

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

RONNIE RENNIE,	)	
	Plaintiff,	
v.	)	SX-97-CV-716
	)	
HESS OIL VIRGIN ISLANDS CORP.,	)	ACTION FOR DAMAGES, WRONGFUL
	)	DISCHARGE AND DISCRIMINATION
Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant's Motion to Dismiss ("Motion"), filed September 5, 2001; Plaintiff's Opposition thereto ("Opposition"), filed October 25, 2001; Defendant's Reply ("Reply"), filed November 28, 2001; Defendant's Supplemental Brief in Support of Motion to Dismiss ("Supplemental Brief"), filed November 18, 2013; and Plaintiff's Supplemental Opposition thereto ("Supplemental Opposition"), filed November 19, 2013. Because Plaintiff's claims are time-barred by the applicable statute of limitations, Defendant's Motion will be granted.

BACKGROUND

Plaintiff Ronnie Rennie, a black Virgin Islands resident, began working for Defendant Hess Oil Virgin Islands Corp. ("HOVIC") on December 27, 1978. Complaint ¶¶ 2-5. Plaintiff later became Shift Forman in 1983 and Shift Supervisor in 1994. In March 1995, he was demoted to the position of "A Operator." Complaint, ¶¶ 6, 11; Supplemental Opposition, at 2.

Plaintiff's Complaint, filed November 21, 1997, alleged that Defendant was demoted, refused promotions, given poor evaluations and refused pay raises on account of Plaintiff's national origin, race, and age. Complaint, ¶¶ 9-11, 13-16. Defendant moves for dismissal of all claims under Fed. R. Civ. P. 12(b)(6) (applicable pursuant to Super. Ct. R. 7), for failure to state a claim upon which relief can be granted.

DISCUSSION

Under Rule 12(b)(6), a defending party may move to have a claim dismissed “for failure to state a claim upon which relief can be granted.” When an affirmative defense “is potentially dispositive it is logical and efficient to consider it on a Rule 12(b)(6) motion, and courts frequently do.” *Pepper-Reed Co. v. McBro Planning & Dev. Co.*, 564 F. Supp. 569, 571 (D.V.I. 1983).¹

The Third Circuit “permits parties to raise a statute of limitations defense in a Rule 12(b)(6) Motion to Dismiss.” *Anderson v. Bryan*, Civ. No. 2008-545, 2010 WL 7371945, at *1 (V.I. Super. Ct. Dec. 6, 2010) (citing *Robinson v. Johnson*, 313 F.3d 128, 135 n.3 (3d Cir. 2002)). The Third Circuit rule applies if “the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations.” *Id.* (citing *Robinson*, 313 F.3d at 135) (internal quotation marks omitted, emphasis in original). That is, the statute of limitations bar must be apparent on the face of the complaint to serve as a proper basis for a motion to dismiss under Rule 12(b)(6). *Bethel v. Jendoco Const. Corp.*, 570 F.2d 1168, 1174 (3d Cir. 1978).

Plaintiff brings claims for discrimination in violation of 10 V.I.C. § 3,² and of 24 V.I.C. § 451;³ for violations of the Wrongful Discharge Act; for intentional and negligent

¹ See also 5 FED. PRAC. & PROC. CIV., Raising Affirmative Defenses by Motion § 1277 (3d ed.). (“[M]ore recent cases, however, hold that a complaint containing dates that show the claim is time-barred can be dismissed on a motion under Rule 12(b)(6). This result is reached in part on the basis of the provision in Rule 9(f) making allegations of time material for purposes of testing the sufficiency of a complaint and in part on the assumption that the motion to dismiss for failure to state a claim is a proper vehicle for asserting the defense of limitations or laches. The result reached in this latter group of cases seems sound; as a matter of judicial administration it is a waste of time and effort to require the defendant to prepare an answer if the case can be disposed of without further delay or to renew his motion in the form of a request for summary judgment.”)

² Plaintiff also alleged discrimination in violation of the Civil Rights Act of Title VII of the U.S. Code, prompting Defendant’s January 5, 1998 Notice of Removal to the District Court of the Virgin Islands. Plaintiff’s federal

infliction of emotional distress; and for punitive damages, all in connection with Plaintiff's March 1995 "demotion."⁴ Complaint, ¶¶ 22, 25, 28, 31, 34. Among the several defenses raised, Defendant argues that Plaintiff's claims are time-barred by the applicable statute of limitations. Supplemental Brief, at 3, 11.

I. Plaintiff's claims fall outside the statute of limitations.

The statute of limitations for a claim based upon the Wrongful Discharge Act is two years. See 5 V.I.C. § 31(5)(A); *Canonier v. Mahogany Run Condominium Ass'n.*, 54 V.I. 210, 219 (V.I. Super. Ct. 2011). "Constructive discharge is a form of wrongful discharge and the statute of limitations for wrongful discharge is two years."⁵ *Canonier*, 54 V.I. at 219. Plaintiff's claims of discrimination in violation of 10 V.I.C. § 3 and for intentional and negligent infliction

discrimination claims were dismissed and the case remanded to the Superior (then Territorial) Court by Memorandum Opinion and Order, entered September 16, 1998. (D. Ct. Civ. No. 1998-0001).

³ In his Opposition, Plaintiff argued that 24 V.I.C. § 451, as it then existed, provided for a private right of action, although nonbinding persuasive case law contradicted his position. Opposition, at 20–27; *Hazell v. Executive Airlines*, 886 F. Supp. 526 (D.V.I. 1995). Subsequent case law lends further support to the proposition that the statute as it existed prior to amendment provided no private right of action. Supplemental Brief, at 8–9; *Miller v. V.I. Housing Auth.*, 46 V.I. 623, 631 (D.V.I. 2005). The statute was amended in 2006 to provide a private right of action, but the amendment lacks language reflecting the clear legislative intent necessary for retroactive application of the amendment. Therefore, the amended statute does not appear to apply to Plaintiff's claim. See 24 V.I.C. § 451; *V.I. Carnival Comm., Inc. v. Legislature of the V.I.*, 46 V.I. 33, 40 (V.I. Terr. Ct. 2004). In his Supplemental Opposition, Plaintiff argues that the amended 24 V.I.C. § 451 does apply, but he offers no analysis of language to demonstrate that the Legislature intended that the amendment should have retroactive application. Supplemental Opposition, at 8. Because the Court finds that Plaintiff's claim under 24 V.I.C. § 451 would be time barred regardless, it is unnecessary to decide whether the statute applies retroactively to Plaintiff's claims.

⁴ Plaintiff also ties his claims of negligent and intentional infliction of emotional distress to his March 1995 demotion, stating that the discovery rule tolls the statute of limitations for his emotional distress claims because "on February 10, 1997, Plaintiff discovered that he had a cause of action for emotional distress due to HOVIC's deception about his wrongful discharge, which forced him to take a job as an A Operator in the hopes of being reinstated to his former position and his claim is not time-barred." Supplemental Opposition, at 12. Apart from the issues discussed below, Plaintiff offers no explanation or logic as to how he suffered emotional distress from a discriminatory act that he was unaware had occurred.

⁵ Defendant argues that constructive discharge is not cognizable under the Wrongful Discharge Act, and that Plaintiff failed to allege constructive discharge in his Complaint. Supplemental Brief, at 6–8. However, because Plaintiff's claims fall outside of the statute of limitations for a Wrongful Discharge Act claim, no determination as to these issues is required.

of emotional distress are subject to two-year statute of limitations periods as well. *Krimmel v. Hovenssa, L.L.C.*, Civ. No. 2002-0028, 2007 WL 6027821, at *5 (D.V.I. Nov. 28, 2007).

Plaintiff alleges he was constructively discharged in March 1995. Complaint, ¶ 11. His Complaint was filed November 20, 1997, two years and eight months after Plaintiff's stated causes of action had accrued, making the claims time-bared on their face.

"Once a cause of action has accrued and the statutory period for bringing the action has expired, an injured party is barred from bringing suit unless the statute of limitations has been tolled." *Santiago v. Virgin Islands Housing Auth.*, 57 V.I. 256, 273 (V.I. 2012) (quoting *Bohus v. Beloff*, 950 F.2d 919, 924 (3d Cir. 1991)). Here, the statute of limitations expired some eight months prior to Plaintiff's filing of his Complaint. As such, an equitable tolling doctrine must apply for Plaintiff's claims to survive Defendant's 12(b)(6) Motion.

Plaintiff argues that the equitable tolling doctrines of "continuing violation theory" and the "discovery rule" apply to his claims, thereby tolling the statute of limitations period. Under Virgin Islands law, a court within its discretion may apply the doctrine of equitable tolling where it is applicable. *Pichierri v. Crowley*, Civ No. 2010-0045, 2013 WL 5781126, at *3 (V.I. Oct. 25, 2013) (citing *Jensen v. VI WAPA*, 52 V.I. 435, 442-43 (V.I. 2009)).

a. The "Continuing Violation Theory" does not apply to Plaintiff's claims.

The "continuing violation theory" states that discrimination claims may be tolled if at least one alleged act occurred within the filing period and the act was more than an isolated or sporadic act of intentional discrimination. *Cornett v. Hovenssa, LLC*, Civ No. 2007-00025, 2012 WL 2865887, at *3 (D.V.I. July 12, 2012) (citing *West v. Philadelphia Elec. Co.*, 45 F.3d 744, 754-55 (3d Cir. 1995)). In his initial 2001 Opposition (but not in his 2013 Supplemental Opposition), Plaintiff argues that his discrimination claims fall within the permitted statute of

limitations period because Defendant's conduct constituted a series of "continuing violations," as each day that he was employed at the demoted position should be considered a discriminatory act. Opposition, at 5–7. As noted, Plaintiff does not argue the applicability of the continuing violation theory in his Supplemental Opposition.

Defendant states that the continuing violation rule does not apply here and, even if the rule were applicable, the alleged continuing discriminatory acts were discrete acts that do not constitute continuing violations for purposes of the rule. Supplemental Brief, at 4–5.

