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As of: Aug 06, 2009

**EMANUEL PAUL and ROBERT ROMANCE versus STEWART ENTERPRISES,
INC. AND ABC INSURANCE COMPANY**

CIVIL ACTION NO. 99-3441 SECTION "C"(2)

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
LOUISIANA**

2000 U.S. Dist. LEXIS 15993; 84 Fair Empl. Prac. Cas. (BNA) 681

**October 25, 2000, Decided
October 26, 2000, Filed, Entered**

DISPOSITION: [*1] Defendant's Motion in Limine **PARTIALLY GRANTED**. Defendant's Motion to Quash the Subpoena of Ms. Chin **DENIED**.

COUNSEL: For EMANUEL PAUL, ROBERT ROMANCE, plaintiffs: Charlotte G. Bordenave, Roy J. Rodney, Jr., Rodney, Bordenave, Boykin, Bennette & Boyle, New Orleans, LA.

For EMANUEL PAUL, plaintiff: Kimberly R. Wicker, Rodney, Bordenave, Boykin, Bennette & Boyle, New Orleans, LA.

For STEWART ENTERPRISES, INC., defendant: Henry Philip Julien, Jr., Stephen Mark Klyza, Stephen L. Scott, Bethany L. Brantley, The Kullman Firm, New Orleans, LA.

JUDGES: Helen G. Berrigan.

OPINION BY: Helen G. Berrigan

OPINION

Defendant has filed a Motion in Limine and Motion to Quash the Subpoena commanding Mae Fong Chin to appear at trial. The Motion in Limine seeks to exclude any reference to prior allegations of sexual harassment by employees of Stewart Enterprises. For the following

reasons, IT IS ORDERED that the Motion is **PARTIALLY GRANTED** and **PARTIALLY DENIED**.

Prior Allegations of Sexual Harassment

Plaintiffs have alleged that they experienced race-based discrimination and retaliation by the Defendants for filing EEOC complaints pertaining to race-based discrimination. Defendant is correct that the Fifth [*2] Circuit has ruled that evidence of prior discrimination on the basis of sex is irrelevant to current allegations of discrimination on the basis of race. *See Rubinstein v. Administrators of Tulane Educ. Fund*, 218 F.3d 392, 400-01 (5th Cir. 2000). Therefore, Plaintiffs are prevented from introducing testimony or evidence about the existence of prior claims of sex discrimination for the purpose of bolstering their claims that racial discrimination occurred at Stewart Enterprises.

The Court may be willing to recognize one limited exception to this ruling: Plaintiffs have asserted that they experienced retaliatory treatment because they filed a race-based claim with the EEOC. They may be entitled to introduce evidence demonstrating that race-based EEO complaints resulted in retaliation whereas sex-based EEO complaints did not for the purpose of supporting its claims. It is unclear at this time whether Plaintiffs have the intention of presenting this specific argument to the jury, and will therefore reconsider this

issue in the event that this scenario arises. Therefore, Defendant's Motion is PARTIALLY GRANTED.

Subpoena of Mae Fong Chin

Defendant has filed a [*3] Motion to Quash the Subpoena commanding Ms. Chin to appear at trial. The court may quash a subpoena if it "subjects a person to an undue burden." *Fed. R. Civ. P. 45 (c) (3) (A) (iv)*. However, the party moving to quash or modify a subpoena "must meet the heavy burden of establishing that compliance with the subpoena would be unreasonable and oppressive." *Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. 1998); see also *Linder v. Department of Defense*, 328 U.S. App. D.C. 154, 133 F.3d 17, 24 (D.C. Cir. 1998).

Mae Fong Chin has already given testimony in prior depositions that she has knowledge about the distribution of leads at Stewart Enterprises and instances of lead distribution that deviated from standard practices. Plaintiffs are entitled to present this testimony to the jury as part of a larger effort to demonstrate that non-white employees at Stewart Enterprises were excluded from these deviations in lead distribution policy. Ms. Chin has also testi-

fied previously that she heard denigrating comments made about minority racial groups while working as an employee of Stewart Enterprises. While these comments alone would be insufficient [*4] to survive a motion for summary judgment, see *Rubinstein*, 218 F.3d at 400, Plaintiffs has decided to include Ms. Chin's testimony as part of their larger presentation of facts to the jury suggesting that Stewart Enterprises does not provide an equal working environment for its non-white employees.

Because the trial is scheduled to begin on October 30, 2000, Ms. Chin may have to cut her visit to Texas short for the purpose of giving her testimony. The Court encourages the parties to negotiate an arrangement whereby the inconvenience to Ms. Chin is minimized -- perhaps by scheduling her testimony towards the end of the five day trial. Mere inconvenience, however, is an insufficient reason to deny Plaintiffs use of the subpoena power of the Court in their attempt to vindicate their claims. The Court believes that Ms. Chin has valuable information to offer a jury. For that reason, Defendant's Motion to Quash the Subpoena of Ms. Chin is HEREBY DENIED.

Helen G. Berrigan