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What's in a Name? Fifth Circuit Expands Exception to the "Named-Party Requirement"

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It seems common sense that a party not named in an EEOC charge may not be sued in subsequent related litigation. Indeed, that has been the general rule in Title VII litigation, subject to limited exceptions. However, a recent ruling by the U.S. Court of Appeals for the Fifth Circuit may have the effect of allowing an increased number of Title VII claims against corporate parents not named in underlying administrative charges filed with the Equal Employment Opportunity Commission.

Over the years, judicially recognized exceptions to the "named-party requirement" have developed. However, most federal district courts that have considered the issue have limited this exception to *pro se* plaintiffs. In [*Equal Employment Opportunity Commission v. Simbaki, Ltd.*](#), decided last month, the Fifth Circuit (covering Louisiana, Texas, and Mississippi) considered whether represented parties may invoke those judicially recognized exceptions and held that they could.

The case involved Laura Baatz and Kimberly Kulig, two former employees of Simbacki, Ltd., a corporate entity that operated a franchisee-restaurant located on Montrose Boulevard in Houston, Texas ("Berryhill Montrose"). Berryhill Montrose was one restaurant of a chain, and the corporate parent of that chain was Berryhill Hot Tamales Corporation ("Berryhill Corporate"). Berryhill Corporate

operated under the trade name Berryhill Baja Grill & Cantina and had several locations throughout Texas and Mexico.

Defendant Phillip Wattel ("Wattel") owned Simbacki, Ltd. and, by his own admissions in the lawsuit, engaged in sexually harassing behavior aimed at both Baatz and Kulig for several years. In fact, Wattel himself described Berryhill Montrose as a "grab-assy place" and admitted to patting Kulig's bottom multiple times, once so hard that she bruised, and asking Baatz to have a child with him. After receiving a complaint about sexual harassment, Wattel posted a sign stating, "Notice: sexual harassment in this area will not be reported. However, it will be graded."

Baatz and Kulig each retained counsel and filed EEOC charges against "Berryhill Baja Grill." The charges identified the Respondent's address as that of the Berryhill Montrose location and identified its owner as Wattel. Although the charges did not mention Berryhill Corporate at all, the EEOC served notices of the charges to Berryhill Corporate, referring to the charges as having been brought against "your organization." In response, Berryhill Corporate's Director of Operations sent correspondence to the EEOC claiming Berryhill Corporate was not a party to the charge and asked to be removed from the EEOC's investigation.

The EEOC investigated the charges, determined Wattel had violated Title VII through sustained sexual harassment of Baatz and Kulig, and filed suit against only Berryhill Montrose in the United States District Court for the Southern District of Texas. The EEOC did not file a lawsuit against Berryhill Corporate. Kulig and Baatz intervened, filing an intervener complaint against Wattel and Berryhill Corporate as defendants. The EEOC did not add Berryhill Corporate to its complaint or name it as a defendant.

Berryhill Corporate moved for summary judgment, based in part on the plaintiffs' failure to exhaust their administrative remedies against Berryhill Corporate by not naming it in the underlying EEOC charges. The district court granted summary judgment in favor of Berryhill Corporate, as it held that the plaintiffs failed to exhaust administrative remedies under Title VII by not naming Berryhill Corporate in their respective charges. In reaching its decision, the district court refused to recognize the application of the judicially-developed exceptions to the named-party requirement because Baatz and Kulig were both represented by counsel at the time they filed their charges. Baatz and Kulig then appealed. The EEOC did not participate in the appeal, as the district court had severed its case against Berryhill Melrose from Baatz and Kulig's claims against Berryhill Corporate.

On appeal, Baatz and Kulig made two arguments: 1) by identifying "Berryhill Baja Grill," the trade name of Berryhill

Corporate in their EEOC charges, they had, in fact, named Berryhill Corporate as a respondent in their respective charges; and 2) the district court erred in finding only *pro se* litigants may invoke the exception to the rule that only parties named in a charge may be subsequently sued in federal court.

The Fifth Circuit agreed with the lower court as to the first argument, rejecting the plaintiffs' argument that they named the corporate parent by citing the trade name used by its franchisees "Berryhill Baja Grill." However, the Fifth Circuit disagreed with the lower court's ruling that Baatz and Kulig could not rely on the judicially-developed exception to Title VII's named-party rule because they were represented by counsel when they filed their respective charges. Rather, the appellate court found there was no justification for limiting the exceptions to *pro se* litigants. The appellate court further stated that its holding was more consistent with the overarching judicial principle that *pro se* litigants are required to follow the federal rules of procedure and are held to the same pleading requirements as represented parties and that allowing all litigants to invoke the exception was more consistent with the liberal construction of Title VII's requirements generally recognized by the courts.

It is important to note that the appellate court did not determine that Berryhill Corporate was a *proper* defendant in the action. It only ruled that the district court erred in not applying the "named-party rule" to individual parties represented by counsel. The Fifth Circuit remanded the case back to the trial court for a determination of whether Berryhill Corporate was a proper defendant under the current case law and the particular facts of the case.

Although the Fifth Circuit's decision may have the effect of increasing the pool of plaintiffs that may invoke the "identity-of-interest" or "actual notice" exceptions to the named-party rule recognized by varying circuits, the *Simbaki* decision also serves as an important reminder to employers that one of the first steps in Title VII litigation should always be to look back at the underlying charge and determine whether the entity sued was named below, particularly where the employer is part of a complex corporate structure. If not, the employer may obtain an expeditious dismissal of the suit based on the plaintiff's failure to exhaust administrative remedies.

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