

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CHRIS L. LOFTON,)
Plaintiff,)
v.) CIV-17-242-R
FTS INTERNATIONAL)
MANUFACTURING)
Defendant.)

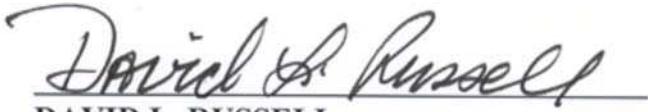
ORDER

This matter comes before the Court on the Motion to Dismiss, filed by Defendant FTS International Manufacturing. (Doc. No. 6). Plaintiff responded in opposition to the motion and Defendant filed a Reply in support of its position. Having considered the parties' submissions, the Court orders as follows.

Plaintiff filed this action in the District Court of Oklahoma County. Although he does not directly allege his race or color, he alleges that during the time of his employment at FTS International Manufacturing he was subject to racial epithets by co-workers. He asserts claims for race discrimination, including the creation of a hostile work environment, and retaliatory termination, allegedly in violation of Title VII of the Civil Rights Act and 42 U.S.C. § 1983. Doc. No. 1-1, ¶ 3. Plaintiff concedes in response to the motion that he intended to plead a claim under § 1981 not § 1983, because Defendant is a private, not state, actor. Plaintiff also seeks leave to amend should the Court conclude that his allegations are deficient, either factually or legally. (Doc. No. 8, p. 11). The Court finds that at this juncture and given the allegations in the Petition, which present a confusing timeline,

that amendment is appropriate. Although Defendant contends amendment would be futile, the Court disagrees. Plaintiff filed his EEOC charge on October 29, 2015, and thus claims accruing after January 2, 2015 would be timely. Plaintiff's counsel should ensure that in amending the pleading, the timeline of events and the basis for Plaintiff's claims is sufficiently clear as to give notice to Defendant of the contours of Plaintiff's claims. Accordingly, the motion to dismiss is hereby denied without prejudice to seeking dismissal of Plaintiff's amended complaint once filed. Plaintiff shall file his amendment within five days of entry of this Order.

IT IS SO ORDERED this 12th day of April 2017.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE