

several Cranston Police Department employees in their individual capacities. On or about July 1, 2015, Plaintiff filed a First Amended Complaint to assert the same claims of employment discrimination against the same Defendants under the Rhode Island Fair Employment Practices Act (RIFEPA, G.L. 1956 § 28-5-1).

Now, Plaintiff moves to amend her Complaint to include both RICRA and RIFEPA claims against three new Defendants—Stephen Antonucci, Carl Robert Ricci, and Vincent McAteer—all employees of the Cranston Police Department. Additionally, Plaintiff wishes to include new claims—for violations of her First Amendment rights under 42 U.S.C. § 1983—against both old and new Defendants. In response, Defendants join in opposition to argue that Plaintiff’s claims under RICRA and RIFEPA against the three new Defendants are barred by the statute of limitations, thus rendering the amendment futile. Further, Defendants argue that allowing such an amendment will cause undue prejudice to Defendants already named.

II

Standard of Review

Superior Court Rule of Civil Procedure 15(a) liberally permits amendment absent a showing of extreme prejudice. Weybosset Hill Invs., LLC v. Rossi, 857 A.2d 231, 236 (R.I. 2004). “[T]he decision to grant or to deny a motion to amend a complaint is confided to the sound discretion of the [trial] justice.” Harodite Indus., Inc. v. Warren Elec. Corp., 24 A.3d 514, 529 (R.I. 2011). A trial justice may deny a motion to amend a complaint because of undue delay, prejudice, bad faith, futility of the amendment, or some other compelling reason. See Medeiros v. Cornwall, 911 A.2d 251, 253-54 (R.I. 2006). However, our Supreme Court has stated that “[t]he true spirit of the rule is exemplified in the words ‘ . . . and leave shall be freely given when justice so requires.’” Ricard v. John Hancock Mut. Life Ins. Co., 113 R.I. 528, 540, 324 A.2d 671, 677 (1974).

A

Rhode Island Civil Rights Act

Under the Rhode Island Civil Rights Act, plaintiffs alleging a violation of rights under § 42-112-1 may commence a civil action for injunctive and other appropriate relief within three years after the occurrence of the alleged violation. RICRA § 42-112-2. The within Plaintiff moves to amend her First Amended Complaint filed on July 1, 2015 to include RICRA claims against three new Defendants: Antonucci, Ricci, and McAteer. The proposed Second Amended Complaint references alleged employment discrimination that occurred after September of 2013, which would fall within the required three-year statute of limitations. Sec. 42-112-2. Plaintiff alleges that on or about October 31, 2013, Defendants Antonucci, Ricci, and McAteer initiated an allegedly improper investigation of Plaintiff that would continue throughout the end of 2013 and into the following calendar year. Proposed Second Am. Compl. ¶¶ 63, 65-66. Therefore, this Court finds that—with respect to the three new Defendants: Antonucci, Ricci, and McAteer—the Plaintiff’s amended claims are *not* barred by the statute of limitations. Sec. 42-112-2.

B

Rhode Island Fair Employment Practices Act

The Plaintiff does *not* bring any new claims under RIFEPA in her proposed Second Amended Complaint.¹ Any new claims under RIFEPA would be time-barred because the statute of limitations is one year. Sec. 28-5-1. Further, any amended claim that is time-barred by the statute of limitations must relate back to the original claims to be added, with limited exceptions. Super. R. Civ. P. 15(c); see Normandin v. Levine, 621 A.2d 713, 715 (R.I. 1993).

¹ Both parties address the issue of individual liability under RIFEPA in their written motions. That issue is presently before the Rhode Island Supreme Court. See Mancini v. City of Providence, 2013 WL 5423717 (D.R.I. Sept. 26, 2013). The question of individual liability is not central to Plaintiff’s Motion to Amend because no new RIFEPA claims are asserted in this Second Amended Complaint.

C

42 U.S.C. § 1983

In her Motion to Amend before this Court, Plaintiff alleges new 42 U.S.C. § 1983 (§ 1983) claims against all three new Defendants—Antonucci, Ricci, and McAteer—in addition to Defendants Fung, Palombo, and Henry. Defendants assert that the amended charges are time-barred by the statute of limitations and, further, that Plaintiff did not comply with procedural filing requirements. The statute of limitations for actions brought under § 1983 is drawn from the applicable state law statute of limitations for personal injury. Owens v. Okure, 488 U.S. 235, 250 (1989); see Paul v. City of Woonsocket, 745 A.2d 169, 171 (R.I. 2000). In Rhode Island, personal injury actions are subject to a three-year statute of limitation. G.L. 1956 § 9-1-14(b). Thus, Plaintiff’s proposed claims under § 1983 are subject to a three-year statute of limitation. See Owens, 488 U.S. at 250; § 9-1-14(b).

Plaintiff contends that Defendants Antonucci, Ricci, McAteer, Fung, Palombo, and Henry allegedly retaliated against Plaintiff by initiating an investigation against her in violation of her First Amendment rights. Although Plaintiff does reference December of 2012 in the Complaint, she does so in order to create a timeline and to provide background information for her claims. The actual alleged acts occurred on or about October 31, 2013 and, therefore, are *not* barred by the three-year statute of limitations. 42 U.S.C. § 1983; Owens, 488 U.S. at 250; § 9-1-14(b).

Further, Defendants contend that Plaintiff failed to comply with procedural filing requirements. They assert that the Plaintiff did not provide the Cranston City Council with notice of her new § 1983 claims at least forty days prior to seeking this amended Complaint. Under Rhode Island law, an individual with “any claim or demand against any town or city, for any matter, cause, or thing whatsoever” must first “present to the . . . city council of the city, a particular account of that person’s claim, debt, damages, or demand, and how incurred or contracted[.]” G.L. 1956 § 45-15-5. Here, Defendants argue that—although named Defendants are sued in their individual capacities—the City of

Cranston's obligatory indemnification laws render the claims virtually against the City of Cranston for purposes of § 45-15-5. Therefore, they argue that the City of Cranston should have received forty days notice before Plaintiff filed her § 1983 claims against individual Defendants.

The Rhode Island Supreme Court has stated that § 45-15-5 applies in all claims that involve a request for monetary damages. Town of Johnston v. Ryan, 485 A.2d 1248, 1250 (R.I. 1984) (holding that the equitable versus monetary nature of the relief sought determines the applicability of § 45-15-5). Additionally, the Court has applied the notice requirement to cases where plaintiffs bring claims against municipal officers, employees, or city boards. Bernard v. Alexander, 605 A.2d 484, 485 (R.I. 1992) (holding that notice requirement is necessary in suit against City Treasurer as employee of City).

However, the Rhode Island Supreme Court is clear that when a plaintiff has failed to comply with the forty-day notice requirement—and compliance would cause the applicable statute of limitations to expire—the proper action is to toll the statute of limitations for forty days to allow for filing of notice. United Lending Corp. v. City of Providence, 827 A.2d 626, 633 (R.I. 2003); Bernard, 605 A.2d at 485. The Supreme Court has stated that where strict compliance with § 45-15-5 will not comport with the notion of substantial justice, a dismissal on the merits is not necessarily appropriate and the Court may toll the statute of limitations while notice is provided. Bernard, 605 A.2d at 485. Therefore, this Court finds that Plaintiff is required to provide the City of Cranston with notice of her claims, but that proceedings shall be stayed, and the statute of limitations will be tolled forty days, in order to afford her proper time to do so. See Lanmar Corp. v. Rendine, 811 F. Supp. 47, 54 (D.R.I. 1993); Town of Johnston, 485 A.2d at 1250.

