

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

CHRISTOPHER ROLLER,

Plaintiff,

v.

Case No. 05-CV-1297 DSD/SRN

GE MEDICAL SYSTEMS INFORMATION  
TECHNOLOGIES, INC.,

Defendant.

---

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO  
DISMISS**

---

Defendant GE Medical Systems Information Technologies, Inc. (“GEMS IT”), by its attorneys, Quarles & Brady LLP, hereby submits its brief in support of its motion to dismiss Plaintiff’s Complaint.

**INTRODUCTION**

Plaintiff, Christopher Roller, (hereafter, “Plaintiff”), commenced this action in Minnesota state court claiming that his former employer, GEMS IT, discriminated against him because of a mental illness. While Plaintiff’s Complaint is not explicit, presumably Plaintiff is alleging GEMS IT violated the Americans With Disabilities Act (“ADA”), the South Dakota Human Relations Act (“SDHRA”), and/or the Minnesota Human Rights Act (“MHRA”).

The claim in Plaintiff’s Complaint, however, fails as a matter of law. Plaintiff’s Complaint itself alleges that he was terminated on February 18, 2002. However, Plaintiff nowhere alleges (and cannot allege) that he filed any complaints of discrimination with either an administrative agency or a court based on separation of his employment from GEMS IT until on or about June 8, 2005, almost three years after the end of his employment. Thus, his claim is

now time-barred under any state or federal statute of limitations that could possibly apply. Therefore, the Complaint must be dismissed.

### **FACTUAL DISCUSSION**<sup>1</sup>

Plaintiff was hired on or about July 19, 1999 by Micro Medical Systems, Inc. in Sioux Falls, South Dakota. (Affidavit of Robert E. Moore (“Moore Aff.”) ¶ 3).<sup>2</sup> GEMS IT acquired Micro Medical Systems, Inc. in September 2000, and Plaintiff stayed on as a GEMS IT employee. (Id. ¶ 4). While employed by GEMS IT, Plaintiff worked as a Senior Engineer for the User Interface Group. (Id. ¶ 5). Essentially, he was a software engineer for GEMS IT. (Id.). At all times relevant to the present Complaint, Plaintiff was a resident of Sioux Falls, South Dakota. (Id. ¶¶ 3, 6 & 9).

Plaintiff’s Complaint contains various allegations regarding events that occurred from 2000 through 2002, while he was employed at GEMS IT and, in particular, regarding his alleged termination from employment at GEMS IT in February 2002.<sup>3</sup> Plaintiff fails to mention that GEMS IT offered him a Separation Agreement and Release on or about April 17, 2002, which

---

<sup>1</sup> For purposes of this Motion only, GEMS IT assumes the facts stated in Plaintiff’s Complaint are true.

<sup>2</sup> Submission of Robert E. Moore’s Affidavit should not transform this Motion into one for summary judgment. See, e.g., Missouri ex rel. Nixon v. Coeur D’Alene Tribe, 164 F.3d 1102, 1107 (8th Cir. 1999), cert. denied, 527 U.S. 1039 (1999) (“Rule 12(b)(6) motions are not automatically converted into motions for summary judgment simply because one party submits additional matters in support of or [in] opposition to the motion.”). The facts stated in Mr. Moore’s affidavit are integral to Plaintiff’s Complaint and should have been included therein. Therefore, it is appropriate to consider these facts for purposes of the 12(b)(6) Motion. See Silver v. H. & R. Block, Inc., 105 F.3d 394, 396 (8th Cir. 1997) (holding that a plaintiff cannot defeat a motion to dismiss by omitting documents that are integral to the cause of action). If this Court is inclined to convert this motion into one for summary judgment because of Mr. Moore’s affidavit, then GEMS IT respectfully requests that the Court disregard Mr. Moore’s affidavit for purposes of this Motion, as dismissal is appropriate even if the facts provided by Mr. Moore’s affidavit are not considered.

<sup>3</sup> GEMS IT’s records indicate Plaintiff went out on leave of absence on or about February 18, 2002. (Moore Aff. ¶7) On or about April 17, 2002, Plaintiff was offered a Separation Agreement and Release, which he signed. (Id.) Pursuant to the terms of that agreement, Plaintiff’s employment with GEMS IT ended on July 26, 2002, not on February 18, 2002 as Plaintiff alleges in his Complaint. (Moore Aff. ¶8, Ex. A). For purposes of this motion, however, Plaintiff’s employment separation date is immaterial, because, even if the later July 26, 2002 date is used, Plaintiff’s claims were filed well outside all potentially applicable statutes of limitation.

Plaintiff signed and which specifically included a release of all claims.<sup>4</sup> (Moore Aff. ¶ 7 & 8, Ex. A).

Similarly, Plaintiff nowhere alleges in his Complaint that following the separation of his employment with GEMS IT, he filed a complaint with any administrative agency regarding his employment at, or separation from, GEMS IT. However, on or about June 8, 2005 – some three years after his separation from GEMS IT - Plaintiff filed suit against GEMS IT in Minnesota state court, alleging “discrimination for mental illness, resulting in loss of job.”<sup>5</sup>

### ARGUMENT

Rule 12(b)(6) of the Federal Rules of Civil Procedure allows a party to move to dismiss claims for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). On a motion to dismiss, the court “takes the facts in the Complaint as true and in the light most favorable to plaintiffs.” Lingenfelter v. Stoebner, 03-CV-5544 (D. Minn. 2005). However, the court is “free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations.” Farm Credit Servs. of Am. v. Am. State Bank, 339 F.3d 764, 767 (8th Cir. 2003). A motion to dismiss should be granted in cases where the “plaintiff includes allegations that show, on the face of the complaint, that there is some insuperable bar to relief.” Todd County v. Barlow Projects, Inc., Civ. Nos. 04-4218 & 04-4220 (D. Minn. 2005).

