

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JULIUS SUMMERROW, )  
 )  
 Plaintiff )  
 )  
 v. ) No. 3:13-0297  
 ) Judge Trauger/Bryant  
 )  
 CHATTANOOGA BOILER AND TANK, )  
 *et al.*, )  
 )  
 Defendants )

**TO: THE HONORABLE ALETA A. TRAUGER**

**REPORT AND RECOMMENDATION**

Individual Defendants Tom Schull and Mike McMinn have filed their motion to dismiss Plaintiff's age discrimination claims against them for failure to state a claim upon which relief can be granted (Docket Entry No. 21). As grounds, these individual Defendants assert that, as a matter of law, there is no personal liability for Schull or McMinn because they do not qualify as Plaintiff's "employer" under Title VII of the Civil Rights Act of 1964.

On November 6, 2013, the parties jointly filed an agreed stipulation of dismissal of the complaint against individual Defendants Schull and McMinn only, on the grounds that Chattanooga Boiler and Tank was Plaintiff's employer at all times material to this case, and therefore that Chattanooga Boiler and Tank is the appropriate Defendant in this matter (Docket Entry No. 27).

Based on this stipulation of the parties, the undersigned Magistrate Judge finds that the motion to dismiss Defendants Schull

and McMinn (Docket Entry No. 21) should be GRANTED and that the complaint against these two Defendants only should be dismissed.

**RECOMMENDATION**

For the reasons stated above, the undersigned recommends that the Motion to Dismiss Defendants Schull and McMinn be GRANTED and that the complaint against them be dismissed with prejudice.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has **14 days** from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have **14 days** from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within **14 days** of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

**ENTER** this 20<sup>th</sup> day of August, 2014.

/s/ John S. Bryant  
JOHN S. BRYANT  
United States Magistrate Judge