In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1833

BARBARA J. UEBELACKER,

Plaintiff-Appellant,

v.

ROCK ENERGY COOPERATIVE and SHANE LARSON,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Wisconsin.
No. 21-cv-00177 — **James D. Peterson**, *Chief Judge*.

ARGUED NOVEMBER 7, 2022 — DECIDED DECEMBER 12, 2022

Before FLAUM, EASTERBROOK, and ST. EVE, *Circuit Judges*.

FLAUM, *Circuit Judge*. Barbara Uebelacker sent a former coworker private Facebook messages disparaging her bosses. Soon afterwards, Uebelacker's employer discovered the messages and confronted her. She was demoted and eventually fired. Now, Uebelacker brings a claim under the Stored Communications Act, arguing that her employer was not authorized to view the messages. The district court granted summary judgment based on the statute of limitations. We affirm.

I. Background

One evening in December 2018, Barbara Uebelacker and Angie Schuman exchanged a flurry of Facebook messages using their personal accounts and devices. Schuman had just been fired from Rock Energy Cooperative and was upset. Uebelacker, who still worked as the communications director for the company, joined in with complaints of her own. Uebelacker took special aim at two of her bosses; she said that she had "no respect" for them, that they did not "know the meaning of trust," and that they were among the "many slimy people at work."

The next day, one of Rock Energy's employees, Robert Booth, began transferring files from Schuman's former work computer so others could access them. Booth discovered that Schuman was still signed in to her personal Facebook account on the active internet browser. The account synched with Schuman's activity on other devices, so it had refreshed to display Schuman's recent conversation with Uebelacker. Booth opened the conversation, saw Uebelacker's messages about Rock Energy's upper management, and took screenshots.

The screenshots made their way to Shane Larson, Rock Energy's CEO and a primary target of Uebelacker's derogatory comments. In January 2019, Larson met with Uebelacker. He told her that Booth had found the messages on Schuman's work computer and showed her printed copies of the screenshots. Uebelacker claims that Larson fired her on the spot. At any rate, the two met again the next day. Larson said Uebelacker could return to work if she accepted a demotion along with certain other conditions. She agreed.

Around June 2020, Uebelacker learned that Rock Energy had posted an advertisement for a communications position that she felt overlapped with many of her own responsibilities. In short, Uebelacker thought she was being replaced. She emailed Rock Energy's administrative services manager later that month, requesting an explanation and voicing her concern that the Facebook messages played a role. Rock Energy fired her the next day.

In March 2021, Uebelacker brought this lawsuit, asserting a violation of the Stored Communications Act. The district court granted the defendants' motion for summary judgment on the grounds that the statute of limitations had already run. Uebelacker appealed.[1]

II. Discussion

This appeal comes to us from summary judgment. Our review is de novo. *Smith v. City of Janesville*, 40 F.4th 816, 821 (7th Cir. 2022). We "view the facts and draw reasonable inferences in the light most favorable to the non-moving party." *Parker v. Brooks Life Sci., Inc.*, 39 F.4th 931, 936 (7th Cir. 2022). Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (quoting Fed. R. Civ. P. 56(a)).

The Stored Communications Act prohibits unauthorized access to communications in electronic storage. 18 U.S.C. § 2701(a). Civil actions under the Act must be brought no later

[1] Uebelacker's remaining claim is for a violation of her right of privacy under Wisconsin law. The district court relinquished its jurisdiction over that claim after disposing of her claim under the Stored Communications Act. The state-law claim is not at issue here.

than "two years after the date upon which the claimant first discovered or *had a reasonable opportunity to discover* the violation." *Id.* § 2707(f) (emphasis added). Our inquiry here concerns this provision's second prong.

At the outset, we must determine which accrual rule corresponds to "a reasonable opportunity to discover the violation." The parties argue for inquiry notice, which kicks in "when the victim … became aware of facts that would have led a reasonable person to investigate whether he might have a claim." *Tregenza v. Great Am. Commc'ns Co.*, 12 F.3d 717, 718 (7th Cir. 1993); *see also Fujisawa Pharm. Co. v. Kapoor*, 115 F.3d 1332, 1335 (7th Cir. 1997) (holding that inquiry notice requires more than "mere suspicion").