Plaintiff’s present Complaint is based solely on incidents occurring on or before February 18, 2002. Specifically, Plaintiff alleges his termination was discriminatory. However, because Plaintiff does not complain of an adverse employment action occurring within any of the

---

<sup>4</sup> The Separation Agreement and Release signed by Plaintiff in April 2002 bars the claim presented in this lawsuit. GEMS IT reserves the right to bring a motion to dismiss or motion for summary judgment at a later date based on the Separation Agreement and Release if this current motion is denied.

<sup>5</sup> GEMS IT removed the present suit to this Court pursuant to 28 U.S.C. § 1446.

potentially applicable statutes of limitation that apply to the claims possibly raised by his Complaint, this matter should be dismissed

**I. PLAINTIFF’S COMPLAINT IS TIME-BARRED UNDER THE ADA.**

First, assuming Plaintiff intends to state a claim under the ADA, a 300 day statute of limitations applies.<sup>6</sup> See 42 U.S.C. § 12117 (adopting portions of the Civil Rights Act of 1964, 42 U.S.C. §2000-e et. seq., including 42 U.S.C. § 2000-e5, which sets a maximum of 300-days from the date of an allegedly discriminatory practice for filing a claim with a state or federal agency). Plaintiff’s disability discrimination claim is barred to the extent it is based on acts that occurred more than 300 days before the filing of the complaint, that is, before August 12, 2004. Because all of the events described in Plaintiff’s Complaint occurred before August 12, 2004, no relief can be granted under the ADA. Plaintiff’s ADA claim is time barred and barred for failure to exhaust the administrative process and must be dismissed.

**II. PLAINTIFF’S COMPLAINT IS TIME-BARRED UNDER THE SDHRA.**

Plaintiff also cannot prevail if he bases his claims on state statutes prohibiting discrimination. The SDHRA defines “employer” as “any person within the State of South Dakota who hires or employs any employee, and any person wherever situated who hires or employs any employee whose services are to be partially or wholly performed in the State of South Dakota.” S.D. Codified Laws § 20-13-1(7). Because GEMS IT employed Plaintiff to perform services only in South Dakota, GEMS IT is an “employer” for purposes of the SDHRA.

All charges filed under the SDHRA, however, 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

---

<sup>6</sup> While the ADA does provide a private right of action, the filing of a charge with the EEOC is a prerequisite to any private action under Title I of the ADA. 42 U.S.C. § 12117. Plaintiff does not allege he filed a timely complaint with the EEOC prior to bringing the present suit. Thus, his potential ADA claim is also defective on these grounds.

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). Thus, Plaintiff had until October 23, 2002, 180 days after his allegedly discriminatory termination, to file a claim with the South Dakota Division of Human Rights. Plaintiff's Complaint does not, and cannot, allege that he filed a claim with this Division, much less that he did so within the appropriate time period. His Complaint must be dismissed.

### **III. PLAINTIFF'S COMPLAINT IS TIME-BARRED UNDER THE MHRA.**

Finally, Plaintiff, as a matter of law, cannot state a claim under the Minnesota Human Rights Act ("MHRA"). Minnesota law is not applicable because Plaintiff was not an "employee" for purposes of the MHRA during his employment with GEMS IT. The MHRA defines "employee" as "an individual who is employed by an employer and who resides or works in [Minnesota]." Minn. Stat. § 363A.03 subd. 15. However, at all times relevant to the present Complaint, Plaintiff both lived and worked in South Dakota. Because Plaintiff was not an "employee" under the MHRA during his employment with GEMS IT, he cannot state a claim under the Act.

Even if the MHRA did apply, Plaintiff's Complaint is time-barred. The MHRA requires employees to bring actions "within one year after the occurrence of the [allegedly discriminatory] practice." Minn. Stat. § 363A.28, subd. 3; see also Zelewski v. American Fed. Savings Bank, 811 F. Supp. 456, 460 (D. Minn. 1993). In a termination case, the MHRA's statute of limitations begins to run from the time notice of termination is received by the employee. Turner v. IDS Financial Services, Inc., 471 N.W.2d 105, 108 (Minn. 1991). Here, Plaintiff alleges that he was terminated in February 2002. Thus, he would have had one year – or until February 2003 - to file either an administrative claim or a lawsuit alleging violations of the

MHRA. Minn. Stat. § 363A.28. Plaintiff did not do so. Consequently, even if the MHRA applied to Plaintiff's claim, and it does not, his Complaint would still be time-barred.

**CONCLUSION**

Based on the foregoing, GEMS IT respectfully requests that Plaintiff's Complaint be dismissed in its entirety with prejudice. The statute of limitations for all of the potential claims raised by Plaintiff's Complaint clearly expired prior to the filing of this action. Because of this, Plaintiff's claims are barred.

Dated this 1<sup>st</sup> day of July, 2005.

s/JUDITH A. WILLIAMS-KILLACKEY  
Judith Williams-Killackey  
Minnesota State Bar No. 0280227  
Attorneys for Defendant  
GE Medical Systems Information  
Technologies, Inc.  
QUARLES & BRADY LLP  
411 East Wisconsin Avenue  
Suite 2040  
Milwaukee WI 53202-4497  
Phone: (414) 277-5439  
Facsimile: (414) 978-8702