APPENDIX A

Second Circuit Decision

MANDATE

25-86
Jones v. JP Morgan Chase & Co.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of September , two thousand twenty-five.

Present:

DENNY CHIN,
WILLIAM J. NARDINI,
MARIA ARAÚJO KAHN,
Circuit Judges.

SHARIFF AHMAD JONES,

Plaintiff-Appellant,

v. 25-86-cv

JP MORGAN CHASE & CO.,
JP MORGAN CHASE BANK N.A.,
SUSAN BUZZARD,

*Defendants-Appellees.**

For Plaintiff-Appellant: Peter C. Lomtevas, Schenectady, NY.

For Defendants-Appellees: Stephanie Schuster, Morgan, Lewis & Bockius LLP, Washington, DC (Melissa C. Rodriguez, Hanna

* The Clerk of Court is respectfully directed to amend the caption as reflected above.

Martin, Morgan, Lewis & Bockius LLP, New York, NY, *on the brief*).

Appeal from a judgment of the United States District Court for the Northern District of New York (Frederick J. Scullin, Jr., *District Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED.**

Plaintiff-Appellant Shariff Ahmad Jones appeals from a judgment entered on December 30, 2024, by the United States District Court for the Northern District of New York (Frederick J. Scullin, Jr., *District Judge*) dismissing his complaint as time-barred under Federal Rule of Civil Procedure ("Rule") 12(b)(6). Jones brought this action in New York State Supreme Court, Onondaga County, on July 4, 2023, asserting one count of race discrimination in contracting against Defendants-Appellees JP Morgan Chase & Co., JP Morgan Chase Bank N.A. (together, "Chase Bank"), and Susan Buzzard (collectively, the "Defendants"), pursuant to 42 U.S.C. § 1981. Jones's complaint stems from a July 2013 incident in which Buzzard—then a Chase Bank employee in Syracuse, New York—reported Jones to the police for purportedly attempting to deposit a fraudulent traveler's check. Buzzard's report and subsequent testimony led to Jones being convicted in state court for possession of a forged instrument and attempted petty larceny, for which he served more than five years in prison before those convictions were overturned on appeal based on the determination that the trial court had erroneously admitted hearsay evidence. *See People v. Jones*, 158 A.D.3d 1103, 1104, 70 N.Y.S.3d 669, 670 (4th Dep't 2018). After his conviction was overturned, Jones was retried and acquitted of the charges on July 24, 2019.

On October 7, 2019, Jones filed a civil action for wrongful conviction and false imprisonment against the State of New York. On May 4, 2023, that matter settled before the

commencement of trial. After the settlement and nearly four years after his acquittal, Jones brought this personal injury action. Defendants timely removed the action to federal court and then successfully moved to dismiss Jones's complaint as time-barred by New York's three-year statute of limitations for personal injury claims. On appeal, Jones challenges the district court's ruling that his § 1981 claim is time-barred. We assume the parties' familiarity with the case.

"We review *de novo* a district court's grant of a motion to dismiss [under Rule 12(b)(6)], including legal conclusions concerning the court's interpretation and application of a statute of limitations." *Castagna v. Luceno*, 744 F.3d 254, 256 (2d Cir. 2014).[1] Generally, "[t]he lapse of a limitations period is an affirmative defense that a defendant must plead and prove," but "a defendant may raise an affirmative defense in a pre-answer Rule 12(b)(6) motion if the defense appears on the face of the complaint." *Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425 (2d Cir. 2008).

The first question we must address is which statute of limitations period applies to Jones's § 1981 claim. The Civil Rights Act of 1991 "enlarged the category of conduct that is subject to § 1981 liability," *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 303 (1994), and claims arising under the expanded version of that statute are uniformly governed by a federal four-year statute of limitations, *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004) (citing 28 U.S.C. § 1658). By contrast, all other § 1981 claims, which arise under the pre-amendment version of the statute, are subject to the state-law limitations period that governs the most analogous state cause of action. *Id.* at 377–78. In New York, that is the three-year limitations period that applies to personal-injury claims set forth in N.Y. C.P.L.R. § 214(5). *See Curto v. Edmundson*, 392 F.3d

[1] Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

502, 504 (2d Cir. 2004). So, we must determine whether Jones's claim would have been cognizable under the pre-amended version of § 1981, or whether it was made possible only by the 1991 amendment.

We conclude that Jones's claim would have been cognizable under the pre-amended version of § 1981, and so his claim is subject to New York's three-year statute of limitations. In *Patterson v. McLean Credit Union*, the Supreme Court recognized that the pre-amended version of § 1981 "prohibits, when based on race, the refusal to enter into a contract with someone, as well as the offer to make a contract only on discriminatory terms." 491 U.S. 164, 176–77 (1989). The holding in *Patterson*—that § 1981 "does not apply to conduct which occurs after the formation of a contract and which does not interfere with the right to enforce established contract obligations," *id.* at 171—is what Congress addressed in its 1991 amendment by "adding § 1981(b), which defines 'make and enforce' to bring postformation conduct . . . within the scope of § 1981," *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 477 (2006). Jones's complaint expressly disavowed the existence of a contractual relationship with Chase Bank. *See* Appellant's App'x at 10 ¶ 22 (alleging that he "was not a Chase Bank account holder"); *see id.* at 10 ¶ 23 ("Mr. Jones may have opened a Chase account had the cheque been genuine."). We therefore concur with the district court's finding that "no contract was ever formed between Plaintiff and Defendants" and that Jones's allegations relate wholly to the possibility of his forming a contract with Chase Bank by opening an account, had his attempt to verify his check been successful. *Id.* at 425. Because, at best, Jones's allegations concern his attempt to *make* a contract with Chase Bank, his legal claim was cognizable under the pre-amended version of § 1981, meaning it is subject to New York's

three-year statute of limitations.[2]

Applying that three-year statute of limitations here, it is evident from the face of Jones's complaint that his claim is time-barred. Jones alleges four moments when his § 1981 claim could have accrued, all of which occurred before July 4, 2020—that is, three years from when Jones filed this action and before which any alleged conduct is time-barred. Those moments include: (1) Jones's first interaction with Buzzard at a Chase Bank branch in July 2013; (2) Buzzard's testimony at Jones's first criminal trial on September 16, 2014; (3) Jones's conviction for possession of a forged instrument in the second degree and attempted petty larceny on September 17, 2014; and, following the vacatur of that conviction, (4) Buzzard's testimony at Jones's retrial on July 23, 2019. We need not determine which of these incidents started the accrual clock for Jones's discovery of his discrimination claim because they all fall outside the applicable three-year statute of limitations. Moreover, we reject Jones's assertion that his claim could have accrued on May 8, 2023. Although Buzzard was noticed to appear and give testimony in Jones's civil action against the State of New York on that day, the case was settled before any trial and, thus, before any testimony by Buzzard. Jones cannot stake his § 1981 claim on a date when nothing happened.

Jones's invocation of the discovery rule exception does not save his § 1981 claim. Although "state law supplies the statute of limitations period, federal law determines when a federal claim accrues." *Kronisch v. United States*, 150 F.3d 112, 123 (2d Cir. 1998). We have said that under the federal "discovery" rule, a cause of action accrues "when the plaintiff knows

[2] In his briefing to the Court, Jones contends, for the first time, that when he encountered Buzzard at Chase Bank in July 2013, he formed a contract with her in which he would "give Buzzard the fake check and have Buzzard dispose of it," implying that his § 1981 claim should be governed by the four-year statute of limitations. Appellant's Br. at 24. We decline to consider that argument, as "[i]t is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal." *Bogle-Assegai v. Connecticut*, 470 F.3d 498, 504 (2d Cir. 2006).

or has reason to know of the injury which is the basis of his action." *Pearl v. City of Long Beach*, 296 F.3d 76, 80 (2d Cir. 2002). As mentioned above, the final date on which Jones alleges any personal injury to him was July 23, 2019, the day of Buzzard's testimony at his retrial, meaning that, no later than that date, Jones knew or had reason to know of the touchstone injury that formed the basis of his complaint.

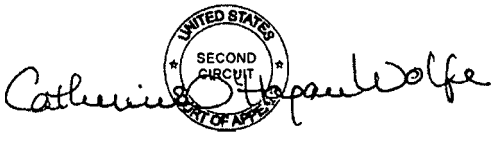
Finally, as to equitable tolling, Jones makes only a passing reference to its applicability here, asking this Court to rule that unspecified "extraordinary circumstances" should excuse his lawsuit's untimeliness. Appellant's Br. at 32. Because that argument is made in "a perfunctory manner, unaccompanied by any effort at developed argumentation, it must be deemed . . . *forfeited*." *In re Demetriades*, 58 F.4th 37, 54 (2d Cir. 2023).

* * *

We have considered Jones's remaining arguments and find them unpersuasive. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk of Court



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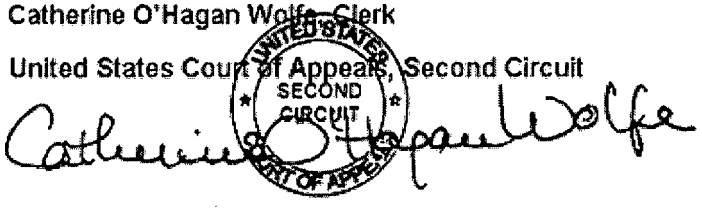
United States Court of Appeals, Second Circuit



APPENDIX B

District Court Decision

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JUDGMENT IN A CIVIL CASE

Shariff Ahmad Jones

Plaintiff

vs.

CASE NUMBER: 5:23-cv-956 (FJS/CFH)

JP Morgan Chase & Co.,
JP Morgan Chase Bank N.A.,
and Susan Buzzard

Defendants

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Defendants' motion to dismiss Plaintiff's complaint, see Dkt. No. 11, is GRANTED; and the Court further ORDERS that Plaintiff's cross-motion to amend his complaint, see Dkt. No. 17, is DENIED; and the Court further ORDERS that the Clerk of the Court shall enter judgement in favor of Defendants and close this case.

All of the above pursuant to the order of the Honorable **Frederick J. Scullin, Jr.**, dated December 30, 2024.

DATED: December 30, 2024

John Domurad
Clerk of Court

Rose Pieklik
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SHARIFF AHMAD JONES,

Plaintiff,

v.

5:23-CV-956
(FJS/CFH)

JP MORGAN CHASE & CO.;
JP MORGAN CHASE BANK N.A.; and
SUSAN BUZZARD, individually,

Defendants.

APPEARANCES	OF COUNSEL
PETER C. LOMTEVAS, ESQ., P.C. 240 State Street Apartment 109 Schenectady, New York 12305-1866 Attorneys for Plaintiff	PETER C. LOMTEVAS, ESQ.
BARCLAY DAMON LLP Barclay Damon Tower 125 East Jefferson Tower Syracuse, New York 13202 Attorneys for Defendants	EDWARD G. MELVIN, ESQ. ROSS M. GREENKY, ESQ.
MORGAN, LEWIS & BOCKIUS LLP 101 Park Avenue New York, New York 10178 Attorneys for Defendants	MELISSA C. RODRIGUEZ, ESQ. HANNA MARTIN, ESQ.

SCULLIN, Senior Judge

MEMORANDUM-DECISION AND ORDER[1]

I. BACKGROUND

In July 2013, Plaintiff entered a Defendant JP Morgan Chase Bank N.A. ("Chase Bank") branch at 110 W. Fayette Street in Syracuse, New York. *See* Dkt. No. 2, State Court Compl., ¶¶ 4-5, 20. Plaintiff inquired about the authenticity of a traveler's check he possessed, with a corresponding letter, and was directed to Defendant Susan Buzzard. *See id.* at ¶¶ 5, 20. Plaintiff provided Defendant Buzzard with the check, his driver license, and his social security number. *See id.* at ¶¶ 5, 27. Defendant Buzzard then determined the check to be a fake; Plaintiff surrendered the check and the corresponding letter and left the Defendant Chase Bank branch. *See id.* at ¶¶ 5, 34-35.

Defendant Buzzard called the police and filed a police report in which she stated that Plaintiff had attempted to open a bank account and deposit the fraudulent check. *See* Dkt. No. 2 at ¶¶ 5, 36. Plaintiff was subsequently arrested, indicted, found guilty, and sentenced to serve time for possession of a forged instrument in the second degree and attempted petty larceny. *See* Dkt. No. 2, State Court Compl., at ¶¶ 6, 37, 39; *see also* Dkt No 2, Ex. 6, Certificate of Conviction, 68. Defendant Buzzard testified at Plaintiff's trial. *See* Dkt. No. 2, State Court Compl., at ¶ 6. The Appellate Division Fourth Department reversed Plaintiff's conviction; and, after serving "six months pre-trial, then 4.8 years upon conviction[,]" Plaintiff was acquitted after re-trial on July 24, 2019. *See* Dkt. No. 2 at ¶¶ 6, 67, 85. Defendant Buzzard again testified at Plaintiff's re-trial. *See id.* at ¶¶ 6, 86.

[1] References to page numbers of documents in the record are to the page numbers that the Court's Electronic Case Filing System generates, which can be found in the upper right corner of those pages.

Plaintiff then filed a wrongful conviction lawsuit against New York State. *See* Dkt. No. 2 at ¶¶ 6, 88. Defendant Buzzard was noticed to testify again in this new action. *See id.* Before Defendant Buzzard testified, Plaintiff and New York State settled Plaintiff's wrongful conviction lawsuit for $600,000. *See id.* at ¶¶ 7, 93.

Plaintiff filed the present action in New York State Supreme Court, Onondaga County, on July 4, 2023. *See* Dkt. No. 2, State Court Summons, at 1. Defendants properly removed the action to this Court on August 7, 2023. *See* Dkt. No. 1. Pending before the Court are Defendants' motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, *see* Dkt. No. 11, Notice of Motion, and Plaintiff's cross-motion for leave to amend his complaint, *see* Dkt. No. 17, Notice of Cross-Motion.

II. DISCUSSION

A. Defendants' motion to dismiss Plaintiff's complaint

When addressing a motion to dismiss for failure to state a claim, this Court must accept "'all factual allegations in the complaint as true, and draw[] all reasonable inferences in the plaintiff's favor.'" *Holmes v. Grubman*, 568 F.3d 329, 335 (2d Cir. 2009) (quotation omitted). Legal conclusions need not be accepted; indeed, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting [*Bell Atl. v. Twombly*, 550 U.S. 544,] 570, 127 S. Ct. 1955 [(2007)]).

Plaintiff asserts a claim against Defendants under Section 1981 of the Civil Rights Act of 1866 ("Section 1981") for "discrimination on the basis of race, color, and ethnicity when making

and enforcing contracts." *See* Dkt. No. 2, State Court Compl., at ¶¶ 14, 96-107. "To state a claim under Section 1981, [P]laintiff[] 'must allege facts supporting the following elements: (1) [P]laintiff[is a] member[] of a racial minority; (2) [D]efendants' intent to discriminate on the basis of race; and (3) discrimination concerning one of the statute's enumerated activities.'" *Bibliotechnical Athenaeum v. Am. Univ. of Beirut*, No. 21-1642, 2022 U.S. App. LEXIS 6208, *6 (2d Cir. Mar. 10, 2022) (summary order) (quoting *Brown v. City of Oneonta*, 221 F.3d 329, 339 (2d Cir. 2000)).

Furthermore, when a defendant relies on a statute of limitations defense as his basis for his Rule 12(b)(6) motion, the defense must "'appear[] on the face of the complaint.'" *Robb v. Brewster*, No. 23-116-cv, 2024 U.S. App. LEXIS 8381, *3 (2d Cir. Apr. 8, 2024) (summary order) (quoting *Ellul v. Congregation of Christian Bros.*, 774 F.3d 791, 798 n.12 (2d Cir. 2014)).

To resolve Defendants' motion, the Court must consider (1) whether Plaintiff's claims are prima facie time barred, (2) whether the discovery rule exception applies to save Plaintiff's claims, and (3) whether equitable tolling applies to save Plaintiff's claims. The Court will address each of these issues in turn.

1. Timeliness of Plaintiff's Section 1981 claims

Plaintiff argues his claims are timely under the federal catchall four-year statute of limitations because the latest enactment of an amendment to Section 1981 was in 2021.[2] *See* Dkt. No. 17-1, Plaintiff's Memorandum in Opposition, at 13, 19.[3]

In New York, the statute of limitations for a Section 1981 claim is either three or four years, depending on whether the claim originates under the 1991 amendments to Section 1981. *See Turner v. AMTRAK*, 181 F. Supp. 2d 122, 131 (N.D.N.Y. 2002) (stating that "[t]he Civil Rights Act of 1991 created new substantive rights after December 1, 1990, and, therefore, . . . it either created a new cause of action or restored a cause of action . . ."); *Jones v. R. R. Donnelly & Sons Co.*, 541 U.S. 369, 382 (2004) (concluding that "a cause of action 'aris[es] under an Act of Congress enacted' after December 1, 1990 -- and therefore is governed by § 1658's 4-year statute of limitation -- if the plaintiff's claim against the defendant was made possible by a post-1990 enactment"). Therefore, if Plaintiff's Section 1981 claims were possible pre-1991 amendment, Plaintiff's claims are subject to a three-year statute of limitations; and, if Plaintiff's claims were made possible by the 1991 amendment, they are subject to a four-year statute of limitations. *See Harper v. City of New York*, No. 10 Civ. 7856 (SAS), 2011 U.S. Dist. LEXIS 86795, *14

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[2] Plaintiff fails to provide support for his proposition that the federal catchall four-year statute of limitations applies to all of Section 1981; in fact, as Defendants correctly point out, the Second Circuit has held that, under *Jones v. R.R. Donnelly & Sons Co.*, 541 U.S. 369 (2004), the catchall four-year statute of limitations applies only to cases which were made possible by Congress's 1991 amendment to Section 1981; if the case could have been brought under the pre-1991 version of Section 1981, New York's three-year statute of limitations applies. *See Harper v. City of New York*, No. 10 Civ. 7856 (SAS), 2011 U.S. Dist. LEXIS 86795, *14 (S.D.N.Y. Aug. 5, 2011).

[3] The Court's Electronic Case Filing System did not generate page numbers for Plaintiff's memorandum in opposition; therefore, references to page numbers in that document refer to the page numbers at the bottom of each page. *See* Dkt. No. 17-1.

(S.D.N.Y. Aug. 5, 2011); *see also McPherson v. New York*, No. 22-CV-10800 (LTS), 2023 U.S. Dist. LEXIS 129993, *6 (S.D.N.Y. July 27, 2023).

