EEOC v. Stephen T. Cox, Inc.

United States District Court for the Middle District of Tennessee, Nashville Division
June 28, 2001, Decided ; July 2, 2001, Entered
No. 3:99-1184

Reporter: 2001 U.S. Dist. LEXIS 25673
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, DEENA BLAKE, Plaintiff-Intervenor v. STEPHEN T. COX, INC., d/b/a COX CABINET COMPANY, Defendant.

Subsequent History: Summary judgment denied by, Claim dismissed by, in part EEOC v. Steven T. Cox, Inc., 2002 U.S. Dist. LEXIS 27160 (M.D. Tenn., July 19, 2002)

Prior History: EEOC v. Stephen T. Cox, Inc., 2001 U.S. Dist. LEXIS 25674 (M.D. Tenn., June 28, 2001)

Disposition: [*1] Plaintiff's Motion to amend Complaint granted.

Counsel: For Equal Employment Opportunity Commission, PLAINTIFF: Katharine W Kores, Terry Beck, Celia S Liner, Equal Employment Opportunity Commission, Memphis, TN USA.

For Equal Employment Opportunity Commission, PLAINTIFF: Lawrence "Ken" R Kenyon, II, Equal Employment Opportunity Commission, Nashville, TN USA.

For Steven T Cox DBA Cox Cabinet Company, DEFENDANT: Robert L Scruggs, Nashville, TN USA.

For Deena Blake Intevenor, PLAINTIFF: Richard James Braun, Richard J Braun & Associates, Nashville, TN USA.

Judges: JOHN T. NIXON, SENIOR JUDGE, UNITED STATES DISTRICT JUDGE.

Opinion by: JOHN T. NIXON

Opinion

MEMORANDUM ORDER

Pending before the Court is the Equal Employment Opportunity Commission's ("EEOC") Motion for Leave to Amend Complaint, (Doc. No. 33), to which no Reply has been filed. Plaintiff's Motion, filed pursuant to *Rules 15(a)* and 19(a) of the Federal Rules of Civil Procedure, seeks to amend the Complaint to join Arete MDF, LLC [*2] as a defendant in this matter. Upon review of the record and for the reasons discussed herein the Court grants Plaintiff's Motion.

I. Background

On October 20, 2000, Arete MDF, LLC ("Arete"), entered an Asset Purchase Agreement ("Agreement") with Stephen T. Cox, Inc., d/b/a Cox Cabinet Company ("STCI") and Stephen T. Cox for the sale of substantially all of STCI's operating assets to Arete including all of STCI's cash, cash equivalents, receivables, inventory, equipment, intellectual property, proprietary information, all rights of STCI as lessee, all assumed contracts, and goodwill. (Doc. No. 35, *Affidavit of Celia S. Liner* (hereinafter "Liner Affidavit"), Pl. Ex. 2 at A-B.) Under the Agreement, Arete agreed to assume certain of STCI's liabilities including payroll, payroll taxes and up to one week of accrued vacation days for each Cox Cabinet employee, service obligations under warranties, and accrued sales commissions due as of the closing date. (Id. at § 1.5.) STCI, however, retained all liabilities pursuant to any claim, litigation or proceeding in connection with the operation of the business prior to the closing and not expressly assumed by Arete. (Id. at [*3] § 1.27.) STCI also retained all liability based on its own tortious or illegal conduct. (Id. at § 1.27.)

The Agreement gave Arete "all requisite power and authority to carry on the business as it is now being conducted by Seller . . ." STCI agreed to change its corporate name so that it does not include the words "Cox Cabinets" or any variation thereof. (Id. at § 5.8.) On October 26, 2000, Arete filed a Certificate of Assumed Name with the Secretary of State for the Commonwealth of Kentucky, in which it took the name Cox Cabinet Company. (Liner Affidavit, Pl. Ex.3.) Stephen Cox signed a covenant not-to-compete for five years, agreeing in part not to engage in a competitive cabinet manufacturing business in any way, and not to solicit or induce employees to leave Cox Cabinet to work for him. (Liner Affidavit, Pl. Ex. 2, Ex. C.) Mr. Cox also agreed to continue employing the Cox Cabinet Company employees after the closing until such times as Arete was able to secure the state tax numbers and implement an employee benefits plan. (Liner Affidavit, Pl. Ex. 2 § 7.1(p).) He further agreed to provide consulting services to Arete for up to twenty hours per week for one year (Liner [*4] Affidavit Pl. Ex. 4.)

The Agreement listed this law suit as pending and representatives for Arete discussed the subject matter and status of this case with Celia Liner, an attorney for the EEOC, in May of 2000.

II. Discussion

Rule 19(a) of the Federal Rules of Civil Procedure provides in pertinent part:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, . . . If the person has not been so joined, the court shall order that the person be made a party. . . . If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.Rule 19(a) has been interpreted to require the joinder of necessary parties where it will not deprive the Court of subject matter jurisdiction. *See* *Continental Cas. Co. v. Taco Bell Corp.*, 127 F. Supp. 2d 864 (W.D.Mich. 2001).

Plaintiff asserts that Arete is subject to [*5] the service of process through its registered agent and because the Court's jurisdiction over this case is derived from federal question jurisdiction Arete's joinder will not deprive the Court of subject matter jurisdiction. (Doc. No. 34 at 5.) Plaintiff also argues that if Arete is not joined, complete relief could not be accorded among the parties. Now that STCI has sold its business operations to Arete, should Plaintiff prevail, the injunctive relief sought could not be imposed against STCI. (Id. at 6, 7.)

The Court is persuaded by Plaintiff's argument, particularly in light of the fact that the Arete workforce appears to be substantially the same as that employed by both STCI and its predecessor Cox Cabinet Company, Inc. Plaintiff's allegations suggest that the statutorily prohibited conduct in question in this lawsuit was committed by male employees at all levels and therefore any injunctive relief would necessarily be directed toward modifying the behavior of these male employees and their current employer. Furthermore, if rightful place reinstatement is to be provided to the allegedly injured employees, only the employer currently running Cox Cabinet Company can provide [*6] such a remedy. Without joining the current employer, Arete, complete relief could not be awarded among the existing parties to this action, accordingly, Plaintiff's Motion is hereby GRANTED. Accordingly, Arete MDF, LLC, d/b/a Cox Cabinet Company, shall be joined as a defendant in this legal action.

The Court also finds that several of the MacMillan factors militating in favor of imposing successor liability upon Arete have been met. [1] Apparently there is substantial continuity of business operations, and Arete had actual notice of the instant lawsuit prior to purchasing STCI's assets. Nevertheless, the Court will not now determine the extent of financial liability that Arete may bear as a successor employer, if any, without additional information about STCI's ability to financially compensate the injured employees.

[*7] It is so ORDERED.

Entered this the 28th day of June, 2001.

JOHN T. NIXON, SENIOR JUDGE

UNITED STATES DISTRICT COURT

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[1] In a contemporaneously filed Memorandum addressing Defendant's Motion for Summary Judgment, the Court has engaged in an extensive discussion of the legal standard applicable to determining when imposition of successor liability is appropriate in the context of an employment discrimination case. Therefore, the Court will address this issue here briefly.