

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KEISHA L. BROWN,

Plaintiff,

v.

**PRINCE GEORGE’S HOSPITAL,
ET AL.,**

Defendants.

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Case No.: RWT 09cv295

MEMORANDUM OPINION

Defendants Dimensions Healthcare System d/b/a Prince George’s Hospital (“Dimensions”) and Beverly Calloway move to dismiss portions of Plaintiff Keisha L. Brown’s Complaint for failure to state a claim upon which relief may be granted. Because several of Plaintiff’s claims are limited or barred as a matter of law and inadequately alleged, the Court grants Defendants’ motion to dismiss.

Plaintiff, acting pro se, filed her Complaint, entitled “Complaint for Libel,” on February 9, 2009, seeking damages for libel and/or defamation. (Compl. ¶¶ 6, 12–14, & 18.) She asserts that Ms. Calloway advised Plaintiff’s employers verbally and in writing that Plaintiff stole medication and hospital property. (Id. ¶ 6.) She also asserts that Defendants informed her employer and coworkers that Plaintiff has AIDS and other sexually transmitted diseases. (Id. ¶ 8.) She contends that these communications took place between June 15, 2007, and January 30, 2009. (Compl. ¶¶ 6, 8, & 11.)

In addition to libel and defamation, Plaintiff alleges that Defendants distributed information from her medical records to her co-workers and members of her community without her permission in violation of the Health Insurance Portability and Accountability Act of 1996

(“HIPAA”) and the Federal Privacy Act of 1974 (“Privacy Act”). (Id. ¶¶ 9–10.) Lastly, Plaintiff alleges that Defendants violated Title VII of the Civil Rights Act of 1964 by distributing her medical information and defaming her in retaliation for her filing of a harassment and retaliation claim with the Equal Employment Opportunity Commission (“EEOC”). (Id. ¶ 10 & 14.)

Defendants move to dismiss all claims in Plaintiff’s Complaint except for claims for libel or defamation arising out of communications occurring after February 8, 2008. First, Defendants contend that Plaintiff’s claims for libel or defamation arising out of communications occurring before February 8, 2008 are time-barred. (Defs.’ Mot. 3.) Second, Defendants contend that Plaintiff cannot bring a private right of action under HIPAA. (Id. at 4.) Third, Defendants contend that the Privacy Act only relates to governmental actors and neither Dimensions nor Ms. Calloway is a governmental actor. (Id. at 5.) Lastly, Defendants contend that Plaintiff’s pleadings are inadequate to put Defendants on notice of a potential Title VII claim. (Defs.’ Reply 3–4.)

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the sufficiency of the complaint. Edwards v. City of Goldsboro, 178 F.3d 231 243 (4th Cir. 1999). The Court must consider all well-pled allegations in the Complaint as true, see Albright v. Oliver, 510 U.S. 266, 268 (1994), and must construe factual allegations in the light most favorable to the Plaintiff, see Lambeth v. Bd. Of Comm’rs of Davidson County, 407 F.3d 266, 268 (4th Cir. 2005).

The Court concludes that Plaintiff’s libel and defamation claims associated with communications made after, but not before, February 8, 2008 are timely. Plaintiff’s Complaint asserts libel and defamation actions arising out of false communications occurring between June 15, 2007, and January 30, 2009. An action for libel or defamation, however, must be filed within

one year from the date it accrues under Maryland law. See Md. Code Ann., Cts. & Jud. Proc. § 5-105 (LexisNexis 2008); see also Hickey v. St. Martin's Press, Inc., 978 F. Supp. 230, 235 (D. Md. 1997). Thus, any libel or defamation action arising more than a year before the filing date of the Complaint is barred by the statute of limitations. Here, Plaintiff filed her Complaint on February 9, 2009. Therefore, the Court will grant the motion as to Plaintiff's libel and defamation claims relating to alleged false communications occurring before February 8, 2008.

