IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBRA ALLEN, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	03-CV-3497
	:	
NATIONAL RAILROAD PASSENGER CORP., (AMTRAK),	:	
Defendant.	:	

ORDER

Davis, J. December 7, 2004

Presently before this Court are Defendant's Motion for Partial Summary Judgment (Doc. No. 12), filed on July 9, 2004; Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment (Doc. No. 13), filed on July 26, 2004; Defendant's Reply Memorandum in Further Support of its Motion for Partial Summary Judgment (Doc. No. 16), filed on September 3, 2004; and Plaintiffs' Surreply Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment (Doc. No. 19), filed on September 21, 2004.

For the following reasons, Defendant's Motion for Partial Summary Judgment on all claims brought by plaintiffs Ronald Jones ("Jones"), Joilynn Scott ("Scott"), Billy Shaw ("Shaw"), and Beverly Green ("Green") is DENIED.

I. Factual and Procedural History

Resolution of the merits of defendant's motion requires a full recitation of the procedural history of this case. On November 20, 2001, attorney David Wolf submitted a letter, labeled an "informal charge of discrimination," to the Equal Employment Opportunity Commission ("EEOC") on behalf of seven Amtrak employees. (See November 20, 2001 Letter to EEOC,

attached as Ex. A to Def. Mot. For Summary Judgment). Five of these seven employees are named as plaintiffs in the instant litigation, including plaintiffs Debra Allen ("Allen"), Jones, Scott, Shaw, and Green. (See Am. Compl., ¶¶1-10). The letter failed to contain signed, verified charges of discrimination by these five plaintiffs. (See EEOC Charges submitted by plaintiffs Green, Scott, Jones, Shaw, and Allen, attached as Ex. B-F of Def. Mot.). These verifications were not received until April 2003. (Id.). On May 19, 2003, the EEOC issued individual right-to-sue notices to each of the five plaintiffs. (See EEOC Notices of Right to Sue, attached as Ex. G-K of Def. Mot.).

On June 5, 2003, plaintiff Allen filed a *pro se* complaint with this Court (the "original complaint"), entitled "Debra Allen et al v. National Railroad Passenger Corporation (Amtrak)." (Doc. No. 1). The original complaint asserted claims for employment discrimination on the basis of race. (Id. at ¶¶3, 5). The body of the original complaint referenced additional "employees" who were allegedly subject to discrimination by defendant, although the original complaint did not refer to these "employees" by name. (Id.). The original complaint was not served upon defendant within 120 days. (See Docket Report, attached as Ex. M to Def. Mot.; Declaration of Linda Damiano, attached as Ex. N to Def. Mot.).

Between July 25, 2003 and September 12, 2003, Scott, Shaw, and Jones filed individual complaints against Amtrak, alleging violations of Title VII.[1] The filing of the individual complaints took the following order. First, on July 25, 2003, Scott filed a motion to proceed *in forma pauperis* to proceed with a civil action against Amtrak. (See Certified Docket Entries for Civil Action No. 03-4352, attached as Ex. O to Def. Mot.). A complaint asserting Title VII

[1] Plaintiff Green never filed a civil action against defendant following the issuance of the EEOC right-to-sue letter.

claims was later filed on October 9, 2003, and, on November 10, 2003, plaintiff Scott attempted to serve process on the defendant. (See Docket Entry Nos. 3 and 8, attached as Exhibit O to Def. Mot.). Second, on August 1, 2004, plaintiff Shaw filed a *pro se* complaint against Amtrak, alleging violations of Title VII; however, process was not served on Amtrak. (See Docket Entry No. 1 for Civil Action No. 03-4479, attached as Ex. Q to Def. Mot.). Third, after filing a motion to proceed *in forma pauperis* on August 15, 2003, plaintiff Jones filed a *pro se* complaint alleging violations of Title VII on September 12, 2003; process was not served until October 17, 2003. (See Docket Entry Nos. 3 and 4 for Civil Action No. 03-4748, attached as Ex. R to Def. Mot.).

Sometime after the filing of their original complaints, Jones, Scott, and Shaw obtained legal representation. Through their attorney, H. Francis deLone, Jr., Jones, Scott, and Shaw voluntarily dismissed their original complaints against Amtrak in November 2003. (See Certified Docket Entry No. 8 for Civil Action No. 03-4748, attached as Ex. R to Def. Mot.; Certified Docket Entry No. 10 for Civil Action No. 03-4252, attached as Ex. O to Def. Mot.; Certified Docket Entry No. 9 for Civil Action No. 03-4479, attached as Ex. Q to Def. Mot.).

