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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff

v.

ALLSTATE INSURANCE COMPANY,

Defendant

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Case No (LT)

3:20-cv-00905-MMH-LLL

PLAINTIFF’S MOTION FOR RELIEF FROM JUDGMENT

Plaintiff, ELIAS MAKERE, on this 26th day of April 2024, respectfully asks this Court to relieve Plaintiff from the ruling that it entered on March 26, 2024. The ruling was titled “*Order Granting...Summary Judgment*” {#108} (hereinafter “That Order”).

Although Plaintiff finds this district judge to be more honorable than every other official [who has intercepted his pursuit of a trial-by-jury], his injuries still remain. Thus, he seeks relief.

Key Points:

- A.) Points timely; remand; errant dismissal; preserve appeal; etc.
- B.) Grounds reversible errors

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Background:	Court sought to adjudicate timeliness
Problem:	Court said time was irrelevant for timeliness calculation
Request:	Court relieves Plaintiff from the mishap

Rule 60 | Fed. R. Civ. P. | Relief from Judgment | (highlights added)

“The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.”

Rule 3-1 | 11th Cir. R. | Failure to Object | (highlights added)

“A party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 USC §636(b)(1) waives the right to challenge on appeal the district court’s order...”

Precedent

- | | |
|-------------------------|---------------------|
| • 6:22-cv-02075-RBD-LHP | - USFLMD (3/22/24) |
| • 2:23-cv-00475-SPC-KCD | - USFLMD (7/26/23) |
| • 5:23-cv-00059-GAP-PRL | - USFLMD (5/15/23) |
| • 8:21-cv-01558-KKM-AAS | - USFLMD (12/27/22) |
| • 6:21-cv-01839-ACC-DAB | - USFLMD (11/17/22) |
| • 5:21-cv-00343-BJD-PRL | - USFLMD (4/20/22) |
| • 8:20-cr-00138-CEH-JSS | - USFLMD (11/22/21) |
| • 3:14-cr-00075-BJD-PDB | - USFLMD (6/17/21) |
| • 8:18-cv-01389-AAS | - USFLMD (6/1/21) |
| • 6:19-cv-00637-CEM-LRH | - USFLMD (4/2/20) |

USFLMD has recently granted similar motions

Abbreviations:

- | | |
|--------|---|
| {#NN} | - Docket Entry NN [of this case] |
| DOAH | - Division of Administrative Hearings (Florida) |
| FCHR | - Florida Commission on Human Relations |
| FS | - Florida Statutes |
| USFLMD | - US District Court, Florida, Middle District |

MOTION

I. Relevant History

1. On June 30, 2017, Plaintiff filed an employment discrimination charge with the FCHR (“First Charge”). Pursuant to §760.11(1) FS, he alleged that Defendant had violated his civil rights on the bases of race **and** sex.
2. On September 8, 2017, Defendant responded to the First Charge by denying **both** allegations. Importantly, the former employer explicitly acknowledged that Plaintiff’s First Charge contained “*allegations of discrimination based upon race and sex discrimination*”.
3. On December 15, 2017 the FCHR concluded its investigation. Notably affirming that race **and** sex were the bases of Plaintiff’s First Charge.
4. On January 19, 2018, Plaintiff filed his Petition for Relief (§760.11(6)-(7) FS; §120.569(2)(a) FS). Thus, the First Charge coursed through the State of Florida’s administrative circuit; where Defendant amplified its retaliation against Plaintiff (eg, lethal attack, smear campaigns, etc.) – among other things.
5. So, on April 10, 2019, Plaintiff filed his second discrimination charge against Defendant (“Second Charge”). Emailing it to the FCHR; who blessed it with a same-day timestamp (2:25 PM on 4/10/19). Despite more

state-sponsored treachery (eg, phantom notices, refusal/reluctance to relinquish jurisdiction), Plaintiff was able to enter the court system.

