Summary Judgment in Discrimination Cases in the Wake of the Supreme Court's Decision in Reeves v. Sanderson Plumbing Products
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In June 2000, the U.S. Supreme Court issued a decision that appeared to significantly ease the burden of proof plaintiffs would be required to meet in order to avoid dismissal of their employment discrimination claims prior to trial. In Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000), the Supreme Court ruled that a discrimination plaintiff can defeat summary judgment and obtain a trial based merely on evidence that the employer’s asserted reason for its adverse employment action is false, regardless of whether additional evidence of discrimination is presented.

The Reeves decision was intended to clarify certain settled rules concerning the burdens of proof in employment discrimination cases. In such cases, the plaintiff must initially establish a prima facie case of discrimination. In an age discrimination case, for example, the prima facie case requires proof that the plaintiff is in the protected age class (40 or older), was qualified for the position in question, was discharged, and was replaced by a younger employee. If the plaintiff makes such a showing, the burden shifts to the employer to adduce evidence of a "legitimate, non-discriminatory reason" underlying its actions. Thereafter, the plaintiff can prevail only by showing that the employer’s reason was a pretext for unlawful discrimination.

Prior to Reeves, the lower federal courts disagreed in the application of these standards to employer motions for summary judgment, seeking dismissal of discrimination claims before trial. Some courts ruled that proof that the employer’s reason was untrue, coupled with the proof adduced in the prima facie case, was sufficient to defeat an employer’s motion for summary judgment and entitle the plaintiff to a trial. Other courts imposed a heavier burden on plaintiffs, ruling that proof that the employer’s reason was false, even taken together with the evidence constituting the prima facie case, was not sufficient and that, to avoid dismissal of a case prior to trial, the plaintiff must also introduce additional evidence tending to show that the real reason was unlawful discrimination.

In its decision in Reeves, the Supreme Court unanimously adopted the less onerous burden for plaintiffs. Specifically, the Court ruled that "a prima facie case, combined with sufficient evidence to find that the employer’s asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." In other words, once a plaintiff produces enough evidence to raise a question as to the validity of the employer's stated reason for the challenged employment action, it is up to the jury to determine whether unlawful discrimination was the real reason, even if the plaintiff has no direct evidence of discriminatory animus.
Summary Judgment in Discrimination Cases in the Wake of the Supreme Court's Decision in Reeves v. Sanderson Plumbing Products (continued)

Many employers feared that Reeves would make it nearly impossible to obtain summary judgment in discrimination cases and thereby dramatically increase the number of such cases that could go to trial. While it is rare for a discrimination plaintiff to be in possession of a "smoking gun" (direct evidence of discriminatory intent), it is relatively easy for a plaintiff to raise factual issues concerning the correctness or validity of the grounds on which the employer based the challenged personnel action. If a plaintiff could avoid summary judgment in any case where he is able to raise such issues, summary judgment would indeed be rare. A number of lower court decisions issued in the six months since Reeves was decided, however, suggest that the impact of the Supreme Court's decision may be less significant than anticipated.

Second Circuit Limits the Impact of Reeves

The U.S. Court of Appeals for the Second Circuit, in New York, for example, has not hesitated to grant summary judgment in several discrimination cases in the wake of Reeves. The Second Circuit's recent decision in James v. New York Racing Ass'n, No. 00-7040, 2000 U.S. App. LEXIS 29872 (2d Cir., November 29, 2000), is illustrative. In that age discrimination case, the plaintiff was terminated because of what the employer called a "downsizing" arising out of a financial crisis. However, almost immediately thereafter, the employer hired a new and substantially younger employee who took over many of the plaintiff's former duties. The Second Circuit recognized that these facts raised an issue as to whether the employer's stated reason for the termination -- "downsizing" -- was pretextual.

Nevertheless, the court rejected the notion that, under Reeves, the presence of evidence of pretext required that the case proceed to trial. According to the Second Circuit, while Reeves made clear that a plaintiff is not necessarily required, in order to avoid summary judgment, to adduce additional evidence of discrimination beyond his prima facie case, Reeves did not mean that the presence of a factual dispute concerning pretext always would preclude summary judgment; such a dispute requires a trial only if the evidence, taken as a whole, could support a reasonable finding of discrimination. In the case before it, the Second Circuit affirmed the dismissal of the lawsuit because the evidence, taken as a whole, could not support such a finding. In particular, the court noted that there was overwhelming evidence of the employer's financial difficulties as well as evidence that the employer had hired other older employees and that the plaintiff had been promoted and given a substantial wage increase shortly before his termination. In sum, proof that the employer's "downsizing" explanation for the termination may have been untrue was insufficient to carry the day for the plaintiff, and the employer therefore was entitled to summary judgment.
Application of Reeves by Other Appellate Courts