On January 26, 2004, plaintiffs' attorney filed an amended complaint in the instant case, asserting claims under Title VII and expressly naming Jones, Scott, Shaw, and Green as plaintiffs in the caption and in the body of the complaint. (Doc. No. 5).[2] Defendant was served with a copy of the amended complaint on the date that it was filed. (Doc. No. 5). However, because the original complaint had not yet been served on defendant, the Court on February 18, 2004

[2] The amended complaint also sought to consolidate the claims of plaintiff Yvonne Upshur against defendant. Because defendant does not seek partial summary judgment on the claims of plaintiff Uphsur at this stage in the litigation, the procedural history behind plaintiff Uphsur's claims is irrelevant for resolution of defendant's instant motion.

extended the deadline until March 3, 2004 for service of the complaint pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (Doc. No. 6). Defendant returned a signed waiver of service of summons on February 27, 2004, indicating that defendant received "a copy of the complaint in the action." (Doc. No. 7).

Plaintiffs' amended complaint contains six counts, all of which allege violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.. (Am. Compl. at ¶ 14). Count I alleges that the defendant created a hostile work environment for plaintiffs. (Id. at ¶¶ 19-28). Count II alleges that the defendant retaliated against plaintiffs after they filed claims with the EEOC. (Id. at ¶¶ 29-34). Counts III-VI allege that the defendant failed to promote plaintiffs Jones, Scott, Shaw, and Upshur because of their race. (Id. at ¶¶ 35-54).

II. Discussion

A. Summary Judgment Standard

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case are "material." Anderson, 477 U.S. 248. All reasonable inferences from the record are drawn in favor of the non-movant. See id. at 256.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on

which it bears the burden of proof. See J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)), cert. denied, 499 U.S. 921 (1991). As the non-movant, a plaintiff cannot avoid summary judgment with speculation or by resting on the allegations in his pleadings, but rather must present competent evidence from which a jury could reasonably find in her favor. Anderson, 477 U.S. at 248; Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

B. Defendant is not entitled to summary judgment on the claims of plaintiffs Jones, Scott, Shaw, and Green.

Defendant argues that it is entitled to partial summary judgment as a matter of law because the claims of Jones, Scott, Shaw, and Green are time-barred. (Def. Mot. Summary Judgment, at 9). Under Title VII, a plaintiff must file a civil action within 90 days of receiving notice of a right to sue from the EEOC ("90-day limitation period"), unless the 90-day limitation period is tolled. See 42 U.S.C. § 2000(e)-5(f)(1); see Fed. R. Civ. P. 3 ("civil action is commenced by filing a complaint with the court"); Baldwin County Welcome Center v. Brown, 466 U.S. 147, 149-50 (1984). Typically, the EEOC provides notice in writing through a "right-to-sue" letter to the complaining party, with the 90-day period running upon receipt of the notice. In accordance with Federal Rule of Civil Procedure 6(e), absent evidence of the exact date of the receipt of the notice, it is presumed that the date of receipt of an EEOC right-to-sue letter is three days after its mailing. See Fed. R. Civ. P. 6(e) (adding 3 days to prescribed period when party must perform some task after service of notice upon party); see also Brown, 446 U.S. at 148 (presuming that date of receipt of right-to-sue notice is three days after issuance of letter).

In an attempt to defeat defendant's summary judgment motion, plaintiffs argue that their claims are not barred by the 90-day limitation period for three independent reasons. First, plaintiffs argue that they were parties to the original complaint, which was filed before August 20, 2003, the date of the expiration of the 90-day limitation period. (See Pl. Mem. In Opp'n to Def. Mot., at 3). Second, plaintiffs argue that the circumstances of the case equitably toll the 90-day limitation period. (Id. at 6). Third, plaintiffs imply that the amended complaint relates back to the filing of the original complaint for purposes of the 90-day limitation period. (Id. at 5-6). This Court agrees with plaintiffs' third argument.

1. Plaintiffs Scott, Shaw, Jones, and Green were not parties to the original lawsuit.

Plaintiffs argue that, by virtue of the "et al" designation in the caption of plaintiff Allen's original complaint, Scott, Shaw, Jones, and Green were parties to the original complaint. (Pl. Mem. In Opp'n to Def. Mot., at 4). On the other hand, defendant claims that Scott, Shaw, Jones, and Green were not parties to the original complaint because they were not listed as parties in the caption of the complaint or in the text of the complaint, as required by Federal Rule of Civil Procedure 10(a), and because none of the four plaintiffs signed the complaint, as required by Federal Rule of Civil Procedure 11(a). (Def. Mot., at 17-19).

Rule 10(a) of the Federal Rules of Civil Procedure requires every complaint to include the name of each party to the action. Fed. R. Civ. P. 10(a) ("Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties . . ."). The designation of "et al" in a complaint's caption, without an identification of the proper parties in the body of the complaint, does not satisfy the Rule 10(a) identification

requirement. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1991) (dismissing *pro se* complaint that included "et al" in caption for failure to amend complaint in compliance with Rule 10(a)); Woods v. Goord, 2002 WL 731691, at *1 n.2 (S.D.N.Y. April 23, 2002) (defendants not named in caption are parties to complaint because mentioned in body of complaint). This type of defective pleading fails to provide adequate notice to unnamed defendants, fails to inform the public of the facts surrounding court proceedings, and/or fails to apprise named defendants of the identities of additional plaintiffs or of parties similarly situated. See Bonzelet, 963 F.2d at 1262; Nat'l Commodity and Barter Assoc. v. Gibbs, 886 F.2d 1240, 1245 (10th Cir. 1989) (failure to expressly name members of organization in caption of complaint that refers to organization and its "members and subscribers" violates Rule 10(a) and deprives Court of jurisdiction over unnamed members because no action has commenced with respect to them); see also 27 Fed. Proc. L. Ed. § 62:101 (2004) ("The caption of the complaint must name both all of the plaintiffs and all of the defendants. The court lacks jurisdiction over a defendant not named in the complaint and who is thus not aware that the complaint should have been brought against him or her . . . .").

