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United States District Court,
E.D. Louisiana.

Debra Rice SAFFORD
v.
ST. TAMMANY PARISH FIRE PROTECTION DISTRICT NO. 1, et al.

No. Civ.A.02-0055.Jan. 6, 2004.

Attorneys and Law Firms

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Opinion

ORDER AND REASONS

VANCE, J.

***1** Before the Court is motion of defendant American Alternative Insurance Corporation to join Diana Aucoin as a necessary party under Federal Rule of Civil Procedure 19(a). For the following reasons, the Court denies defendant's motion.

I. BACKGROUND

Plaintiff Debra Rice Safford asserts that the defendant St. Tammany Parish Fire Protection District No. 1 (the "Fire District") failed to promote her from volunteer to full-time firefighter because of her gender and age. Safford claims that in May 2000, the Fire District passed over her application for a full-time firefighter position in favor of four younger, less-qualified men. Safford further alleges that in August 2001, she was passed over in favor of three younger, less-qualified men.

On September 22, 2001, plaintiff filed a claim with the Equal Employment Opportunity Commission.[1] On January 8, 2002, Safford filed a complaint against the Fire District and its insurer. Safford alleges that the Fire District discriminated against her on the basis of age and gender in violation of 42 U.S.C. § 1983; 42 U.S.C. § 2000e, *et seq.* ("Title VII"); 29 U.S.C. § 623, *et seq.* ("ADEA"); and Louisiana anti-discrimination laws.

1 She received a right to sue letter from the EEOC dated January 11, 2002.

On July 21, 2003, Safford sought leave to file her fourth amended and supplemental complaint. Safford indicated that the purpose of the amendment was to: (1) incorporate all previous amendments into a single pleading, (2) add allegations regarding events that occurred since the filing of the last amendment, and (3) add Steve Farris[2] and Milton Kennedy[3] as defendants. Magistrate Judge Shushan granted in part and denied in part plaintiff's motion for leave to file a fourth amended complaint. Specifically, Magistrate Judge Shushan allowed Safford to amend her complaint but required her to limit her ADEA and state law claims to the Fire District. *See* Hearing On Motion, Rec. Doc. 113, at 3. After the magistrate's ruling,

plaintiff filed her fourth amended complaint in which she clarified that her Title VII, ADEA, and state anti-discrimination law claims do not apply to the individual defendants. The Fire District moved the Court to review the magistrate judge's ruling. In an Order and Reasons dated January 5, 2004, the Court affirmed in part and reversed in part the magistrate judge's ruling. The Court affirmed the magistrate judge's determination that the plaintiff may amend her complaint to assert a claim against Fire Chief Kennedy but found that the claim must be based only on conduct that occurred within the one-year limitation period. The Court reversed the magistrate judge's ruling that granted plaintiff leave to amend her complaint to assert a claim against Fire Board Chairman Farris.

2 Plaintiff asserts that Farris was a Commissioner appointed to the Fire District by the City Counsel for the city of Slidell, Louisiana, and was Chairman of the Fire Board during the period of time in question. *See* Fourth Amended Complaint, Rec. Doc. 116, at ¶ I.

3 Plaintiff asserts that Kennedy was the Fire District's Fire Chief during the period of time in question. *See* Fourth Amended Complaint, Rec. Doc. 116, at ¶ I.

Plaintiff's complaint alludes to a consent decree that defendant entered into with the United States Department of Justice in 1980. The complaint states:

X-B.

Defendants were obligated to hire/promote certain percentages of women and minorities by a Consent Decree the Fire District entered into with the United States Department of Justice in approximately 1980.

***2** Defendants secured their release from the Consent Decree when they failed to inform the Justice Department that the Fire District had lost one of only two female firefighters, and that female firefighter had filed a discrimination claim against the Fire District with the EEOC due to the Fire District's discriminatory actions. Since that time, the only remaining female firefighter has also left the District. Defendant Farris was instrumental in securing the District's release from the Consent Decree.

X-C.

On information and belief, during the period while they were subject to the Consent Decree and thereafter, Defendants failed to institute sufficient policies, procedures and guidelines to prevent discrimination such as that practiced against Plaintiff and/or to affirmatively rectify past discrimination. Alternatively, Defendants breached whatever policies, procedures and guidelines were in effect in their hiring/promotion policies as they affected Plaintiff. In addition, Defendants' failure to institute sufficient anti-discrimination policies precludes their ability to assert a good faith defense in these proceedings.
(Fourth Amended And Supplemental Complaint, Rec. Doc. 116.) The Fire District obtained its release from the Consent Decree in May 2000, the same month that it rejected Safford's first employment application.

