its state of incorporation. (Dft's 12(M) Stmt. ¶ 8.) No EEOC charge concerning the Robbins construction project has been filed against FW Corp. (Dft's 12(M) Stmt. ¶ 9.) There is no allegation against or allusion to any of the affiliates in the EEOC charges filed by James

Ferguson ("Ferguson") and Theodore Moore ("Moore"). (Dft's 12(M) Stmt. ¶ 9.) The EEOC attempted to conciliate with FW Const., but did not seek to conciliate directly with FW Corp. (Dft's 12(M) Stmt. ¶ 9; Ptf's 12(N) Resp. ¶ 9.)[1]

FW Corp. does not own or lease property in Illinois, is not registered to do business in Illinois, has no exclusive agents in Illinois, pays no taxes in Illinois, and does not solicit business in Illinois. (Dft's 12(M) Stmt. ¶ 16.)[2]

***2** FW Corp. was not involved in constructing the Robbins Facility. (Dft's 12(M) Stmt. ¶ 13.) FW Corp. did provide support services to subsidiaries, such as legal, human resources, and labor relations services. (Dft's 12(M) Stmt. ¶ 13.) The FW Corp. Law Department provided legal services to FW Const. in connection with the EEOC charges that gave rise to this suit. (Dft's 12(M) Stmt. ¶ 13.) A member of the FW Corp. Labor Relations Staff, David Semerad ("Semerad"), served as FW Const.'s Labor Relations Manager during construction of the Robbins Facility. (Dft's 12(M) Stmt. ¶ 13.) Semerad gave labor relations advice to FW Const. starting in September 1996 concerning the EEOC charges relating to graffiti in the portable toilets at Robbins. (Dft's 12(M) Stmt. ¶ 13.) Semerad visited the Robbins construction site and had telephone conversations with FW Const. and EEOC personnel. (Dft's 12(M) Stmt. ¶ 13.) Semerad became involved with FW Const. after most, if not all, of the events giving rise to this lawsuit had taken place. (Dft's 12(M) Stmt. ¶ 13.) Also, Leonard Wallace, FW Const.'s Community Relations Representative at Robbins, was on the FW Corp.'s payroll for part of the relevant time period. (Dft's 12(M) Stmt. ¶ 13.)

The EEOC and FW Corp. dispute the role that Semerad and other employees of FW Corp. played at the Robbins site.[3] At the Robbins project, Steve Kokosa ("Kokosa") was the Construction Manager, Les Jordan ("Jordan"), Troy Roder ("Roder") was Construction Superintendent, Richard LeBarre ("LeBarre") was a field superintendent, and Michael Woods ("Woods") was the Administrative Manager. (Ptf's 12(N) Stmt. ¶ 2.) Semerad was the Manager of Labor Relations for various Foster Wheeler entities; while his "direct" employer was FW Corp., he held the same position, manager of Labor Relations, for several other Foster Wheeler entities, including FW Const. (Ptf's 12(N) Stmt. ¶ 4.) Semerad was responsible for planning, organizing, and directing labor relations activities of FW Const. (Ptf's 12(N) Stmt. ¶ 5.) Semerad's activities included responding to labor relations issues at various project sites and supporting the activities of project managers and on-site labor relations managers at job sites. (Ptf's 12(N) Stmt. ¶ 5.) The parties disagree on the question of to whom Semerad was ultimately responsible. While it is undisputed that, regardless of which Foster Wheeler entity he was working for, Semerad always reported to James Schessler ("Schessler"), the FW Corp. Vice President for Human Resources, (Ptf's 12(N) Stmt. ¶ 6), FW Corp. argues that FW Const.'s management ultimately directed and controlled Semerad's activities made on FW Const.'s behalf. (Dft's 12(M) Stmt. ¶ 14; Burcin Decl. ¶ 6.) Prior to Semerad, Paul Mannion ("Mannion") was the Manager of Labor Relations/Human Resources for FW Const. (Ptf's 12(N) Stmt. ¶ 9.) Mannion's employer at that time was also FW Corp., and his boss was also Schessler. (Ptf's 12(N) Stmt. ¶ 9.) Schessler directed Semerad, who advised and directed the Robbins on-site managers on their response to complaints regarding on-site racial harassment. (Ptf's 12(N) Stmt. ¶ 7.) Semerad also negotiated with the EEOC regarding the terms of the Agreed Order. (Ptf's 12(N) Stmt. ¶ 7.) FW Corp. allocated charges to FW Const. for these services consistent with its normal policy of charging subsidiaries for staff services, i.e., Semerad kept timesheets and allocated his time to FW Const. when he performed services for FW Const. (Dft's 12(M) Stmt. ¶ 14.) While Semerad's true employer was FW Corp., Semerad had business cards identifying himself as Manager of Labor Relations for each of different "divisions," e.g., FW Const. (Ptf's 12(N) Stmt. ¶ 8.)

***3** At the Robbins project, James Roach ("Roach") was the Site Labor Relations Manager, and Wallace was the Site Human Resources Manager. (Ptf's 12(N) Stmt. ¶ 10.) Roach and Wallace reported to Semerad. (Ptf's 12(N) Stmt. ¶ 11.)[4] Michael Woods ("Woods") was employed at the Robbins site as the administrative manager from March 1995 to October 1996; his employer was FW Corp. (Ptf's 12(N) Stmt. ¶ 12; Dft's 12(M) Resp. ¶ 12.) Woods charged his time out to FW Const. (Dft's 12(M) Resp. ¶ 12.) Woods' was the office manager, handled accounts payable, and handled payroll for all FW Const. employees at the site. (Ptf's 12(N) Stmt. ¶ 12.) Woods also collected from each new FW Const. employee at the Robbins site an executed pre-printed certification regarding receipt of the Code of Ethics. (Ptf's 12(N) Stmt. ¶ 12.) Woods also interviewed, hired, and supervised two FW Const. employees at the Robbins site, including Moore, who filed one of the charges of racial harassment that gave rise to this lawsuit. (Ptf's 12(N) Stmt. ¶ 13.)

The Code of Ethics that governed the workers at the Robbins project was created by FW Corp. and then adopted by the FW subsidiaries, including FW Const. (Ptf's 12(N) Stmt. ¶ 18.) As part of its policy and procedure for handling complaints about harassment and other workplace issues, the Code of Ethics referred FW Const. employees to a 24–hour hotline operated by the Compliance Officer for FW Corp. (Ptf's 12(N) Stmt. ¶ 18.) The Code of Ethics also requires FW Const.'s managers and supervisors to "seek the advice of the [FW Corp.] Compliance Officer" when they receive reports of violations of the Code of Ethics. (Ptf's 12(N) Stmt. ¶ 18.)[5]

II. Standards

A. Rule 12(b)(2)

Once a defendant has challenged a court's jurisdiction over his or her person, the plaintiff has the burden of showing personal jurisdiction. *RAR, Inc. v. Turner Diesel, Ltd.,* 107 F.3d 1272, 1276 (7th Cir.1997). In determining whether the plaintiff has met his or her burden of proving personal jurisdiction, the court may receive and consider affidavits from both parties. *Glass v. Kemper Corp.,* 930 F.Supp. 332, 337 (N.D.Ill.1996). The court resolves factual disputes in the pleadings and affidavit in favor of the plaintiff but takes as true facts contained in the defendant's affidavit that the plaintiff does not dispute. *Id.*

B. Rule 56

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c); *Cox v. Acme Health Serv., Inc.,* 55 F.3d 1304, 1308 (7th Cir.1995). A genuine issue of material fact exists for trial when, in viewing the record and all reasonable inferences drawn from it in a light most favorable to the non-movant, a reasonable jury could return a verdict for the non-movant. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986); *Hedberg v. Indiana Bell Tel. Co.,* 47 F.3d 928, 931 (7th Cir.1995). The movant has the burden of establishing that there is no genuine issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986); *Hedberg,* 47 F.3d at 931. If the movant meets this burden, the non-movant must set forth specific facts that demonstrate the existence of a genuine issue for trial. Rule 56(e); *Celotex,* 477 U.S. at 324, 106 S.Ct. at 2553. Rule 56(c) mandates the entry of summary judgment against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and in which that party will bear the burden of proof at trial." *Celotex,* 477 U.S. at 322, 106 S.Ct. at 2552–53. A scintilla of evidence in support of the non-movant's position is not sufficient to oppose successfully a summary judgment motion; "there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson,* 477 U.S. at 250, 106 S.Ct. at 2511.