The district court agreed that inquiry notice governs, and so do we. *See Davis v. Zirkelbach*, 149 F.3d 614, 618 (7th Cir. 1998) (interpreting similar language in the Federal Wiretap Act to require inquiry notice); *Sewell v. Bernardin*, 795 F.3d 337, 340 (2d Cir. 2015) (explaining that "the limitations period [under the Stored Communications Act] begins to run when the plaintiff discovers" the violation or "has information that would motivate a reasonable person to investigate").

We therefore ask when a reasonable person would have begun investigating in this case. During the January 2019 meetings, Larson showed Uebelacker screenshots of her conversation with Schuman. He also told her that Booth found the messages on Schuman's work computer. Although Uebelacker argues that Larson failed to disclose that Booth accessed Facebook's servers to view the messages, she did not need to know all the violation's technical details to be put on inquiry notice. *See Sewell*, 795 F.3d at 340–41. These meetings provided enough information to spur a reasonable person's

investigation. *See Davis*, 149 F.3d at 618 (considering when the plaintiff knew "that something was afoot").[2]

In addition, Uebelacker's June 2020 email illustrates her basic understanding of the alleged violation. She questioned how an "IT staff person was able to access [Schuman's] private Messenger account without her permission, search the private account, and locate [Uebelacker's] private, after-hours conversation with her." Uebelacker does not point to any event other than the January 2019 meetings that would have allowed her to piece this narrative together. The email thus further shows that the statutory clock expired in January 2021—two months before Uebelacker filed her suit.

Still, Uebelacker urges us to overlook her lack of investigation following the meetings. As she puts it, she had just been demoted and feared that further inquiry would get her fired. Uebelacker suggests that it only became reasonable for her to investigate in June 2020, when she saw Rock Energy's posting for a position in her department. At that point, Uebelacker thought her job security was in peril regardless.

Uebelacker offers no caselaw to support this argument. Her position somewhat resembles the equitable-estoppel doctrine, which prevents defendants from asserting a limitations

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[2] Uebelacker cites a Western District of Kentucky case where the court denied the defendant's motion to dismiss for failure to comply with the Act's limitations period. *See Petty v. Bluegrass Cellular, Inc.*, 440 F. Supp. 3d 692 (W.D. Ky. 2020). Given the procedural posture, the court asked whether the complaint "affirmatively show[ed] that the claim [was] time-barred." *Id.* at 695 (citation omitted). The court held that it did not, noting the plaintiff's claim that she did not receive the forms that would have put her on notice. *Id.* at 694, 696. Here, we are at summary judgment. More to the point, Uebelacker admits that she saw the screenshotted messages.

defense if they "took active steps to prevent the plaintiff from suing in time, such as by hiding evidence or promising not to plead the statute of limitations." *Vergara v. City of Chicago*, 939 F.3d 882, 886 (7th Cir. 2019) (quoting *Lucas v. Chi. Transit Auth.*, 367 F.3d 714, 721 (7th Cir. 2004)). To apply equitable estoppel, the "plaintiff's reliance on a defendant's conduct [must] be 'both actual and reasonable.'" *Franklin v. Warmington*, 709 F. App'x 373, 374–75 (7th Cir. 2017) (quoting *Rager v. Dade Behring, Inc.*, 210 F.3d 776, 779 (7th Cir. 2000)). We have indicated that threats are often insufficient in this context. *See, e.g.*, *id.* at 375 (refusing to apply equitable estoppel based on "dated death threats" the plaintiff learned of "secondhand"); *Vergara*, 939 F.3d at 887 (rejecting the position that threats made years earlier justified equitable estoppel).

The doctrine of equitable estoppel confirms that a vague fear of termination cannot save Uebelacker's claim. She does not offer any specific statements showing she was actually threatened not to investigate. Uebelacker's demotion alone is not enough to extend the statute of limitations until she thought her termination was inevitable. *See Shanoff v. Ill. Dep't of Hum. Servs.*, 258 F.3d 696, 702 (7th Cir. 2001) (preventing the plaintiff from "sidestep[ping] the statute of limitations," which we must "seriously recognize and apply").

As such, the Act's limitations period began running in January 2019 and expired in January 2021. Uebelacker did not bring this suit until March 2021, so her claim is time-barred.

III. Conclusion

We AFFIRM the judgment of the district court.