6. On August 12, 2020, Plaintiff initiated this lawsuit.
7. On January 14, 2021, this Court stayed discovery {#39}.
8. The following month – on February 8, 2021 – this Court entered a partial dismissal {#40}. Thereby dismissing Plaintiff’s state charges (ie, §760 FS). Doing so, importantly, because of administrative timeliness.
9. On February 9, 2021, Plaintiff asked this Court to take judicial notice of Plaintiff’s [officially] time-stamped charge of discrimination (§5 *supra*).
 - a) His motion {#41} was aimed at providing the public records that would debunk the timeliness issue (§13 *infra*).
10. On October 13, 2021, this Court ordered Plaintiff to amend his complaint {#70}. Thereby instructing him to “*include all claims and factual allegations*”. Plaintiff obliged.
11. On November 4, 2021, Plaintiff filed his fully amended complaint (“The Complaint”). It included – but was not limited to – charges under: (a) the FCRA; and (b) Title VII. Plaintiff, importantly, invoked both statutes to redress all of Defendant’s misconduct (ie, from 2013 onward).
12. Months later – on June 21, 2023 {#96} – this Court dismissed several counts from The Complaint (§11, *supra*). Thereby keeping Plaintiff’s

Title VII charges – for the limited purpose of examining timeliness (ie, “*statute of limitations*”).

13. Nine months after that – on March 26, 2024 {#108} – this Court granted Plaintiff’s motion for judicial notice [of the correct filing date] (§9, *supra*). However, That Order simultaneously entered summary judgment in favor of Defendant (on the basis of administrative timeliness). A decision that claimed that the [correct] filing date no longer mattered (contrast with §8 *supra*).

II. Analysis

14. Plaintiff filed both of his administrative charges on time.
- a) He filed his First Charge within 365 days of [one of] Defendant’s discrete acts of discrimination (§1 *supra*);^{1/}
 - b) He filed his Second Charge within 365 days of another batch of Defendant’s discrete acts of discrimination (§5 *supra*)^{2/}.
15. Plaintiff’s Second Charge relates back to his First Charge; thereby linking the continuing nature of Defendant’s unlawful conduct.
16. With explicit language, Plaintiff’s Title VII counts incorporated all of Defendant’s discrimination (§11 *supra*). Thereby debunking That Order’s [false] contention that his Title VII charges only addressed certain timeframes in Defendant’s misconduct.

17. As detailed in The Complaint, the State of Florida tried to manufacture a jurisdictional issue of timeliness. It did so in order to obstruct Plaintiff's cause of action [against Defendant]. It did so, of course, while also committing perjury (and destroying evidence) – to cover for Defendant.^{3/}
18. Despite judicially noticing the correct filing date of Plaintiff's Second Charge, this Court still held onto its timeliness conclusion (precluding a trial-by-jury). A holding that spanned three-plus (3+) years. A 3+ year timespan, notably, that ran concurrent to this Court's discovery stay.
19. As such, the government has manifested an injustice onto this cause of action. An injustice that has included – but has not been limited to – a violation of Plaintiff's constitutional rights:
- a) due process; equal protection; access to the court; trial-by-jury; etc.

III. Standard for Review

20. Thankfully, these injustices are reversible.
21. Rule 60 Fed. R. Civ. P. gives this Court the power to reverse a prior decision (highlights added):

“The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.”

– Rule 11 Fed. R. Civ. P.

22. The appellate courts have reinforced this power (highlights added):

“A district court has the inherent power to reconsider and modify its interlocutory orders prior to the entry of judgment, whether they be oral, e.g., United States v. Green, 414 F.2d 1174, 1175 (D.C. Cir. 1969) (trial judge had authority to withdraw oral decision granting defendant’s motion to dismiss indictment), or written, e.g., United States v. Jerry, 487 F.2d 600, 604-05 (3d Cir. 1973) district court had authority to rescind written order improvidently permitting defendant to withdraw guilty plea); cf. United States v. Benz, 282 US 304, 306-07, 51 S.Ct. 113, 114, 75 L.Ed. 354 (1931) (stating general rule that judgments, decrees, and orders in civil or criminal cases may be modified by court within the term in which they were entered), and there is no provision in the rules or any statute that is inconsistent with this power.”