Rule 11(a) requires a complaint to be "signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, [to] be signed by the party." Fed. R. Civ. P. 11(a). Most courts interpret Rule 11(a) to require all *pro se* plaintiffs to sign the complaint. See, e.g., Simpson v. Department of Corrections, 1998 WL 130102, at *1 (E.D. Pa. March 18, 1998) (interpreting Rule 11(a) as requiring that each *pro se* plaintiff sign the complaint); WGC, Jr. v. Roman Catholic Diocese of Paterson, 1996 WL 1177356, at *1 (D.N.J. Feb. 20, 1996) (*pro se* plaintiffs must sign their own names to complaint and must set forth own

addresses and telephone numbers). Indeed, Rule 11(a) precludes one *pro se* plaintiff from signing on behalf of others. See, e.g., Abdul-Wadood v. Debruyn, 1996 WL 359890, at *1 (7th Cir. June 10, 1996) (unpublished opinion).

Compliance with Rules 10(a) and 11(a) provides an accurate gauge as to whether a party is an official party to a lawsuit. It is indisputable that the caption of the original complaint failed to name Jones, Scott, Shaw, and Green in the caption. It is also indisputable that the body of the complaint failed to identify these plaintiffs by name. In fact, the only reference to other possible plaintiffs in the complaint is an allusion to "employees" who were also allegedly subject to racial discrimination. Furthermore, none of the additional plaintiffs signed the complaint, as required by Rule 11(a), and defendant never received notice of the alleged parties to the original complaint until the filing of the amended complaint on January 26, 2004, 159 days after the expiration of the 90-day limitation period. To consider the claims of plaintiffs Jones, Scott, Shaw, and Green part of the original complaint would eviscerate the Supreme Court's declaration that "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." Mohasco Corp. v. Silver, 447 U.S. 807, 826 (1980). Accordingly, even with this Court's obligation to liberally construe the inartful pleading of *pro se* complaints, this Court concludes that Jones, Scott, Shaw, and Green were not parties to the original complaint because they failed to comply with the requirements of Rules 10 and 11 of the Federal Rules of Civil Procedure. See, e.g., Boag v. MacDougall, 454 U.S. 364, 365 (1982).

2. The 90-day limitation period has not been equitably tolled.

The 90-day window during which a plaintiff may file a lawsuit after receipt of an EEOC right-to-sue letter is non-jurisdictional in nature. See Communications Workers of America v.

New Jersey Dep't of Personnel, 282 F.3d 213, 216-17 (3d Cir. 2002) (filing of civil action under Title VII is "non-jurisdictional prerequisite, akin to statutes of limitations and . . . subject to waiver, estoppel and equitable tolling principles"). This means that the 90-day limitation period may be tolled in appropriate, albeit "sparing," circumstances. See, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1991) (federal courts "only sparingly" toll statutory time limits applicable to Title VII claims). The Third Circuit has declared that the 90-day limitation period may be tolled in three instances: (1) when the defendant has actively misled the plaintiff; (2) when the plaintiff has in some "extraordinary way" been prevented from asserting her rights;[3] or (3) when plaintiff has timely asserted her rights mistakenly in the wrong forum. See Kocian v. Getty Refining & Marketing Co., 707 F.2d 748, 753 (3d Cir. 1983) (applying equitable tolling doctrine to Title VII claims). To invoke the benefit of this doctrine, a plaintiff must exercise due diligence in pursuing her claim. Id. at 151.

Despite the existence of the equitable tolling doctrine, it is well-settled that the voluntary dismissal of a complaint does not toll a statute of limitations, but, instead, leaves the parties in the position they were in prior to the filing of the original complaint. See, e.g., Cardio-Medical Assoc., Ltd. v. Crozer-Chester Medical Center, 721 F.2d 68, 77 (3d Cir. 1983) ("It is a well recognized principle that a statute of limitations is not tolled by the filing of a complaint subsequently dismissed without prejudice. As regards the statutes of limitations, the original complaint is treated as if it never existed."); see also Wright & Miller, 9 Federal Practice and

[3] The Supreme Court has identified a list of unique situations that prevent a plaintiff from asserting her rights and that may justify tolling the statutory period, such as when a plaintiff received inadequate notice of the time limit to file a civil action; when a motion for appointment for counsel is pending and equity would justify tolling the statutory period until the motion is acted upon; or when the court affirmatively led plaintiff to believe that she successfully met the requirements for bringing a Title VII claim. See Brown, 466 U.S. at 151-152.

