

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHRISTOPHER ROLLER,

Plaintiff,

v.

Case No. 05-CV-1297 MJD/JGL

GE MEDICAL SYSTEMS INFORMATION
TECHNOLOGIES, INC.,

Defendant.

**DEFENDANT’S REPLY MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DISMISS**

Plaintiff’s Complaint presumably alleges claims that GEMS IT violated the Americans with Disabilities Act (“ADA”), the South Dakota Human Relations Act (“SDHRA”), and/or the Minnesota Human Rights Act (“MHRA”). As explained in GEMS IT’s memorandum of law in support of its motion to dismiss, the applicable statutes of limitations bar all of these claims. In addition, Plaintiff cannot proceed on a claim under the MHRA because he was not an “employee” protected by this statute.

In his response, Plaintiff does not deny that his employment with GEMS IT ended on February 18, 2002 and that he never filed a complaint with an administrative agency or a court based on the separation of his employment from GEMS IT until on or about June 8, 2005. Instead, Plaintiff argues that the statutes of limitations for his claims pursuant to the MHRA and SDHRA were tolled. However, the statutes upon which Plaintiff relies do not apply to these claims. Moreover, Plaintiff provides no authority or

argument as to why the limitations period on his ADA claim would be tolled, nor does he dispute that he was not an employee for purposes of the MHRA. For these reasons, GEMS IT's motion to dismiss should be granted.

I. PLAINTIFF'S COMPLAINT IS TIME-BARRED UNDER THE ADA

Plaintiff does not dispute that he did not file a claim for violation of the ADA within 300 days of his termination. Moreover, he provides no authority or argument as to why the statute of limitations for such a claim would be tolled. Thus, Plaintiff cannot proceed on an ADA claim.

II. PLAINTIFF'S COMPLAINT IS TIME-BARRED UNDER THE SDHRA

All charges filed under the SDHRA must be filed with the South Dakota Division of Human Rights within 180 days after the alleged discriminatory practice occurred and before a claim can be filed in circuit court. S.D. Codified Laws §§ 20-13-29 & 20-13-31. Plaintiff does not, and cannot, allege that he filed a claim with this Division, much less that he did so within the required time period. His Complaint must be dismissed for this reason alone.

Moreover, the statute Plaintiff cites as somehow providing a basis to toll the time frame for filing an action in court does not apply to this claim. See Pl. Mem. Law at 2; S.D. Codified Laws § 15-2-8. That statute provides,

Except where, in special cases, a different limitation is prescribed by statute, the following civil actions other than for the recovery of real property can be commenced only within ten years after the cause of action shall have accrued:

- (1) An action upon a judgment or decree of any court of the United States, or any state or territory other than this state within the United States;

(2) Actions by any county in this state to recover from any person; legally bound for the support of a mentally ill person at the hospital for the mentally ill;

(3) An action upon an abstractor's bond given pursuant to the provisions and requirements of chapter 36-13. Cause of action on bond shall be deemed to accrue on date of certificate in which error, deficiency, or mistake occurred;

(4) An action for relief not otherwise provided for.

This statute nowhere provides an extension of time by which to file a claim with an administrative agency. Even if it did, a claim of termination based upon disability is clearly not encompassed by subsection 1 of the statute – the only subsection cited by Plaintiff. See Pl. Mem. at 2. This is not an action upon a judgment or decree of any court of the United States or a state other than South Dakota. Plaintiff is not seeking to enforce a judgment.

Moreover, none of the other subsections of this statute apply. Plaintiff asserts a claim of discrimination based upon his alleged mental illness. Plaintiff could have pursued his claim by following the procedures outlined in S.D. Codified Laws §§ 20-13-29 and 20-13-31. He chose not to do so and cannot avoid the consequences of that decision based upon S.D. Codified Laws § 15-2-8(1).

III. PLAINTIFF'S COMPLAINT IS TIME-BARRED UNDER THE MHRA

Finally, Plaintiff provides no evidence that he was an “employee” for purposes of the MHRA during his employment with GEMS IT. The MHRA defines “employee” as “an individual who is employed by an employer and who resides or works in [Minnesota].” Minn. Stat. § 363A.03 subd. 15. Plaintiff does not allege that he lived and/or worked in Minnesota while employed at GEMS IT, because he did not. Because

Plaintiff was not an “employee” under the MHRA during his employment with GEMS IT, he cannot state a claim under the Act.

Even if the MHRA did apply, a claim pursuant to it would be time-barred. The MHRA requires employees to bring actions “within one year after the occurrence of the [allegedly discriminatory] practice.” Minn. Stat. § 363A.28, subd. 3; see also Zelewski v. American Fed. Savings Bank, 811 F. Supp. 456, 460 (D. Minn. 1993). Plaintiff does not allege that he filed his Complaint within this one year time period. Instead, he alleges that the statute of limitations was tolled based upon Minn. Stat. § 541.15(a)(2), which provides:

(a) Except as provided in paragraph (b), any of the following grounds of disability, existing at the time when a cause of action accrued or arising anytime during the period of limitation, shall suspend the running of the period of limitation until the same is removed; provided that such period, except in the case of infancy, shall not be extended for more than five years, nor in any case for more than one year after the disability ceases:

...

(2) the plaintiff's insanity;

...

“Insanity” for purposes of this statute means “substantial inability, by reason of mental defect or deficiency, to understand one’s legal rights, manage one’s affairs, and prosecute the claim.” L.A.B. v. P.N., 533 N.W.2d 413, 417 (Minn. Ct. App. 1995).

While Plaintiff does state that he was stressed and not of sound mind, he nowhere alleges that he was ever adjudicated insane or that his mental condition made him unable to manage his affairs. Indeed, the undisputed facts in his own memorandum in opposition

to the motion to dismiss and Complaint establish he was not as a matter of law. Plaintiff states in his memorandum that after his termination he tried to support his children and family and that he sold his house. See Pl. Mem. Law at 2. In his Complaint, Plaintiff alleges that as a result of his termination he was divorced. Compl. at 3. Thus, despite his alleged mental disability, Plaintiff engaged in and participated in legal proceedings. These admitted facts establish as a matter of law that Plaintiff was not insane for purposes of Minn. Stat. § 541.15 during the entire time period from February 2002 though June 2005.

Moreover, even if Plaintiff was “insane” at the time of the separation of his employment with GEMS IT, this statute would not save his claim. Plaintiff alleges in his Complaint that his issues with suicide extended for only six months. Compl. at 3. Thus, at the latest, Plaintiff would have been able to proceed with this action in August 2002. Under Minn. Stat. § 541.15, the statute of limitations can only be extended for a year after the disability ends. Thus, Plaintiff would have had until August 2003, not April 2007 as he alleges, to file a claim pursuant to the MHRA. Because he did not do so, based on the undisputed facts, his claim is time barred as a matter of law.

CONCLUSION

Based on the foregoing, GEMS IT respectfully requests that Plaintiff’s Complaint be dismissed in its entirety with prejudice. The statutes of limitations for all of the potential claims raised by Plaintiff’s Complaint clearly expired prior to the filing of this action. In response, Plaintiff provides no argument as to why an ADA claim would not be barred. While Plaintiff points to S.D. Codified Laws § 15-2-8(1) as somehow tolling

the time by which he needed to file a claim under the SDHRA, a review of the section cited establishes that it is not applicable. With regard to a claim under the MHRA, Plaintiff does not dispute that he was not an “employee” for purposes of that statute because he lived and resided in South Dakota at the time of the alleged wrongful conduct. Moreover, even if he was an employee so that this statute applied to him, Minn. Stat. § 541.15 does not toll the statute of limitations based upon Plaintiff’s own allegations in the Complaint and his memorandum of law in opposition to the motion to dismiss. For these reasons, GEMS IT’s motion to dismiss should be granted and Plaintiff’s Complaint should be dismissed in its entirety.

Dated: August 26, 2005.

s/JUDITH A. WILLIAMS-KILLACKEY
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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

This certification states that this Reply Memorandum of Law complies with the length limitation of L.R. 7.1(e) and type size requirements of L.R. 7.1(e) and has 1,539 words and the original Memorandum of Law in Support of Defendant's Motion to Dismiss had 1,852 words. The software used for the Memorandum and the word count was Microsoft Word and the count applied included all text, including headings, footnotes and quotations.