

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

ADEDOTUN W. ONIBOKUN,  
Plaintiff,

v.

BERKS COUNTY CHILDREN AND  
YOUTH SERVICES, et al.,  
Defendant.

Civil Action  
No. 98-CV-4402

Padova, J.

August , 1999

**M E M O R A N D U M**

Before the court in this employment discrimination and retaliatory discharge case is defendant Barbara Taylor's motion for summary judgment on plaintiff Adedotun W. Onibokun's common-law claim for intentional infliction of emotional distress, (Count XIV), as well as plaintiff's claims under the Civil Rights Act of 1871, 42 U.S.C. § 1981, (Count IX), the Civil Rights Act of 1871, 42 U.S.C. § 1983, (Counts X, XI), the Civil Rights Act of 1871, 42 U.S.C. § 1985 (Count XII), and the Pennsylvania Human Relations Act, ("PHRA"), 43 Pa.C.S. § 951, et seq., (Counts V, VI, VII). Taylor argues that these claims are untimely. For the following reasons, I shall deny her motion.

**I. Background**

The facts, according to plaintiff, are as follows. On June 26, 1996, plaintiff, a Nigerian-born male, was hired by Berks County Children and Youth Services ("Berks County Youth

Services") as a caseworker. Plaintiff claims that from his first day on the job Taylor, his supervisor, sexually and racially harassed him. On August 8, 1996, plaintiff, to discuss the alleged harassment, requested a meeting with Taylor's supervisor. A meeting occurred that afternoon. At this meeting, plaintiff was notified, in writing, that he was discharged. He administratively appealed his termination.

After plaintiff's termination from Berks County Youth Services, he worked as a salesman at a Best Buys store. At a February 5, 1997 civil service hearing, Taylor learned of plaintiff's new employment. The following week, on February 12, 1997, Taylor appeared at the store and spoke with its management. The next day, allegedly as a result of Taylor's actions, Best Buys terminated plaintiff's employment.

On August 25, 1997, the Pennsylvania Civil Service Commission, after determining that Taylor had sexually harassed plaintiff, reinstated plaintiff to his position at Berks County Youth Services. Plaintiff alleges that when he returned to work on October 8, 1997, several staff members retaliatorily discriminated against him. The culmination of this alleged discrimination was a second discharge on May 13, 1998. Having exhausted his administrative remedies, plaintiff filed this suit on August 21, 1998.

## **II. Standard**

Summary judgment may only be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Unless evidence in the record would permit a jury to return a verdict for the non-moving party, there are no issues for trial, and summary judgment becomes appropriate. Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986).

## **III. Discussion**

Taylor argues that because (1) each of plaintiff's claims has a two-year statute-of-limitations period, (2) the only harassment plaintiff alleges on her part occurred prior to his August 1996 termination, and (3) plaintiff did not commence this action until September 11, 1998, she is entitled to summary judgment. Plaintiff, however, responds that in his complaint he alleges that on February 12, 1997, Taylor, in an effort to sabotage his new employment, visited the Best Buys store where he was employed and spoke with its management. Plaintiff thus argues that because, within two years of his filing this suit, Taylor continued to both harass and discriminate against him, his claims are not barred by the statute-of-limitations. Plaintiff further argues that his § 1981 claim is subject to a four-year,

and not a two-year, statute-of-limitations period.

PHRA claims are subject to a two-year statute-of-limitations period. This period begins to run once the Pennsylvania Human Relation's Commission ("PHRC") grants a plaintiff the "right to institute a court action." Long v. Bd of Educ. of Philadelphia, 812 F.Supp. 525, 534 (E.D. Pa. 1993) (quoting Raleigh v. Westinghouse Elec. Corp., 550 A.2d 1013, 1014 (Pa. Super. 1988) (summary judgment appropriate when plaintiff did not institute action within two years of either discharge or dismissal of complaint by PHRC)). In their papers, neither party states when plaintiff, if ever, received his right to institute a PHRA action. Consequently, it is unclear when the statute-of-limitations begun to run on plaintiff's PHRA claims, and thus whether these claims are time-barred.