Procedure § 2367 (1995) ("A voluntary dismissal without prejudice leaves the situation as if the action never had been filed . . . The statute of limitations is not tolled by bringing an action that later is dismissed voluntarily under Rule 41(a)."). Courts have applied this well-settled principle to Title VII claims. See, e.g., Brown v. Hartshorne Public School District, 926 F.2d 959, 961 (10th Cir. 1991) (dismissing Title VII claim because plaintiff voluntarily dismissed complaint prior to start of trial due to attorney's injury and then refiled claim after 90-day limitation period); Price v. Digital Equip. Corp., 846 F.2d 1026, 1027 (5th Cir. 1988) (dismissal of Title VII claim for want of prosecution does not toll 90-day limitation period, even when plaintiff later refiles lawsuit); Neal v. Xerox Corp., 991 F.Supp. 494, 498 (E.D. Va. 1998) (refusing to equitably toll 90-day limitation period for Title VII claim because plaintiff voluntarily dismissed complaint, and then re-filed lawsuit after expiration of 90-day limitation period). These courts reason that the failure to research the ramifications of a voluntarily dismissal constitutes a lack of "due diligence in preserving [one's legal] rights," thereby precluding the tolling of the 90-day limitation period. See, e.g., Neal, 991 F.Supp. at 498.

Plaintiffs have presented no evidence that they were misled or prevented from asserting their claims. Nor did plaintiffs assert their claims in the wrong forum. Instead, Scott, Shaw, and Jones filed individual complaints within the 90-day limitation period, and, then, while represented by their current attorney, voluntarily dismissed those claims. The decision to voluntarily withdraw these complaints appears to have been the product of strategic, albeit erroneous, decision-making, and does not justify tolling the 90-day limitation period.

In response, plaintiffs baldly reference the proposition that "equitable tolling may be appropriate when a plaintiff has made diligent but technically defective efforts to act within the limitations

period." (Pl. Surreply Mem. In Opp'n, at 2).[4] The crux of this argument seems to be that plaintiffs' *pro se* status not only excuses them from complying with the Federal Rules of Civil Procedure at the time of the filing of the original complaint, but also justifies their failure to comply with the Rules within the 90-day limitations period. Plaintiffs provide no applicable case law in support of this argument. Furthermore, this argument fails as a matter of law, because, in the instant situation, the unintentional failure both to properly name the appropriate parties and to rectify this mistake within the 90-day limitations period constitutes a "garden variety claim of excusable neglect" on behalf of the plaintiffs, to which the principles of equitable tolling do not apply. Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1991) (refusing to toll limitations on basis that plaintiff's lawyer was absent from office when EEOC notice was received, even though plaintiff filed claim within statutory limit from the date on which he personally received notice); see also Brown, 466 U.S. at 151 (refusing to toll limitations for *pro se* plaintiff who mailed notice of EEOC right-to-sue letter to Court and who requested appointment of counsel, but who failed to file actual complaint within 90 days); Jones v. Next Day Motor Freight, Inc., 2002 WL 31936688, at *2 (D. Kan. Dec. 19, 2002) (plaintiff's *pro se* status does not justify tolling 90-day limitation period when complaint alleging Title VII violations filed 109 days after receipt of right–to-sue notice).

Accordingly, because Scott, Shaw, and Jones chose to voluntarily dismiss their individual lawsuits against defendant after the expiration of the 90-day limitation, and because plaintiffs'

[4] In support of this proposition, plaintiffs cite the lone case of Bowden v. United States, 106 F.3d 433 (D.C. Cir. 1997), in which the court declared that "courts have excused parties, particularly those acting pro se, who make diligent but technically defective efforts to act within a limitations period." Id. at 438. Unfortunately, Bowden does not discuss this equitable tolling exception, nor does it contain facts analogous to those in this case. Thus, Bowden does not provide legal support for equitably tolling the 90-day limitation in this litigation.

counsel fails to provide any evidence why the 90-day limitation period should be tolled with respect to Scott, Shaw, Jones, and Green, this Court concludes that plaintiffs are not entitled to invoke the equitable tolling doctrine as a matter of law.

3. The claims of Scott, Green, Shaw, and Jones in the amended complaint relate back to the date of the filing of the original complaint.

Plaintiffs implicitly argue that the amended complaint relates back to date of the filing of the original complaint pursuant to Federal Rule of Civil Procedure 15(c), thereby satisfying the 90-day limitation period for filing a Title VII claim. Fed. R. Civ. P. 15(c). This Court agrees.

