UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LOUISE WALLACE, Plaintiff	:	
v.	:	3:98CV02523 (EBB)
KX INDUSTRIES, INC., ET AL., Defendants	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

This action arises out of Plaintiff Louise Wallace's ("Plaintiff" or "Wallace") Complaint against Defendants KX Industries, Inc., ("Defendant" or "KX") and Oscar McClain ("McClain") or, following his death, the estate of Oscar McClain (the "Estate"). The Complaint asserts that KX violated Title VII and Connecticut General Statutes Section 31-49 by failing to provide a safe workplace.[1]/ As to McClain, Plaintiff alleges state claims of assault, battery, trespass and intentional and negligent emotional distress.[2]/

KX now moves for summary judgment, arguing, *inter alios* that the action is time barred.

STATEMENT OF FACTS

The Court sets forth only those facts deemed necessary to an

[1]/ Wallace now concedes that there exists no private right of action under this statute.

[2]/ No one has entered an appearance for McClain or his Estate.

understanding of the decision rendered on this Motion. The facts are culled from the parties' moving papers, their Local Rule 9(c) Statements and exhibits to the memoranda of law.

On March 11, 1997, Wallace filed concurrent Complaints with the Connecticut Commission on Human Rights and Opportunities ("CHRO"), and the Equal Employment Opportunities Commission ("EEOC"), alleging that KX had engaged in sexual harassment, thereby illegally discriminating against her on the basis of her gender. The CHRO conducted a Merit Assessment Review of Plaintiff's Complaint, including a full investigation of the charges she had brought. The CHRO found that there was "no reasonable possibility that further investigations will result in a finding of reasonable cause". The CHRO also found that KX took immediate "actions necessary to remedy [Wallace's] Complaint of sexual harassment." [3]/ Accordingly, on June 4, 1997, the CHRO dismissed Plaintiff's Complaint. Plaintiff requested reconsideration of the decision, which request was denied on August 4, 1997.

Pursuant to her statutory right, Wallace next filed a suit in the Connecticut Superior Court, appealing the decision of the CHRO rulings. The action was commenced on August 13, 1997. In a lengthy Memorandum of Decision, issued on August 12, 1998, the

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[3]/ Immediately after complaining to her supervisors that McClain was sexually harassing her, the Company investigated and determined that he indeed was. KX gave him a "Final Warning" letter and suspended him without pay. Upon return from his suspension, McClain never harassed her again except for "looks and stares", as written in Wallace's memorandum of law.

Superior Court judge upheld the CHRO's decision and found that "the plaintiff's appeal must be dismissed . . . because there was insufficient proof of the employer's liability . . . . The CHRO's findings and conclusions are supported by the record and the law".

During the pendency of Plaintiff's appeal to the Superior Court, she received a right to sue letter from the EEOC, notifying Wallace that it had adopted the findings of the decision of the CHRO. The right to sue letter notified her that she had ninety days in which to commence litigation in federal court, based on Title VII.

The current suit was filed on December 28, 1998, fifteen months following receipt of her right to sue letter. [4]/

LEGAL ANALYSIS

I. The Standard of Review

In a motion for summary judgment the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). *See also* Anderson v. Liberty Lobby, 477 U.S. 242, 256 (1986)(plaintiff must present affirmative evidence in order to defeat a properly supported

[4]/ Although Plaintiff claims that it is a genuine issue of material fact as to whether she received the right to sue letter, she is deemed by law to have received it within three days following its issuance. Further, in the Rule 26(f) Report of Parties' Planning Meeting, Plaintiff states as an undisputed fact that she received this letter on September 19, 1997. Accordingly, Wallace cannot transmogrify her present claim into a genuine issue of material fact.

motion for summary judgment).

If the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof at trial, then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.* at 322-23. *Accord,* Goenaga v. March of Dimes Birth Defects Foundation, 51 F.3d 14, 18 (2d. Cir. 1995)(movant's burden satisfied if it can point to an absence of evidence to support an essential element of nonmoving party's claim).

The court is mandated to "resolve all ambiguities and draw all inferences in favor of the nonmoving party. . . ." Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d. 520, 523 (2d Cir.), *cert. denied*, 506 U.S. 965 (1992). "Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), *cert. denied*, 502 U.S. 849 (1991). If the nonmoving party submits evidence which is "merely colorable", or is not "significantly probative," summary judgment may be granted. Anderson, 477 U.S. at 249-50.

"[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly

supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact. As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id*. at 247-48 (emphasis in original).

II. The Standard As Applied

Pursuant to 42 U.S.C. Section 2000e-5, Plaintiff had three hundred days, or thirty days after the state decision, in which to file her Title VII litigation before the EEOC. KX correctly argues that she had to file her federal suit within 90 days of receipt of her right to sue letter. Inasmuch as Plaintiff received her EEOC right to sue letter on September 19, 1997, she had until December 18, 1997 in which to file the present litigation. However, she did not file the suit until December 29, 1998. Resultingly, her Complaint is time barred, as she has missed the mandatory statute of limitations.

With no citation to any authority, Plaintiff claims that her federal action was tolled during the pendency of the state court action. Equitable tolling is in the discretion of the Court and is to be used only in "extraordinary" circumstances, such as where a claimant was deliberately prevented from exercising her rights. Doherty v. American Home Products, Corp., 1999 WL 958556

at * 5 (D.Conn, 1999). This is not such a case and the Court will not toll the statute of limitations based on the appeal to the Superior Court.[5]/

CONCLUSION

Reviewing this action in the light most favorable to Plaintiff, the Court still finds that it is time barred under the ninety-day statute of limitations. Hence, KX's Motion for Summary Judgment [Doc. No. 13] is GRANTED. Inasmuch as Plaintiff never identified McClain in either her CHRO or EEOC Complaints, there exists no viable federal cause against him. Accordingly, this Court has no jurisdiction over the state law claims, purportedly brought under the supplemental jurisdiction of the Court. These claims are, therefore, dismissed.

The Clerk is directed to enter judgment for Defendants and to close this case.

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of December, 1999.

[5]/ The Court also finds that the decision of the Superior Court would be res judicata as to this action.