

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

Judge: PHRA Claims Against Individuals OK in Federal Court

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A plaintiff in a sexual harassment case can pursue claims against individuals in federal court by suing the employer under Title VII and the individual defendants under the Pennsylvania Human Relations Act, a federal judge has ruled.

In his 16-page opinion in *Wasserman v. Potamkin Toyota Inc.*, U.S. District Judge Herbert J. Hutton rejected the argument that he should decline to exercise supplemental jurisdiction over the PHRA claims because they present a novel and complex issue of state law.

Attorney William T. Saltzer, who represents three individual defendants sued by Rachel Wasserman, argued that Pennsylvania courts have not concluded whether individual employees may be liable under Section 955(e) of the PHRA, and that Hutton should therefore dismiss that claim.

Saltzer cited *Goodwin v. Seven Up Bottling Co. of Phila.*, in which an Eastern District judge dismissed the plaintiff's PHRA claim against the individual defendants because the Pennsylvania state courts had yet to decide whether Section 955 imposes personal liability on individual employees.

But Hutton said, "The situation presented to the court in *Goodwin* is distinguishable from the present case. In *Goodwin*, the court also dismissed the Title VII case against the individual employees."

As a result, Hutton said, the *Goodwin* court declined supplemental jurisdiction for

two reasons - because it was presented with a novel state issue, and because the federal claim against the defendant was dismissed.

"Therefore, the court in *Goodwin* found that it would not prejudice the plaintiffs if the court dismissed this claim and forced them to file their PHRA claim in state court," Hutton wrote.

But in *Wasserman's* case, Hutton said, "the Title VII claim is still viable. ... Thus, if this court were to dismiss plaintiff's PHRA claim, she would have to maintain a separate action involving the same exact set of facts in state court."

If the individuals were dismissed from her suit, Hutton said, *Wasserman* "would have to expend a substantial amount of time, effort, and money to prepare a claim that could just as easily be argued in federal court."

Hutton also ruled that *Wasserman's* PHRA claim "no longer presents a novel or complex state law issue."

When *Goodwin* was decided, he said, the 3rd U.S. Circuit Court of Appeals had just recently issued an opinion which found that individual employees may be liable under Section 955(e) of the PHRA.

"Many courts have since concluded that individual employees may be liable under Section 955(e) of the PHRA," Hutton wrote. "While the Supreme Court of Pennsylvania has yet to rule on this issue, the court is confident that the Supreme Court would agree with the numerous courts that have concluded that individual employee liability is possible under Section 955 of the PHRA."

Hutton was also forced to tackle the ques-

tion of whether *Wasserman* had pleaded sufficient facts to meet the test for Section 955 individual liability.

Wasserman, who is represented by Hyman Lovitz and Kevin Lovitz of Lovitz & Gold, worked for Potamkin Toyota from Oct. 19, 1994, until Aug. 12, 1996, as an executive assistant. The individual defendants named in her suit are Robert Weisen and Santi Parrilla, two Potamkin managers, and David Hyman, the dealership's vice president.

In her suit, *Wasserman* all three men subjected her to a continuous pattern of sexually hostile and offensive conduct, including sexually offensive gestures and comments. She also alleges that these acts created a hostile and offensive work environment which interfered with the performance of her employment.

Wasserman claims she repeatedly objected to the conduct of Weisen and Parrilla and that when her objections fell on deaf ears, she brought her objections to Hyman. But Hyman failed to stop the acts of sexual harassment and sex discrimination, and thus added to the already hostile and offensive work environment, the suit alleges.

The suit says Hyman also subjected *Wasserman* to sexually offensive conduct. Realizing that they would not cease their behavior, *Wasserman* says she involuntarily resigned her position.

Saltzer argued that *Wasserman* failed to allege sufficient facts to support her claims of individual accomplice liability under the PHRA.

But Hutton found that the when the case

law is applied to Wasserman's case, she met the test.

"A supervisory employee who engages in discriminatory conduct while acting in the scope of his employment shares the intent and purpose of the employer and may be held liable for aiding and abetting the employer in its unlawful conduct," Hutton wrote, citing *Glickstein v. Neshaminy School District*.

"Thus, a supervisor's failure to take action to prevent discrimination, even when it is the supervisory employee's own practices at issue, can make him or her liable for aiding and abetting the employer's insufficient remedial measures," he wrote, citing *Frye v. Robinson Alarm Co.*

Saltzer argued that Wasserman pleadings

"are insufficient to establish the direct supervisor-employee nexus" required under Section 955.

Hutton disagreed, saying Wasserman alleged that Weisen and Parrilla were managers and that she, as executive assistant, received her assignments from them. She also alleged that Weisen and Parrilla committed sexually harassing conduct, including sexually offensive comments and gestures, he noted.

"This court finds that plaintiff sufficiently pled that Weisen and Parrilla were, in addition to being her direct harassers, her supervisors," Hutton wrote. "Therefore, despite the defendants' assertions to the contrary, plaintiff's complaint meets the pleading requirements for Section 955(e) liability."

Saltzer also argued that Wasserman failed to allege facts under which Hyman could be liable because the only allegations against Hyman were that he was informed of the harassment and did nothing to remedy it.

Hutton again disagreed, saying, "First, plaintiff alleges that Hyman, as vice president and supervisor, failed to take appropriate remedial measures. Second, plaintiff alleges that Hyman personally and directly engaged in sexually offensive and hostile conduct. These allegations provide an ample basis for plaintiff's Section 955(e) claims."

Potamkin Toyota Inc. is separately represented by Imogene Hughes of Kleinbard Bell & Brecker.