Rule 15(c) strikes a balance between the policy of adjudicating claims on their merits and the policy of avoiding prejudice to defendants by applying with fairness the relevant limitation period. See, e.g., Oleck v. Village of Willowbrook, 138 F. Supp. 2d 1036, 1042 (N.D. Ill. 2000). To achieve this balance, Rule 15(c)(3) permits an amended pleading that seeks to add a party to relate back to the date of the original pleading upon the satisfaction of three elements. Fed. R. Civ. P. 15(c)(3); see also Nelson v. County of Allegheny, 60 F.3d 1010, 1014 (3d Cir. 1995) (Rule 15(c)(3) applies to amended pleadings that seek to "add" new plaintiffs). First, "the claim or defense asserted in the amended pleading must arise out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Fed. R. Civ. P. 15(c)(3). Second, "within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in . . . has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits." Fed. R. Civ. P. 15(c)(3)(A). Third, within the period provided by Rule 4(m), the defendant "knew or should

have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party." Fed. R. Civ. P. 15(c)(3)(B).

Although the literal text of Rule 15(c)(3) applies only to the naming of additional defendants, the Third Circuit has applied this three-prong standard for relating back to an amended pleading that names additional plaintiffs. See Nelson, 60 F.3d at 1014; see also Advisory Committee Notes to 1966 Amendment to Fed. R. Civ. P. 15(c) ("The relation back of amendments changing plaintiffs is not expressly treated in revised Rule 15(c) since the problem is generally easier. Again the chief consideration of policy is that of the statute of limitations, and the attitude taken in revised Rule 15(c) toward change of defendants extends by analogy to amendments changing plaintiffs."). In performing an analysis that is not contemplated by the literal language of Rule 15(c)(3), it is vital to keep in mind the purpose of the Rule, which is to "prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense." See Advistory Committee Notes to 1991 Amendment to Fed. R. Civ. P. 15(c). Reflective of this purpose, the focus of the Rule 15(c)(3) analysis is on the defendant's "notice" of the new claims. See Schiavone v. Fortune, 477 U.S. 21, 31 (1986) ("The linchpin [of Rule 15(c)] is notice").

A. Same Transaction or Occurrence

The first element of the Rule 15(c)(3) standard requires the claims of the amended pleading to arise out of the conduct, transaction, or occurrence set forth in the original complaint. Id. Defendant does not dispute that the majority of the claims of plaintiffs Shaw, Green, Scott, and Jones arise out of the subject matter of the original complaint. However, defendant argues that the claim asserted by plaintiff Shaw in Count V of the amended complaint, which alleges a

failure to promote with respect to an "Advocate" position, fails to meet this standard. (Def. Mot., at 22).

The original complaint is quite broad in its description of the defendant's discriminatory behavior. It alleges that defendant's general manager "retaliated against employees and discriminated against them based on their race by not promoting to leads [sic] positions, changing shift assignments and scheduling, [and] adverse treatment regarding the terms and conditions of their employment." (Compl. at ¶3). In other words, the underlying conduct in the original complaint is the defendant's discriminatory behavior, which, according to the original complaint, took the specific form of retaliating against, failing to promote to important positions, and adversely treating African-American employees. Count V of the amended complaint, which alleges that defendant discriminated against Shaw by failing to promote him to an "advocate" position, certainly arises from the pattern of discriminatory conduct both generally and specifically described in the original complaint.

B. Notice and Prejudice

The second prong of Rule 15(c)(3) evaluates whether defendant received notice of the institution of the action within the time provided by Rule 4(m) so that defendant would be prejudiced in maintaining a defense against the newly added parties. Fed. R. Civ. P. 15(c)(3)(A). Defendant claims that it had no knowledge of the institution of the original complaint within 120 days of its filing. (Def. Mot. at 21-22). Defendant also claims that it would suffer prejudice by allowing the four plaintiffs to assert claims in the instant action. (Id. at 22).

Rule 15(c)(3)(A) requires that the defendant have formal or informal notice of the institution of the action within the period provided by Rule 4(m) for service of the summons and

complaint. See, e.g., Advanced Power Systems, Inc. v. Hi-Tech Systems, Inc., 801 F. Supp. 1450, 1456 (E.D. Pa. 1992) (notice may be formal or informal). Rule 4(m) sets the time for service at 120 days after the filing of the complaint, while giving a court the discretion to direct that service be effected within a specified time and to extend the time for service for an appropriate period. Fed. R. Civ. P. 4(m). This means that 120 days will not always be the applicable time frame for purposes of a Rule 15(c)(3) analysis, and that the appropriate standard, in certain instances, may be whether the defendant received notice within any "additional time resulting from any extension ordered by the court pursuant to that rule . . . ." Advisory Committee's Note to 1991 Amendment to Fed. R. Civ. P. 15(c).

Applying this conceptualization of "notice" to the facts of this case, this Court finds that defendant had notice both of the original complaint and of the amended complaint within the time provided by Rule 4(m). Although the 120-day period ended on October 3, 2003, the Court issued an Order on February 18, 2004 that extended the deadline for plaintiffs to serve the original complaint and summons until March 3, 2004. (Doc. No. 5, 6). However unintended, the effect of the Order was to extend the time period for which notice could be provided to defendant pursuant to Rule 15(c)(3). It is undisputed that, prior to March 3, 2004, defendant was served with a copy of the amended complaint, which gave defendant notice of the new claims and of the existence of the original complaint. (Doc. No. 5, 7). Thus, although defendant did not receive notice of the original action within 120 days after the filing of the original complaint, defendant received notice both of the commencement of the original action and of the claims by the newly added parties within the time period provided by Rule 4(m).