III. Analysis

A. Motion to dismiss for lack of personal jurisdiction

***4** Because this is a federal question case, The EEOC must demonstrate "1) that haling the defendant into court accords with the Due Process Clause of the Fifth Amendment; and 2) that defendant is amenable to service of process from the court." *Perry v. Delaney,* 5 F.Supp.2d 617, 619 (C.D.Ill.1998) (citing *United States v. De Ortiz,* 910 F.2d 376, 381–82 (7th Cir.1990). FW Corp. does not deny that it meets the "national contacts" test for the Fifth Amendment due process clause prong, because FW Corp. conducts business in the United States. *Perry,* 5 F.Supp.2d at 619. The "amenable to service" prong in cases, like this one, where there is no federal statute permitting national service of process, reduces to the question of whether an Illinois state court would have jurisdiction over the defendants. *Id.* at 620. *See* Fed.R.Civ.P. 4(k)(1)(A) ("Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant (A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located."). The court looks to the question of whether an Illinois state court could have jurisdiction over FW Corp.

When considering a challenge to personal jurisdiction, the court looks to state statutory and due process law and to federal due process law. *RAR,* 107 F.3d at 1276. In Illinois, statutory law authorizes personal jurisdiction over defendants to the full extent of due process. *Id.* In determining whether personal jurisdiction is appropriate over FW Corp., the court must look to whether FW Corp. has had sufficient contact with the state of Illinois. *See Hanson v. Deckla,* 357 U.S. 235, 251, 78 S.Ct. 1228, 1238 (1958) ("However, minimum the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him."). Where a defendant has had contact with a prospective forum state, the court looks to whether the defendant has "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* at 253, 78 S.Ct. at 1240. It is not enough to show that the defendant's contacts are "random," "fortuitous," or "attenuated." *Burger King Corp. v.. Rudzewicz,* 471 U.S. 462, 475, 105 S.Ct. 2174, 2183 (1985) (quoting *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 774, 104 S.Ct. 1473, 1478 (1984)).

This court does not have general jurisdiction over FW Corp. but does have specific jurisdiction over FW Corp. The court may maintain jurisdiction over FW Corp. "[e]ven when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State," if general jurisdiction exists, i.e., if FW Corp. has maintained "continuous and systematic general business contacts" in Illinois. *Helicopteros Nacionales de Colombia v. Hall,* 466 U.S. 408, 415–16, 104 S.Ct. 1868, 1872–73 (1984). In Illinois, general jurisdiction based on general business contacts is premised on the "doing business" provision of the personal jurisdiction statute. *See* 735 ILCS 5/2–209(b)(4) (permitting personal jurisdiction over a "corporation doing business within this State"). The "doing business" provision requires that the defendant corporation maintains " 'a regularity of activities in Illinois," such that the corporation "operates within the state " 'not occasionally or casually, but with a fair measure of permanence and continuity." ' *Michael J. Neuman & Assoc. v. Florabelle Flowers, Inc.,* 15 F.3d 721, 724 (7th Cir.1994) (quoting *Cook Assocs., Inc. v. Lexington United Corp.,* 87 Ill.2d 190, 202, 429 N.E.2d 847, 852–53 (1981)). "One way of thinking about the concept of 'doing business' ... is that it picks out those nonresident businesses that are so like resident businesses, insofar as the benefits they derive from state services are concerned, that it would give them an undeserved competitive advantage if they could escape having to defend their actions in the local courts." *IDS Life Insurance Co. v. SunAmerica Life Insurance Co.,* 136 F.3d 537, 540–41 (7th Cir.1998). Here, there are no claims that FW Corp. has had *any* contacts with the state of Illinois other than contacts related to the Robbins Facility. FW Corp. avers that it owns no property in Illinois, is not registered to do business in Illinois, pays no taxes in Illinois, and has no exclusive agents in Illinois. In light of these facts, the court cannot find that FW Corp. has been "doing business" in Illinois and, thus, is not subject to general jurisdiction in the courts of Illinois. *See id.* (finding that firm that "has no office, owns no property, and makes no sales in Illinois" but "advertises its subsidiaries' products in national media that are broadcast or otherwise disseminated in Illinois," borrows money from a Chicago bank, and has security interests in certain Illinois property is not "doing business" in Illinois; "A firm that has no offices or sales in Illinois is not much like a resident firm and so is not within the reach of the statute.").

***5** The court finds that it does have specific jurisdiction over FW Corp. A court has specific jurisdiction over a defendant "in a suit arising out of or related to the defendant's contacts with the forum ." *Helicopteros,* 466 U.S. at 414 n. 8, 104 S.Ct. at 1872 n. 8. The EEOC argues that the acts of Semerad and Woods, both FW Corp. employees working at the Robbins Facility project, constitute sufficient contacts with the state of Illinois to establish personal jurisdiction consistent with due process and that the lawsuit at hand arises from or is related to Semerad's and Woods' conduct. If the conduct of Semerad and Woods can be imputed to FW Corp., that conduct is sufficient to justify this court having personal jurisdiction over FW Corp., for the conduct was purposeful and is related to this lawsuit. The facts in this case indicate that Semerad's job position with FW Corp. continued throughout the events at issue, that Semerad's job position subsumed job activities with subsidiaries, such as FW Const., that Semerad acted during the relevant time period both as an employee of FW Corp. (i.e., continued to report to Schessler at FW Corp.) and as an agent of FW Const., where he was the acted as Manager of Labor Relations. Additionally, the EEOC argues that the claims against FW Corp. arise from Semerad's actions. In light of these facts, the court finds that it would be appropriate to exercise personal jurisdiction over FW Corp.

B. Motion for summary judgment

"Ordinarily, a party not named in an EEOC charge may not be sued under Title VII." *Schnellbaecher v. Baskin Clothing Co.,* 887 F.2d 124, 126 (7th Cir.1989)(citing 42 U.S.C. § 2000e–5). While this requirement is not jurisdictional but instead, is a condition precedent, courts generally apply the rule to ensure that prospective defendants receive proper notice of the charges against them and that prospective defendants have an opportunity to engage in the process of conciliation with the EEOC. *Id.* FW Corp. argues that summary judgment should be granted as to it because it was not named in the EEOC charge as a charged party or in the factual statement.

The EEOC argues that this case falls within an exception to the general rule that a Title VII lawsuit cannot be maintained against a party not named in the EEOC charge. Where " 'an unnamed party has been provided with adequate notice of the charge, under circumstances where the party has been given the opportunity to participate in conciliation proceedings aimed at voluntary compliance," ' *Id.,* a Title VII suit may still be maintained against that unnamed party. The EEOC argues that this exception applies here because FW Corp.'s subsidiary, FW Const., was named in the charge and because FW Corp. had notice of the charges against FW Const. and actually participated in the conciliation process on behalf of FW Const. The fact that a parent had notice of EEOC charges against its subsidiary is not sufficient to meet this exception where the parent "did not thereby have any notice of any charges against it, nor did it have any opportunity to conciliate on its own behalf." *Id.* at 127. Where the parent lacked notice of charges against it, the fact that the parent acted on its subsidiary's behalf in the conciliation process is likewise insufficient to meet this exception. *Currie v. Danna,* 1994 WL 494708,[*]3 (N.D.Ill.1994); *Bright v. Roadway Services, Inc.,* 846 F.Supp. 693, 697 (N.D.Ill.1994).

***6** The EEOC, however, argues that FW Corp. and FW Const. together constitute a single employer, and, thus, that notice of charges against FW Const. is the equivalent of notice of charges against FW Corp. *See Mihalik v. Illinois Trade Assoc.,* 1994 WL 66915,*2–3 (N.D.Ill.1994) (finding that an unnamed party with both "a close relationship with a named respondent" and actual notice of the EEOC charges against that respondent may be sued under Title VII). *Cf. Currie,* 1994 WL 494708 at *3–5 (acknowledging that notice to subsidiary of charges against it may constitute notice to the parent if the parent and subsidiary are deemed to be a "single employer"; finding that parent and subsidiary were not a "single employer"). The Seventh Circuit has recently clarified the single employer rule in the Title VII context. *See Papa v. Katy Indus .,* 166 F.3d 937 (7th Cir.1999) (discussing single employer rule where plaintiff sought to aggregate number of parent's and subsidiary's employees to meet Title VII's 15 employee threshold in the definition of employer). In *Papa,* the Seventh Circuit identified three situations in which a parent and subsidiary could be deemed a "single employer":

> 1. Where a plaintiff meets the "traditional conditions" for "piercing the [corporate] veil" between the parent and subsidiary;
>
> 2. Where a business enterprise has "split itself up into a number of corporations ... for the express purpose of avoiding liability under the discrimination laws"; or
>
> 3. Where the parent corporation might have directed the discriminatory act, practice, or policy of which the employee of its subsidiary was complaining.