Several other federal appeals courts have also applied Reeves in a narrow fashion and have found that evidence of pretext, standing alone, is insufficient to raise a jury question:

- In *Tatom v. Georgia-Pacific Corp.*, No. 99-2879WA, 2000 WL 1499174 (8th Cir., October 10, 2000), for example, the plaintiff was suspended because of certain safety violations and his inappropriate conduct during the investigation of those violations; he resigned and claimed he had been constructively discharged because of his age. The court ruled that, even assuming "there was sufficient evidence for [a] jury to reject Georgia-Pacific's stated reason" for the suspension, the employer was entitled to judgment as a matter of law: "in an [age discrimination] case it may not be enough for a jury to disbelieve the employer; the fact finder must have evidence on which to base a reasonable belief that age was a determining factor." *Id.* at *5.

- In *Vadie v. Mississippi State University*, 218 F.3d 365 (5th Cir. 2000), in which the plaintiff claimed he was denied a teaching position because of his race, the university asserted as its reason that the plaintiff lacked the required doctoral degree. While acknowledging that there was some evidence that this requirement was pretextual, the court nevertheless ruled that the university was entitled to judgment as a matter of law because the evidence of pretext was insufficient to support a reasonable finding that racial discrimination was the real reason for the decision.

- In *De La Cruz v. El Conquistador Resort and Country Club*, 218 F.3d 1 (1st Cir. 2000), the court affirmed summary judgment in favor of an employer before Reeves was decided; the court then reconsidered but adhered to its ruling after Reeves. The plaintiff claimed he was discharged because of his national origin; the employer countered with proof that performance problems were the reason for the termination. The court found that there were triable issues with respect to the alleged pretextual nature of the employer's claim of performance deficiencies, but nevertheless affirmed summary judgment for the employer. The court reasoned that the plaintiff’s evidence of pretext was "thin" and that the evidence as a whole would not support a reasonable finding that national origin was the true reason for the termination.

The Application of Reeves in the Ninth Circuit

In contrast to these courts, the U.S. Court of Appeals for the Ninth Circuit, in San Francisco, has consistently held that a discrimination plaintiff can survive summary judgment merely by showing that the employer’s proffered explanation for its actions is "unworthy of credence" because it is internally inconsistent or otherwise not believable. In other
Summary Judgment in Discrimination Cases in the Wake of the Supreme Court's Decision in Reeves v. Sanderson Plumbing Products (continued)

words, in the Ninth Circuit, even before Reeves, no additional, independent evidence of discriminatory intent was required. See, e.g., Godwin v. Hunt Wesson, Inc., 150 F.3d 1217 (9th Cir. 1998). Based on the court’s recent decision interpreting Reeves, Chuang v. University of California Davis, 225 F.3d 1115 (9th Cir. 2000), it appears that employers will continue to face formidable obstacles to summary judgment in the Ninth Circuit.

Specifically, the court denied an employer’s motion for summary judgment because "the evidence constituting [plaintiff’s] prima facie case is sufficiently strong to raise a genuine issue of material fact regarding the truth of [the employer’s] proffered nondiscriminatory reasons." Id. at 1128. Plaintiff Chuang, a university professor employed in "in-residence" status, was promised a more favorable "full time equivalent" ("FTE") position (professors with FTE status were not responsible for securing funding for their positions). Chuang never received FTE status, even when such positions became available. The university contended that he was not qualified for the positions and that, in any event, his position as an in-resident faculty member was not at risk. However, based on what the court characterized as Chuang’s "extraordinary" qualifications, its observation that his position was not at risk precisely because he had been so successful in attracting funding, and the fact that the plaintiff was the only non-caucasian in the department without an FTE position, the court concluded that "a factfinder could well decide to disbelieve [the university's] explanation" for failing to offer him the positions. The fact that there was evidence which could lead a jury to disbelieve the university’s reasons, according to the Ninth Circuit, was sufficient to require a trial on Chuang’s discrimination claim.

Although the Chuang court also observed that the plaintiff presented certain direct evidence of discriminatory intent (e.g., allegedly race-based derogatory comments), the court emphasized that the presence of such evidence was not essential to its decision. In other words, summary judgment was inappropriate merely because the plaintiff was able to raise factual issues concerning the validity of the reasons relied upon by the university.

Conclusion

While Reeves undoubtedly was a defeat for employers, summary judgment remains an available tool in appropriate cases. Evidence that the employer’s stated reason may be false should not, standing alone, and in every case, suffice to support the ultimate determination that unlawful discrimination was the real reason. In light of Reeves, however, it all the more critical for employers (especially those in California and in the other western states within the Ninth Circuit) to make it difficult for a potential discrimination plaintiff to marshal persuasive evidence of pretext. Employers can do so by carefully monitoring and documenting instances of inadequate performance or unsatisfactory conduct, and by
ensuring that the reasons for disciplinary action or discharge are well supported.