The Burger Court Opinion Writing Database

Christianburg Garment Co. v. EEOC

434 U.S. 412 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 17, 1978

RE: 76-1383 - Christiansburg Garment Co. v. EEOC

Dear Potter:

I join.

Regards,

W. E. B.

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 16, 1978

RE: No. 76-1383 Christianburg Garment Co. v. EEOC

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 10 JAN 1978

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1383

Christiansburg Garment Co., Petitioner, *v.* Equal Employment Opportunity Commission. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[January —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

Section 706 (k) of Title VII of the Civil Rights Act of 1964 provides:

> "In any action or proceeding under this title the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee. . . ." [1]

The question in this case is under what circumstances an attorney's fee should be allowed when the defendant is the prevailing party in a Title VII action—a question about which the federal courts have expressed divergent views.

I

Two years after Rosa Helm had filed a Title VII charge of racial discrimination against the petitioner Christiansburg Garment Company (the company), the Equal Employment Opportunity Commission notified her that its conciliation efforts had failed and that she had the right to sue the com-

[1] "In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person." 42 U. S. C. § 2000e-5 (k).

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

Recirculated: 12 JAN 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–1383

Christiansburg Garment Co., Petitioner, *v.* Equal Employment Opportunity Commission. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[January —, 1978]

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SEE PAGES: 7

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–1383

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[January —, 1978]

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 12, 1978

Re: 76-1383 Christianburg Garment Co.
v.
Equal Employment Opportunity Commission

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 16, 1978

Re: No. 76-1383, Christiansburg Garment Co. v. EEOC

Dear Potter:

Please join me.

Sincerely,

T. M.

Mr. Justice Stewart

cc: The Conference

January 11, 1978

76-1383 Christiansburg Garment v. EEOC

Dear Potter:

Although I could join 95% of your opinion circulated yesterday, I am more than a little disquieted by some of its language.

Earlier in Part III you recognize that both the language and legislative history make clear that District Courts have the discretion to award attorney's fees to prevailing defendants. The only question is the standard to be applied, a question that has received considerableattention from the Courts of Appeals, including CADC, CA2 and CA3. The standard adopted by the last named circuits (and consistent with that of CADC) is - as you opinion states on page 8 - as follows:

> "In upholding an attorney's fee award to a successful defendant, that court (CA2 in Yeshiva University) stated that such awards should be permitted 'not routinely, not simply because he succeeds, but only when the action brought is found to be unreasonable, frivilous, meritless, or vexatious'".

Your opinion states that "the concept embodied" in the above quoted language "is correct". (p. 8). You then give a good reason for omitting the word "meritless", and conclude:

> "In sum, a District Court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was unreasonable or without foundation, even though not brought in subjective bad faith." (p. 9).

Although this formulation of the appropriate standard, omitting the words "meritless" and "frivolous," may be viewed as somewhat stricter than that now prevailing in the Circuits, I think it is one that I could endorse.

But, in the paragraph commencing at the bottom of the same page, your draft incorporates language that could well be read as further raising the level of proof required by a prevailing defendant. I refer to the following sentence:

> "Hence, a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim is so lacking in factual or legal foundation that it plainly should never have been commenced, or that it has been carried beyond the point when it became obviously groundless." (pp. 9, 10)

If a claim is "so lacking in factual or legal foundation that it plainly should never have been commenced", our ethical standards should prevent a lawyer from signing the complaint. I believe this will be read as a far different standard from that of "unreasonable or without foundation".

Moroever, my notes reflect that a majority of the Conference agreed that the "reasonableness" standard of the Circuits was appropriate with - as someone suggested - the elimination of the elastic word "meritless". In this connection, the CA2 standard includes the word "frivolous", which I understood we would retain.

I appreciate, of course, that we are dealing with words that cannot be precisely defined and that will mean different things to different judges. But there is an advantage in not undertaking precise definition. The statute contemplates vesting discretion in a District Court. I would leave it there with a formulation along the lines I thought we had agreed upon at Conference.

One further observation: The first sentence in the paragraph commencing at the bottom of page 9 seems a bit unrealistic in light of what actually happens with

respect to the vast majority of Title VII claims. We were told that more than 120,000 claims are pending before EEOC, and that last year some 6,000 of these reached the courts. I know from my limited experience before coming on the Court (since corroborated by the cert petitions) that Title VII may well be the single most productive source of federal civil litigation. Lawyers are happy to take these cases because the expense of litigation (the typical procedure is prolonged discovery initiated by the plaintiff) compels small and modest size employers to settle as being "cheaper" than fighting even the most frivolous claim.

Thus, there is no realistic problem of discouraging "private plaintiffs" from the bringing of claims. Moreover, the defendant in many of these cases (and usually the only solvent one) is EEOC. I know of no reason to encourage it to sue or to protect it when it acts unreasonable.

With fairly modest changes, consistent with the Conference vote, I will be happy to join you.

Sincerely,

Mr. Justice Stewart

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 12, 1978

No. 76-1383 Christiansburg Garment Co. v. EEOC

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

Copies to the Conference

LFP/lab

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 17, 1978

Re: No. 76-1383-Christiansburg Garment v. EEOC

Dear Potter:

Please join me.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 12, 1978

Re: 76-1383 - Christianburg Garment Co.
v. EEOC

Dear Potter:

Please join me.

Respectfully,

John

Mr. Justice Stewart

Copies to the Conference