

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH JASPER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 09 C 4445
)	
SAINT ANTHONY HOSPITAL,)	
)	
Defendant.)	

MEMORANDUM ORDER

Saint Anthony Hospital ("Hospital"), defendant in this employment discrimination action brought against it by Joseph Jasper ("Jasper") and Leeandrew Banks ("Banks"), responded by filing a Fed. R. Civ. P. ("Rule") 12(b)(6) motion to dismiss the three-count Complaint and noticing up that motion for presentment on today's motion call. This memorandum order is issued to memorialize this Court's rulings on the motion for the reasons explained in its extended oral in-court statement (which will not be repeated or even summarized in detail here).

First as to Jasper, Hospital's motion for dismissal of his portion of the Complaint on grounds of untimeliness is denied without prejudice. Further factual inquiry is required in that respect, and Hospital is free to renew that motion if such inquiry reveals the motion to be well-founded in factual terms. As for Jasper's substantive contentions, he is dismissed as a plaintiff in both Counts I and II, while Hospital's motion is denied as to Count III (for the latter purpose, Hospital's

contention that any claim equating to the concept of hostile work environment would have to be race-based is entirely mistaken-- see, e.g., Washington v. Ill. Dep't of Rev., 420 F.3d 658 (7th Cir. 2005) and Burlington, N. & Santa Fe v. White, 548 U.S. 53 (2006). Hospital is ordered to answer Count III as to Jasper on or before November 13, 2009.

As to Banks, Hospital's motion to dismiss him from Counts II and III is granted, while its motion for his dismissal from Count I is denied. Because the surviving counts as to Jasper and Banks reveal that the case presents two separate lawsuits, Banks is dismissed as a plaintiff here without prejudice, with leave being granted to him to file a separate Count-I-type action against Hospital on or before November 20, 2009. In that respect Hospital's counsel has confirmed that it expressly waives any contention that such a refileing would be untimely because of the 90-day provision of Title VII.

Finally, the previously-set November 10, 2009 status hearing date in this action (which is now pending solely as to Jasper) is vacated. Instead a status hearing is set for 9 a.m. December 21, 2009.



Milton I. Shadur
Senior United States District Judge

Date: October 23, 2009