

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FRANKLIN C. EDMONDS,

Plaintiff,

v.

OPERATING ENGINEERS LOCAL 139,

Defendant.

ORDER

08-cv-644-bbc

This is a civil action for monetary relief in which plaintiff Franklin Edmonds, who is proceeding pro se, alleges that he has been discriminated against by defendant Operating Engineers Local 139. Defendant has filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). In conjunction with this motion, defendant has filed a motion for leave to present to the court documents outside the pleadings and has submitted copies of those documents. The documents are docket sheets and filings in previous cases filed in the District Court for the Eastern District of Wisconsin in which plaintiff sued defendant.¹

Generally, a court cannot consider documents outside the pleadings in deciding a motion to dismiss under Rule 12(b)(6); such documents do not become fair game unless they are attached to or at least referred to in the complaint. *Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir. 2002). However, there is an exception to this rule: a court may consider “documents contained in the public record” without converting the motion into one for summary judgment. *Menominee Indian Tribe of Wisconsin v. Thompson*, 161 F.3d 449, 456 (7th Cir. 1998). The court documents

¹ Defendant also includes a complaint plaintiff filed with the Wisconsin Department of Workforce Development and a notice of right to sue letter from the United States Equal Employment Opportunity Commission. Because these documents were attached to plaintiff’s complaint, this court can consider them in deciding defendant’s motion to dismiss, and I need not address these documents in deciding defendant’s motion for leave to present documents outside the pleadings.

defendant has submitted are matters of public record and thus may be the subject of judicial notice. Therefore, defendant's motion for leave to present documents outside the pleadings (Dkt. #18) is GRANTED. I will also set the following briefing schedule regarding defendant's motion to dismiss: plaintiff has until February 12, 2009, to file his brief in opposition, and defendant has until February 23, 2009, to file its reply brief.

Entered this 22nd day of January, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge