

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

KATHLEEN M. MIZZI TODD,	)	CIVIL ACTION NO. 5:01CV00021
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BLUE RIDGE LEGAL SERVICES,	)	<u>ORDER</u>
INC., and JOHN E. WHITFIELD,	)	
individually, and in his official capacity	)	
as Executive Director of Blue Ridge	)	
Legal Services, Inc.,	)	
	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is accordingly  
this day

ADJUDGED ORDERED AND DECREED

as follows:

(1) The July 3, 2001 Report and Recommendation of the Magistrate Judge shall be,  
and it hereby is, ADOPTED.

(2) The defendants' April 30, 2001 Motion for Summary Judgment shall be, and it  
hereby is, DENIED WITHOUT PREJUDICE to refile at the close of discovery.

(3) The plaintiff's objections, filed July 12, 2001, to the Report and Recommendation  
shall be, and they hereby are, OVERRULED.

The Clerk of the Court hereby is directed to send a certified copy of this order and  
the accompanying Memorandum Opinion to all counsel of record and to Magistrate Judge  
Crigler.

ENTERED: \_\_\_\_\_  
Senior United States District Judge

\_\_\_\_\_  
Date

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KATHLEEN M. MIZZI TODD,	)	CIVIL ACTION NO. 5:01CV00021
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Plaintiff,	)	
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BLUE RIDGE LEGAL SERVICES,	)	<u>MEMORANDUM OPINION</u>
INC., and JOHN E. WHITFIELD,	)	
individually, and in his official capacity	)	
as Executive Director of Blue Ridge	)	
Legal Services, Inc.,	)	
	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

Before the court is the defendant's April 30, 2001 motion for summary judgment. This matter was referred to United States Magistrate Judge B. Waugh Crigler for proposed findings of fact, conclusions of law, and a recommended disposition. See 28 U.S.C. §§ 636(b)(1)(B). On July 3, 2001, the Magistrate Judge issued his Report and Recommendation, wherein he recommended that the court deny the defendant's summary judgment motion as premature. The defendants filed no objections. The plaintiff filed a response in which she expressed her support for the Magistrate Judge's recommendation to deny the summary judgment motion and her objection to some of the factual assertions made in the report. Having conducted a *de novo* review of the portions of the Report and Recommendation relevant to the plaintiff's response, the court overrules the plaintiff's objections. The court also adopts the recommendation of the Magistrate Judge to deny the defendants' summary judgment motion as premature for the reasons set forth below.

I.

The plaintiff, Kathleen M. Mizzi Todd, was employed by the defendant, Blue Ridge Legal Services, Inc., a not-for-profit corporation that provides *pro bono* legal services, from

October, 1987 until February, 1999.

On March 6, 2001, the plaintiff filed this suit in which she claims that the defendants violated the Equal Pay Act and the Fair Labor Standards Act, 29 U.S.C. § 206(d). Specifically, the plaintiff claims that defendants paid her a lesser amount than similarly situated male employees. The plaintiff seeks compensatory and punitive damages as well as attorney's fees and costs. The defendants filed a motion for summary judgment on April 30, 2001, in which they claim that the plaintiff waived her right to bring this action by signing the termination agreement; that the plaintiff's claims are barred by the statute of limitations; that the plaintiff cannot prove a *prima facie* case for violation of the Equal Pay Act and that the defendants can provide an explanation for the salary differential which falls into the exemptions to the Equal Pay Act.

## II.

The defendants filed their motion for summary judgment at what was the start of the discovery process for this case. While FED. R. CIV. P. 56 allows a party to file a motion for summary judgment "at any time," this rule also specifies that a court, in determining whether a genuine issue of material fact exists, may consider "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any..." See FED. R. CIV. P. 56(c). The Supreme Court has recognized the importance of providing parties with an opportunity to make use of the discovery process before a court grants summary judgment. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986) (assuming parties had ample opportunity for discovery). The Fourth Circuit incorporated this reasoning into its summary judgment analysis and has held that "[r]ule 56(c) requires that the district court enter judgment against a party who, 'after adequate time for ... discovery fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'"

*Harleysville Mut. Ins. Co. v. Packer*, 60 F.3d 1116, 1119 (4th Cir. 1995) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

Discovery need not be completed before a court may grant a summary judgment. Indeed, the Fourth Circuit upheld the granting of a summary judgment by this court in an anti-trust case where discovery had been stayed at the time the motion was argued. See *Oksanen v. Page Memorial Hospital*, 945 F.2d 696 (4th Cir. 1991), *cert. denied*, 502 U.S. 1074 (1992). While the Magistrate Judge points out that in the first hearing of this case, the Court of Appeals reversed this court's granting of a summary judgment and remanded for further discovery to be allowed, see *Oksanen v. Page Memorial Hospital*, 912 F.2d 73 (1991), upon a rehearing *en banc*, the Court of Appeals found that the defendant had "received adequate discovery on the key issues in his suit." See *Oksanen*, 945 F.2d at 708 (citing *Matsushita Elec. Indust. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)). The Court of Appeals stressed that while discovery had been stayed by the district court at oral arguments on the motion, the record was nevertheless "voluminous" as it contained some thirty five exhibits including 690 pages of transcripts. See *id.* at 707. An analysis of that evidence convinced the Court of Appeals that even with further discovery, the plaintiff could not have presented sufficient proof to survive a summary judgment motion.

While both the defendants and the plaintiff in this case attached exhibits to their briefs on the summary judgment motion, the court cannot describe the record before it as voluminous. The court recognizes that the determination of whether plaintiff had "ample opportunity" for discovery is not simply about counting the number of pages in the record before it. However, the court's impression that the record needs to be more fully developed before it can rule on a summary judgment motion is supported by the fact that the plaintiff herself noted an omission in the salary chart which was provided by the defendants. (Pl.'s Resp. in Opp'n to Def.'s Mot. for Summ. J. at 12). The court acknowledges that the

defendants did rectify the omission in their reply brief. (Def.'s Reply Brief at 2).

Nevertheless, this does not alleviate the court's concern that the plaintiff be given adequate time for discovery before it rules on a summary judgment motion. The court also notes that the plaintiff has served interrogatories and requested further documents which were not attached to the summary judgment motion by defendants. Thus, in the interests of assuring that ample discovery has taken place, the court finds it premature to take up the defendants' motion for summary judgment.

Further support for the court's hesitation is found among the various cases which the defendants cite in support of their Equal Pay Act argument. In the cases where discovery is mentioned, it is clear that the discovery periods had expired by the time the courts took up the motions for summary judgment. *See Strag v. Board of Trustees, Craven Community College*, 55 F3d 943, 945 (4th Cir. 1995) (denying plaintiff's request for extension of discovery deadlines) and *Fitzgerald v. Trustees of Roanoke College*, No. 95-1049-R, 1996 U.S. Dist. LEXIS 16419, at \*10-11 (W.D.Va. Aug. 29, 1996) (striking affidavit submitted by plaintiff after discovery deadline had passed). This court intends to follow their example and allow the defendants' to refile their motion after the discovery period is concluded.

Accordingly, the court adopts the Magistrate Judge's recommendation that the defendants' summary judgment motion be denied without prejudice to refile upon the close of the discovery period as set by the Magistrate Judge in consultation with the parties.

### III.

Finally, the court shall address the plaintiff's "Response to Report and Recommendation." The response consists of four brief statements. FED. R. CIV. P. 72(b) allows a party to file "specific, written objections to the proposed findings and recommendations." The court does not believe that the plaintiff met this criteria in her response with the first two statements which read in pertinent part:

1. Plaintiff disputes the background information if it is to be interpreted as findings of fact.
2. Plaintiff's previous proffers concerning the Equal Pay Act claims are not necessarily relevant to a premature summary judgment motion, but Plaintiff notes that this is an Equal Pay Act claim, not a wrongful termination claim.

Under the law of the Fourth Circuit, a court is not obligated to conduct a *de novo* review “when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations.” *See Orpiano v. Johnson*, 687 F.2d 44, 47 (1982), (citing *United States v. Mertz*, 376 U.S. 192 (1964) and *Pendleton v. Rumsfeld*, 628 F.2d 102 (D.C.Cir.1980)). The court feels it unnecessary to address these statements of the plaintiff beyond finding them to be general observations which do not warrant further review by the court.

In the third statement, the plaintiff takes issue with the Magistrate Judge's presentation of the defendants' arguments with regard to the Equal Pay Act. Because the court is denying the summary judgment motion as premature, the merits of the suit are not presently before the court and need not be addressed at this time.

In the fourth statement of the plaintiff's response, the plaintiff questions whether defendants ever asserted, as stated in the Report and Recommendation, that the percentage increase in salary each year was “linked to the length of a lawyer's service at Blue Ridge.” (See Report and Recommendation at 3). The court views this as a proper objection to a finding of fact by the Magistrate Judge and thus shall review the record *de novo* on this issue. *See* 28 U.S.C. § 636(b)(1) (West 1993 & Supp. 2000); Fed. R. Civ. P. 72(b).

The court draws the plaintiff's attention to the defendants' brief in support of their motion for summary judgment. In footnote two of that brief, the defendants provide an explanation for how annual pay increases are decided and explain that new attorneys with no prior experience get 8% their first year, and 7% their second, and so on. (Defs.' Br. at 13).

Accordingly, the Magistrate Judge correctly stated that the defendants asserted that the yearly raise was linked to the length of a lawyer's service. The court overrules the plaintiff's objection to this finding of the Magistrate Judge in his Report and Recommendation.

IV.

In conclusion, the court shall adopt the Magistrate Judge's Report and Recommendation for the reasons stated above. The defendants' motion for summary judgment shall be denied without prejudice to refile at the close of the discovery period. The plaintiff's objections to the Report and Recommendation are overruled.

An appropriate Order this day shall issue.

ENTERED: \_\_\_\_\_  
Senior United States District Judge

\_\_\_\_\_  
Date