The 1991 amendments expanded Section 1981 "to protect against discriminatory actions which occurred after a contract is formed." *Harper*, 2011 U.S. Dist. LEXIS 86795 at *14 & n.63. Here, no contract was ever formed between Plaintiff and Defendants; instead, Plaintiff's Section 1981 claims involve alleged conduct during an alleged contract negotiation interaction, *i.e.* Plaintiff's attempt to verify the traveler's check and Defendants' conduct following from that interaction. *See* Dkt No. 2 at ¶¶ 5-7, 27, 34-37, 39. Plaintiff, therefore, brings a claim that he could have brought before the 1991 amendment to § 1981, not one that was made possible by the 1991 amendment to § 1981. *See Harper*, 2011 U.S. Dist. LEXIS 86795 at *14; *see also McPherson*, 2023 U.S. Dist. LEXIS 129993 at *6. Thus, Plaintiff's claims are subject to New York's three-year statute of limitations. *See Bedden-Hurley v. N.Y. City Bd. of Educ.*, 385 F. Supp. 2d 274, 277-78 (S.D.N.Y. 2005) (stating that "federal courts – before the Supreme Court's decision in *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 124 S. Ct. 1836, 158 L. Ed. 2d 645 (2004) – traditionally applied the forum state's statute of limitations for personal injury actions when deciding any § 1981 claim; in New York, that statute of limitations is three years from the date the cause of action arose[.]" (citing *Patterson v. County of Oneida*, 375 F.3d 206, 225 (2d Cir. 2004); *King v. Am. Airlines, Inc.*, 284 F.3d 352, 356 (2d Cir. 2002))).

Plaintiff filed the present action on July 4, 2023. *See* Dkt. No. 2, State Court Summons, at 1. Even assuming, *arguendo*, that Defendants' conduct is enumerated activity under Section 1981, applying the three-year statute of limitations, any alleged conduct that occurred prior to July 4, 2020, is time barred. This encompasses all of Defendants' alleged conduct, including the initial interaction at the Chase Bank branch in July 2013, Defendant Buzzard's police report

describing this initial interaction, Defendant Buzzard's testimony at Plaintiff's first criminal trial on September 16, 2014, and Plaintiff's subsequent conviction, and Defendant Buzzard's testimony at Plaintiff's criminal re-trial on July 23, 2019.[4] *See* Dkt. No. 2 at ¶¶ 5-7, 27, 34-37, 39.

Accordingly, for the above-stated reasons, the Court finds that it is clear "on the face of the complaint" that Plaintiff's claims are prima facie time-barred. *Robb*, 2024 U.S. App. LEXIS 8381, at *3.

2. The discovery rule exception

"'Under the federal discovery rule, a cause of action accrues when the plaintiff knows or has reason to know of the injury which is the basis of his action.'" *Okor v. Borough of Manhattan Cmty. Coll.*, No. 14-CV-1593 (JPO), 2015 U.S. Dist. LEXIS 77859, *10 (S.D.N.Y June 16, 2015) (quoting *Singh v. Wells*, 445 F. App'x 373, 376 (2d Cir. 2011) (summary order) (quoting *Pearl v. City of Long Beach*, 296 F.3d 76, 80 (2d Cir. 2002)) (internal quotation marks omitted)). "'[A] discrimination claim accrues "from the date the claimant receives notice of the allegedly discriminatory decision,"' . . . "not when he has reason to know of a possibly discriminatory motive for that conduct. . . ." *Andrews v. Freemantlemedia N.A., Inc.*, No. 13 Civ. 5174 (NRB), 2014 U.S. Dist. LEXIS 166242, *15-*16 (S.D.N.Y. Nov. 20, 2014) (citing e.g.,

[4] Plaintiff attempts to argue his claims are timely because of Defendant Buzzard's scheduled testimony against Plaintiff in his wrongful conviction case against New York State; however, this testimony never occurred. *See* Dkt. No. 2 at ¶¶ 6-7, 88, 93. Plaintiff wholly speculates as to what Defendant Buzzard would have testified to on that date, and the Court is quite honestly baffled by Plaintiff's attempt to use something that never occurred as the basis for a timely claim. Clearly, the date of Defendant Buzzard's scheduled testimony cannot support a timely claim because Defendant Buzzard never testified.

Morse v. Univ. of Vermont, 973 F.2d 122, 125 (2d Cir. 1992) ("In analyzing the timing of accrual in the context of discrimination claims, . . . the proper focus is on the time of the discriminatory act, not the point at which the consequences of the act become painful." (internal quotation mark omitted)); *Morris v. Broadridge Fin. Servs., Inc.*, No. 10-CV-1707 JS AKT, 2010 U.S. Dist. LEXIS 132708, 2010 WL 5187669 (E.D.N.Y. Dec. 14, 2010) (citing *Milani v. Int'l Bus. Machines Corp., Inc.*, 322 F. Supp. 2d 434, 453 (S.D.N.Y. 2004) *aff'd*, 137 F. App'x 430 (2d Cir. Jul. 1, 2005)) ("In employment discrimination cases, lower courts have not stalled the limitations period until the point at which a plaintiff realizes an employer's motive.")) (footnote omitted).

Based on the above-stated legal principles, the Court finds that the federal discovery rule does not apply to Plaintiff's claims. Instead, the three-year statute of limitations began to accrue with Defendants' alleged discriminatory conduct, not later, such as when Plaintiff subsequently read about news articles involving Defendants' alleged conduct in similar "banking while black" cases or when Plaintiff discovered any alleged discriminatory intent on the part of Defendants.

Therefore, the Court finds that the federal discovery rule does not save Plaintiff's claims from dismissal for being time-barred.

3. The effect of equitable tolling on Plaintiff's claims

"'"Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way."'" *Smalls v. Collins*, 10 F.4th 117, 145 (2d Cir. 2021) (quoting *Watson v. United States*, 865 F.3d 123, 132 (2d Cir. 2017) (quoting *Mottahedeh v. United States*, 794 F.3d 347, 352 (2d Cir. 2015))).

Here, Plaintiff has done neither. Plaintiff does not even adequately assert equitable tolling but merely offers reasons the Court should excuse his untimely claim, including that he was incarcerated, engaged in appeals of his conviction and a re-trial, that all witnesses and parties remain available, and the "sting" of his harm has not abated for him. *See* Dkt. No. 17-1 at 14. First, Plaintiff has not demonstrated that "he pursued his right with reasonable diligence throughout the time period he seeks to have tolled." *McGrath v. Exec. Dir.*, No. 3:14-cv-15 (JAM), 2016 U.S. Dist. LEXIS 174691, *8 (D. Conn. Dec. 19, 2016) (citing *Menominee Indian Tribe of Wisconsin v. United States*, 136 S. Ct. 750, 755, 193 L. Ed. 2d 652 (2016); *Martinez v. Superintendent of E. Corr. Facility*, 806 F.3d 27, 31 (2d Cir. 2015)). Also, Plaintiff has not shown how any of these excuses prevented him from filing his complaint or rise to an extraordinary circumstance that justifies the application of equitable tolling. *See Cobaugh v. Superintendent, Bedford Hills Corr. Facility*, 9:12-CV-1798 (GTS/ATB), 2013 U.S. Dist. LEXIS 175518, *8-*9 (N.D.N.Y. Aug. 28, 2013) (holding that incarceration was "absolutely no indication that this court should apply equitable tolling" where the plaintiff had "been well aware of her claims for many years," "she was clearly able to file challenges as demonstrated by the different motions related to her conviction"; "she [had] filed her 440 motion while she was incarcerated"; and "she [had] filed this petition while incarcerated").

Therefore, the Court concludes that Plaintiff's arguments in support of his application for equitable tolling are vastly insufficient under the circumstances of this case.