For the continuing violation theory to toll the statute of limitations, the Complaint must allege more than just "independently actionable discrete acts." *Krimmel v. Hovensa, L.L.C.*, 2007 WL 6027821, at *4 (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002)). "The Third Circuit has [] recognized the following as discrete acts which are individually actionable: denial of transfer, refusal to hire, wrongful discipline, wrongful suspension, denial of training and failure to provide an adequate staff." *Id.* (citing *O'Connor v. City of Newark*, 440 F.3d 125, 126–27 (3d Cir. 2006)). Failure to promote, constructive termination, and failure to properly compensate for work done are also discrete discriminatory acts. *Id.*

All of Defendant's discriminatory acts as alleged by Plaintiff are precisely the type of independently actionable discrete acts referenced in *Krimmel*.⁶ As such, Plaintiff's claims cannot be salvaged by the continuing violation theory.

b. The "Discovery Rule" does not apply to Plaintiff's claims.

The discovery rule tolls the statute of limitations when the injury or its cause is not immediately evident to the victim. *Joseph v. Hess Oil*, 867 F.2d 179, 182 (3d Cir. 1989). This

⁶ Plaintiff's Complaint alleges that he was required to take additional tests, was paid less than other workers, was denied promotions, was demoted to a lower position, was placed on "CAPS" (there is no explanation of what "CAPS" means), was given poor evaluations, was refused pay raises, and was constructively discharged, all due to his race, nationality, and age. Complaint, ¶¶ 7, 9–16.

question does not turn on “the plaintiff’s actual knowledge, but rather whether the knowledge was known, or through the exercise of diligence, knowable to [the] plaintiff.” *Id.* (citing *Bohus*, 950 F.2d at 925 (internal quotations omitted)). The exercise of reasonable diligence is established by a plaintiff showing “that he pursued the cause of his injury with those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and the interests of others.” *Id.* (citing *Mest v. Cabot Corp.*, 449 F.3d 502, 511 (3d Cir. 2006) (internal quotation marks omitted)).

Plaintiff argues that although he was “demoted” in March 1995, he did not know that he had been “wrongly discharged” at that time and thus, the statute of limitations should be deemed to have been tolled until he discovered that the actions against him constituted wrongful discharge. Supplemental Opposition, at 10–11. However, nowhere in Plaintiff’s Complaint does he allege that he did not have knowledge until a later date that his demotion was actionable. Actual knowledge is not the sole test, but rather Plaintiff must also show that he could not have known about his injury within the statute of limitations period, even through the exercise of diligence. *Santiago*, 57 V.I. at 273. Whether a plaintiff failed to exercise reasonable diligence for purposes of the discovery rule is typically a jury question, “unless the facts are so clear that reasonable minds cannot differ.” *In re Equivest St. Thomas, Inc.*, Case No. 07-30011, 2010 WL 4343616 (Bankr. D.V.I. Nov. 1, 2010) (internal quotation omitted).

Here, Plaintiff fails to allege in his Complaint (and fails to address in his Opposition and Supplemental Opposition) what steps he took, if any, to exercise reasonable diligence to determine the reason for Defendant’s actions and the cause of his alleged injury. Therefore, even accepting all of Plaintiff’s pleadings as true, the facts do not permit an equitable tolling by

application of the discovery rule to Plaintiff's claims. As such, the Court will not exercise its discretion to toll the statute of limitations for Plaintiff's claims.

Because Plaintiff's Complaint does not set forth sufficient factual basis to demonstrate the plausibility that his claims entitle him to relief as to any count, the Complaint cannot survive Defendant's Rule 12(b)(6) Motion for dismissal. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Plaintiff also brings a claim for punitive damages. This claim cannot stand on its own. As all other claims of Plaintiff are dismissed, his claim for punitive damages must also fail.

CONCLUSION

By the allegations of Plaintiff's Complaint, his claims are time-barred by the applicable statute of limitations, and the Court finds that no equitable tolling rule applies to Plaintiff's claims. Therefore, Plaintiff's claims are subject to dismissal under Rule 12(b)(6).

On the basis of the foregoing, it is hereby

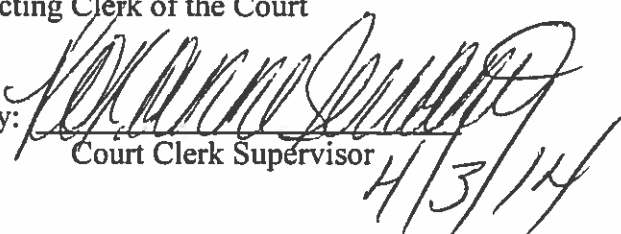
ORDERED that Defendant's Motion to Dismiss is GRANTED; it is further

ORDERED that Plaintiff's Complaint is DISMISSED with prejudice.

Dated: April 2, 2014.


DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

CERTIFIED TO BE A TRUE COPY
This 5th day of April 2014

CLERK OF THE COURT
By:  Court Clerk u