IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PATRICK LEE,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 3:06-CV-00873**
	§	
GROUP 1 SOFTWARE, INC. and PITNEY BOWES INC.	§	
	§	
Defendants.	§	

DEFENDANT PITNEY BOWES INC.'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant Pitney Bowes Inc. ("Pitney Bowes" or "Defendant"), files its Brief in Support of Motion for Summary Judgment, incorporating the Defendant's Motion for Summary Judgment filed herewith, as if fully set forth, and states as follows:

I. INTRODUCTION

Plaintiff was hired by Defendant, Group 1 Software, Inc. ("Group 1") in March, 2002 and served as its regional sales director in its Dallas office until his termination on December 31, 2004. At all times during his employment with Group 1, Plaintiff was paid, supervised, and directed by Group 1. In July 2004, Defendant Pitney Bowes purchased Group 1 and Group 1 became a wholly owned subsidiary of Pitney Bowes. Thereafter, and at all times during Plaintiff's employment with Group 1, Group 1 continued to function as a separate entity without interference or control by Pitney Bowes into its day to day operations or management. In his lawsuit, Plaintiff purports to state causes of action for retaliation for opposition to discrimination, for participation in investigation and for association with persons opposing discrimination and participating in Title VII proceedings. In fact, Plaintiff was terminated due to performance

issues directly related to his employment with Group 1. In any event, Plaintiff was not and has never been an employee of Pitney Bowes.

II.
SUMMARY JUDGMENT EVIDENCE

Defendant's Motion is based on the following evidentiary support:

1) Plaintiff's Original Complaint and Jury Demand, Apx. pp. 1-17, Exhibit "A; "

2) Excerpts from deposition of Plaintiff, Apx. pp. 18-23, Exhibit "B;"

3) Affidavit of Wayne Arden, Apx. pp. 24-26, Exhibit "C;"

4) Affidavit of Dennis Reisher, Apx. pp. 27-30, Exhibit "D;" and

5) *Torres v. Liberto Manufacturing Co., Inc.*, Apx. pp. 31-34, Exhibit "E."

III.
UNDISPUTED FACTS

1. Plaintiff was employed with Defendant, Group 1, from March of 2002 to December 31, 2004. Apx. p. 2; Plaintiff's Complaint, Exhibit "A," ¶ 8.

2. Plaintiff was a Regional Sales Director of Group 1. Plaintiff's employment with Defendant Group 1 was terminated on December 31, 2004. Apx. pp. 27 and 29, Affidavit of Dennis Reisher, Exhibit "D," ¶¶ 3 and 10.

3. Pitney Bowes purchased Group 1 in July 2004, at which time Group 1 became a wholly-owned subsidiary of Pitney Bowes. Apx. p. 24, Affidavit of Wayne Arden, Exhibit "C," ¶ 3.

4. Plaintiff has never received compensation from Pitney Bowes. Apx. p. 21, Plaintiff's Deposition, Exhibit "B," p. 208:1-3.

5. During the time of his employment with Group 1, Plaintiff testified that all of his compensation was from Group 1 and that the W-2 forms attached by Plaintiff to his tax returns

reflected that he was employed by Group 1. Apx. pp. 20-21, Plaintiff's Deposition, Exhibit "B," 207:23 – 208:6.

6. Plaintiff acknowledges, under oath, that the only basis he has for asserting that he is employed by Pitney Bowes are documents that he purports to have seen which state that Group 1 is a wholly owned subsidiary of Pitney Bowes. Apx, pp. 19-20, Plaintiff's Deposition, Exhibit "B", 206:8 – 207:25.

7. Dennis Reisher, Group 1's Manager of Human Resources at the time of Plaintiff's termination, states in his affidavit that: "[t]he decision to terminate Mr. Lee was solely a Group 1 decision and the decision was not discussed with or in any manner approved or authorized by anyone at Pitney Bowes, Inc." Apx. p. 30, Affidavit of Dennis Reisher, Exhibit "D," ¶ 14.

8. Wayne Arden, in-house counsel for Group 1 states, in his affidavit, that:

(a) Group 1 Software, Inc. was a wholly owned subsidiary of Pitney Bowes, Inc., as of December 31, 2004. At all times prior to December 31, 2004, Group 1 Software, Inc. was the final decision-maker for all employment decisions concerning and regarding Group 1 employees. All matters set forth herein refer to time periods on and before Patrick Lee's termination on December 31, 2004;

(b) Prior to and as of the date of Patrick Lee's termination from his employment with Group 1 Software, Inc., Pitney Bowes, Inc. exercised no responsibility for hiring, termination, supervision or control of Group 1 Software, Inc.'s employees, including Patrick Lee;

(c) Patrick Lee was, at all times prior to his termination, employed by Group 1 Software, Inc;

