

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY *
COMMISSION *

v.

Civil Action WMN-08-CV-984

MCCORMICK & SCHMICK'S SEAFOOD *
RESTAURANTS, INC. and *
MCCORMICK & SCHMICK *
RESTAURANT CORPORATION *

* * * * *

ORDER

In this action, the Equal Employment Opportunity Commission (EEOC) has alleged that Defendants have engaged in a pattern and practice of discriminating against Black job applicants and employees at their Baltimore restaurant facilities. Now before the Court is Defendants' "Emergency Motion for a Special Order Enjoining Plaintiff from Airing Radio Advertisements Seeking Additional Claimants." ECF No. 45. Defendants assert that Plaintiff has caused to be broadcast and has purchased airtime for additional broadcasts of a 27-second announcement concerning this litigation. The complete text of the radio announcement, the broadcast of which Defendants seek to enjoin, is as follows: "In connection with the class race discrimination lawsuit, the U.S. EEOC is looking for black individuals who applied for employment at or used to work for McCormick and Schmick's or

M&S Grill at the Inner Harbor. If you applied to work, or worked at either restaurant, please call the EEOC at 410-209-2208. Again, 410-209-2208."

In asking the Court to enjoin the broadcast of this announcement, Defendants argue that Plaintiff's announcement violates the Rule of Professional Responsibility that prohibits the making of "an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." Mot. at 5 (citing Md. R. of Prof'l Conduct 3.6). Defendants also argue the announcements will "pollute the jury pool," Mot. at 6, and "threaten to injure [Defendants'] business." Id. at 8. They also assert that the announcement is misleading because it implies that this is a class action lawsuit brought pursuant to Rule 23 of the Federal Rules of Civil Procedure, which it is not. Id. at 7.

Addressing the last point first, the Court notes that, while not a class action under Rule 23, the Complaint clearly alleges discrimination against a class of individuals and seeks a class remedy. See Compl. ¶¶ 9, 11 (alleging Defendants' conduct has subjected a class of Black employees and applicants to pattern and practice of discrimination) and Prayer For Relief C-E (seeking relief and damages "to make whole a class of

aggrieved Black job applicants (and deterred applicants)). To communicate to the general public that this is a "class race discrimination lawsuit" is not misleading.

As to the remaining arguments, the Court notes that the EEOC is relaying nothing more than what is in the public record. It simply reports the pendency of a lawsuit. As to Defendants' primary argument based on the Rules of Professional Conduct, the Court notes that the rule cited by Defendants expressly allows attorneys to make a statement relating: "the claim . . . involved," "the identity of the persons involved," "information contained in a public record," and "that an investigation of a matter is in progress." Md. R. of Prof'l Conduct 3.6(b). Furthermore, the Rule specifically allows "a request for assistance in obtaining evidence and information necessary thereto." Id. The Court finds no violation of the Rules of Professional Conduct.

Finding no grounds for the relief requested, the Court will deny Defendants' motion. Accordingly, IT IS this 17th day of March, 2011, by the United States District Court for the District of Maryland, ORDERED:

1) That Defendants' Emergency Motion for a Special Order Enjoining Plaintiff from Airing Radio Advertisements Seeking Additional Claimants, ECF No. 45, is DENIED; and

2) That the Clerk of the Court shall transmit a copy of this Memorandum and Order to all counsel of record.

_____/s/_____
William M. Nickerson
Senior United States District Judge