Finally, Defendant Fung argues that any amendment to assert a § 1983 claim against him is futile because § 1983 does not provide for individual liability when Defendant acted in a supervisory capacity. In O'Neill v. Baker, the First Circuit Court of Appeals held that defendants acting in a supervisory capacity can trigger § 1983 liability in two scenarios. 210 F.3d 41, 47 (1st Cir. 2000). First,

liability will attach if the defendant, although a supervisor, plays a causal role in the alleged violation and if he or she has the state of mind to carry out the constitutional violation. Id. Second, liability will occur where the defendant is deliberately indifferent to the constitutional violation. Id. In the present matter, Plaintiff has alleged that Defendant Fung acted in a retaliatory fashion against Plaintiff—in both an individual and supervisory capacity—resulting in a violation of her First Amendment rights. See Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 582 (1st Cir. 1994).

Plaintiff contends that Defendant Fung allegedly initiated, and participated in, an internal investigation against Plaintiff after she lodged complaints against the Cranston Police Department. In Monell v. Dep't of Soc. Servs. of City of New York, the United States Supreme Court found that—although local municipalities or local officers can be sued under § 1983—liability cannot be predicated on respondeat superior theories alone. 436 U.S. 658, 691 (1978). In the present case however, Plaintiff does not base claims against Defendant Fung on claims of respondeat superior alone; rather, she relies on Defendant Fung's personal and individual actions. See Monell, 436 U.S. at 691; O'Neill, 210 F.3d at 47. Therefore, since Plaintiff is suing Defendant Fung in his individual capacity and for his causal role in the alleged violation, Plaintiff has alleged sufficient facts to allow amendment and to refute Defendant Fung's argument that any § 1983 claim would be futile. See O'Neill, 210 F.3d at 47; Maldonado-Denis, 23 F.3d at 582.

D

Undue Prejudice

Finally, Defendants argue that the inclusion of three new Defendants will require additional time for discovery and that the Plaintiff's deposition day may need to be rescheduled. A trial judge enjoys significant discretion to allow or to deny a motion to amend based on the particular facts and circumstances of each case. Lomastro v. Iacovelli, 56 A.3d 92, 94 (R.I. 2012). The Rhode Island Supreme Court has held that Super. R. Civ. P. 15(a) liberally permits timely amendments absent a

showing of *extreme* prejudice. Wachsberger v. Pepper, 583 A.2d 77, 78 (R.I. 1990) (emphasis added). Further, the burden rests on the party opposing the motion to show it would incur substantial prejudice if the motion to amend were granted. Id. at 78-79.

In the present matter, Defendants have not sufficiently shown that a delay in the proceedings and a rescheduling of a deposition would cause substantial or extreme prejudice. See Mikaelian v. Drug Abuse Unit, 501 A.2d 721, 722-23 (R.I. 1985) (granting motion to amend one day before the case was scheduled for trial and more than four years after case commenced did not result in undue prejudice or delay). Although this action was initially commenced approximately three years ago, a delay and any necessary rescheduling of Plaintiff's deposition will not cause undue prejudice. Wachsberger, 583 A.2d at 79 (holding that a delay of over three years without a showing of prejudice was insufficient to deny motion to amend).

III

Conclusion

For the abovementioned reasons, Plaintiff's proposed new claims are timely under the applicable statutes of limitations. Further, this Court finds that an amendment will not result in undue burden or delay to Defendants. With respect to Plaintiff's amended § 1983 claims, all matters shall be suspended for forty days—and the statute of limitations shall be tolled—to allow for notice to the City of Cranston as required by § 45-15-5. Therefore, Plaintiff's Motion to Amend her Complaint is granted in full. Counsel shall prepare an appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Karen E. Guilbeault v. Marco Palombo, Jr., et al.

CASE NO: PC-13-2109

COURT: Providence County Superior Court

DATE DECISION FILED: October 11, 2016

JUSTICE/MAGISTRATE: Gibney, P.J.

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