

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

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

MEMORANDUM AND ORDER
05-C-42-S

MENARD, INC.,

Defendant.

Plaintiff Equal Employment Opportunity Commission (EEOC) brought this action against defendant Menard, Inc. requesting an order requiring Menard to prepare, execute and file accurate and complete EEO-1 reports for each calendar year from 2000 to the present pursuant to 42 U.S.C. §2000e-8(c).

On April 29, 2005 plaintiff moved for partial summary judgment on liability pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. Pursuant to this Court's March 11, 2005 Preliminary Pre-Trial Conference Order defendant's response to this motion was to be filed not later than May 19, 2005 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding the plaintiff's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Equal Employment Opportunity Commission (EEOC) is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action pursuant to 42 U.S.C. §

2000e-8(c) and regulations issued thereunder, 29 C.F.R. §1602.9. At all times relevant to this action defendant Menard, Inc. has been doing business in the State of Wisconsin and the City of Eau Claire, Wisconsin and has continuously had at least 100 employees. Defendant is an employer engaged in an industry affecting commerce.

Defendant Menard, Inc. has not filed its EEO-1 reports for 2000, 2001, 2002, 2003 or 2004 except for one such report for the Headquarters office for the year 2001.

MEMORANDUM

Defendant has failed to respond to plaintiff's motion for summary judgment. Accordingly, plaintiff's motion will be decided as a matter of law.

Section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-8(c) authorizes the EEOC to require employers to make records, preserve records and report to EEOC concerning records "relevant to the determinations of whether unlawful practices have been or are being committed." By regulations codified at 29 C.F.R. §§ 1602.7-1602.14, EEOC requires all employers with more than one hundred employees to file an annual EEO-1 report.

It is undisputed that defendant has failed to file these reports as required by law. Accordingly, plaintiff is entitled to judgment in its favor as a matter of law. Plaintiff's motion for

partial summary judgment will be granted. Further, since in its complaint plaintiff requested only declaratory judgment the Court will enter judgment in this matter granting plaintiff the requested declaratory relief.

ORDER

IT IS ORDERED that the plaintiff's for partial summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff against defendant together with costs declaring that defendant Menard is ordered without further delay to prepare, execute and file accurate and complete EEO-1 reports as required by law for each calendar year from 2000 to present.

Entered this 26th day of May, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge