

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

HAROLD MILLER and DARICE FOWLER,

Plaintiffs,

v.

KRAFT FOODS GLOBAL, INC.,

Defendant.

ORDER

11-cv-381-slc

In this case brought pursuant to 42 U.S.C. § 1981, plaintiffs Harold Miller and Darice Fowler, who are both African-American, allege that their former employer, defendant Kraft Foods Global, Inc., discriminated against them on the basis of their race when it fired them for violating a company policy prohibiting cell phones within the plant at which they worked. Miller was terminated by defendant on June 8, 2009; Fowler was terminated on June 7, 2008. On February 23, 2010, Miller and his wife jointly filed for bankruptcy protection under Chapter 7 of the U.S. Bankruptcy Code, but Miller never listed his claim against Kraft on any of his schedules and instead represented under penalty of perjury that he owned no assets, including potential lawsuits, available for distribution to his creditors. On the basis of these representations, the bankruptcy court concluded that there was no property available to Miller's creditors and granted him and his wife a full discharge of debt on June 3, 2010.

Less than a year after his bankruptcy discharge Miller filed this lawsuit against Kraft, seeking to recover lost wages and benefits, front pay, liquidated damages and punitive damages for his alleged discriminatory firing. However, pre-bankruptcy claims like Miller's claim against Kraft "are part of debtors' estates . . . [and] therefore belong[] to the Trustee, for the benefit of [the debtors'] creditors." *Biesek v. Soo Line R. Co.*, 440 F.3d 410, 413 (7th Cir. 2006) (citing 11

U.S.C. § 541(a)(1) and *Pease v. Production Workers Local 707*, 386 F.3d 819, 821-22 (7th Cir. 2004)); *see also Cannon-Stokes v. Potter*, 453 F.3d 446 (7th Cir. 2006). Therefore, Kraft has filed a motion for judgment on the pleadings, asserting that Miller must be dismissed from this suit because he is not the real party in interest with respect to his claims against Kraft. Dkt. 20.

Miller has not offered any substantive response to the motion.¹ Instead, he filed a motion to amend his complaint to add the bankruptcy estate as a plaintiff; two weeks later, the bankruptcy estate (represented by Miller's attorneys) institution its own, separate action against Kraft. *Bankruptcy Estate of Harold Miller and Celesta Jean Miller by Trustee Michael Kepler v. Kraft Foods Global, Inc.*, 11-cv-850-slc, dkt. 1. Like Miller's complaint, the estate's complaint alleges that Miller was terminated by Kraft on the basis of his race in violation of 42 U.S.C. § 1981.

In light of the fact that the bankruptcy estate has instituted its own, separate action against Kraft, Miller's motion to amend the complaint to add the bankruptcy estate as a plaintiff is now moot. Further, because Miller has not attempted to show that he has any personal interest in the outcome of the instant suit or offered any other substantive response to Kraft's motion, I will grant the motion for judgment on the pleadings against Miller.

¹ Although I have not ruled on Miller's motion for an extension of time to respond to the motion for judgment on the pleadings, it appears that Miller's only purpose in seeking the extension was to gain time to file his second amended complaint, which he has now done. Accordingly, the motion is denied as moot.

ORDER

IT IS ORDERED THAT:

1. Defendant's motion for judgment on the pleadings against plaintiff Harold Miller, dkt. 20, is GRANTED. Plaintiff Harold Miller is not the real party in interest in this case and therefore may not maintain this suit for his personal benefit. Accordingly, he must be dismissed from this action.

2. Plaintiff Miller's motion to amend the complaint to add the Bankruptcy Estate of Harold Miller, dkt. 25, is DENIED as moot.

3. Plaintiff Miller's motion for an extension of time to respond to defendant's motion for judgment on the pleadings, dkt. 23, is DENIED as moot.

Entered this 13th day of January, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge