1995 WL 602885
United States District Court, E.D. Louisiana.

UNITED STATES of America
v.
The SHERIFF OF ASSUMPTION PARISH LOUISIANA (in his official capacity).

Civ.A. No. 94-3656. | Oct. 11, 1995.

Opinion

RULING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

LIVAUDAIS, District Judge.

***1** Before the court is motion for summary judgment of the plaintiff, the United States of America, for dismissal with prejudice of the First through Seventh, Ninth and Tenth defenses contained in the Answer and Defenses of defendant, Sheriff of Assumption Parish ("Sheriff"). In addition, the plaintiff moves for dismissal of ¶¶ 2, 5, 11 and 12 of the Eighth Defense. Defendant does not object to the dismissal of his First through Fifth defenses, or to ¶¶ 5, 11 and 12 of his Eighth Defense. Defendant does object to the dismissal of the Ninth and Tenth Defenses. For the following reasons, the motion is granted in part and denied in part.

FACTS:
The following facts are taken in large part from the Defendant's Memorandum in Opposition:

On November 15, 1994, the Department of Justice filed this complaint under 42 U.S.C.A. §2000e, *et seq.* (Title VII) of the Civil Rights Act of 1964. The complaint named as defendant the "Sheriff of Assumption Parish, Louisiana (in his official capacity)". In due course the Complaint was served on Sheriff Mabile, the present incumbent, and answered by him.

In its Complaint, the Department of Justice alleges that the sheriff has pursued and continues to pursue policies and practices that discriminate against women, and deprive or tend to deprive women of employment opportunities because of their sex. In particular, the Complaint alleges that the sheriff has failed or refused to hire, or to consider for hire, women in the position of road deputy or its equivalent. The complaint is based primarily on the claims made by April D. Jones Cola to the Equal Employment Opportunity Commission (EEOC). The Complaint concludes by requesting not only injunctive and declaratory relief against the sheriff, but also monetary relief for all as yet unidentified past female victims of such alleged discrimination.

In his Answer to the Complaint, the sheriff asserted as his Ninth Defense that:

> Defendant further avers that at the time that April D. Jones Cola applied for employment with the Assumption Parish Sheriff's Department, Defendant was not the Sheriff of Assumption Parish and thus had no input in to the decision as to whether April D. Jones Cola should be hired.

Additionally, the Sheriff asserted as his Tenth Defense that:

> Defendant further avers that he is not responsible for the alleged act of any predecessor Sheriff of Assumption Parish.

Following a status conference on September 8, 1995, this court has ordered a bifurcated trial. Trial on liability issues is set for January 25, 1996 with the damages issues trial at a later date, if necessary.

DISCUSSION:

I.

The essence of the defendant's Ninth and Tenth Defenses is that the current Sheriff, Thomas P. Mabile, is not liable under Louisiana law for the alleged actions of his predecessor, Anthony Falterman. The defendant argues that there are no "sheriff's departments" or "sheriff's offices" as continuing entities under Louisiana Law, but that each sheriff is a distinct and separate elected constitutional officer. As such each Sheriff is separate and distinct from the predecessors and successors in the office and cannot be held liable for the actions of his predecessors or successors.

***2** Plaintiff maintains that under federal law a successor is liable for both prospective relief and "make-whole" relief for the acts of the predecessor. The contention is, in the present case, that there exists a pattern and practice of gender based discrimination that continued from the prior administration to that of the present sheriff in the hiring of road deputies. Additionally, the plaintiffs claim the that a court has the power and authority to grant injunctive relief even after apparent discontinuance of the unlawful practice. (Plaintiff's brief at Pg. 8)

The issue of "successor liability" has never been directly addressed by the Fifth Circuit. However, the court has consistently ruled that questions of status for Title VII purposes are controlled by federal law. *Montgomery v. Brookshire,* 34 F.3d 291 (5th Cir. 1994). In *Montgomery,* the court stated that, as to the definition of "employee" for Title VII purposes, state law is relevant only insofar as it describes the plaintiff's position. *Id.* To allow each state to determine when Title VII will apply would create an unmanageable lack of uniformity in the application of Title VII provisions. This rationale of uniformity is equally as important here as the mere classification of an entity, as distinguished from the characteristics of the entity, should not be a means to avoid liability.

The leading case on successor liability, *EEOC v. MacMillan Bloedel Containers, Inc.,* 503 F.2d 1086 (6th Cir. 1974), while never specifically considered by the Fifth Circuit itself, has been the basis of several decisions within this Circuit. See *Green v. Westvaco Corp.,* 1987 WL 16821 (E.D. La., September 9, 1987) (No. 86-cv-4472); *Burt v. Ramada Inn of Oxford, Miss.,* 507 F.Supp 336 (N.D.Miss. 1980); *Stevenson v. International Paper Co.,* 432 F.Supp 390 (W.D.La., 1977). The general rule for Title VII is that only those parties named in the EEOC charge are subject to suit under Title VII, however an exception was created by the *MacMillan* decision to cover successors to the named parties. *Simon v. Kelso Marine, Inc.,* 19 Empl.Prac.Dec. 9053, 1979 WL 167 (S.D. Tex.). This exception was designed to protect the claimant from either bona fide or evasive corporate transfers and to further the purposes of Title VII. *Id.*

However, successor liability is not automatic, but must be determined on a case by case basis. *EEOC v. MacMillan,* 503 F.2d at 1091. The factors to be considered include: (1) whether the successor had notice of the charge, (2) the ability of the predecessor to provide relief, (3) whether there has been a substantial continuity of operations, (4) whether the new employer uses the same facilities, (5) whether the new employer uses the same or substantially the same work force, (6) whether he uses the same or substantially the same supervisory personnel, (7) whether the same jobs exist under substantially the same working conditions, and (8) whether he uses the same machinery and equipment. *Id.* at 1094.

***3** Under these factors, the determination of successor liability is a heavily fact based determination. As neither party to the present litigation has presented an adequate factual basis for a ruling on these factors, the issue is inappropriate for summary judgment at this time.

II.

Additionally, the defendant appears to maintain an objection to the dismissal of the Sixth and Seventh Defenses and ¶ 2 of the Eighth Defense. However, the defendant fails to address these objections in his Memorandum in opposition. After considering the applicable law, the court finds that these defenses are groundless as the Attorney General is not constrained by a statute of limitations, that the concept of qualified immunity is inapposite in this situation, and that this court does have subject matter jurisdiction over this case pursuant to 42 USCA § 2000e-5, *et seq,* and 28 USCA §1345.

Accordingly,

IT IS HEREBY ORDERED that the motion for summary judgment is DENIED as to the Ninth and Tenth Defenses of the defendant, as stated in his Answer.

IT IS FURTHER ORDERED that in all other respects the motion is GRANTED, thereby dismissing the First, Second, Third, Fourth, Fifth, Sixth, and Seventh defenses, as well as ¶¶ 2, 5, 11, and 12 of the defendant's Eighth Defense.

Parallel Citations

69 Fair Empl.Prac.Cas. (BNA) 129