– *United States v. LoRusso*, 695 F.2d 45 (2d Cir. 1982)

23. Moreover, the appellate courts attach an ‘abuse of discretion’ to district court “mistakes” (highlights added):

“Abuse occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them. See In re San Juan Dupont Plaza Hotel Fire Litigation, 859 F.2d 1007, 1019 (1st Cir. 1988); United States v. Hastings, 847 F.2d 920, 924 (1st Cir.), cert. denied, --- U.S. ---, 109 S. Ct. 308, 102 L. Ed. 2d 327 (1988); see generally Anderson v. Cryovac, Inc., 862 F.2d 910, 915 (1st Cir. 1988) (equating abuse of discretion with court's commission of "a meaningful error in judgment")”

– *Independent Oil v Procter & Gamble*, 864 F.2d 927 (1st Cir. 1988)

24. Of course – and importantly – the appellate courts have established that such an abuse is cause for reversal/correction (highlights added):

“We find, however, that the court below did not give appropriate consideration to appellants' posttrial motion to set aside the judgment pursuant to Rule 60(b)(3). Thus, we remand to the district court for rehearing on that motion...”

– Anderson v Cryovac, 862 F.2d 910 (1st Cir. 1988)

25. Altogether, this Court has the “*inherent power*” to correct its orders/judgments.

IV. Application

26. For the instant case, this Court is well-positioned to exercise that “*inherent power*”.

27. First, this Court can restore the *continuing nature* of Plaintiff's cause of action. Doing so via the *relation back provision* (among other things).

a) see Rule 15(c) Fed. R. Civ. P.;

b) see 60Y-5.001(4) FAC;

c) see 29 CFR §1601.12; 29 CFR §1603.12; 29 CFR §1626.8; and

d) see McKinney v. VA Surgical, 284 Va. 455 (S.E.2d 27 2012).

28. Secondly, this Court can remand the state charges (Segura v. Hunter Douglas, 184 F. Supp. 2d 1227 (USFLMD 2002)).

29. Plus, this Court can remove the manifest injustice that has blanketed this case (Agro Dutch v. USA, 589 F.3d 1187 (Fed. Cir. 2009)).

30. Moreover, this Court can remedy the unconstitutionality of the FCHR's trespasses-against-Plaintiff (*Bounds v. Smith*, 430 US 817 (1977)). As well as the unconstitutionality of the state agency's determinations. Determinations which – in the instant case – were null & void.^{4/}

V. Nature of Relief Sought

31. Plaintiff seeks reversal on the grounds of:

- a) the relation back provision (found in Title VII; the FCRA; etc.);
- b) remanding state charges (pendent jurisdiction);
- c) the plausibility standard (*Ashcroft v. Iqbal*, 556 US 662 (2009));
- d) the administrative timeliness calculation (*Woodham v. BCBSFL*, 829 So.2d 891 (Fla. 2002));
- e) the FCHR's unconstitutional conduct (ie, covering for Defendant with timeliness obstructions);
- f) the unconstitutionality of FCHR determinations (§760.11(3) FS);
- and
- g) more.

32. Moreover, Plaintiff seeks preservation (of all appealable issues) for his potential appeal (Rule 3-1 11th Cir. R.).

CONFERRAL

Today – Friday, April 26, 2024 – Defendant told Plaintiff (via email) that it opposes this motion. Its short communication (1-sentence/17-words), however, prompted Plaintiff to outline the aforementioned points (ie, timeliness calculation, unconstitutionality, etc.). Yet, Plaintiff's exhausted efforts to *confer in good faith* (pursuant to Local Rule 3.01) were to no avail (as Defendant repeated its boilerplate objection).

Thus, Plaintiff believes the foregoing presents a compelling (ie, *manifest injustice; unconstitutional proceeding/provisions*) and important (ie, *reversible issues*) reason for obtaining the requested relief.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to reverse the *Order Granting Summary Judgment* {#108}; thereby letting the parties fully litigate this case.

Dated this 26th day of April 2024.

Respectfully submitted,

/s/ Elias Makere
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CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Century Schoolbook 13-point Font (contents); thus complying with the font requirements of Local Rule 1.08.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April 2024, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. A notice – via CM/ECF – will be sent to the attached service list.

/s/ Elias Makere (4/26/24)

Endnotes:

^{1/} match with The Complaint at paragraph 43 (ie {#73} at ¶43).

^{2/} {#73} at ¶73-124

^{3/} {#73} at ¶125-129

^{4/} Please see (and/or incorporate) “*Plaintiff’s Memorandum of Law Regarding Equitable Tolling*” (11/9/21 {#74})

Electronic Copy: (text-searchable)

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[Allstate's Penchant for Employment Discrimination \(500+ Cases\)](#)

[How-To Guide: How to Write a Motion for Relief](#)

Link to Complaint ([HTML](#), [PDF](#), [Video](#))

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