

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

SUSAN HINDS,)	
BFC SOLUTIONS, INC.,)	
)	
Plaintiffs,)	
vs.)	NO. 4:05-cv-00180-DFH-WGH
)	
JOHN O'CONNER,)	
ENHANCED BUSINESS REPORTING)	
CONSORTIUM, INC.,)	
GRANT THORNTON, LLP,)	
PRICEWATERHOUSE COOPERS, LLP,)	
AMERICAN INSTITUTE OF CERTIFIED)	
PUBLIC ACCOUNTANTS,)	
MICROSOFT, INC.,)	
MIKE STARR,)	
ALAN ANDERSON,)	
BOB LAUX,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

SUSAN HINDS, individually, and as CEO)
of Strategic Management Harmony, LLC,)
and BFC SOLUTIONS, INC.,)

Plaintiffs,)

v.)

ENHANCED BUSINESS REPORTING)
CONSORTIUM, INC.,)
GRANT THORNTON, LLP,)
PRICEWATERHOUSE COOPERS, LLP,)
AMERICAN INSTITUTE OF CERTIFIED)
PUBLIC ACCOUNTANTS,)
MICROSOFT, INC.,)
MIKE STARR, as managing partner of)
Grant Thornton, LLP, and as a founding)
partner of Enhanced Business Reporting)
Consortium, Inc., JOHN O'CONNOR, as)
Chairman of Services of)
Pricewaterhouse Coopers, LLP, and as a)
founding partner of Enhanced Business)
Reporting Consortium, Inc., ALAN)
ANDERSON, as Senior Vice President of)
Member Services of American Institute of)
Certified Public Accountants and as a)
founding partner of Enhanced Business)
Reporting Consortium, Inc., and BOB)
LAUX, as Director of Financial Reporting)
for Microsoft, Inc., and as a founding)
partner of Enhanced Business Reporting)
Consortium, Inc.,)

Defendants.)

CASE NO. 4:05-cv-180-DFH-WGH

ORDER ON MICROSOFT CORPORATION'S MOTION
FOR ENTRY OF FINAL JUDGMENT

This matter is before the court on the "Motion of Defendant, Microsoft Corporation, for Entry of Final Judgment," (Docket No. 162), plaintiff's response (Docket No. 169), and Microsoft's reply (Docket No. 170).

On August 10, 2007, Judge Tinder dismissed all of Susan Hinds' claims against Microsoft Corporation under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act, as well as the additional state law claims for breach of contract and defamation. (Docket No. 116.) In the entry of August 10, 2007, the court directed Microsoft to file and serve a bill of costs and petition for attorney fees pursuant to Local Rule 54.1 within 14 days of the court's entry. On August 24, 2007, Microsoft timely filed its "Bill of Costs," a "Verified Petition and Memorandum in Support of Defendant Microsoft's Bill of Costs," and a "Verified Petition and Memorandum in Support of Attorneys' Fees." (Docket Nos. 119-21.) The case was reassigned to me upon Judge Tinder's appointment to the Seventh Circuit in December 2007.

On February 14, 2008, the United States Court of Appeals for the Seventh Circuit issued an order dismissing Susan Hinds' appeal for lack of jurisdiction because this court had not entered a final Rule 58 judgment and the case remained pending in the district court.

Based on the Seventh Circuit's order, on March 28, 2008, this court denied all "ostensibly post-judgment motions" filed by the parties because of the absence of a final judgment. (Docket No. 161.) Those "ostensibly post-judgment motions" included Microsoft's "Bill of Costs," "Verified Petition and Memorandum in Support of Defendant Microsoft's Bill of Costs," and "Verified Petition and Memorandum in Support of Attorneys' Fees." On April 4, 2008, Microsoft filed its Motion for Entry of Final Judgment with the Court under Rule 54(b) of the Federal Rules of Civil Procedure.

Under Rule 54(b), when an action presents more than one claim for relief or when multiple parties are involved, the court may direct entry of a final

judgment as to one or more, but fewer than all, claims or parties upon an express determination that there is no just reason for delay. In determining whether to grant a Rule 54(b) motion for final judgment, the court must consider these factors:

- (a) whether the claims under review are separable from the others remaining to be adjudicated; and
- (b) whether the nature of the claims already determined is such that no appellate court would have to decide the same issues more than once, even if there were subsequent appeals.

Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 8 (1980). Claims are considered separable from others remaining to be adjudicated if they have only minimal factual overlap. *Continental Casualty Co. v. Anderson Excavating & Wrecking Co.*, 189 F.3d 512, 517 (7th Cir. 1999).

The problem here is that one of Hinds' claims against Microsoft might meet this standard, but the others would not. The claim against Microsoft under Title VII was dismissed because Hinds had failed to file an EEOC charge against Microsoft, and there was an insufficient showing that Microsoft could be her employer under the statute. For purposes of Rule 54(b), this court's dismissal of the Title VII claims based on a failure to exhaust administrative remedies is severable from the remaining claims in this case as it arises out of a distinct set of facts that would not apply to any of the other defendants or other claims in this case. Further litigation of Susan Hinds' remaining claims under Title VII and the Equal Pay Act against Grant Thornton will not require any court to revisit the filing of the charge against Microsoft.

But the state law claims for breach of contract and defamation were directed at all defendants, including Microsoft, and Judge Tinder's reasons for dismissing

those claims were applicable to all defendants. The plaintiff's Title VII claims against those other defendants continue. Under these circumstances, a Rule 54(b) certification in this case could require the Court of Appeals to deal twice with different claims against the same defendants arising from the same circumstances. Under these conditions, the court exercises its discretion to deny Microsoft's motion for entry of a final Rule 54(b) judgment in its favor.

So ordered.

Date: March 23, 2009

DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

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