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NO. 68134-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

SHAW RAHMAN,

Appellant,

v.

THE BOEING COMPANY, ET AL.,

Respondents,

BRIEF OF RESPONDENTS

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ORIGINAL

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I. INTRODUCTION

The Boeing Company (“Boeing”) hired Appellant Rahman in February 2008 and terminated his employment on August 8, 2008 for insubordination. Mr. Rahman subsequently filed this lawsuit seeking relief from Boeing and eight individual Boeing employees (“Individual Respondents”) for purported violations of the Washington Law Against Discrimination. But the Law Against Discrimination has a three-year statute of limitations, and Mr. Rahman did not file this lawsuit until October 13, 2011, which was more than three years after his Boeing employment ended. The Superior Court’s decision to dismiss Mr. Rahman’s lawsuit was therefore proper because Mr. Rahman filed this lawsuit more than two months after the statute of limitations had expired.

Even if Mr. Rahman’s lawsuit had been timely filed, dismissal would still be proper because Mr. Rahman’s Complaint does not include any facts that would support a cause of action under the Law Against Discrimination. To the contrary, Mr. Rahman’s Complaint consists largely of conclusory statements or admissions that he failed to meet Boeing’s performance expectations. Although his “Complaint” includes dozens of pages of text, Mr. Rahman does not identify any fact which indicates or even suggests he was treated less favorably by Boeing or any

Individual Respondent because of any protected characteristic under the Law Against Discrimination.

In his appeal to this Court, Mr. Rahman continues to rely exclusively on conclusory statements and/or other statements or allegations that do not support a cause of action under the Law Against Discrimination. Indeed, much of Mr. Rahman's argument to this Court is based on his faulty recitation of Washington's Unemployment Insurance laws and his mistaken understanding of the reasons that Respondents referred to the U.S. Supreme Court's *Iqbal* and *Twombly* decisions in their earlier pleadings.

For these reasons and the additional reasons set forth below, Boeing and the Individual Respondents respectfully ask this Court to affirm the trial court's dismissal with prejudice of Mr. Rahman's lawsuit.

II. RESPONSE TO ASSIGNMENTS OF ERROR

Boeing and the Individual Respondents dispute Rahman's assignment of error to the trial court's decision to dismiss his Complaint.

III. RESPONSE TO ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Was Mr. Rahman's lawsuit properly dismissed because Mr. Rahman failed to file his claim within the applicable statute of limitations?

B. Was Mr. Rahman's lawsuit properly dismissed because Mr.

others when directed to complete the tasks” himself. CP at 93.

Mr. Rahman was placed on suspension on July 31, 2008 for failure to follow management direction and refused to sign his suspension memo. CP at 136. He was suspended for five days. *Id.* In an August 5, 2008 letter, Boeing informed Mr. Rahman that due to “concerns about [his] behavior,” he was required to set up an appointment with Boeing Medical for an evaluation before returning to work. CP at 64. The letter informed Mr. Rahman that he must contact Boeing’s Medical Department before the close of business August 8, 2008, and that failure to set up the appointment would constitute insubordination and result in his immediate termination. *Id.* Mr. Rahman failed to make an appointment with Boeing Medical, and received another letter from Boeing on August 12, 2008, terminating his employment effective August 8, 2008. CP at 63.

Mr. Rahman waited more than two years, until April 1, 2011, to file an employment discrimination claim with the EEOC. CP at 39. In his EEOC claim, he stated he was “deliberately given untruthful written warnings and corrective action memos to strategically move forward to termination ... I was discriminated against based on my race, religion, and retaliation, in violation of Title VII of the Civil Rights Act of 1964, as amended.” *Id.* Because Mr. Rahman filed his claim with the EEOC more

than 300 days after his dismissal by Boeing, his claim was untimely and the EEOC declined to conduct any investigation into his claims. *See* 42 U.S.C. 2000e-5(e)(1). Because his claim with the EEOC was untimely, the EEOC also did not issue a Right to Sue Letter, which would have entitled him to assert claims in state or federal courts under Title VII of the U.S. Civil Rights Act of 1964.