American Alternative now moves this Court to join Diana Aucoin as a necessary party under Federal Rule of Civil Procedure 19(a). During the relevant time period, Diana Aucoin was an administrative assistant for the Fire District.[4] She conducted background checks on applicants for employment, including Safford.[5] As a part of Safford's background check, Aucoin contacted one of Safford's previous employers and reported that the employer gave Safford a negative reference.[6] Aucoin also sat on the Hiring Committee when the committee interviewed Safford and unanimously decided not hire her in May 2000.[7] In addition, American Alternative contends that Aucoin was instrumental in securing the Fire District's release from the Consent Decree.

4 *See* Def.'s Mot. to Join Aucoin, Ex. A, Aucoin Affidavit.

5 *See id.*

6 *See id.*

7 *See id.*

II. DISCUSSION

A. Applicable Law

American Alternative argues that the Court should join Aucoin under Federal Rule of Civil Procedure 19. Proper joinder under Rule 19 is a two step process. First, the court must decide if the absent party is a necessary party to the action. *See* FED. R. CIV. P. 19(a). Second, if the absent party is a necessary party, but its joinder is not feasible, the court must decide whether the absent party is an "indispensable" party to the action under Rule 19(b). *See* FED. R. CIV. P. 19(b).

Under Rule 19(a), a party is "necessary" if:

(1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

***3** FED. R. CIV. P. 19(a).

If a party is "necessary," but cannot be joined in the action, the court must determine "whether in equity and good conscience the action should proceed among the parties before it ..." FED. R. CIV . P. 19(b). The rule provides a list of four factors for a court to consider when making its determination:

[F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

FED. R. CIV. P. 19(b).

State law is relevant "in determining what interest the outsider actually has, but the ultimate question whether, given those state-defined interests, a federal court may proceed without the outsider is a federal matter." *Morrison v. New Orleans Pub. Serv. Inc.*, 415 F.2d 419, 423 (5th Cir.1969) (*citing Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 125 n. 22, 88 S.Ct. 733, 19 L.Ed.2d 936 (1968)).

B. Analysis

American Alternative asserts that as a Fire District employee, Diana Aucoin is an insured employee under the Fire District's insurance policy, absent any applicable exclusion. Defendant quotes a provision of the policy that states that Fire District employees are insured under the policy, but only for "acts within the scope of their employment by [the Fire District] or while performing duties related to the conduct of [the Fire District's] business."[8] Defendant contends that it has a right to demand joinder of its alleged insured under Louisiana Revised Statute 22:655. Louisiana's Direct Action Statute, LA. R.S. 22:655(B), provides:

8 Def.'s Mot. to Join Aucoin, at p. 3.

(1) The injured person ... at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and, such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido.... However, such action may be brought against the insurer alone only when:

(a) The insured has been adjudged a bankrupt by a court of competent jurisdiction or when proceedings to adjudge an insured a bankrupt have been commenced before a court of competent jurisdiction;

(b) The insured is insolvent;

(c) Service of citation or other process cannot be made on the insured;

(d) When the cause of action is for damages as a result of an offense or quasioffense between children and their parents or between married persons;

(e) When the insurer is an uninsured motorist carrier; or

(f) The insured is deceased.

Defendant contends that Safford will seek to hold it liable for the actions of its alleged insured Aucoin and therefore the Court must join Aucoin under Louisiana Revised Statute 22:655.

***4** Plaintiff argues, and defendant concedes, that defendant's right to demand joinder of its alleged assured is a procedural rather than substantive right. *See also McAvey v. Lee*, 260 F.3d 359, 367 (5th Cir.2001) (holding that the provision of section 655(B)(1) ending with subparagraphs (a)-(e) set forth procedural requirements that "provide the insurer a procedural means to avoid defending a direct action alone, except in the circumstances listed, by objecting to the non-joinder of the insured.") Because joinder of Aucoin is a procedural matter governed by federal procedure, the Court turns to Federal Rule of Civil Procedure 19.

First, the Court points out that the Fire District, the named insured under the policy, is a party to this action. Thus, even in Aucoin's absence, plaintiff may still obtain complete relief. Louisiana Civil Code article 2320 provides that "[m]asters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed." *See also Cooper v. Reed*, 2002-0575, 845 So.2d 411, 415 (La.App. 1 Cir. 2/14/03) (noting that the language "in the exercise of the functions in which they are employed" is the codal expression of the usual phrase "in the course and scope of the employment.") As a result, the Fire District, a party to this action and the insured under American Alternative's policy, is vicariously liable for any damage caused by Aucoin in the scope of her employment. Plaintiff does not allege in her complaint, nor does defendant argue, that Aucoin acted outside of the scope of her employment. Safford may therefore obtain complete relief in spite of Aucoin's absence from the suit. Further, the Court finds that as a result Aucoin does not have an interest relating to the subject of the action. Accordingly, the Court concludes that Diana Aucoin is not a necessary party under Rule 19(a).

III. CONCLUSION

For the foregoing reasons, the Court denies defendant's motion to join Diana Aucoin as a defendant in this action.

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