The Court also concludes that Plaintiff's HIPAA and Privacy Act claims are barred as a matter of law. Enforcement of the provisions of HIPAA are limited to the Secretary of Health and Human Services, see 42 U.S.C. § 1320d-5, and provisions of the Privacy Act apply to federal agencies, see 5 U.S.C. § 552(a). Plaintiff, however, is a private actor, and Defendants are not federal agencies. Moreover, Plaintiff does not argue in her opposition that she has a private cause of action under either HIPAA or the Privacy Act. Accordingly, the Court will grant the motion as to Plaintiff's claims under both HIPAA and the Privacy Act.

Finally, the Court concludes that Plaintiff's pleadings are insufficient to put Defendants on notice of Plaintiff's Title VII retaliation claim, which is almost certainly barred anyhow. In her Complaint, Plaintiff states that her "medical information was . . . distributed in order to force the Plaintiff to drop charges in a Title VII harassment, retaliation lawsuit." (Compl. ¶ 10.) She further alleges that the "defendants and their agents intentionally inflicted emotional distress for the purpose of torturing the plaintiff in retaliation for initiating a harassment complaint." (Id. ¶ 14; see also Pl's. Opp'n ¶ 17.) Together, these statements suggest that Defendants took adverse actions against Plaintiff because Plaintiff filed an EEOC claim. Neither the Defendants nor the Court can determine, however, whether the allegations of retaliation stem from her previous EEOC charge, from which Plaintiff did not timely sue, or constitute a separate EEOC

charge, which must be brought to the EEOC before this Court.¹ Either way, Plaintiff's Title VII claim is barred and inadequately pleaded. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (noting that the purpose of Rule 8(a) is to provide fair notice to the defendants of the nature of the claim and the ground on which it rests). Therefore, the Court grants Defendants' motion as to Plaintiff's Title VII claim.

For the foregoing reasons, the Court will grant, by separate order, Defendant's Motion To Dismiss (Paper No. 8).

November 4, 2009

/s/
ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

¹ Plaintiff's Title VII claims in this case appear to stem from her Title VII claims previously filed with the EEOC and with this Court. On February 2, 2009, Plaintiff filed a Complaint against the same defendants in this case, alleging employment discrimination under Title VII. See Complaint at 13, Brown v. Prince George's Hospital, No. RWT-09-cv-215 (D. Md.). Accompanying her Complaint was an EEOC "Right To Sue" Letter dated July 25, 2007, which advised Plaintiff to pursue her lawsuit within 90 days of receiving notice. See id. Ex.1. The Court dismissed her Complaint as time-barred because it was filed almost two and one-half years after the issuance of the Right To Sue Letter. See Brown v. Prince George's Hospital, No. RWT-09-cv-215 (D. Md. Feb. 26, 2009). Plaintiff moved the Court to reconsider because she contends that she did not receive the Right To Sue Letter until October 19, 2008. See Motion for Reconsideration, Brown v. Prince George's Hospital, No. RWT-09-cv-215 (D. Md. May 7, 2009). The Court denied Plaintiff's Motion for Reconsideration. See Brown v. Prince George's Hospital, No. RWT-09-cv-215 (D. Md. Oct. 21, 2009).

Meanwhile, on October 5, 2009, Plaintiff filed a separate Complaint entitled "Wrongful Termination," in which she again alleges employment discrimination claims as to Prince George's Hospital and Ms. Calloway. See Complaint at 4, Brown v. Prince George's Hospital, No. RWT-09-cv-2602 (D. Md.). Referring to Plaintiff's July 25, 2007 Right To Sue Letter, the Court explained that Plaintiff was not entitled to equitable tolling of its ninety-day time period because she failed to act diligently in filing her Complaint. See Brown v. Prince George's Hospital, No. RWT-09-cv-2602 (D. Md. Oct. 22, 2009). Thus, for similar reasons, the Court dismissed Plaintiff's October 5, 2009 Complaint. See id.