



The Colorado

Bench Trial Reporter

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UNITED STATES DISTRICT COURT

No. 92-K-1269 Equal Employment Opportunity Commission v. Master Manufacturers, Inc.

Judge: John L. Kane, Jr.

Trial Date: January 12, 1993

Judgment Date: March 31, 1993

Back Pay - Health Coverage for Pregnancy Related Medical Conditions

Plaintiff, the Equal Employment Opportunity Commission ("EEOC"), brought this suit against defendant, Master Manufacturers, Inc., to determine if defendant had discriminated against a class of females by not providing health coverage for pregnancy-related medical conditions. Plaintiff also contended that defendant discriminated against an ex-employee, Karen Cox King, because of her sex and because of her pregnancy. Karen Cox King voluntarily left the employ of defendant to avoid having her wages garnished. She was pregnant at the time of her departure. King filed her charge of discrimination against defendant a month after leaving the employ of defendant.

Defendant confessed to not providing health care coverage for pregnancy related medical conditions, but denied the allegations of Karen Cox King. The Court found that the main witness for the EEOC was not a credible witness and concluded that the EEOC had failed to prove a sufficient nexus between the departure of Karen Cox King and her gender or pregnancy. Defendant asserted that it was entitled to attorneys fees because plaintiff's

claim was frivolous, unreasonable and without foundation. Plaintiff claimed that its decision to initiate the instant litigation was reasonable.

The evidence was undisputed that the EEOC thoroughly investigated and considered King's allegations of discrimination. **Just because the witness' testimony was not credible did not mean the case was frivolous, unreasonable and without foundation.** The Court held that credibility is a question of fact for the fact finder.

A prevailing defendant in a Title VII case may recover attorney fees only if the plaintiff's case is frivolous, unreasonable and without foundation. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421-22 (1978). *Christiansburg* cautions against equating frivolousness with the plaintiff's ultimate failure to prevail, 434 U.S. at 422. In a previous case, this circuit suggested that where the EEOC made an investigation "in due course and in the usual manner" **there must be evidence of bad faith prior to an award of attorney fees.** *EEOC v. Fruehauf Corp.*, 609 F.2d 434, 436 (10th Cir. 1979).

The Court **ENTERED JUDGMENT for the plaintiff, EEOC,** and denied the defendant's motion for attorney fees. The evidence was undisputed that the EEOC thoroughly investigated King's allegations of discrimination. The Court held that **the lack of credibility of the plaintiff's main witness did not mean that the case was frivolous, unreasonable and without foundation.** As the Court pointed out, one lawyer's Portia is another's Iago.

Damages Alleged: Back Pay - Health Coverage for Pregnancy Related Medical Conditions

Attorney for Plaintiff: Nelson G. Alston

Attorney for Defendant: Kathryn E. Miller (Miller, Leher & Steiert)

Judgment: For the defendant

No. 91-B-1497 Martin Martinez v. Speed Cut Inc., aka Metra-Cut, a corporation

Judge: Lewis T. Babcock

Trial Date: October 26, 1992

Judgment Date: October 26, 1992

Personal Injury - Product Liability - Breach of Express and Implied Warranties

Plaintiff, Martin Martinez, bought this suit against defendant for personal injuries plaintiff sustained while operating a saw made by defendant. Plaintiff alleged that the saw was defective and caused plaintiff to sustain serious injuries. Plaintiff's left hand was completely severed. Plaintiff further claimed that (1) the design and manufacture of the saw breached express and implied warranties, (2) the saw was negligently designed and/or manufactured and (3) the product contained inadequate warnings. Plaintiff claimed damages consisting of permanent injuries, past and future pain and suffering, loss of enjoyment of life, permanent partial disability and disfigurement, past and future lost earnings, past and future medical and hospital expenses, lost earnings and lost earning capacity.

Defendant admitted the allegations of plaintiff due to defendant's failure to respond to

plaintiff's request for admissions. The trial was on the issue of damages only. Plaintiff's motion for partial summary judgment was granted.

The Court ENTERED JUDGMENT for the plaintiff and concluded that plaintiff sustained the following damages: (1) temporary total disability and rehabilitation benefit - \$66,575 (2) medical benefits - \$205,366 (3) past economic loss - \$14,153 (4) non-economic loss - \$500,000 and (5) permanent physical impairment and disfigurement - \$1,000,000. Plaintiff's damages were \$1,786,094, with pre-judgment interest at 9% per annum from the date of injury, plaintiff's total damages are \$2,382,243 plus post-judgment interest to accrue at 3.24%, plus costs.

Damages Alleged: indefinite money damages
Attorney for Plaintiff: Richard A. Waltz (Waltz, D'Antuono, Correll & Anderson)

Attorney for Defendant: Mark Housen (Speed Cut Inc., Oregon)

Judgment: For the plaintiff in the amount of \$2.3 million plus costs and interest.

ARAPAHOE COUNTY DISTRICT COURT

No. 92CV656 Sara K. Weakland v. Jim Hayes, d/b/a Timberline Roofing

Judge: Michael J. Watanabe

Trial Date: January 14, 1993

Judgment Date: January 27, 1993