

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHRISTOPHER ROLLER,

Plaintiff,

v.

Case No. 05-CV-1297 MJD/AJB

GE MEDICAL SYSTEMS INFORMATION
TECHNOLOGIES, INC.,

Defendant.

DEFENDANT GEMS IT'S SURRESPONSE

Plaintiff acknowledges that he cannot proceed under the ADA or MHRA. However, Plaintiff asserts that his Complaint should not be dismissed because his cause of action under the SDHRA is not time barred based upon Minn. Stat. §§ 541.31(2) and 541.15(a)(2). Plaintiff's argument is misplaced.

Minn. Stat. § 541.31(2) provides that where a cause of action arises in another state and is barred under that state's statute of limitations, a plaintiff residing in Minnesota may bring the claim in Minnesota as long as the plaintiff has: 1) owned the cause of action since it accrued; and 2) the cause of action is not barred under the applicable Minnesota statute of limitations. Minn. Stat. § 541.31(2).

This statute does not apply to Plaintiff's claims for a number of reasons. First, Minn. Stat. § 541.31 was first adopted by the MN legislature in 2004. See 2004 Minn. Sess. Law Serv. Ch. 211. Minn. Stat. § 541.34 provides that Minn. Stat. § 541.31 only applies to claims arising from incidents occurring on or after August 1, 2004. Plaintiff's claim clearly does not meet this requirement - he admits that the termination which forms the basis for his claim occurred on

July 26, 2002. (Surreply at 2). Thus, Minn. Stat. § 541.34 does not allow Plaintiff to utilize the Minnesota statute of limitations to save his SDHRA claim.

Even if Plaintiff could somehow rely upon Minn. Stat. § 541.31, his claim would still be barred. The most applicable statute of limitations would be the MHRA's one-year statute of limitations. This time period, however, has clearly expired.

Additionally, as previously explained in GEMS IT's reply brief filed on August 26, 2005, Plaintiff is not "insane" and, therefore, he cannot rely upon Minn. Stat. § 541.15(a)(2) to save his claim. (Reply Brief at 4-5). Plaintiff provides no information in his surreply establishing that he falls within this statute's definition of "insanity." Instead, Plaintiff acknowledges that his failure to file his complaint within the applicable time period had nothing to do with his alleged "insanity," but rather his being told by lawyers that he had no claim against GEMS IT. (Surreply at 2).

Furthermore, Plaintiff identifies no event that has occurred which now makes him able to proceed with this suit, when he could not do so previously. The purpose of Minn. Stat. § 541.15 is to allow individuals who are insane the opportunity to become well and participate in litigation. Here, Plaintiff does not allege that he is now well and able to proceed with this action, while he was not previously able to do so. Instead, he appears to allege that he has the same mental state that he did when the termination occurred. The only thing that has changed is his contriving a tortured legal theory that he believes allows him to proceed with this case, despite his having failed to file a timely complaint based on the advice of counsel that he had no claim. In fact, Plaintiff states that if he had known of the statute upon which he relies earlier, he would have proceeded with this case earlier - not that he could not proceed with this case earlier

because of his insanity. Plaintiff should not be allowed to twist the purpose of Minn. Stat. § 541.15 to circumvent the SDHRA's statute of limitations.

Notably, even if Minn. Stat. §541.15 could potentially toll the statute of limitations on Plaintiff's SDHRA claim, Minn. Stat. § 541.31 does not require the Court to find that it is tolled. Minn. Stat. § 541.31 uses the word "may," not "shall," when discussing the limitations period. Thus, the statute gives the Court discretion to find that the Minnesota statute of limitations does or does not apply. This is a case where the Court should find that it does not apply.

In any event, neither Minn. Stat. § 541.31 nor Minn. Stat. § 541.15 can save Plaintiff's claim. As discussed in GEMS IT's memorandum of law in support of its motion to dismiss at pp. 4-5 and its reply memorandum of law at p. 2, under the SDHRA, all charges must be filed with the South Dakota Division of Human Rights within 180 days after the alleged discriminatory practice occurred and before a claim can be filed in circuit court. S.D. Codified Laws §§ 20-13-29 & 20-13-31; see also Weist v. Montana, 580 N.W.2d 613, 615 (S.D. 1998) (finding South Dakota circuit court lacked jurisdiction over sexual harassment claim due to employee's failure to first file the claim with the Division of Human Rights). Plaintiff acknowledges that he has not filed a charge as required by the statute. This failure requires dismissal.

CONCLUSION

Based on the foregoing, GEMS IT respectfully requests that Plaintiff's Complaint be dismissed in its entirety with prejudice.

Dated: October 14, 2005.

s/JUDITH A. WILLIAMS-KILLACKEY
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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

This certification states that this surreponse complies with the length limitation of L.R. 7.1(e) and type size requirements of L.R. 7.1(e) and has 864 words and the original Memorandum of Law in Support of Defendant's Motion to Dismiss had 1,852 words and Reply Memorandum of Law had 1,539 words. The software used for the Memorandum and the word count was Microsoft Word and the count applied included all text, including headings, footnotes and quotations.