Further, even were the PHRA's statute-of-limitations to have begun running on Taylor's last allegedly discriminatory act, Taylor has still not established that she is entitled to summary judgment on these claims. True, all allegations of direct employment discrimination by Taylor occurred prior to or during August 1996. Post-employment actions, however, which hurt a plaintiff's employment prospects can constitute a continuation of employment discrimination. See Durham Life Ins. Co. v. Evans, 166 F.3d 139, 157 (3d Cir. 1999) (holding that under Title VII employer's post-employment actions threatening employee's

livelihood can constitute continuation of initial employment discrimination); See also Dici v. Commwlth of Pennsylvania, 91 F.3d 542, 552 (3d Cir. 1996) ("Generally, the PHRA is applied in accordance with Title VII.") (citation omitted); Chmill v. City of Pittsburgh, 412 A.2d 860, 871 (Pa. 1980) ("[T]he [PHRA] should be construed in light of 'principles of fair employment law which have emerged relative to [Title VII].'" (quotation omitted). In addition, "an ex-employee may file a retaliation action . . . for retaliatory conduct occurring after the end of the employment relationship when the retaliatory act is in reprisal for a protected act." Charlton v. Paramus Bd. of Educ., 25 F.3d 194, 200 (3d Cir. 1994) (Title VII case).

Plaintiff alleges that Taylor's February 12, 1997 actions caused his discharge from his job at Best Buys. (Compl., at ¶ 32). Were plaintiff to prove this allegation, he could establish that Taylor's alleged employment discrimination against him continued within the two years prior to his filing this suit. Plaintiff might also establish that Taylor acted in retaliation for his exercising his right to be free from sex- and race-based discrimination. In her motion for summary judgment, however, Taylor neither discredits nor even addresses this allegation. She has thus failed to establish that there is no genuine issue of material fact as to the timeliness of plaintiff's PHRA claims. Accordingly, plaintiff's motion for summary judgment on

plaintiff's PHRA claims shall be denied.<sup>1</sup>

I likewise find that Taylor has failed to establish that plaintiff's other claims against her are time-barred. Pennsylvania's general statute-of-limitations for torts and other personal injuries is two years. 42 Pa.C.S. § 5524. Both § 1983 and § 1985 cases, for statute-of-limitations purposes, are treated as personal injury actions, and thus subject to Pennsylvania's two-year statute-of-limitations period. Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 79 (3d Cir. 1989). It is unclear, however, whether § 1981 claims are also considered personal injury cases, and thus subject to Pennsylvania's two year statute-of-limitations period, or rather, are subject to 28 U.S.C. § 1658's four year statute-of-limitations period. See Rodgers v. Apple South, Inc., 35 F.Supp.2d 974, 977 (W.D. Ky. 1999) (holding that § 1981's 1991 amendments incorporated 28 U.S.C. § 1658's four year statute-of-limitations); Davis v. State of California Dept. of Corrections, Civ. No. S-93-1307DFLGGH, 1996 WL 271001, at \*19 (E.D. Cal. Feb. 23, 1996) (holding that 1991 amendments did not change fact that § 1981 claims are treated as personal injury actions). Nevertheless, even applying a two-year statute-of-limitations period to plaintiff's § 1981

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<sup>1</sup> I finally note that plaintiff appears to have diligently pursued these claims. Thus, even were plaintiff's claims untimely, the facts of this case would warrant equitable tolling.

claim, Taylor has not met her summary judgment burden. I thus need not, and shall not, reach the issue of which statute-of-limitations period applies to this claim.

Plaintiff's intentional infliction of emotional distress claim, as well as his § 1983 and § 1985 claims, are premised on Taylor's alleged harassment of him for speaking out against and exercising his right to be free from sex- and race-based discrimination. His § 1981 claim is premised on his allegation that defendants, on the basis of his race, interfered with his right to contract. As discussed, plaintiff maintains that, at least as late as February 12, 1997 - less than two years before this action was commenced, Taylor continued to harass him. Further, according to plaintiff, this harassment interfered with his employment contract with Best Buys. Were plaintiff to prove these allegations, his federal- and common-law claims would not be time-barred. As also discussed, Taylor does not address the alleged February 12, 1997 incident. She has thus failed to establish that there is no genuine issue of material fact as to whether plaintiff's federal- or common-law claims are time-barred. Accordingly, plaintiff's motion for summary judgment on plaintiff's intentional infliction of emotional distress, § 1981, § 1983, and § 1985 claims shall also be denied.

An appropriate order follows.

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O R D E R

AND NOW, this            day of August, 1999, Defendant Barbara  
Taylor's Motion For Summary Judgment is DENIED.

BY THE COURT:

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John R. Padova

J.