The fact that defendant had notice of both the original complaint and the amended

complaint within the period specified by Rule 4(m) does not mean that the defendant's presentation of its defense was not prejudiced by the delay in providing notice until after the expiration of the 90-day limitation period. Nonetheless, because the prejudice element of the Rule 15(c)(3)(A) analysis is dependent upon, rather than independent of, the notice requirement, notice of the matters raised in the amended pleading within the applicable time limit generally eliminates the prejudice a party may experience. See, e.g., Sokolski v. Trans Union Corp., 178 F.R.D. 393, 398 (E.D.N.Y. 1988) (principal inquiry is whether defendant received adequate notice of matters raised in amended pleading by general fact situation alleged in original pleading); Wright, Miller, & Kane, 6A Federal Practice and Procedure § 1501, at 154-155 ("As long as defendant is fully apprised of a claim arising from specified conduct and has prepared to defend the action, his ability to protect himself will not be prejudicially affected if a new plaintiff is added, and he should not be permitted to invoke a limitations defense."). Indeed, the type of prejudice that Rule 15 (c)(3) refers to is not an increase in liability, which would apply regardless of when defendant received notice; but, instead, those strategic hardships imposed by the unreasonable passage of time upon a defendant's ability to present an effective defense. See Nelson, 60 F.3d at 1014-15 (prejudice defined as that "suffered by one who, for lack of timely notice that a suit has been instituted, must set about assembling evidence and constructing a defense when the case is already stale") (internal quotations omitted).

In this unique procedural situation, defendant received notice of the original complaint and of the amended complaint within the time provided by Rule 4(m). This means that defendant started defending the claims of the original plaintiff at the same time that defendant had notice of, and presumably started defending, the claims of the additional plaintiffs. As such,

the addition of new plaintiffs through the amended complaint will not hinder the defendant's ability to conduct discovery. More importantly, because the amended complaint does not allege new types of facts, legal claims, or injuries, gathering and presenting evidence relevant to a defense against the additional Title VII claims will be nearly identical to the gathering and presenting of evidence relevant to a defense against the original Title VII claims brought by plaintiff Allen. Furthermore, defendant does not argue that evidence necessary to defend the claims of Shaw, Green, Scott, and Jones has been lost or destroyed. Nor does defendant argue that it has taken affirmative steps in reliance upon its belief that the claims of Shaw, Jones, Green, and Scott are time-barred. Therefore, this Court finds that defendant received timely notice and would not suffer prejudice by defending the claims of the additional parties. See, e.g., Nelson, 60 F.3d at 1010 (no prejudice when new plaintiffs allege injury by the same conduct described in original pleading).

C. Mistake Concerning the Identity of the Proper Party

The third prong of the Rule 15(c)(3) standard evaluates whether, within the time specified in Rule 4(m), the defendant knew or should have known that, but for a mistake concerning the identity of the proper party, the claims of the new parties would have been brought with the original action. Fed. R. Civ. P. 15(c)(3)(B). Defendant contends that none of the four plaintiffs can demonstrate that there was an actual "mistake concerning the identity of the proper party" because each of the four plaintiffs "made strategic decisions to pursue individual actions as they saw fit." (Def. Mot., at 22). Defendant further contends that even if a mistake was made, defendant had no knowledge that, but for this mistake, the claims of plaintiffs Jones, Scott, Shaw, and Green would have been brought with the original action. (Id., at 21).

A "mistake concerning the identity" of the newly named party is a requirement for an amended complaint to relate back to an original complaint. See, e.g., Nelson v. Adams USA, Inc., 529 U.S. 460, 467 n.1 (2000) ("mistake" of identity essential element of Rule 15(c)(3) standard). Although some courts relax the mistake requirement when the amended complaint seeks to add new plaintiffs, the Third Circuit continues both to demand the existence of a mistake concerning the identity of the new party and to couch this element in the reasonable knowledge of the defendant during the time provided by Rule 4(m). Compare Nelson, 60 F.3d at 1014 (amended complaint adding new plaintiffs does not relate back because failure to add names to complaint was not due to mistake) with Olech,138 F.Supp.2d at 1044 (refusing to impose mistake requirement when amended pleading seeks to add new plaintiffs because "mistake requirement would serve no substantive purposes, but only would erect a needless barrier to adjudication of claims on the merits"). The "mistake" element ensures the existing defendant's awareness that a new party, and potentially a new claim, might be added to the case and that plaintiff intended to add new parties at the time of the filing of the original complaint, rather than pursuing a deliberate strategy of piecemeal litigation. Advanced Power Systems, Inc., 801 F. Supp. at 1457.