(d) Group 1 Software, Inc. was at all times responsible for its employees and for employment decisions concerning its employees, including Patrick Lee. Group 1 maintained a human resources department separate from that of Pitney Bowes, Inc. and issued paychecks and employee income tax documents under its own name. Pitney Bowes, Inc. pays no wages to the employees of Group 1;

(e) Pitney Bowes was not directly involved in Group 1's daily decision-making, nor did it set any hiring standards. Pitney Bowes did not set, review or control the labor practices of Group 1, nor did it recruit or approve personnel and/or hiring decisions. Its books and financial records were and are separately kept. No directors were shared between Pitney Bowes and Group 1. No property was shared between them and less than 1% of Pitney Bowes' business was conducted with Group 1; and

(f) Pitney Bowes, Inc. exercised no control of or responsibility for the employees of Group 1, including Patrick Lee, or any of the decisions concerning or regarding Lee's employment, including his termination.

Apx. pp. 24-25, Affidavit of Wayne Arden, Exhibit "C," ¶¶3-7.

IV.
LEGAL ISSUES

Whether Plaintiff was an employee of Pitney Bowes?

V.
ARGUMENT AND AUTHORITIES

A. Criteria for Summary Judgment

Under Rule 56(c), summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a

matter of law."[1] "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'"[2] A party opposing a properly supported motion under Rule 56 "must set forth specific facts showing that there is a genuine issue for trial."[3]

B. Plaintiff Was Not an Employee of Pitney Bowes

The crux of Plaintiff's claims against Pitney Bowes rests on Plaintiff's assertion that Pitney Bowes was his employer. Plaintiff has no evidence that Pitney Bowes employed him. Instead, Pitney Bowes has come forward with summary judgment evidence that it did not employ Plaintiff and, in addition, submitted evidence that the Court should not disregard the corporate separateness between it and its subsidiary, Group 1, as they did not singularly employ Plaintiff.

Plaintiff was employed by Group 1 prior to its purchase by Pitney Bowes, and continued in this capacity as an employee of Group 1 until his termination.[4] Plaintiff was not at any time an employee of Pitney Bowes nor did Pitney Bowes exercise any degree of control over or responsibility for employment decisions concerning Plaintiff or other Group 1 employees, during the period of Plaintiff's employment.[5] From the time of Pitney Bowes' purchase of Group 1 and for the duration of Plaintiff's employment with Group 1, parent and subsidiary continued to operate separately and Group 1 continued to be responsible for employment decisions concerning its employees.[6]

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[1] Fed. R. Civ. P. 56(c).
[2] *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 1356 (1986)(quoting *First Nat'l Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 289, 88 S. Ct. 1575, 1592 (1968)).
[3] Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2510 (1986).
[4] Apx. p. 2, Plaintiff's Complaint, Exhibit "A," ¶ 8; Apx. p. 25, Affidavit of Wayne Arden, Exhibit "C," ¶ 5; Apx. pp. 27 and 30, Affidavit of Dennis Reisher, Exhibit "D," ¶¶ 3, 14.
[5] Apx. p. 25, Affidavit of Wayne Arden, Exhibit "C," ¶¶ 4, 6, 7.
[6] Apx. p. 25, Affidavit of Wayne Arden, Exhibit "C," ¶ 6.

Plaintiff admits in his deposition testimony that he understood Group 1 had become a wholly owned subsidiary of Pitney Bowes during Plaintiff's employment.[7] Plaintiff's paychecks were issued by Group 1 and the W-2s attached to Plaintiff's tax returns reflect that he was employed by Group 1.[8] Further, Plaintiff admits that he has never received any compensation from Pitney Bowes.[9]

In *Lusk v. Foxmeyer Health Corp.,* 129 F. 3d 773, 777-781 (5th Cir. 1997), the Fifth Circuit considered in the context of an Age Discrimination in Employment Act case ("ADEA"), whether a parent corporation and its subsidiary could be held to be a single employer of the plaintiffs, who were the subsidiary company's former employees. The court applied the analysis that it had earlier held to apply in civil right cases as relevant in determining whether distinct legal entities constitute an integrated enterprise,[10] so as to be considered as a single employer of plaintiff, such "factors to consider include: (1) interrelation of operations, (2) centralized control of labor or employment decisions, (3) common management, and (4) common ownership or financial control."[11] In an unpublished decision, in *Torres v. Liberto Manufacturing Co., Inc.,* 67 Fed. Appx. 252 (5th Cir. 2003)[12], the Fifth Circuit applied these four factors in the context of a Title VII and ADEA case when the plaintiff's employer, Liberto Manufacturing Co., Inc. employed less than the requisite number of employees for purposes of Title VII and the ADEA, but where plaintiff contended that because of the interrelatedness between Liberto Manufacturing Co., Inc. and its parent company, Liberto Specialty Company, Inc., both companies should be treated together as one enterprise, pursuant to the single employer doctrine. The Fifth Circuit has emphasized that in the application of the four-factor analysis used in

