

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOANNE M. TOOMEY : CIVIL ACTION
 :
 v. :
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 :
 APPLE PRESS, LTD. and :
 GARY GEHMAN : 00-1890

ORDER - MEMORANDUM

AND NOW, this 27th day of July, 2000, the motion of defendants Apple Press, Ltd. and Gary Gehman to dismiss this action is denied. Fed. R. Civ. P. 12(b)(6).¹ Jurisdiction is federal question. 28 U.S.C. § 1331.

According to the complaint, on March 11, 1994, defendants terminated plaintiff Joanne Toomey's employment for discriminatory reasons. On August 24, 1994, plaintiff filed a complaint with the Pennsylvania Human Relations Commission (PHRC) alleging violations of Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Pennsylvania Human Relations Act. The complaint was simultaneously cross-filed with the Equal Employment Opportunity Commission (EEOC). On October 26, 1995, the PHRC issued a right-to-sue letter, informing plaintiff of her right to file suit in state court. The letter also stated that the investigation was ongoing and that plaintiff therefore was not required to take any action.

Before and after receiving the right-to-sue letter, plaintiff had continued contacts with the assigned PHRC investigator and gave requested information on

¹ Under Rule 12(b)(6), the allegations of the complaint are accepted as true, and all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff would prove no set of facts that would entitle her to relief. See United States v. Occidental Chem. Corp., Civ. No. 99-3084, 1999 WL 1268110 at *2 (3d Cir. Dec. 28, 1999).

numerous occasions. See Plaintiff's Response, Exhs. 2-5. In September of 1997, plaintiff's case was reassigned to a new PHRC investigator and, soon thereafter, reassigned once more; plaintiff again supplied information. On April 12, 2000, having not heard from the PHRC, plaintiff commenced this action. On April 24, 2000, the PHRC dismissed plaintiff's complaint. On June 12, 2000, the EEOC issued plaintiff a right-to-sue letter. On June 14, 2000, plaintiff amended her complaint.²

Defendants move to dismiss the complaint based on the doctrine of laches – citing the four and a half year delay before this action was instituted. The equitable defense of laches arises when a party “has not fulfilled his or her minimum duties in pursuing a claim.” Waddell v. Small Tube Prods., 799 F.2d 69, 74 (3d Cir. 1986). The party asserting the defense must show: “(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” Id. at 74 (citations omitted). In considering a similar set of circumstances – a four and a half year delay in processing a charge – our Court of Appeals noted:

[P]laintiffs have some obligation to monitor the progress of their charge and do not have the absolute right to await termination of EEOC proceedings where it would appear to a reasonable person that no administrative resolution will be forthcoming. . . .

Id. at 77 (case remanded for further findings on whether plaintiff was diligent).³

² The amended complaint made reference to the EEOC's right-to-sue letter, without which her federal claims would have remained unexhausted.

³ Some decisions have noted “that when a plaintiff brings a federal statutory claim seeking relief, laches cannot bar that claim, at least where the statute contains an express limitations period within which the action is timely.” Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 260 (2d

Here, there is no evidence that plaintiff was not diligent. While her administrative case was pending, plaintiff was in contact with the PHRC on numerous occasions. Moreover, since the investigation appeared to be proceeding, albeit slowly, plaintiff was under no compulsion to file suit in federal court.

Defendants make much of the argument that during the four and a half year period, plaintiff made no contact with the EEOC, evidencing lack of diligence on plaintiff's part. However, contact with the EEOC is beyond the point. The PHRC and the EEOC have a work-sharing agreement in which "they have apportioned initial jurisdiction over discrimination complaints in order to avoid unnecessary duplication of investigatory time and effort." Woodson v. Scott Paper Co., 109 F.3d 913, 925-26 (3d Cir. 1997). Under the agreement, "each agency waive[d] its right to initially review claims that are first filed with the other agency." Id. Since the claim was first filed with the PHRC, contact with the EEOC was unnecessary – the PHRC was the agency investigating the claim.

Accordingly, since plaintiff was diligent in her efforts to pursue her claim, to the extent that its enforceability was within her reasonable control, the doctrine of laches does not apply.

Edmund V. Ludwig, J.

Cir. 1997); see also, Ashley v. Boyle's Famous Corned Beef Co., 66 F.3d 164, 170 (8th Cir. 1995) (holding that laches did not apply to Title VII actions since "separation of powers principles dictate that federal courts not apply laches to bar a federal statutory claim that is timely filed under an express statute of limitations.")

