

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

DEBRA BROWN, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
 :
UNITED STATES POST OFFICE, :
et al. : No. 01-6462
Defendants. :

MEMORANDUM AND ORDER

J. M. KELLY, J.

APRIL 4, 2002

Presently before the Court is Co-Defendant United States' Motion to Dismiss or, in the alternative, Motion for Summary Judgment and Remand. In this suit, Plaintiff, Debra Brown, seeks redress for injuries she allegedly sustained when she tripped and fell while walking on the sidewalk in front of the United States Post Office at 425 Lafayette Street, Conshohocken, Pennsylvania on December 1, 1999. On May 16, 2000, Plaintiff submitted a mandatory administrative claim to the United States Postal Service ("Postal Service") but by letter dated September 1, 2000, the Postal Service denied her claim. The denial letter specifically advised Plaintiff of her right to sue within a six (6) month time limitation. Plaintiff however, did not file suit until October 19, 2001, more than one year after notice of the denial.

Plaintiff originally filed this suit in the Court of Common Pleas of Montgomery County, Pennsylvania, against the Postal

Service and the Borough of Conshohocken ("Borough"). Thereafter, the Postal Service removed the case to federal court. The United States, on behalf of the Postal Service, now seeks the following: (1) substitution of the United States for the Postal Service as the only federal Defendant pursuant to provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671, et seq. (1994) ("FTCA"), and the dismissal of all claims against the Postal Service; (2) the dismissal of Plaintiff's state law negligence claims against the United States with prejudice, on the grounds that Plaintiff failed to timely file suit under 28 U.S.C. § 2401(b), which mandates that Plaintiff file suit within six (6) months after notice of denial of an administrative claim or be barred; and (3) the remand of the remaining claims to state court. Co-Defendant Borough responded in a timely manner while Plaintiff failed to respond. Subsequently, this Court issued an Order directing the Plaintiff to answer by April 1, 2002. In response, Plaintiff, rather than filing her own brief, relies completely on Co-Defendant Borough's Response.

DISCUSSION

1. Substitution of United States as Defendant

Despite other statutory authority of federal agencies to sue or be sued, the FTCA is the exclusive remedy for tort actions against the United States. See 28 U.S.C. § 2679(a); 39 U.S.C. § 409(c) (FTCA applies to tort actions arising from Postal Service

activities). Moreover, in such actions, the only proper defendant is the United States. See e.g., Myers & Myers, Inc. v. United States Postal Serv., 527 F.2d 1252, 1256 (2d Cir. 1975). The Court will therefore substitute the United States as the federal Defendant in this action. Accordingly, all claims against the Postal Service are dismissed with prejudice.

2. Statute of Limitations Under FTCA

The statute of limitations under the FTCA, 28 U.S.C. § 2401(b), requires that any administrative claims be submitted within a two year period and that any judicial action be commenced within six months after notice of final denial thereof or the claim is "forever barred." The undisputed facts are that Plaintiff failed to file her Complaint against the United States within the six month statute of limitation under the FTCA. Therefore, all claims against the United States are dismissed with prejudice.

3. Remand

The issue of remand is the only matter contested by Co-Defendant Borough. Co-Defendant Borough asserted cross-claims for contribution or indemnification against the United States. Such causes of action, if any, only arises after the party seeking to assert such claims has "paid, or had a judgment rendered against him or her, for more than his or her fair share of a common liability." Sea-land Serv., Inc. v. United States,

874 F.2d 169, 171 (3d Cir. 1989). The fact that the statute of limitations has run against the original plaintiff will not bar such a claim "since that cause of action does not arise until payment." Id. at 171 n.1. Applicable statute of limitations under the FTCA for such causes of action runs, not from the date of the injury, but from the time the right to contribution or indemnity accrues, namely, the date of payment. Jackson v. Southeastern Pa. Transp. Auth., 727 F. Supp. 965, 967 (E.D. Pa. 1990).

As all claims against the federal Defendant have been dismissed with prejudice and no claim for contribution or indemnity has yet accrued, this case must be remanded to state court. Defendant Borough may seek contribution or indemnity against the United States at a later time after the state court proceedings, should the occasion arise.

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O R D E R

AND NOW, this 4th day of April, 2002, in consideration of the Motion For Summary Judgment filed by the United States, on behalf of the originally named Defendant, United States Postal Service, (Doc. No. 7), and the response thereto, it is **ORDERED**:

1. The United States is substituted for the United States Postal Service as the only federal Defendant. All claims against the United States Postal Service are **DISMISSED** with prejudice.
2. All claims against the substituted federal Defendant United States are **DISMISSED** with prejudice.
3. The clerk shall **REMAND** the case to the Court of Common Pleas of Montgomery County, Pennsylvania, without the United States or the United States Postal Service as Defendants.

BY THE COURT:

JAMES MCGIRR KELLY, J.