Mr. Rahman subsequently filed a complaint in King County Superior Court on July 6, 2011. CP at 36-38. Respondents removed this lawsuit to the United States District Court on August 12, 2011 because it raised a federal question by asserting claims under Title VII. *See* CP at 161. Mr. Rahman's first lawsuit against the Respondents was dismissed by the U.S. District Court on September 27, 2011. CP at 59-62.

This latest lawsuit was filed on October 13, 2011, more than three years after Boeing terminated Mr. Rahman's employment in August 2008.

V. ARGUMENT

A. Standard Of Review

A dismissal under CR 12(b)(6) is reviewed *de novo* and is appropriate if "it appears beyond a reasonable doubt that no facts exist that would justify recovery." *Reid v. Pierce County*, 136 Wn.2d 195, 200, 961 P.2d 333 (1998) quoting *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749,

755, 881 P.2d 216 (1994).

B. Dismissal Was Proper Because Appellant Failed To File His Lawsuit Within The Applicable Statute Of Limitations

Mr. Rahman alleged that he “suffered Discrimination while working for The Boeing Company, Seattle, WA, workplace harassment and unlawful Termination.” CP at 20. The most recent violation asserted by Appellant was the termination of his employment with Boeing, which occurred on August 8, 2008. CP at 63. The three-year statute of limitations at RCW 4.16.080(2) applies to employment discrimination actions brought under state statutes. *Lewis v. Lockheed Shipbuilding & Construction Co.*, 36 Wn. App. 607, 613, 676 P.2d 545 (1984). Mr. Rahman’s allegations are all brought under Washington state law. CP at 20 (“the complaint ... is attached to explain and complaint using Washington states [sic] law of discrimination with evidence.”) Thus, Mr. Rahman’s window to bring this lawsuit closed on August 8, 2011, more than two months before he filed this lawsuit.

“The purpose of a statute of limitations is to compel the exercise of a right of action within a reasonable time so opposing parties have fair opportunity to defend. Statutes of limitation are intended to provide certainty and bring finality to transactions for both parties.” *Rental Housing Ass’n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525,

555, 199 P.3d 393 (2009) (*internal citations omitted*). Under CR 12(b)(6) a defendant may ask a trial court to dismiss a claim brought after the statute of limitations has expired. *Atchison v. Great Western Malting Co.*, 161 Wn.2d 372, 374, 166 P.3d 662 (2007). The trial court correctly dismissed this case under CR 12(b)(6) because Mr. Rahman failed to file his lawsuit within the three-year statute of limitations.

Mr. Rahman's previous lawsuit against Defendants was dismissed without prejudice by the U.S. District Court on September 27, 2011. CP at 59-62. Mr. Rahman attached a copy of the Court's Amended Order on Motions at Exhibit 5 to the Complaint that was before the trial court. *Id.* If a case is dismissed without prejudice, refiling is permitted so long as the statute of limitations has not expired; however, the statute of limitations is not tolled by the dismissal of the first action. *Fittro v. Alcombrack*, 23 Wn. App. 178, 180, 596 P.2d 665 (1979). "When an action is dismissed, the statute of limitations continues to run as though the action had never been brought." *Id.*, see also *State of Washington v. Nonog*, 169 Wn.2d 220, 226 n.3, 237 P.3d 250 (2010) ("[a] deficient complaint or information is dismissed without prejudice to the State's ability to refile charges,

subject to the statute of limitations”).²

Thus, the dismissal without prejudice of Mr. Rahman’s first complaint did not in any way impact the three-year statute of limitations for the actions alleged by Mr. Rahman. The trial court’s dismissal of Mr. Rahman’s action for failure to timely file is consistent with Washington law and should therefore be upheld by this court.

C. Dismissal Was Proper Because Appellant’s Complaint Failed To State A Plausible Claim For Relief

Even if Appellant had filed this action within the applicable statute of limitations, the Court should still affirm the dismissal of his Complaint because it failed to state any claim on which relief can be granted. *See* CR 12(b)(6). When entertaining a motion for dismissal under CR 12(b)(6), a court should dismiss a claim if it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief. *Haberman v. WPPSS*, 109 Wn.2d 107, 120, 744 P.2d 1032 (1987). “While a court must consider any hypothetical facts when entertaining a motion to dismiss for failure to state a claim, the gravamen of a court’s inquiry is whether the plaintiff’s claim is legally

² Washington state decisions on this issue are consistent with corresponding federal law. *See, e.g., Laine v. Caesars Palace, et al.*, 242 F.3d 382, 2000 WL 1593910, *1 (9th Cir. 2000) (unpublished) (“[a]lthough the dismissal was without prejudice, the statute of limitations has now run on [plaintiff’s] Title VII action and therefore bars [plaintiff] from filing a new complaint”).

sufficient.” *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 215, 118 P.3d 311 (2005). “If a plaintiff’s claim remains legally insufficient even under his or her proffered hypothetical facts, dismissal pursuant to CR 12(b)(6) is appropriate.” *Id.*

Although Mr. Rahman frequently used the word “discrimination” in the dozens of pages of his Complaint, he did not make even the barest of allegations that would support a claim of discrimination actionable under Washington state law. The Washington Law Against Discrimination addresses “discrimination *because of* race, creed, color, national origin ...” and other protected categories. *See* RCW 49.60.030(1) (emphasis added). Mr. Rahman failed to allege even a hypothetical fact that would support a legal claim that he was discriminated against by Respondents because of his national origin or religion. To the contrary, although he makes the conclusory assertion that he “suffered Discrimination while working for the Boeing Company, Seattle, WA, workplace harassment and unlawful termination,” CP at 20, he admits he received a Corrective Action Memo because he failed to follow the correct procedure to inform his supervisor when he was late to work and when he was sick (*see* Appellant’s Brief at 4, 10 and CP at 67 where Mr. Rahman states that he called a colleague instead of calling his supervisor). He also

admits he received another Corrective Action Memo for failing to follow management direction and for delegating tasks to others when he had been directed to complete the tasks. *See* Appellant’s Brief at 16 and CP at 105 (“SU 5.21 is not my SOW”).

Because Mr. Rahman did not, either in his Complaint or in his Appeal to this Court, identify any purported fact (even a hypothetical fact) that would support his conclusory assertions that any of the Respondents’ purported actions were a result of unlawful discrimination or retaliation, his Complaint is deficient under the standard set forth in *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 118 P.3d 311 (2005). The trial court’s dismissal of this lawsuit was proper and should therefore be upheld because Mr. Rahman has failed to state a claim under the Washington Law Against Discrimination.

VI. CONCLUSION

For all of these reasons, the trial court’s dismissal should be affirmed.

Respectfully submitted this 4th day of May, 2012.

RIDDELL WILLIAMS P.S.

By: 

Laurence Shapero, WSBA #31301
Hannah Ard, WSBA #40362
Attorneys for Respondents Boeing
Company and Individual Defendants

CERTIFICATE OF SERVICE

I, Janine Fader, certify that:

1. I am an employee of Riddell Williams P.S., attorneys for Respondents The Boeing Company and Individual Defendants in this matter. I am over 18 years of age, not a party hereto, and competent to testify if called upon.

2. On May 4, 2012, I served a true and correct copy of the foregoing document on the following party, pro se attorney for Appellant, via overnight express delivery for next-day delivery, and addressed as follows:

Shaw Rahman
16596 NE 84th Court, #4A
Redmond, WA 98052

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Seattle, Washington, this 4th day of May, 2012.