It is well-settled that a "mistake" within the meaning of Rule 15(c)(3)(B) includes erroneous judgments of law and fact. See, e.g., Dalicandro v. Legalgard Inc., 2003 WL 182942, at *6 (E.D. Pa. Jan. 23, 2003) (purpose of Rule 15(c) is to protect plaintiffs who name the wrong parties due to mistake of law or fact); Advanced Power Systems, Inc., 801 F. Supp. at 1457 ("courts have typically resisted a narrow reading of the mistake element and allowed the addition of responsible individual defendants when plaintiff simply made an error in legal judgment or

form in suing only the corporation"); Kinnally v. Bell of Pennsylvania, 748 F. Supp. 1136, 1142 (E.D. Pa. 1990) (mistake pursuant to Rule 15(c)(3) also "includes errors in legal form," such as "where a plaintiff has full knowledge of all relevant actors but lists the technically incorrect party in her complaint"; permitting *pro se* plaintiff's amended complaint naming additional parties who could have been included in original complaint to relate back because plaintiff's mistake was due to legal ignorance). In applying the "mistake" requirement, courts focus on the reasons for the plaintiff's delay either in entering, or bringing a new defendant into, the litigation. See, e.g., Nelson, 60 F.3d at 1014 (focusing on whether plaintiffs "sat on their rights" before filing claims). For instance, it is well-settled that 15(c)(3)(B) is not met if the plaintiff is aware of the identity of the newly named parties when she files her original complaint and simply "chooses" not to name them at that time. See, e.g., Garvin, 354 F.2d at 221; Lundy, 34 F.3d 1173, 1184 (3d Cir. 1994) (no mistake because "no reason for another party to believe that plaintiff did anything other than make a deliberative choice"). On the other hand, however, the technical failure to name a party at the time of the original complaint, despite an intent to do so, constitutes a "mistake" within the meaning of Rule 15(c)(3). See, e.g., Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 457-58 (3d Cir. 1996) ("mistake" element met because plaintiff "intended" to sue individual police officers in § 1983 claim, although plaintiff named only the police department in the original complaint); Woods v. Indiana Univ.-Purdue Univ. at Indianapolis, 996 F.2d 880, 888 (7th Cir. 1993) (finding counsel's "legal blunder" in pursuing state agencies rather than individual state actors constitutes mistake within meaning of Rule 15(c)(3)). This comports with the underlying purpose of the early amendments to Rule 15(c), which were "expressly intended to preserve legitimate suits despite such mistakes of law at the pleading stage." Soto v.

Brooklyn Correctional Facility, 80 F.3d 34, 36 (2nd Cir. 1996).

Applying this standard, the Court concludes that plaintiffs made a mistake in legal judgment and form within the meaning of Rule 15(c)(3). In November 2001, the attorney representing plaintiffs Shaw, Green, Scott, Jones, and Allen filed an informal charge of discrimination with the EEOC on behalf of all plaintiffs, alleging that each plaintiff was subject to the racial discrimination later described in the original and amended complaints. (See November 20, 2001 Letter to EEOC, attached as Ex. E to Pl. Mem. In Opp'n to Def. Mot.).[5] On May 19, 2003, the EEOC treated the plaintiffs' claims collectively and sent individual right-to-sue letters to each of the plaintiffs. (See Notices of Right to Sue, attached as Ex. G-K to Def. Mot.). Shortly after receiving these right-to-sue letters, plaintiff Allen filed the original complaint on behalf of her and plaintiffs Shaw, Green, Scott, Jones, and Upshur. (See Declaration, attached as Ex. C to Pl. Mem. In Opp'n to Def. Mot.). Indeed, according to their declarations, each plaintiff paid part of the filing fee, and each believed that he or she was part of that original suit. (See Declarations, attached as Ex. C to Pl. Mem. In Opp'n to Def. Mot.). In

[5] Specifically, the November 20, 2001 EEOC letter asserts that plaintiffs Allen, Green, Jones, Scott, and Shaw were "long time, senior employees" at defendant's Crew National Operations Center ("CNOC") in Wilmington, Delaware. (See November 20, 2001 EEOC Letter, at 1). The EEOC letter describes the "widespread posting" of a racially demeaning cartoon throughout the CNOC, the defendant's failure to investigate this incident, and the retaliatory acts suffered by plaintiffs for complaining about the cartoon. (Id.). The EEOC letter also alleges that this was "part of a larger pattern" of discrimination, in which plaintiffs suffered

> disparate and adverse treatment regarding the terms and conditions of their employment, including but not limited to, shift assignments and scheduling, lead person assignments, FMLA, personal and sick leave requests, application of Short Term Disability policies and procedures, application of discipline and attending policies and job bidding and assignments in general.