166 F.3d at 940–41. The EEOC argues that FW Corp. directed the discriminatory practices at issue in this case. In particular, the EEOC argues that the actions of Semerad, a FW Corp. employee acting as FW Const.'s Manager of Labor Relations, constitute direction of the discriminatory practices. FW Corp. argues that it did not "direct" the hostile work environment, and, indeed, there are no allegations that FW Corp. directed that graffiti be placed in the portable toilets at issue in this case. But that argument misses the point. The EEOC seeks to find FW Corp. liable for the failure to *remedy* the hostile work environment and argues that FW Corp. used Semerad to centralize the labor relations and human relations function at the various subsidiaries, that Semerad was the person directing the response to the graffiti at issue in this case, and that Semerad, and through him FW Corp., failed to respond to the graffiti and, thus, to alleviate the hostile work environment that allegedly existed at the Robbins Facility site. FW Corp. argues that Semerad was not acting as an agent of FW Corp. but, rather, as an agent of FW Const., at the relevant time periods. That point, however, is clearly disputed, and, if that was FW Corp.'s only argument, summary judgment would be inappropriate. *See Mihalik,* 1994 WL 66915 at *2 (denying summary judgment to parent corporation not named in EEOC charge where "the precise nature of the relationship between [the parent] and [the subsidiary] is murky"). However, an undisputed fact in this case is that Semerad became involved in this case after most, if not all, of the relevant events were completed. (Dft's 12(M) Stmt. ¶ 13.) Thus, while the EEOC argues that Semerad's acts constitute direction of the hostile work environment, there are *no* facts to indicate that Semerad was involved in the alleged failure to respond until *after* the EEOC charge was filed. While the EEOC alleges that Semerad advised and directed the on-site project managers and on-site labor relations and human resources managers at the Robbins Facility, there is no evidence that Semerad advised or directed *anyone* regarding the alleged graffiti until after the EEOC charges in this case were filed—or that Semerad was even aware of the graffiti before the filing. FW Corp., thus, cannot be considered to be a single employer under *Papa* and cannot be expected to have read the EEOC charges as applying to its conduct.

IV. Conclusion

***7** For the foregoing reasons, the motion to dismiss is denied and summary judgment is granted as to FW Illinois, FW USA, and FW Corp.

Footnotes

1 The EEOC disputes this claim on the grounds that it attempted to conciliate with FW Const., which it says is a "single employer" with FW Corp. This legal argument will be addressed in the legal analysis section of this opinion.

2 FW Corp. also alleges that it had no employees acting on its behalf in Illinois at the time of the Robbins project. (Dft's 12(M) Stmt. ¶ 16.) As noted further in this fact section, the parties dispute whether certain employees of FW Corp. who were acting in the state of Illinois on the Robbins project site, were acting as employees of FW Corp. or as employees of FW Const.

[3] The EEOC also asserts, citing to FW Corp.'s SEC Form 10–K/A, that the various Foster Wheeler enterprises presents itself as one entity, FW Corp. (Ptf's 12(N) Stmt. ¶ 3.) Beyond being supported by vague materials, which frequently refer to FW Corp. *and* its subsidiaries, this assertion does not help to clarify the single employer question.

[4] The EEOC asserts that Roach and Wallace also reported to "others at Foster Wheeler Corporation," (Ptf's 12(N) Stmt. ¶ 11), but the cited materials, which clearly state that Roach and Wallace reported to Semerad, offer only speculation regarding the possibility that Roach and Wallace might have reported to some unknown "others" at FW Corp. (*See* Semerad Dep. at 12, 21; Wallace Dep. at 26, 40, 135–36.)

[5] The EEOC includes a number of factual statements about the alleged failure to provide anti-discrimination training to managers at the Robbins job site. (Ptf's 12(N) Stmt. ¶¶ 15–17.) These statements are not relevant to the questions of whether this court has personal jurisdiction over FW Corp. and whether FW Corp. and FW Const. acted as a single employer.