

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

Waring :  
 :  
v. : No. 3:01cv1822(JBA)  
 :  
Carrier Corp. et al. :

Ruling on Pending Motions [Docs. ##21 & 43]

John Waring commenced this suit against Carrier Corp. ("Carrier"), Carrier International Corp. ("CIC") and United Technologies Corp. ("UTC"), alleging violations of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA"). Carrier and UTC (but not CIC) moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6), asserting that the complaint fails to state a complaint against them, as they are not liable as an "integrated enterprise" for the acts of CIC. Simultaneous with his filing of opposition to this motion, Waring moved to amend his complaint.<sup>1</sup> Carrier and UTC ("the moving defendants") oppose the amendment on the grounds of futility, asserting that even the facts as pled in the proposed Amended Complaint fail to establish that Carrier, UTC and CIC were an "integrated enterprise" subject to liability under ADEA.

For the reasons set out below, the Court grants Waring's motion to amend and denies the moving defendants' motion to

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<sup>1</sup>Waring nonetheless argues that even under his original complaint, the motion to dismiss should be denied.

dismiss.

## I. The Motion to Amend

Waring's original complaint in this case was filed September 24, 2001, and his motion to amend was filed February 11, 2002. The operative scheduling order [Doc. #27] provides that motions to amend are due by April 1, 2002. Thus, the amendment is by all accounts timely filed.

The moving defendants' only objection to the motion to amend is that it is futile. Because, as discussed below, the Amended Complaint sufficiently states a claim against the moving defendants, it is not futile and the amendment will be permitted.

## II. The Motion to Dismiss

### A. The Allegations of the Amended Complaint

Waring was hired by defendants in 1982 as a Production Control Manager, and thereafter assumed various positions throughout Asia with defendants. Am. Compl. ¶¶ 15-17. In April 2000, the Vice President of Human Resources for CIC, Patrick Preux, asked Waring about his retirement plans, as did the President of CIC, Geraud Darnis, in June 2000. Id. ¶ 20. Despite the fact that Waring was "well qualified for each of the job positions he held with defendants," id. ¶ 18, his employment was terminated by Preux on August 8, 2000, id. ¶ 21. While Preux cited "behavior inconsistencies" and "serious violations of

expense procedures," id., as the reasons for termination, the former term was never explained and the latter reason was unfounded, id. ¶ 23. These reasons were "a pretext for unlawful and wilful age discrimination." Id.

In addition to alleging throughout the Amended Complaint that he was employed by "defendants" (plural), Waring asserts:

Carrier, CIC, and UTC constitute an integrated enterprise, with common management, common ownership or financial control, centralized control of labor relations, and a functional interrelation of operations. CIC is a mere instrumentality and/or alter ego of UTC.

Id. ¶ 14. This allegation is given further context by Waring's claims that "the termination decision in this case [was] made by human resource personnel employed by Carrier and/or UTC"; when Waring questioned his termination, those questions were answered by Carrier's Vice President for Human Resources and a UTC ombudsman; Waring's paychecks were issued by Carrier for several years after he was transferred to Carrier's Asian Pacific Operations "(a/k/a CIC)"; Waring "regularly reported to, and took direction from, executives at Carrier and UTC concerning operations"; "business plans by Mr. Waring were submitted to UTC and Carrier for approval and changes"; "benefit plans offered to Mr. Waring were Carrier and/or UTC plans"; and UTC and Carrier oversaw Waring's duties as Director of Environmental Health and Safety and as Regional Dialog Coordinator. Id. ¶ 28.

Beyond these allegations specific to his employment, Waring

asserts that CIC's human resources and labor decisions were regularly made by UTC/Carrier human resources personnel; employees of the three corporations "regularly and routinely transferred between the corporate entities"; and the corporations share common management with regard to policies and procedures. Id. ¶¶ 28-29.

#### B. Standard

When deciding a motion to dismiss, the Court must accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the pleader. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

#### C. Analysis

The basis for Carrier's and UTC's motion to dismiss is that

neither company was Waring's "employer," and thus Waring has not stated a claim under ADEA against them. To determine when a parent company may be considered the employer of a subsidiary's employees, courts assess four factors: (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or interest. Cook v. Arrowsmith Shelbourne, Inc., 69 F.3d 1235, 1240-1241 (2d Cir. 1995). The focus of the inquiry is on the second factor, centralized control of labor relations, id. at 1241, which "'has been further refined to the point that the critical question to be answered then is: What entity made the final decisions regarding employment matters related to the person claiming discrimination?'" Id. at 1240 (quoting Trevino v. Celanese Corp., 701 F.2d 397, 404 (5th Cir. 1983) (citations omitted)).

Carrier and UTC claim that the Amended Complaint is "deficient in its allegation of an integrated enterprise," Def.'s Reply [Doc. #26] at 5, because it relies on inconsistent facts and conclusory allegations. Specifically, the moving defendants argue that Waring's allegation that Carrier and UTC participated in the decision to end his employment "directly contradicts the specific facts he alleged [in Am. Compl. ¶ 24; that is,] only that Patrick Preux, Vice President of Human Resources for CIC, terminated his employment, told him the reasons for the termination, and attempted to negotiate a severance package with him." Def.'s Reply [Doc. #26] at 6-7. The moving defendants

further point out that "the only people Plaintiff claims were involved in the alleged age discrimination at issue in this case are CIC officials - Mr. Preux and Geraud Darnis, the President of CIC." Id. at 7. In addition to these claimed contradictions, the moving defendants argue that the Waring's allegations against them are "so conclusory or otherwise insufficient that [they] still fail[] to properly allege an integrated enterprise." Id. at 8.

First, the claim that Waring's allegations are contradictory is without merit. Specifically identifying Preux as the conveyor of the termination decision is not inconsistent with Waring's claims that the actual decision to terminate his employment was made by Carrier and/or UTC human resources personnel, or that Carrier, UTC and CIC are so interrelated that they form a single integrated enterprise.

Second, Waring's complaint is not conclusory with regard to the allegations that Carrier, UTC and CIC form a single integrated enterprise. Waring sets out in detail his allegations of interrelated operations, centralized control of labor relations, common management, and common ownership or interest, providing concrete examples of the types of functions the defendants' are alleged to perform jointly.

A complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), and must simply "give the defendant fair

notice of what the plaintiff's claim is and the grounds upon which it rests," Conley v. Gibson, 355 U.S. 41, 47 (1957). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S.Ct. 992, 998 (2002) (citations omitted). Waring has sufficiently satisfied this standard, and is entitled to use the discovery mechanisms provided for in the Federal Rules of Civil Procedure to further assess and refine his claims.

### III. Conclusion

For the reasons set out above, Plaintiff's motion to amend his complaint [Doc. #43] is GRANTED and Carrier's and UTC's motion to dismiss [Doc. #21] is DENIED. The Clerk is directed to docket the Amended Complaint.

IT IS SO ORDERED.

/s/

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Janet Bond Arterton  
United States District Judge

Dated at New Haven, Connecticut, this \_\_\_\_\_ day of August, 2002.