

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TAS'SHEA S. LAFATE, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 03-985 JJF
 :
 HOSPITAL BILLING & :
 COLLECTIONS SERVICE, LTD., :
 :
 Defendant. :

Tas'Shea S. LaFate, Newark, Delaware.
Pro Se Plaintiff.

Jennifer C. Jauffret, Esquire and Kelly A. Green, Esquire of
RICHARDS, LAYTON & FINGER, P.A., Wilmington, Delaware.
Attorneys for Defendant.

MEMORANDUM OPINION

September 1, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion To Dismiss filed by Hospital Billing & Collections, Service, Ltd. ("HBCS"). (D.I. 8.) For the reasons discussed, the Court will deny the Motion.

BACKGROUND

Plaintiff initiated the instant lawsuit alleging that HBCS wrongfully discharged her from employment on the basis of race in violation of Title VII of the Civil Rights Act of 1964. (D.I. 2.) Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (the "EEOC"), and the EEOC denied Plaintiff's charge on May 7, 2003.¹ On October 28, 2003, Plaintiff filed the instant lawsuit.

STANDARD OF REVIEW

A motion to dismiss tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-56 (1957). In reviewing a motion to dismiss pursuant to Rule 12(b)(6), courts "must accept as true the factual allegations in the [c]omplaint

¹ Although Plaintiff did not attach the EEOC's letter of dismissal and notice of right-to-sue letter (the "notice of right-to-sue") to the Complaint (as Plaintiff contends it was never mailed to her), the Court will rely upon the dates provided in the notice of right-to-sue in the instant motion without converting the same to a motion for summary judgment because the notice of right-to-sue is a "document integral to or explicitly relied upon in the complaint." See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997) (inner quotations omitted).

and all reasonable inferences that can be drawn therefrom.”
Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir.
2000). A court will grant a motion to dismiss only when it
appears that a plaintiff could prove no set of facts that would
entitle him or her to relief. Id.

DISCUSSION

I. Parties' Contentions

HBCS contends that the Court should dismiss the Complaint because it was not filed within ninety days of the date Plaintiff is presumed to have received the notice of right-to-sue from the EEOC. HBCS contends that established precedent requires the Court to presume that Plaintiff received the notice of right-to-sue within three days of its mailing. HBCS also contends that there are no grounds for equitable tolling in this case.

Plaintiff responds that, although she lived at the address listed on the notice of right-to-sue, she never received it. As such, Plaintiff contends that it was impossible for her to know that the ninety day limitation period had begun. Further, Plaintiff contends that she contacted the EEOC about the status of her charge of discrimination but that the EEOC was not helpful.

II. Decision

Before initiating a discrimination lawsuit in federal court for a violation of Title VII, a plaintiff must file a charge of

discrimination with the EEOC. If the EEOC denies or takes no action on the charge, it will notify the charging party. The charging party then has ninety days after receipt of such notice to file a lawsuit in federal court. 42 U.S.C. § 2000e-5(f)(1). In this case, HBCS contends that the Court should apply precedent providing that a party is presumed to have received a notice of right-to-sue three days after it is mailed by the EEOC.

After review of the parties' submissions and the applicable legal principles, the Court will deny HBCS's Motion. The cases relied on by HBCS for the principle that courts presume a plaintiff to have received his or her notice of right-to-sue from the EEOC do not compel dismissal at this stage of the proceedings. Unlike the plaintiffs in Seitzinger v. Reading Hospital and Medical Ctr., 165 F.3d 236 (3d Cir. 1999), Garrison v. Town of Bethany Beach, 131 F. Supp. 2d 585 (D. Del. 2001), and Arots v. Salesianum Sch., Inc., 2003 WL 21398017 (D. Del. June 16, 2003), in this case, Plaintiff has not had the opportunity to rebut HBCS's assertion that she received her notice of right-to-sue from the EEOC. The courts in Seitzinger, Garrison, and Arots, granted dismissal for violating the ninety day limitation period of Section 2000e-5(f)(1) at the summary judgment stage. In this case, by contrast, HBCS moves for a Rule 12(b)(6) dismissal, and therefore, the Court must accept as true Plaintiff's allegation in the Complaint that she "never received

a right-to-sue letter" from the EEOC. (D.I. 2.) Accordingly, the Court cannot conclude that Plaintiff had notice from the EEOC and that she failed to file the instant lawsuit until after the limitations period had expired. See Khazzaka v. Univ. of Scranton, 2001 WL 1262320, at *2 (M.D. Pa. Oct. 22, 2001).

The Court concludes that Plaintiff should be given the opportunity to provide evidence sufficient to rebut HBCS's contention that she did not comply with the statute of limitations in this case, see Seitzinger, 165 F.3d at 238-39 (providing that "in the absence of other evidence, courts will presume that a plaintiff received her right-to-sue letter three days after the EEOC mailed it") (emphasis added) (citations omitted); Garrison, 131 F. Supp. 2d at 588-89 (citing Sherlock v. Montefiore Med. Ctr., 84 F.3d 522, 525 (2d Cir. 1996)); Arots, 2003 WL 21398017 at *2 (stating that it is when a plaintiff "offers no evidence in support of th[e] bare assertion [that he or she did not receive notice, that] Rule 6(e), presuming receipt . . . , must be applied") (emphasis added), and therefore, the Court will deny HBCS's Motion.

An appropriate Order will be entered.

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 Plaintiff, :
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ORDER

At Wilmington, this 1st day of September, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1) The Motion To Dismiss filed by Hospital Billing & Collections, Service, Ltd. (D.I. 8) is **DENIED**;

2) Plaintiff and counsel for Defendant shall confer and submit a proposed Rule 16 Scheduling Order, using the enclosed form of order, within fifteen (15) days from the date of this Order.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE