IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60293

DAVID DOUGLAS SMITH, III, ET AL.,

Plaintiffs-Appellants,

versus

ST. REGIS CORPORATION, ET AL.,

Defendants-Appellees,

Appeal from the United States District Court for the Southern District of Mississippi
(CA-3:85-140)

(February 15, 1995)

Before VAN GRAAFEILAND,[*] JOLLY, and WIENER, Circuit Judges.

PER CURIAM:[**]

The plaintiffs-appellants raise several issues on appeal. They argue that their claims under § 301 of the National Labor Relations Act are not time barred; these claims are based on allegations that the collective bargaining agreement survived the sale of St. Regis Corporation's ("St. Regis") Monticello,

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[*]United States Court of Appeals, Second Circuit Judge sitting by designation.

[**]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Mississippi, Paper Mill (the "Mill") to Georgia-Pacific, and that the United Paperworkers International, Local Union 371, and Local Union 1349 (collectively, "Union defendants") breached their duty of fair representation. The plaintiffs further appeal the dismissal of their discrimination and state law claims; these claims include race, age, and handicap discrimination; civil conspiracy, which encompassed the claims of inducement to breach employment contracts, defamation, and intentional infliction of emotional distress; unjustifiable, tortious, and intentional interference with their employment contracts; and intentional interference with prospective employment relations and economic advantages. The district court thoroughly and intelligently considered each of these claims and in a sixty-seven page opinion granted summary judgment to the defendants. On appeal, the parties have extensively briefed each of the issues. After study of the briefs and review of the record, we can find no reversible error in the district court's ruling.

The primary issue before us is whether the district court erred in holding that the statute of limitations barred the plaintiffs' § 301 claims. The applicable limitations period for § 301 causes of action is six months as provided in § 10(b) of the National Labor Relations Act, codified at 29 U.S.C. § 160(b). See DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983); Nelson v. Local 854, 993 F.2d 496, 498-99 (5th Cir. 1993)(per curiam). The limitations period begins to run "when the

plaintiffs either were or should have been aware of the injury itself, not when the plaintiffs became aware of one of the injuries' many manifestations." Farr v. H. K. Porter, 727 F.2d 502 (5th Cir. 1984). The record is clear that St. Regis notified its employees on July 12, 1984, that it intended to terminate their employment on July 16, 1984. Thus, the statute of limitations began to run on July 12. The plaintiffs filed their action on January 14, 1985. Consequently, the district court was correct to conclude that the plaintiffs' action is untimely because the statute of limitations expired on January 12, 1985.

With respect to their civil rights claims, we agree with the district court that the plaintiffs failed to carry their burden of production in these vaguely stated claims. The plaintiffs simply did not make the requisite showing of intentional discrimination in their Title VII discrimination case. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981). Nor did the plaintiffs make out a prima facie case of age discrimination. See Bodenheimer v. PPG Indust., Inc., 5 F.3d 955, 957 (5th Cir. 1993). Finally, we agree with the district court's determination that the plaintiffs failed to allege a prima facie case of handicap discrimination. The plaintiffs failed to refer to any statute or specific violation, nor did they show how they could qualify as "handicapped individuals" as contemplated by 29 U.S.C. § 706(7).

With respect to the plaintiffs' state law claims, we agree with the district court's determination and find that these claims are without merit. The claims of civil conspiracy, tortious interference with contract rights, and prospective economic advantages are pre-empted by § 301. See Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985). "Any other result would elevate form over substance and allow parties to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract." Id. at 211.

We also agree with the district court's determination that the plaintiffs failed to produce sufficient evidence to support their remaining claims of defamation and intentional infliction of emotional distress. The statements that Georgia-Pacific made to the representatives of the EEOC concerning its reasons for refusing to hire some of the plaintiffs are privileged. See Montgomery Ward & Co. v. Harland, 38 So.2d 771, 774 (Miss. 1949). The alleged communications between Georgia-Pacific and the Union defendants are also privileged because the plaintiffs have not presented evidence of malice. Killebrew v. Jackson City Lines Co., 82 So.2d 648 (Miss. 1955). As for any statements by St. Regis to Georgia-Pacific concerning individual employees during the reference check, these were privileged because they were authorized by the plaintiffs. Burdett v. Hines, 87 So. 470, 471 (Miss. 1921). Finally, there were rumors in the community that some of the plaintiffs had not been hired because they had failed a drug test.

The plaintiffs, however, did not present any evidence to show that any of the defendants were the source of these rumors. See Garziano v. E.I. DuPont de Nemours & Co., 818 F.2d 380, 393 (5th Cir. 1987); cf. Ferguson v. Watkins, 448 So.2d 271, 275 (Miss. 1984). Since there was no factual or legal basis for the plaintiffs' defamation claim, summary judgment was appropriate. See, e.g., Brewer v. Memphis Pub. Co., 626 F.2d 1238, 1245 (5th Cir. 1980), cert. denied, 452 U.S. 962 (1981).

Finally, summary judgment was also appropriate on the intentional infliction of emotional distress claim, whether it was based on the plaintiffs not being hired or the rumors of their drug use. Even assuming that there was a claim to assert, there was simply no evidence to support the allegation that the plaintiffs suffered emotional distress.

For the foregoing reasons, the district court's grant of summary judgment is

A F F I R M E D.