[7] Apx, p. 20, Deposition of Patrick Lee, Exhibit "B," 207:17-22.
[8] Apx. pp. 20 and 21, *id.* 207:23-208:6.
[9] Apx. p. 21, *id.,* 208:1-3.
[10] *See Trevino v. Celanese Corp.,* 701 F.2d 397, 404 (5th Cir. 1983).

determining whether a parent corporation and its subsidiary can be held to be plaintiff's single employer, that "[t]his analysis ultimately focuses on the question of whether the parent corporation was a final decision-maker in connection with the employment matters underlying the litigation ... and all four factors are examined only as they bear on this precise issue."[13]

The Fifth Circuit has recognized that there exists under the law "a strong presumption that a parent corporation is not the employer of its subsidiary's employees."[14] Thus, the court in *Lusk* held, "[o]nly evidence of control suggesting a significant departure from the ordinary relationship between a parent and its subsidiary - domination similar to that which justifies piercing the corporate veil - is sufficient to rebut this presumption... and to permit an inference that the parent corporation was a final decision-maker in its subsidiary's employment decisions."[15] Rather, the Fifth Circuit has held that relevant factors that suggest "the existence of interrelated operations [between the parent and its subsidiary] include evidence that the parent: (1) was involved directly in the subsidiary's daily decisions relating to production, distribution, marketing, and advertising; (2) shared employees, services, records, and equipment with the subsidiary; (3) commingled bank accounts, accounts receivable, inventories, and credit lines; (4) maintained the subsidiary's books; (5) issued the subsidiary's paychecks; or (6) prepared and filed the subsidiary's tax returns."[16] Factors, such as these, simply do not exist in this case.

Considering the four-factor analysis, with the ultimate focus on the question of whether Pitney Bowes was a final decision-maker in connection with the employment matters underlying Lee's litigation, it is clear that Pitney Bowes was not Lee's employer; thus, summary judgment is proper.

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[11] *Lusk,* 129 F. 3d at 777.
[12] Apx. pp. 31-34.
[13] *Lusk,* 129 F. 3d at 777.
[14] *Lusk,* 129 F.3d at 778; *see Frank v. U.S. West, Inc.,* 3 F.3d 1357, 1362 (10th Cir. 1993).

1. No interrelationship of operations.

Pitney Bowes and Group 1 did not have an interrelationship of operations. Group 1 maintained a human resources department separate from that of Pitney Bowes, Inc.[17] Group 1 issued paychecks and employee income tax documents under its own name and Pitney Bowes pays no wages to the employees of Group 1.[18] Group 1's books and financials records were separately kept.[19]

2. Group 1 had separate control of its own labor relations.

Group 1 maintained a human relations department separate from that of Pitney Bowes.[20] Pitney Bowes did not set, review or control the labor practices of Group 1, nor did it recruit or approve personnel and/or hiring decisions.[21] Group 1 was at all times responsible for its employees and for employment decisions concerning its employees, including Patrick Lee.[22] At all times on and prior to the date of Patrick Lee's termination, Group 1 was the final decision-maker for all employment decisions concerning and regarding Group 1 employees.[23] Prior to and as of the date of Patrick Lee's termination from his employment with Group 1, Pitney Bowes exercised no responsibility for hiring, termination, supervision or control or Group 1's employees, including Patrick Lee.[24] Pitney Bowes exercised no control of or responsibility for the employees of Group 1, including Patrick Lee, or any of the decisions concerning or regarding Lee's employment, including his termination.[25] Patrick Lee was, at all times prior to his

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[15] *Lusk,* 129 F.3d at 778-779 (citation omitted).
[16] *Lusk,* 129 F.3d at 778.
[17] Apx. p. 25, Affidavit of Wayne Arden, Exhibit "C," ¶ 6.
[18] Apx. p. 25, *id.,* ¶ 6.
[19] Apx. p. 25, *id.,* ¶ 7.
[20] Apx. p. 25, *id.,* ¶ 6.
[21] Apx. pp. 24 and 25, *id.,* ¶¶ 3, 4.
[22] Apx. pp. 24 and 25, *id.,* ¶¶ 3, 6.
[23] Apx. p. 25, *id.,* ¶ 4.
[24] Apx. p. 25, *id.,* ¶ 4.
[25] Apx. pp. 25 and 26, *id.,* ¶¶ 7,8.

termination, employed by Group 1.[26] Dennis Reisher, Group 1's Manager of Human Resources at the time of Patrick Lee's termination, states in his affidavit that: "[t]he decision to terminate Mr. Lee was solely a Group 1 decision and the decision was not discussed with or in any manner approved or authorized by anyone at Pitney Bowes Inc."[27]

3/4. Common Management, Ownership or Financial Control.[28]

Pitney Bowes did not share directors in common with Group 1.[29] Group 1 maintained a human resources department separate from that of Pitney Bowes Inc.[30] Pitney Bowes conducted less than 1% of its business with Group 1.[31]

The summary judgment evidence is clear that Plaintiff was the employee of Group 1 and not Pitney Bowes. Plaintiff is unable to overcome the "strong presumption" that a parent corporation is not the employer of its subsidiary company's employees. Plaintiff is not able to come forward with summary judgment evidence establishing a "significant departure from the ordinary relationship between a parent and its subsidiary" that is similar in nature to that required to justify piercing the corporate veil. In particular, here, Pitney Bowes has come forward with summary judgment evidence that establishes that it was Group 1 that made the employment decisions involving Patrick Lee, including the termination decision, and that Pitney Bowes was not involved in such decisions at all. Thus, in this case, no inference can be made that overcomes the strong presumption that a parent company is not the employer of its subsidiary

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[26] Apx. p. 25, *id.*, ¶ 5.
[27] Apx. p. 30, Affidavit of Dennis Reisher, Exhibit "D," ¶ 14.
[28] As to the factors of common management and ownership, such factors are considered to be usual and ordinary parts of a parent corporation and subsidiary relationship and should not be considered as a justification of treating the two companies as a single employer. Similarly, the ownership of stock of a subsidiary company by its parent corporation, selecting directors of the subsidiary and establishing policies of the subsidiary are all rights incidental to corporate ownership and should not be a means by which limited liability protection of the parent corporation is forfeited. *Lusk,* 129 F.3d at 778.
[29] Apx., p. 25, Affidavit of Wayne Arden, Exhibit "C," ¶ 7.
[30] Apx. p. 25, *id.*, ¶ 6.
[31] Apx. p. 25, *id.*, ¶ 7.

company's employees. As a matter of law, Plaintiff is not an employee of Pitney Bowes and summary judgment is proper.

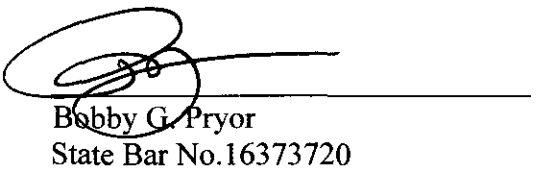
VI.
ATTORNEYS' FEES

Pitney Bowes requests that the Court award it attorneys' fees under Title VII. Such fees can be awarded to a successful defendant "only upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation." *See Akop,* 2006 WL 119146, *12; *quoting Tutton v. Garland Indep. Sch. Dist.*, 733 F. Supp. 1113, 1117 (N.D. Tex. 1990)(internal quotation marks omitted). Here, Plaintiff was a manager for Group 1, knew that Group 1 and not Pitney Bowes compensated him, that Group 1 provided him with his W-2 tax forms, and that Pitney Bowes was the parent company of its subsidiary, Group 1. All facts know to Plaintiff and his counsel before they pursued this action against Pitney Bowes. Plaintiff has no reasonable basis for asserting that he was an employee of Pitney Bowes and has no evidentiary foundation to assert that Pitney Bowes and Group 1 acted as a "single employer" of Lee. Further, in Plaintiff's SOX case Plaintiff was made well aware that Group 1 was a wholly owned subsidiary of Pitney Bowes and that Pitney Bowes did not engage in activity which would justify an argument for joint employees; including, such evidence as the affidavit of Dennis Reisher included as a part of this summary judgment record. Yet, Plaintiff continued to pursue Pitney Bowes in this action. Pitney Bowes prays that the Court award it reasonable attorneys' fees.

VII.
PRAYER

Wherefore, premises considered, Defendant prays that its Motion for Summary Judgment be granted in all respects, and that it be awarded costs and attorneys' fees and such other and further relief to which it is justly entitled.

Respectfully Submitted,



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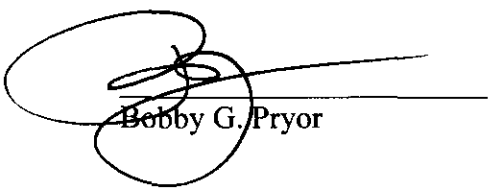
CERTIFICATE OF SERVICE

This is to certify that on May 15, 2007, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to the following individuals who have consented in writing to accept this Notice as service of this document by electronic means: Matthew Hill, Esq., 8080 North Central Expressway, Suite 1480, Dallas, Texas 75206.



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