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

KURIAN MATHAI	)	
	)	
v.	)	CIVIL ACTION No. 00-656
	)	
CATHOLIC HEALTH INITIATIVES, INC.	)	
CECILIA A. ROCHE, LAWRENCE	)	
WRIGHT, HARRY WALLS	)	

MEMORANDUM

Padova, J. **November, 2000**

This matter arises on the Plaintiff's Petition for Leave to Amend the Complaint to Join Nazareth Hospital as an Additional Defendant. Defendants have filed a response. The matter is fully briefed and ripe for decision. For the reasons that follow, the Court grants Plaintiff's Petition.

I. Background

Plaintiff, Kurian Mathai, worked as a respiratory therapist for Nazareth Hospital beginning in 1979. After being the subject of disciplinary actions, Plaintiff was discharged from his employment in 1998. In response, Plaintiff filed complaints with the Pennsylvania Human Relations Commission ("PHRC") and the Equal Employment Opportunity Commission ("EEOC"). He filed the current action on February 4, 2000, and alleges discrimination, harassment, and wrongful termination based on his race.

Plaintiff originally brought suit against Catholic Health Initiatives, Inc. ("CHI"), his alleged employer, and several named employees. Since the suit's inception, CHI has contended that Nazareth Hospital, and not CHI, is the proper defendant in this action, because only Nazareth

Hospital was Plaintiff's employer. Plaintiff contends that it was his understanding, as an employee of Nazareth Hospital, that in 1996, CHI became the owner of the hospital and his real employer, and that CHI was therefore the proper defendant in the suit. Plaintiff continues to assert that CHI will ultimately be held liable as Plaintiff's employer. (Pl.'s Mot. at 2). Nevertheless, Plaintiff now seeks to amend the complaint to add Nazareth Hospital as a co-defendant.

II. Legal Standard

"A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed.R.Civ.P. Rule 15. Amendments are to be granted freely absent a showing of undue delay, bad faith, or dilatory tactics. See Foman v. Davis, 371 U.S. 178, 181 (1962). "The liberal tenor of Rule 15 is reinforced by the often-recognized principle that the Federal Rules of Civil Procedure are to be liberally construed so as to effectuate the underlying goal that cases be tried on the merits wherever possible." Johnson v. Goldstein, 850 F. Supp. 327, 329 (E.D. Pa. 1994).

III. Discussion

Plaintiff seeks leave to amend the Complaint to add Nazareth Hospital as an additional defendant to the action. Such amendment is permissible under Federal Rule of Civil Procedure 15(c)(1) if the statute of limitations period has not yet expired. Fed.R.Civ.P. 15(c)(1)("relation back is permitted by the law that provides the statute of limitations applicable to the action . . ."). If the statute of limitations period has already passed, then the permissibility of the amendment is

governed by the provisions of Federal Rule of Civil Procedure 15(c)(2) and 15(c)(3). Fed.R.Civ.P. 15(c)(2)-(3).

In this case, amendment under Rule 15(c)(1) is unavailable to the Plaintiff. Section 2000e-5(f)(1) of Title 42 of the United States Code provides: "If a charge filed with the [Equal Employment Opportunities] Commission . . . is dismissed by the Commission . . . the Commission . . . shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought . . ." 42 U.S.C. § 2000e-5(f)(1) (1994). This ninety-day time limit serves as a statute of limitations for Title VII claims. Seitzinger v. The Reading Hosp. & Med. Ctr., 165 F.3d 236, 239 (3d Cir. 1999). The Commission mailed Plaintiff a notice of right to sue letter on November 5, 1999. (Compl. Exh. "A"). Applying the Federal Rules' presumption that a party receives a document three days after it was mailed[1], the statute of limitations period ended on about February 7, 2000. See id. Plaintiff filed this Motion to add Nazareth Hospital as a defendant on September 26, 2000, well beyond the expiration of the statute of limitations period. Thus, Plaintiff may not add Nazareth Hospital pursuant to Rule 15(c)(1). Fed.R.Civ.P. 15(c)(1); see Childs v. City of Philadelphia, Civ. Act. No. 99-615, 2000 U.S. Dist. LEXIS 6281, at *7 (E.D. Pa. May 10, 2000).

Plaintiff may, however, properly add Nazareth Hospital as an additional defendant to the action if he meets the requirements of Federal Rules of Civil Procedure 15(c)(2) and 15(c)(3). An amendment of a pleading relates back to the date of the original pleading when:

> (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or (3) the amendment changes the party or the naming of the

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[1]Notice is deemed to be received when the EEOC delivers its letter to a claimant or claimant's attorney. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 92-93 (1990).

> party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Fed.R.Civ.P. 15(c).

The first requirement, that the claim asserted arise out of the same cause of action as asserted in the original pleading, is not at issue here. Plaintiff seeks only to add a co-defendant, and not to add any new allegations to the Complaint.[2] The claims against Nazareth Hospital do not depend upon allegations arising from some different conduct, transaction, or occurrence not set forth in the previous complaint. Therefore, the Court will focus on the second and third requirements of the rule, and whether Plaintiff's proposed amendment meets these requirements.

Rule 15(c)(3) requires that the party to be added through the amendment received notice of the original action, and knew of the mistake in not having been named a defendant, prior to the expiration of the time periods establish in Rule 4(m). Plaintiff filed the instant complaint on February 4, 2000. The 120-day deadline for service of the complaint, pursuant to Rule 4(m), passed on or about June 3, 2000. Therefore, in order to meet the requirements of Rule 15(c)(3), prospective defendant Nazareth Hospital must have received notice and have known of the mistake on or before June 3, 2000.

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[2]Defendant asserts that Plaintiff's Motion for Leave to File an Amended Complaint should be denied because Plaintiff has failed to provide a copy of the proposed amended complaint. The Court declines to deny the Motion on that basis, because it is clear from the moving papers that Plaintiff seeks only to add Nazareth Hospital as a co-defendant, and not to change the substance of the complaint.

The Court concludes that Nazareth Hospital had notice of the institution of the action prior to June 3, 2000. Defendants appear to acknowledge such notice in its responding papers. According to the declaration by Paul P. Rooney, Esq., an attorney of the law firm of counsel for Defendants, in May 2000, defense counsel offered to consent to an amendment substituting Nazareth Hospital for CHI, but Plaintiff's counsel refused. (Rooney Decl. ¶3). Even absent the declaration, the close relationship between Nazareth Hospital and CHI suggests that Nazareth had, at the very least, informal notice of the institution of the action. See Wine v. EMSA Ltd. Pshp., 167 F.R.D. 34, 38 (E.D. Pa. 1996) (notice is usually imputed where "the original and added parties are so closely related in business or other activities that it is fair to presume the added parties learned of the institution of the action shortly after it was commenced.")

The next question is whether Defendant "knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party." Rhyder v. Santos, Civ. A. No. 91-2920, 1992 WL 25863, at *1 (E.D. Pa. Feb. 5, 1992). The "mistake" condition "is concerned fundamentally with the new party's awareness that failure to join it was error rather than a deliberate strategy." Advanced Power Systems, Inc. v. Hi-Tech Systems, Inc., 801 F. Supp. 1450, 1457 (E.D. Pa. 1992). Rule 15(c)(3) was not intended to assist a plaintiff who ignores or fails to respond in a reasonable fashion to notice of a potential party, nor to permit a plaintiff to engage in piecemeal litigation. Shirsat v. Mutual Pharmaceutical Co., Inc., Civ. Act. No. 93-3202, 1996 U.S. Dist. LEXIS 6691, at *5-6 (E.D. Pa. May 15, 1996). To satisfy this requirement, the plaintiff must demonstrate a mistake concerning the identity of the proper party existed at the time the complaint was filed. See Nelson v. County of Allegheny, 60 F.3d 1010, 1014 (3d Cir. 1995), cert. denied, 516 U.S. 1173 (1996).

The Court concludes that Plaintiff's failure to name Nazareth Hospital as a defendant was based on a mistaken understanding of his relationship to the hospital, and of a mistaken belief that Nazareth Hospital had been dissolved as a corporate entity. Plaintiff claims he made an inquiry with the Pennsylvania Corporation Bureau, and that he was told that Nazareth Hospital was dissolved on November 4, 1999. (Pl.'s Mot. at 1). Plaintiff only recently learned, through discovery, that Nazareth Hospital is a wholly owned subsidiary of CHI (Pl.'s Mot. at 2).[3] Plaintiff's confusion over the status of Nazareth Hospital would explain his decision not to name Nazareth Hospital as a defendant, and sufficiently demonstrates mistake under Rule 15(c)(3).[4]

Furthermore, the Court concludes that Nazareth Hospital knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it. The close relationship between Nazareth Hospital and CHI tends to suggest that Nazareth Hospital knew or should have known of the mistake. See Advanced Power Systems, 801 F. Supp. at 1457 ("Courts have generally held that [the mistake condition] is

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[3]Defendant does not indicate whether Plaintiff's characterization of the formal relationship between the entities is correct, and in fact, the actual nature of the relationship itself will likely be a subject of the instant suit. Nevertheless, the bylaws of Nazareth Hospital indicate that a relationship between the entities is sufficiently close for purposes of the notice and mistake requirements of Rule 15(c)(3). (Defs. Mot. Exh. 3 §5.1)("The sole member of the [Nazareth Hospital] Corporation shall be Catholic Health Intitiatives, a Colorado nonprofit corporation.")

[4]The Court's inquiry with respect to plaintiff's state of mind is generally limited to the time period at filing of the complaint. Nelson, 60 F.3d at 1014. However, with respect to the mistake inquiry, courts often also consider the Plaintiff's awareness of the omitted party as a potential defendant. See Kilkenny v. Atlantic Richfield Co., 800 F.2d 853, 857 (9th Cir. 1986) (no relation back where plaintiff, inter alia, failed to amend her complaint after being informed of potential defendants), cert. denied, 480 U.S. 934 (1987); Curry v. Johns-Manville Corp., 93 F.R.D. 623, 626 (E.D. Pa. 1982) (no relation back where third-party defendants were impleaded five months before plaintiffs moved to add them as direct defendants, because defendants could have interpreted plaintiffs' decision as strategy not error). However, Plaintiff's assertion that he only recently learned of the true relationship between Nazareth Hospital and CHI distinguishes the case at bar from Kilkenny and Curry.

satisfied when the original party and added party have a close identity of interests."); Johnson v. Goldstein, 850 F. Supp. 327, 330 (E.D. Pa. 1994). Furthermore, that Plaintiff refused to accept defense counsel's offer to substitute Nazareth Hospital for CHI as the institutional defendant does not demonstrate deliberate choice by the Plaintiff, since Plaintiff here seeks to join Nazareth Hospital as an additional co-defendant, and not to make a substitution of party.

For the reasons stated, the Court concludes that Plaintiff has met the liberal requirements of Rule 15, and thus grants Plaintiff's motion to amend the complaint and add Nazareth Hospital as a defendant. An appropriate Order follows.

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ORDER

AND NOW, this day of November, 2000, upon consideration of Plaintiff Kurian Mathai's Petition for Leave to Amend the Complaint to Join Nazareth Hospital as an Additional Defendant (Docket No. 27), and any responses thereto, **IT IS HEREBY ORDERED** that:

1. Said Motion is **GRANTED**; and

2. Plaintiff shall file an amended complaint on or before November ____, 2000.

BY THE COURT:

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John R. Padova, J.