IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT (FILED ON NOVEMBER 3, 2017)

No. 17-50364
Summary Calendar

JOHN A. TEAMAH,
Plaintift – Appellant

v.

APPLIED MATERIALS, INCORPORATED,
Defendant – Appellee

Appleal from the United States District Court
for the Western District of Texas
USDC No. 1:16-CV-1261

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

John Teamah ("Teamah") challenges the district court's dismissal of his action against his former employer under Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans with Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"), and 42 U.S.C. § 1981.

*Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

The district court held that Teamah had not exhausted his administrative remedies and that, in any event, his claims were time barred. We affirm.

1. FACTS AND PROCEDURAL HISTORY

Applied Materials, Inc. ("Applied") hired Teamah in 1994. Teamah worked for the company in various capacities until his termination in November of 2012. Prior to his termination, Teamah filed a charge with the Equal Employment Opportunity Commission ("EEOC") complaining that Applied unlawfully discriminated against him on the basis of race, age, and disability. He received a notice of right-to-sue on these charges in November of 2012 but did not file suit until November 30, 2016.

His complaint echoed the allegations in the 2012 EEOC charge: namely, that Applied discriminated against him on the basis of race, age, and disability. He also claimed that Applied demoted and terminated him in retaliation for filing multiple EEOC complaints during his employment. Finally, Teamah alleged state-law claims of intentional infliction of emotional distress and fraud, as well as a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO").[1]

Applied filed a 12(b)(6) motion to dismiss, which the district court granted because it found that all of Teamah's claims were subject to the defenses of either limitations or failure to exhaust.

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[1] 18 U.S.C. § 1964 et. seq.

II. STANDARD OF REVIEW

We review this dismissal de novo.[2] Because Teamah proceeds pro se, we hold his complaint "to less stringent standards than formal pleadings drafted by lawyers."[3] However, he still must "plead 'enough facts to state a claim to relief that is plausible on its face.'"[4] "[C]onclusory allegations or legal conclusions masquerading as factual conclusions [do] not suffice."[5]

III. DISCUSSION

A. Teamah's Title VII and ADA Claims

Under Title VII and the ADA, plaintiffs must comply with strict exhaustion and limitation requirements.[6] Exhaustion occurs when the plaintiff files a timely charge with the EEOC, the EEOC dismisses the charge, and the EEOC informs the plaintiff of his right to sue.[7] The plaintiff must then file suit within ninety days or else his claim is barred.[8]

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[2] *Sw Bell., LP v. City of Hous.,* 529 F.3d 257, 260 (5th Cir. 2008).
[3] *Miller v. Stanmore,* 606 F. 2d 986, 988 (5th Cir. Unit A Feb. 1981).
[4] *Sw. Bell, 529 F.3d at 260 (quoting Bell Atl. Corp. v. Twombly,* 550 U.S. 544 (2007)).
[5] *Fernandez-Montes v. Allied Pilots Ass'n,* 987 F.2d 278, 284 (5th Cir. 1993).
[6] *Taylor v. Books A Million, Inc.,* 296 F.3d 376, 378–79 (5th Cir. 2002); *Julian v. City of Houston,* Tex., 314 F.3d 721, 725–727 (5th Cir. 2002).
[7] *Id*
[8] *Dao v. Auchan Hypermarket,* 96 F.3d 787, 788–89 (5th Cir. 1996).

Here, Teamah received a right-to-sue notice on his Title VII and ADA claims in 2012, but he did not file suit until 2016. Therefore, these claims are time barred.

B. Teamah's ADEA Claims

In order to exhaust ADEA claims, plaintiffs must timely file an EEOC charge, but can file suit sixty days later regardless of whether the EEOC has issued a right-to-sue notice.[9] However, if the EEOC dismisses the charge, the plaintiff must file suit within ninety days of receiving a notice of dismissal.[10]

Teamah did not specifically allege in his complaint whether he received a notice of dismissal. He alleged only that he "exhausted all administrative remedies." Even if Teamah properly exhausted his ADEA claims, they are time barred because he did not file suit until over four years after termination and his dealings with the EEOC ceased.[11]

C. Teamah's § 1981 Claims

Teamah also alleged that Applied violated his rights under 42 U.S.C. § 1981. It is unnecessary to reach the merits of this allegation because the limitations period has run.

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[9] *Julian*, 314 F.3d at 725–727.

[10] *Id.*; *see also* 29 U.S.C. § 626(d).

[11] 29 U.S.C. § 626(d) (noting a 90-day limitations period after receipt of notice of dismissal); *see also* Julian, 314 F.3d at 725–727.

Because § 1981 lacks an express statute of limitations, courts adopt the most closely analogous state-law limitations period.[12] Accordingly, "where a section 1981 claim is brought in Texas, the two year statute of limitations for personal injury actions in Texas controls."[13] Here, the limitations period for Teamah's § 1981 claims began running, at the latest, on November 26, 2012. He filed suit on November 30, 2016. The district court properly dismissed these claims on limitations grounds.

D. Teamah's RICO Claim

Civil RICO claims have a four-year limitations period beginning from the date the plaintiff knew or should have known of the alleged RICO violation.[14] Teamah's RICO claim arises out of an allegedly rigged Applied internal investigation in 2011. Teamah admits he learned of Applied's actions before his termination in November of 2012—over four years before Teamah filed the instant suit. Therefore, this claim is also time barred.

E. Teamah's State Law Claims

Lastly, Teamah makes vague allegations that

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[12] *Jones v. ALCOA, Inc.*, 339 F.3d 359, 364 (5th Cir. 2003).

[13] *Id.* Even though 1981 claims generally adopt state limitations periods, "if the plaintiff's claim against the defendant was made possible" by the 1991 revisions to the statute, then a four-year statute of limitations applies. *Fonteneaux v. Shell Oil Co.*, 289 F..App'x 695, 698 (5th Cir. 2008) (quoting *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382, (2004)). Even if the four-year period applied, Teamah's 1981 claims would be time barred.

[14] *Rotella v. Wood*, 528 U.S. 549, 553–54 (2000).

Applied intentionally inflicted emotional distress and perpetrated fraud upon him at several times during his employment. Teamah failed to present any argument in support of these claims in his brief, and inadequately briefed claims are generally "deemed abandoned."[15] In any event, these claims are time barred because Teamah did not file suit until over four years after the alleged conduct occurred.[16]

F. Continuing Violation and Equitable Tolling

Teamah attempts to evade the time bar by invoking equitable tolling and the "continuing violation" doctrine.[17] We find that both of these doctrines are unavailable because Teamah does not call our attention to any affirmative "trick or

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[15] *Hall v. Cont. Airlines, Inc.*, 252 F. App'x 650, 654 (5th Cir. 2007); *see* also *Sammons v. Tex. State Bd. of Med. Exam.*, 251 F.3d 157 (5th Cir. 2001).

[16] *See Doe v. Catholic Diocese,* 362 S.W.3d 707, 717 (Tex. App. 2011) (noting that intentional infliction of emotion distress claims are subject to a two-year limitations period); *Williams v. Khalaf,* 802 S.W.2d 651, 658 (Tex. 1990) (noting that fraud claims are subject to a four-year limitations period).

[17] *See Nat'l R.R. Passenger Corp. v. Morgan,* 536 U.S. 101 (2002).

contrivance,"[18] nor does he connect a timely discriminatory act to an ongoing unlawful employment practice.[19]

IV. CONCLUSION

For these reasons, we agree with the district court that properly dismissed all claims and therefore AFFIRM its judgment.

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[18] *See State of Tex. v. Allan Constr. Co., Inc.*, 851 F.2d 1526, 1529 (5th Cir. 1988) (quoting *Crummer Co. v. Du Pont*, 255 F.2d 425, 432 (5th Cir. 1958)).

[19] Morgan, 536 U.S. at 117–18. Additionally, Teamah asserts the "continuing violation" doctrine for the first time on appeal. This court generally does "not consider an issue that a party fails to raise in the district court." *Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999); *see also Sw. Bell*, 529 F.3d at 263.

