

CLIENT ALERT

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Eleventh Circuit: Employers May Recover Fees Even If Not All Claims Are Frivolous

In a victory for employers, the U.S. Court of Appeals for the Eleventh Circuit has held that defendants in employment discrimination lawsuits may recover attorneys' fees for frivolous claims that plaintiffs assert against them – even if the plaintiffs also assert non-frivolous claims. In *Quintana v. Jenne*, the Court held that in such instances, the trial court should calculate and award the defendant the attorneys' fees incurred in defending the frivolous claims.

Title VII

Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits discrimination on the basis of race, color, religion, sex, or national origin, and prohibits an employer from retaliating against an employee who complains about such discrimination. It also permits a court to award attorneys' fees to the “prevailing party.”

The Facts

In 1991, plaintiff Paul Quintana began working as a deputy sheriff for Broward County, Florida. In 1998, Quintana passed an examination and became eligible for a promotion to the position of sergeant, but he was not promoted. In 2000, he was suspended for disparaging a motorist with derogatory and racist epithets. In 2001, he was suspended for falsely reporting an incident in his log.

The District Court

Quintana filed a lawsuit against Broward County Sheriff Kenneth Jenne, in his official capacity, asserting (among other claims) two claims under Title VII. Quintana asserted a discrimination claim, alleging that Jenne had denied him a promotion based upon his race. He also alleged that, in retaliation for complaining about discrimination, Jenne had

denied him a promotion and punished him unduly harshly for his misconduct.

The District Court dismissed both claims on summary judgment. It determined that Quintana had established a *prima facie* case of disparate treatment discrimination, but dismissed the claim because Quintana had failed to present sufficient evidence to overcome Jenne's legitimate, nondiscriminatory reasons for denying the promotion. With respect to the retaliation claim, the Court determined that Quintana had failed to establish a *prima facie* case.

Jenne filed a motion for attorneys' fees under Title VII. The Court decided that Quintana's claims were frivolous and awarded Jenne \$73,890 in attorneys' fees. Quintana appealed the award.

The Eleventh Circuit

On appeal, the Eleventh Circuit explained that attorneys' fees are “typically awarded to successful Title VII plaintiffs as a matter of course,” but are only awarded to prevailing defendants when the plaintiff's case is “frivolous, unreasonable, or without foundation.” The Court set forth the “general guidelines” that courts should consider in deciding whether a claim is frivolous: “(1) whether the plaintiff established a *prima facie* case; (2) whether the defendant offered to settle; and (3) whether the trial court dismissed the case prior to trial or held a full-blown trial on the merits.” The Court then considered whether Quintana's claims were frivolous.

Retaliation Claim

First, the Court analyzed the retaliation claim. It explained that the first and third factors suggested that the claim was frivolous, because Quintana had failed to establish a *prima facie* case of retaliation and the claim had been dismissed on summary judgment. As for the second factor, the Court explained

that there was no indication in the record as to whether Jenne had made a settlement offer. The Court decided that, “[i]n the absence of an offer of a substantial amount in settlement, this factor does not support either party.” The Court concluded that Quintana’s retaliation claim was frivolous and that the District Court had not abused its discretion in awarding attorneys’ fees for this claim.

Discrimination Claim

Next, the Court considered whether the discrimination claim was frivolous. The Court held that because the evidence supported a *prima facie* discrimination claim, the claim was not frivolous and Jenne was not entitled to attorneys’ fees on the claim.

Apportioning Attorneys’ Fees

After concluding that one of Quintana’s claims was frivolous and the other was not, the Court considered whether a defendant may recover attorneys’ fees in a Title VII action in which a frivolous claim is joined with an unsuccessful claim that is not frivolous. The Court held that “an apportionment and award of fees to Jenne for the defense of Quintana’s retaliation claim is necessary.”

In reaching this holding, the *Quintana* Court considered a previous case that it had decided, in which a district court had dismissed a frivolous federal civil rights claim with prejudice and then dismissed the remaining state law claims without prejudice and without considering their merits. In that case, the district court had denied the defendant’s motion for attorneys’ fees for the federal civil rights claim. The Eleventh Circuit had held that denying the motion was an abuse of discretion and remanded the case to enable the district court to calculate the appropriate attorneys’ fees.

The *Quintana* Court also considered *Hensley v. Eckerhart*, a case in which

the U.S. Supreme Court had held that courts should award partial attorneys’ fees to a prevailing plaintiff even if he or she does not prevail on all of his or her claims. The *Quintana* Court noted that, in dicta, the Supreme Court had stated that “if a plaintiff succeeds on one claim but also asserts a frivolous claim unrelated to the successful claim, ‘the defendant may recover [attorneys’ fees] incurred in responding to’ the frivolous claim.”

The *Quintana* Court also relied upon decisions of the First and Seventh Circuits. In *Ward v. Hickey*, the First Circuit held that a district court had improperly denied attorneys’ fees for all of the plaintiff’s claims, where some of the claims were frivolous and others were not. The *Ward* Court stated that the fact that the claims were interrelated was not a proper basis for denying an application for fees. The *Ward* Court explained that fee awards are necessary to deter frivolous claims and that “a district court should not deny fees for defending frivolous claims merely because calculation would be difficult.”

Similarly, in *Curry v. A.H. Robins Co.*, the Seventh Circuit held that a district court did not abuse its discretion by awarding attorneys’ fees for a frivolous 42 U.S.C. § 1983 claim, even though the plaintiff had also asserted non-frivolous claims. In analyzing these cases, the Eleventh Circuit emphasized that while a civil rights defendant is not entitled to recover attorneys’ fees for an unsuccessful claim that is not frivolous, “it would also undermine the intent of Congress to allow plaintiffs to prosecute frivolous claims without consequences merely because those claims were joined with unsuccessful claims that were not frivolous.”

The Court stated that Quintana had included separate claims in his Complaint for retaliation and discrimination. The Court further stated that, although some of the facts

supporting each of the claims were common to both, Quintana made distinct arguments for each claim. It concluded that the District Court should be able to weigh and assess the attorneys’ fees attributable exclusively to Quintana’s frivolous retaliation claim. Accordingly, the Court vacated the award of attorneys’ fees and remanded the case for a calculation of the amount of attorneys’ fees Quintana owed Jenne for legal fees “reasonably and exclusively incurred in the defense against Quintana’s retaliation claim.”

Conclusion

Courts have traditionally been reluctant to impose any costs on unsuccessful plaintiffs in employment discrimination cases. While the *Quintana* decision does not signal a departure from that reluctance, it may (at least in the Circuits in which it is followed) discourage plaintiffs from pursuing claims for which they have absolutely no support. Although an employer should not realistically anticipate that a Court will award it attorneys’ fees, the risk that cases such as *Quintana* creates for plaintiffs may cause them to reconsider pursuing their most frivolous claims, which should reduce litigation costs for both sides.

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For further Employment & Labor information, please contact:

David W. Garland, Co-Chair
Employment & Labor
973.643.6390
dgarland@sillscummis.com

Lester Aron, Co-Chair
Employment & Labor
973.643.5795
laron@sillscummis.com

New Jersey

One Riverfront Plaza
Newark, NJ 07102
Tel: 973-643-7000
Fax: 973-643-6500

www.sillscummis.com

New York

30 Rockefeller Plaza
New York, NY 10112
Tel: 212-643-7000
Fax: 212-643-6500