Janine Fader

242 F.3d 382, 2000 WL 1593910 (C.A.9 (Nev.))
 (Table, Text in WESTLAW), Unpublished Disposition
 (Cite as: 242 F.3d 382, 2000 WL 1593910 (C.A.9 (Nev.)))

C

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.
 Erma J. LAINE, Plaintiff-Appellant,
 v.
 Caesars PALACE; I.T.T. Hotel, Defendants-Appellees.

No. 99-17414.
 DC No. CV-98-00068-JBR.
 Submitted Oct. 16, 2000 ^{FN2}.

^{FN2}. The panel unanimously finds this case suitable for decision without oral argument. See Fed. R.App. P. 34(a)(2).

Decided Oct. 25, 2000.

Appeal from the United States District Court for the District of Nevada Johnnie B. Rawlinson, District Judge, Presiding.

Before PREGERSON, KLEINFELD AND GOULD, Circuit Judges.

MEMORANDUM ^{FN1}

^{FN1}. This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

*1 Erma Laine appeals pro se the district court's dismissal without prejudice ^{FN3} of her Title VII action. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

^{FN3}. Although the dismissal was without prejudice, the statute of limitations has now run on Laine's Title VII action and therefore

bars Laine from filing a new complaint.

A. Dismissal of Complaint ^{FN4}

^{FN4}. The district court dismissed Laine's action because (1) Laine never filed an amended complaint and (2) Laine's original complaint failed to state a claim. Laine does not argue and has therefore waived any claim that her original complaint was sufficient to state a claim upon which relief could be granted. See Hyon-Su v. Maeda Pac. Corp., 905 F.2d 302, 304 n. 1 (9th Cir.1990). We therefore review only whether the district court's dismissal for failure to file an amended complaint was appropriate. Our review of this issue is for abuse of discretion. See Yourish v. California Amplifier, 191 F.3d 983, 988 (9th Cir.1999).

The district court granted Laine's motion to file an amended complaint, pointed out the deficiencies of the original complaint and the elements that would need to be pleaded in a complaint in order to state a cause of action under Title VII for discriminatory discharge and retaliation, and gave Laine thirty days to file an amended complaint. When Laine failed to comply with this order, the district court again gave Laine the opportunity to file an amended complaint, but this time warned Laine that the failure to timely file an amended complaint would result in dismissal of the action. Laine never filed an amended complaint. In this situation, it was not an abuse of discretion for the district court to dismiss the action for failure to file an amended complaint. ^{FN5}

^{FN5}. See Ferdik v. Bonzelet, 963 F.2d 1258, 1261-63 (9th Cir.1992).

B. Motion for Change of Name

Once the district court granted Laine's motion to amend the complaint, Laine's pending motion for change of name became moot because Laine could make the requested change of name when she filed an amended complaint. ^{FN6}

^{FN6}. See Fed.R.Civ.P. 15 (providing guide-

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lines for amending complaint and specifically for when an amendment adding or changing a party against whom a claim is made will “relate[] back to the date of the original pleading” for statute of limitations purposes).

C. Denial of Motion for Default Judgment^{FN7}

^{FN7}. We review for abuse of discretion the district court's denial of default judgment. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir.1986). “[W]e need not agree with the district court's reasoning to affirm. We may affirm on any ground finding support in the record.” *Id.*

The “complaint” filed on June 1, 1998, that Laine references in her motion for entry of default, was struck by the district court because Laine failed to obtain leave to file an amended complaint as required under Federal Rule of Civil Procedure 15(a). The defendants did not need to file an answer in response to this stricken “complaint,” and their failure to do so cannot form the basis for entry of default or a default judgment under Federal Rule of Civil Procedure 55(a) and (b). The district court's denial of Laine's motion for entry of default and default judgment was therefore proper.

AFFIRMED.

C.A.9 (Nev.),2000.
Laine v. Caesars Palace
242 F.3d 382, 2000 WL 1593910 (C.A.9 (Nev.))

END OF DOCUMENT