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No. 17-50364

JOHN A. TEAMAH,

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APPLIED MATERIALS, INCORPORATED,

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Appleal from the United States District Court
for the Western District of Texas

ON PETITION FOR REHEARING EN BANC

(Opinion 11/3/17, 5 Cir., ____________________ ,
______________, F.3d ____________)

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for

Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be pulled on Rehearing En Banc (FED R. APP. P. and 5th CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the member of the Court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED R. APP. P. and 5th CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ W. Eugene Davies

W. EUGENE DAVIES
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

JOHN A. TEAMAH,
Plaintiff,

-vs- Case No. A-16-CA-1261-SS

APPLIED MATERIALS
Defendant.

AMENDED ORDER
(Filed on April 5, 2017)

BE IT REMEMBERED on November 30, 2016 John A. Teamah filed his first complaint in this lawsuit. Subsequently, and without any authority from this judge, Mr. Teamah has filed a complaint on December 29, 2016 with redacted allegations. The original complaint consisted of 22 pages. In response to the defendant's Motion to Dismiss, Mr. Teamah filed a "First Amended Original Complaint" of 62 pages. In response to the First Amended Original Complaint, Applied Materials, Inc. filed its second Motion to Dismiss. Then on February 2, 2017 Mr. Teamah filed his Second Amended Complaint of 116 pages, and Applied Materials filed its third Motion to Dismiss. In the interim, the parties have blessed the

Court with multiple and voluminous motions and responses, which remain pending.

The pleading of a complaint in federal court is controlled by Rule 8 of the Federal Rules of Civil Procedure and two Supreme Court cases, Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). Rule 8 of the Federal Rules of Civil Procedure expressly states, "A pleading that states a claim for relief must contain....(1) a short and plain statement of the grounds for the court's jurisdiction,....(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief."

The two Supreme Court cases, in explaining Rule 8 and pleadings in the federal court for every claim for relief or cause of action stated, state the pleader must specify factual allegations which, if true, would allow the pleader relief and the pleader must specify the damages the pleader believes he is entitled to in each claim or cause of action.

This means Mr. Teamah must file a legible complaint setting out each cause of action or claim for relief and specify the factual allegations that, if proved, entitle him to the specific damages on each cause of action. These instructions are simple and are followed daily by pro se petitioners. Yet, in the voluminous four attempts at a valid complaint involving hundreds of pages, as well as an "errata" and three voluminous responses to motions for dismissal, Mr. Teamah has failed to allege a single cause of action not subject to the defenses of limitations, exhaustion, or a binding release. What Mr. Teamah has filed are irresponsible allegations of his personal opinions resulting, in part, in the publication of serious defaming allegations against the defendant. These pleadings, as the record discloses, also violate private and confidential interests of individuals who are in no way involved in this lawsuit. These pleadings, if filed by a licensed lawyer, would lead to sanctions and the award of attorney's fees against the filer.

The record is clear that nowhere in these hundreds of pages is there alleged a single cause of action for which relief can be granted in this case. In fact, the record is clear that all allegations of any type cause of action are barred either by the statutes of limitations, failure to exhaust remedies before filing a lawsuit, or Mr. Teamah's own admissions establishing his executing of a release with the defendant Applied Materials, Inc. in 2012 when he was being assisted by the Equal Employment Opportunity Commission. Mr. Teamah has not worked for Applied Materials, Inc. since November of 2012 when he executed the release[1].

Three tries and Mr. Teamah simply cannot state a personal cause of action for which he can get relief in this lawsuit. Therefore, the Court declines to award sanctions and attorney's fees at this point but GRANTS the Motion to Dismiss with prejudice. Should Mr. Teamah file any other lawsuit or file any further pleadings in this case other than a notice of appeal, sanctions and attorney's fees against him will be considered.

All other pending motions are DISMISSED.

SIGNED this the ___5th____day of April 2017.

/s/ Sam Sparks

SAM SPARKS
UNITED STATES DISTRICT JUDGE

[1]The original order entered on March 28, 2017 incorrectly states the release was executed in 1979, when it was actually executed in the 2012. The Court issues this amended order to correct that error, and therefore VACATES the March 28, 2017 Order and Judgment.