

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2218

JONATHAN VALENTIN,
Appellant

v.

MANPOWER GROUP SOLUTIONS

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. Civil Action No. 2-17-cv-01821)
District Judge: Honorable C. Darnell Jones, II

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 11, 2019
Before: MCKEE, COWEN and ROTH, Circuit Judges

(Opinion filed: November 27, 2019)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Jonathan Valentin, proceeding pro se, appeals an order of the United States District Court for the Eastern District of Pennsylvania dismissing his employment discrimination complaint. For the reasons that follow, we will affirm the judgment of the District Court.

Valentin filed a complaint against Manpower Group Solutions in District Court claiming employment discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17.¹ He alleged in his form complaint that Manpower discriminated against him based on his race, national origin, and sex. He claimed that Manpower terminated his employment, failed to stop harassment, retaliated against him, and defamed him. Valentin averred that he was hired and fired in under two days.

Valentin attached to his complaint a discrimination charge he filed with the Equal Employment Opportunity Commission and the EEOC's subsequent notice of his right to sue. Valentin stated in the charge that Manpower hired him on or about July 20, 2015 as a Customer Service Representative and that, on the first day of training, his co-workers and instructors harassed him about his sexual orientation. He stated that on July 21 he asked to speak with the instructors about the harassment, that an instructor told him to go home and said that he would try to change his training location, and that Manpower's Business Manager later told him that his employment was terminated. The charge

¹Appellee states that its correct name is Manpower US, Inc. We will refer to the Appellee as Manpower.

reflects the earliest and latest dates of discrimination as July 20 and July 21, 2015, respectively. The EEOC's right-to-sue notice reflects that it dismissed the charge on the ground that it was unable to conclude that there was a statutory violation.

Manpower moved to dismiss the complaint for failure to state a claim for relief or for a more definite statement. Manpower argued, among other things, that Valentin's Title VII claims must be dismissed because his EEOC charge was untimely filed. Valentin did not respond and the District Court ordered him to show cause why the motion should not be granted as unopposed.

Valentin filed a compilation of documents in response to the show cause order, including a document styled as an amended complaint and filings and correspondence with the Pennsylvania Human Relations Commission and the EEOC. In response to Manpower's timeliness argument, Valentin stated that his complaint was filed "with the PHRC's federal agency well within the EEOC's statute of limitations." Response at 21. Manpower replied that Valentin improperly sought to amend his complaint via an opposition to its motion to dismiss and that the documents he filed showed that both his PHRC and EEOC complaints were untimely.

The District Court granted Manpower's motion and ordered Valentin to file an amended complaint that complied with the Federal Rules of Civil Procedure and addressed the issues of exhaustion of administrative remedies and timeliness. The District Court cautioned Valentin to refrain from simply submitting all of the

correspondence he has acquired, stated that the complaint shall inform Manpower of the conduct he claims is unlawful, and noted that any exhibits shall speak to the issues of timeliness and exhaustion.

Valentin filed a “Response to Amended Defense,” which he stated was argument in support of his original complaint. He asserted that the complaint he filed with the PHRC could be deemed timely and that the EEOC “reserves the right to use the earliest date made available by any other . . . agency. . . to draft a complaint involving a specific incident.” Response at 2. He also addressed his defamation claim and set forth principles purportedly applicable to harassment and retaliation claims.

Manpower treated the filing as an amended complaint and moved to dismiss it on grounds similar to those raised in its prior filings. The District Court granted Manpower’s motion to dismiss with regard to Valentin’s federal claims based on his failure to timely exhaust his administrative remedies. The District Court declined to exercise supplemental jurisdiction over his defamation claim and dismissed that claim without prejudice. This appeal followed.²

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the grant of a motion to dismiss under a plenary standard. Connelly v. Lane Const. Corp., 809 F.3d 780, 786 n.2 (3d Cir. 2016).

²The District Court also denied Valentin’s motion for reconsideration. This order is not before us as he did not file another notice of appeal. Fed. R. App. P. 4(a)(4)(B)(ii).

Title VII requires a claimant in Pennsylvania to file a charge with the EEOC within 300 days of an unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1); Mandel v. M & Q Packaging Corp., 706 F.3d 157, 165 (3d Cir. 2013); Watson v. Eastman Kodak Co., 235 F.3d 851, 854 (3d Cir. 2000). Absent the filing of such a charge, a claim for relief under federal law may not proceed. Watson, 235 F.3d at 854. Here, the alleged unlawful employment practices occurred on July 20 and July 21, 2015. Valentin thus had until May 16, 2016 to file a timely charge with the EEOC. In ruling that Valentin’s EEOC charge was untimely, the District Court relied on the charge attached to his original complaint, which was stamped received by the EEOC on October 27, 2016.³

Valentin argues on appeal that the District Court erred in relying on the October 27, 2016 charge “without taking into account the four month procedural investigation conducted by the EEOC prior to issuing [his] Notice of Rights” or an Executive Order giving the EEOC full access to other agency records while investigating a complaint. Informal Appeal Brief at 13. Valentin has not elaborated on these arguments, although he suggests in his reply brief that the District Court should have considered that the EEOC investigated his complaint as opposed to dismissing it. Valentin’s arguments are unclear and inadequately developed and he has not shown that the District Court erred.

³Courts generally consider the allegations in a complaint, exhibits attached to the complaint, and matters of public record in deciding a motion to dismiss. Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014). Documents integral to or explicitly relied upon in a complaint may also be considered. Id.

In addition, his argument based on the EEOC's investigation is waived because he did not raise it below in his response to the District Court's show cause order or his Response to Amended Defense. See Garza v. Citigroup Inc., 881 F.3d 277, 284 (3d Cir. 2018) (arguments not raised before the District Court are waived on appeal).

Valentin has presented no other arguments for our review. Accordingly, we will affirm the judgment of the District Court.⁴

⁴Valentin's motion for leave to file supplemental evidence, which may also be construed as a motion to expand the record, is denied.