Thus, the Court finds Plaintiff's claims are subject to dismissal because they are time-barred.[5,6]

B. Plaintiff's cross-motion for leave to amend his complaint

Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a); *see also Morris v. NYS Dep't of Corr. & Cmty. Supervision*, No. 1:23-CV-89 (LEK/ML), 2024 U.S. Dist. LEXIS 170610, *36 (N.D.N.Y. Sept. 20, 2024). "However, leave to amend need not be granted where amendment would be futile because the problems with the complaint's claims are substantive and not the result of inartful pleading." *Yu v. City of New York*, 792 F. App'x 117, 118-19 (2d Cir. 2020) (summary order) (citing [*Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000)]).

Here, Plaintiff provides a proposed amended complaint, which again, on its face, does not present a timely claim. *See* Dkt. No. 17-3, Plaintiff's Proposed First Amended Complaint. Instead, Plaintiff inserts examples of Defendants' alleged conduct against non-party individuals

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[5] The Court need not reach many of Defendants' arguments regarding other deficiencies in Plaintiff's complaint. *See* Dkt. No. 11-1; *see also* Dkt. No. 21. These arguments include that Plaintiff did not, and cannot, sufficiently state a Section 1981 claim, that Defendants are subject to immunity or privilege, and that Defendant JP Morgan Chase & Co. is not a proper defendant. *See id.*

[6] The Court also admonishes Plaintiff's counsel, Peter C. Lomtevas, for filing papers that are in violation of L.R. 7.1(b), which provides that "[d]ocuments that are on file with the Court in the same action should not be attached as exhibits to the motion papers, but rather should be referenced to the appropriate docket number," and L.R. 10.1(a)(3), which requires that "all text in the body of the document must be double-spaced." Plaintiff's counsel filed two duplicate exhibits of the operative complaint to his opposition and cross-motion, *see* Dkt. Nos. 17-2, 17-4. In addition, Plaintiff's counsel did not double-space his memorandum of law, see Dkt. No. 17-1, and provided little to no legal support for his client's position, cited to inadequate support, and misapplied the law and facts to his client's case in parts of his memorandum in law.

in news articles and makes edits regarding other substantive aspects of his complaint; however, Plaintiff still does not assert that any of Defendants' alleged conduct against him occurred within the three-year statute of limitations, *i.e.* within 3 years prior to the filing of his complaint on July 4, 2023. *See id.*

Therefore, for the above-stated reasons, the Court denies Plaintiff's request to amend his complaint because the proposed amendment would be futile.[7]

[7] Defendants also argue that the Court should deny Plaintiff's motion to amend his complaint because it is made in bad faith. *See* Dkt. No. 21 at 20-21. Since the Court finds that allowing Plaintiff to amend his complaint would be futile, it does not need to reach this alternative argument.

III. CONCLUSION

After carefully considering the entire file in this matter, the parties' submissions, and the applicable law, and for the above-state reasons, the Court hereby

ORDERS that Defendants' motion to dismiss Plaintiff's complaint, *see* Dkt. No. 11, is **GRANTED**; and the Court further

ORDERS that Plaintiff's cross-motion to amend his complaint, *see* Dkt. No. 17, is **DENIED**; and the Court further

ORDERS that the Clerk of the Court shall enter judgement in favor of Defendants and close this case.

IT IS SO ORDERED.

Dated: December 30, 2024
Syracuse, New York

Frederick J. Scullin, Jr.
Senior United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SHARIFF AHMAD JONES,

Plaintiff,

-*vs*-

JP MORGAN CHASE & CO., JP MORGAN CHASE BANK N.A., SUSAN BUZZARD, Individually,

Defendants.

Civil Action No.:

5:23-cv-00956 (FJS) (ATB)

CERTIFICATE OF SERVICE

I, VERA A. LOMTEVAS, hereby certify under penalty of perjury that On January 8th, 2025, I served a copy of a Notice of Appeal, Information Statement, Transcript Statement, the judgment, and docket sheet by first class mail addressed to defendant's counsel of record at the following addresses:

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Dated: January 8th, 2025
Schenectady, New York

Respectfully,

Vera A. Lomtevas

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