

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TONY DUPREE, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 03-138 JJF
 :
 FLOYD MEGEE & SONS, DOUG ROSE, :
 JOHN FERRIS, BENNY WHITBANKS, :
 and MEGEE MOTORS CHRYSLER :
 PLYMOUTH DODGE TRUCK JEEP :
 DEALERSHIP, all assets, all :
 possessions, all affiliates, :
 all connected sister or :
 parent companies, :
 :
 Defendants. :

Tony Du Pree, Jr., Milton, Delaware.
Pro Se Plaintiff.

Sheldon N. Sandler, Esquire and Adria B. Martinelli, Esquire of
YOUNG, CONAWAY, STARGATT & TAYLOR, Wilmington, Delaware.
Attorneys for Defendants Floyd A. McGee Motor Co., Inc., John
Ferris, and Doug Rhodes.
Of Counsel: Joseph M. English, Esquire of FISHER & PHILLIPS, LLP,
Atlanta, Georgia.
Attorney for Defendants John Ferris and Doug Rhodes.

MEMORANDUM OPINION

March 31, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court are three Motions filed by Plaintiff, a Motion To Amend (D.I. 14), Motion To Schedule A Rule 16 Conference (D.I. 16), and Motion In Limine. (D.I. 17.) For the reasons discussed, the Court will grant in part the Motion To Amend and deny the Motion To Schedule A Rule 16 Conference and Motion In Limine.

BACKGROUND

The Plaintiff, Tony DuPree, alleges that he was denied a sales position at Floyd A. McGee Motor Co., Inc. ("McGee Motor")¹ on the basis of race. Plaintiff filed a charge with the Equal Employment Opportunity Commission (the "EEOC"), and, after receipt of his notice of dismissal and right to sue, timely filed suit in federal court.

DISCUSSION

I. Motion To Amend

By his Motion To Amend (D.I. 14), Plaintiff seeks to add two statutory provisions to his Complaint, 28 U.S.C. § 1658 and 28 U.S.C. § 1653. Plaintiff also seeks to add a claim for damages in the amount of eight million dollars.

Ordinarily, a court will "freely" grant leave to amend. Fed. R. Civ. P. 15. However, a court will deny leave to amend if

¹ In the Complaint, McGee Motor is improperly identified as McGee Motors Chrysler Plymouth Dodge Truck Jeep Dealership.

such amendment would be futile. Cowell v. Palmer Tp., 263 F.3d 286, 296 (3d Cir. 2001) (citing Maio v. Aetna, Inc., 221 F.3d 472 (3d Cir. 2000)). Beginning with Plaintiff's request to add 28 U.S.C. § 1658 and 28 U.S.C. § 1653 to his Complaint, the Court will deny Plaintiff's request. Section 1658 is a statute of limitations provision. Section 1653 provides that amendments to pleadings may be made to cure defective allegations of jurisdiction. As Title VII contains its own limitations provision and the Court has subject matter jurisdiction over the instant lawsuit, granting leave to amend these two statutory provisions would be futile.

Turning to Plaintiff's request to add a claim for eight million dollars as damages to the Complaint, the Court will grant this request to the extent Plaintiff seeks to add a general request for damages. The Court will deny, however, Plaintiff's request to add his specified sum of damages as his request is in excess of the damages available in a Title VII action. 42 U.S.C. § 1981a.

II. Motion To Schedule A Rule 16 Conference

The decision to schedule a Rule 16 conference is within the discretion of the Court. At this time, the Court will deny the Motion To Schedule A Rule 16 Conference (D.I. 16) and directs the parties to confer and submit to the Court a proposed scheduling order. Following a review of the parties' submissions, the Court

will schedule a pretrial conference and trial.

III. Motion In Limine

Plaintiff's Motion In Limine (D.I. 17) does not appear to request any specific relief. Plaintiff's Motion is a confusing one page document alleging various acts committed by Defendants. Because the Court cannot discern the relief requested by Plaintiff's Motion in Limine (D.I. 16), the Court will deny the Motion.

CONCLUSION

For the reasons discussed, the Court will grant in part the Motion To Amend and deny the Motion To Schedule A Rule 16 Conference and Motion In Limine. An appropriate Order will be entered.

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 parent companies, :
 :
 Defendants. :

O R D E R

At Wilmington, this 31st day of March, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- 1) The Motion To Amend (D.I. 14) filed by Plaintiff is:
 - a) **DENIED** with respect to the request to add 28 U.S.C. § 1658 and 28 U.S.C. § 1653 to the Complaint;
 - b) **GRANTED** with respect to the request to add a general claim for damages.
- 2) The Motion To Schedule A Rule 16 Conference (D.I. 16) filed by Plaintiff is **DENIED**;
 - a) The parties shall confer and submit to the Court a proposed scheduling order by April 27, 2004.

After reviewing the parties' submissions, the Court will schedule a pretrial conference and trial for this matter.

- 3) The Motion In Limine (D.I. 17) filed by Plaintiff is **DENIED.**

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE