

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ANGEL COLLAZO,	:	
	:	
Plaintiff,	:	NO. 3:03cv1620 (MRK)
	:	
v.	:	
	:	
	:	
SIKORSKY AIRCRAFT CORP.,	:	
	:	
Defendant.	:	

RULING

Plaintiff Angel Collazo, proceeding *pro se*, brings this action against his former employer, Sikorsky Aircraft Corporation, alleging that his termination was the result of improper race and national origin discrimination, as well as discrimination on the basis of a disability. Amend. Compl. [doc. #3] at 3-4. Defendant Sikorsky has filed a Motion to Dismiss [doc. #12]. For the reasons stated below, the Motion to Dismiss [doc. #12] is GRANTED.

I.

The Court need not go into the facts underlying this case at length. Plaintiff, who is Hispanic, alleges that he was terminated as a result of a "violation of company rules due to a falsified note due to severe depression and anxiety." Amend. Compl. at 2. He further alleges that other employees who committed similar offenses, all of whom were white, were reinstated to their jobs. *Id.* at 3. The Court will accept these allegations as true for the purposes of the motion to dismiss. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

Plaintiff filed a charge of discrimination with the EEOC on July 15, 2003, in which he

alleged that Sikorsky had discriminated against him on the basis of his disability in violation of the Americans with Disabilities Act of 1990. EEOC Charge, Mot. to Dismiss [doc. #12], Ex. A.¹ The EEOC dismissed Plaintiff's charge on July 17, 2003 because the charge had not been timely filed. EEOC Dismissal, Compl. [doc. #2], Attachment. Plaintiff filed suit in this Court on September 22, 2003.

II.

For purposes of the motion to dismiss, the Court assumes the truth of the allegations set forth in the Amended Complaint and will draw all reasonable inferences in Plaintiff's favor. *See ICM Holding, Inc. v. MCI Worldcom, Inc.*, 238 F.3d 219, 221 (2d Cir. 2001). The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." *Ryder Energy Distribution v. Merrill Lynch Commodities, Inc.*, 748 F.2d 774, 779 (2d Cir.1984). Furthermore, "[s]ince most *pro se* plaintiffs lack familiarity with the formalities of pleading requirements, [the Court] must construe *pro se* complaints liberally, applying a more flexible standard to evaluate their sufficiency than [it] would when reviewing a complaint submitted by counsel." *Lerman v. Bd. of Elections in the City of New York*, 232 F.3d 135, 139-40 (2d Cir. 2000); *see also McEachin v. McGuinnis*, 357 F.3d 197, 200 (2d Cir. 2004); *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980) (*per curiam*). Accordingly, the Court

¹On a motion to dismiss the Court is generally limited to the four corners of the complaint. However, the Court may also consider "documents attached to the complaint as an exhibit or incorporated in it by reference, to matters of which judicial notice may be taken, or to documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." *Brass v. American Film Techs, Inc.*, 987 F.2d 142, 150 (2d Cir. 1993). In this case, Plaintiff has attached the EEOC dismissal to his Complaint and certainly had knowledge of the EEOC charge he filed. This Court may thus refer to the EEOC charge and dismissal in connection with the motions to dismiss.

recognizes that "[i]n order to justify the dismissal of the plaintiffs' *pro se* complaint, it must be beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Lerman*, 232 F.3d at 140 (citations and quotation marks omitted).

Defendant bases its motion to dismiss on two arguments: first, Defendant argues that Plaintiff's action should be dismissed because he failed to timely file a charge with the EEOC or the CHRO, the Connecticut state agency, as required by Title VII and the ADA; second, Defendant argues that the claim of racial or national origin discrimination should be dismissed because such a claim was never filed with the EEOC or CHRO. Mot. to Dismiss, at 1. As the Court dismisses this case because of Plaintiff's failure to timely file an EEOC charge, it will not discuss the second argument raised by Defendant.

Federal law provides that a Title VII charge "shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . . , except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local [EEO] agency . . . , such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred." 42 U.S.C. § 2000e-5(e)(1). "This requirement functions as a statute of limitations in that discriminatory incidents not timely charged before the EEOC will be time-barred upon the plaintiff's suit in district court." *Quinn v. Green Tree Credit Corp.*, 159 F.3d 759, 765 (2d Cir. 1998).

Plaintiff was terminated on May 19, 2002. Pl's Obj. to Def's Mot. to Dismiss [doc. #15] at 1. Plaintiff's EEOC charge was filed on July 15, 2003, 422 days after the alleged unlawful employment practice. EEOC Charge, Mot. to Dismiss [doc. #12], Ex. A. Plaintiff has thus failed to meet the requirement of filing a charge within 300 days.

Plaintiff argues in response that he attempted to file a complaint with the CHRO and in fact met with CHRO employees on two separate occasions in September and October 2002 — well within the statute of limitations — but on both occasions the CHRO destroyed the documents Plaintiff had prepared because the complaint was "nonjurisdictional" and "contained no merits."² Pl's Obj. to Def's Mot. to Dismiss [doc. #15] at 2; Obj. and Reply to Def's Reply Mem. of Law [doc. #29], at 4-6. Plaintiff argues that because his failure to file a charge was due solely to the actions of CHRO personnel, he "should be excused and the case should not be dismissed." *Id.* at 7. The Court will construe this as an argument for the statute of limitations to be equitably tolled.

"Equitable tolling allows courts to extend the statute of limitations beyond the time of expiration as necessary to avoid inequitable circumstances." *Johnson v. Nyack Hosp.*, 86 F.3d 8, 12 (2d Cir. 1996). The Second Circuit has held that the EEOC "timeliness requirement is not jurisdictional, and the filing deadline is subject to . . . equitable tolling." *Bruce v. United States DOJ*, 314 F.3d 71, 74 (2d Cir. 2002). However, that court has also cautioned that "equitable tolling is only appropriate in rare and exceptional circumstances, in which a party is prevented in some extraordinary way from exercising his rights." *Zerilli-Edelglass v. N.Y. City Transit Auth.*, 333 F.3d 74, 80 (2d Cir. 2003) (internal quotations and citations omitted). The court specified the conditions under which the argument could be made:

Equitable tolling is generally considered appropriate where the plaintiff actively pursued judicial remedies but filed a defective pleading during the specified time period, where plaintiff was unaware of his or her cause of action due to misleading

²Plaintiff states that "the Plaintiff clearly had every intention of filing a charge, yet, due to the circumstances and incidents which occurred with the CHRO office, of which he had no control over, as explained below, it was never filed due to reasons set forth and the original was kept in the files of the Plaintiff until sent to the Court." Reply to Def's Reply Mem. of Law [doc. #29], at 2.

conduct of the defendant, or where a plaintiff's medical condition or mental impairment prevented her from proceeding in a timely fashion. When determining whether equitable tolling is applicable, a district court must consider whether the person seeking application of the equitable tolling doctrine (1) has acted with reasonable diligence during the time period she seeks to have tolled, and (2) has proved that the circumstances are so extraordinary that the doctrine should apply.

Id. at 80-81.

The Court finds that Plaintiff cannot meet the standard for establishing that his claim should be equitably tolled. To do so, Plaintiff must demonstrate that he acted with reasonable diligence during the time period he seeks to have tolled. Even crediting Plaintiff's entire story, parts of which the Court finds difficult to believe, it is clear that Plaintiff did nothing from his ill-fated meeting at the CHRO office on October 24, 2002 until sometime in April or May of 2003, when he finally contacted the EEOC. Pl's Obj. to Def's Mot. to Dismiss [doc. #15] at 2. Had Plaintiff taken this action a few months earlier, his filing would have been timely. Additionally, Plaintiff signed a CHRO Intake Acknowledgment Form on October 24, 2002, affirming that he understood that: "you have been informed by the CHRO Investigator/Representative assisting you in filing your complaint, that only you can make the decision to file, or not to file the complaint. As such, no matter what the CHRO employee thinks about the merits of your complaint, you still have a right to file if you want to." *Id.* at 19. Having acknowledged that he understood that he had a right to file no matter what the CHRO employees thought of his complaint, Plaintiff cannot claim that he acted with reasonable diligence when he did not file the claim because of the actions of the CHRO employees. The Court finds that Plaintiff did not act with reasonable diligence with regard to the filing of the CHRO charge. Accordingly, the Court need not proceed to the question of whether the circumstances of this case are so extraordinary that equitable tolling should apply, though the Court does not think that

Plaintiff could meet that standard on the facts of this case.

In light of the Court's finding that the EEOC or CHRO charge was not timely filed and that equitable tolling should not apply, Defendant's Motion to Dismiss [doc. #12] is GRANTED. The case is dismissed and the Clerk is directed to close the file.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: June 23, 2004