(Id. at 3). These factual allegations, along with the corresponding Title VII legal theories, form the substance of the original complaint and the amended complaint. (See Compl. and Am. Compl.).

filling out the complaint, however, plaintiff Allen made the legal mistakes of placing only her name, followed by the designation "et al," on the caption, of referring to the other intended plaintiffs as "employees" in the body of the complaint, and of filing the complaint without companion signatures by the other intended plaintiffs. (See Compl.).[6] These technical, unintended violations of Rules 10 and 11, while preventing Shaw, Green, Jones, and Scott from being considered parties to the original complaint, support plaintiffs' argument that the omission of their names was due to a legal mistake, rather than litigation strategy. Plaintiffs' continuing, albeit erroneous, belief that they remained parties to the original complaint also precludes a factual finding that plaintiffs slept on their rights and are now seeking to exploit the benefits of Rule 15(c)(3). See Nelson, 60 F.3d at 1015. Consequently, this Court finds that the legal errors made by the *pro se* plaintiffs in this litigation constitute "mistake[s] concerning the identity of the proper party." Fed. R. Civ. P. 15(c)(3)(B); see also Nelson, 60 F.3d at 1015 (no mistake when plaintiffs do not demonstrate that failure to add name to complaint was due to mistake) [7]

[6] Plaintiffs attribute the failure to comply with Rules 10 and 11 to the spatial limitations of the standard *pro se* complaint form distributed by the Court. Plaintiffs argue that the standard form contains "no room on the form for multiple names and addressed on the four lines provided for the address and telephone number (both stated in the singular) or for multiple signatures on either line that asks for a signature (with signature stated in the singular)." (Pl. Mem. In Opp'n to Def. Mot., at 4). Furthermore, plaintiffs claim that the "form contains no instructions about any need to list multiple names and addresses on the four lines provided for the address and telephone number (both stated in the singular) or to have multiple people sign the form in the small space allowed for the signature (stated in the singular)." (Id.). Although the alleged spatial limitations of the *pro se* complaint form do not justify a failure to comply with Rules 10 and 11, this Court takes these arguments into consideration in determining whether plaintiff Allen made a "mistake" within the meaning of Rule 15(c)(3).

[7] Although the filing of separate complaints by Shaw, Scott, and Jones on a *pro se* basis evinces an intent to strategically pursue individual claims, this decision is not incompatible with a corollary belief that they were still parties to the original complaint, the filing fee of which they partially paid. Plaintiffs' declarations confirm this belief, which is enhanced by the use of "et al" in the caption of the original complaint and its reference to additional "employees" who were subject to racial discrimination in violation of Title VII. (See Declarations, attached as Ex. C to

This Court also finds that the defendant "should have known" that, but for the mistake, additional parties would have joined the original complaint. Several reasons support this conclusion. First, defendant received notice of the amended complaint and the original complaint at the same time, prior to the end of the Rule 4(m) period. A cursory reading of the original complaint, followed by a comparison of the original complaint with the amended complaint, would have indicated that the plaintiffs intended to bring one lawsuit and that plaintiff Allen intended to assert in the original complaint the claims of those employees allegedly subjected to racial discrimination at defendant's Crew National Operations Center in Wilmington, Delaware. Second, prior to the end of the Rule 4(m) period, defendant was aware that individual claims had been brought by Jones, Shaw, and Scott, and that each of these individual claims was later voluntarily dismissed by the same attorney who filed the amended complaint on behalf of plaintiffs. Third, defendant received a copy of the November 20, 2001 EEOC discrimination charge, which was filed on behalf of plaintiffs Allen, Green, Jones, Scott, and Shaw, thereby indicating to defendant that the claims of these employees were linked factually and legally and suggesting that these parties intended to pursue these claims together in a court of law. (See November 20, 2001 Letter to EEOC, attached as Ex. E to Pl. Mem. In Opp'n to Def. Mot.).

Based upon the body of the complaint, the affidavits provided by plaintiffs, and the procedural and administrative history of this case, this Court finds as a matter of law that defendant should have known that, but for the mistake, the claims of plaintiffs Shaw, Jones, Scott, and Green would have been brought with the original complaint. This holding is

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Pl. Mem. In Opp'n to Def. Mot.).

consistent with the text and purpose of Rule 15(c)(3), as it prevents the dismissal of claims due to an "otherwise inconsequential pleading error." See Advisory Committee Note to 1991 Amendment to Fed. R. Civ. P. 15(c).

III. Conclusion

For the foregoing reasons, this Court finds that the claims of Green, Scott, Shaw, and Jones, as expressed in the amended complaint, relate back to the date of the filing of the original complaint. In turn, because these claims are treated as if they were filed on the date of the original complaint, they are not time-barred by the 90-day limitation period of 4 U.S.C. § 2000(e)-5(f)(1). Defendant's motion for partial summary judgment is therefore denied. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBRA ALLEN, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	03-CV-3497
	:	
NATIONAL RAILROAD PASSENGER	:	
CORP., (AMTRAK),	:	
Defendant.	:	

ORDER

AND NOW, this 7th day of December 2004, upon consideration of Defendant's Motion for Partial Summary Judgment (Doc. No. 12), filed on July 9, 2004, Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment (Doc. No. 13), filed on July 26, 2004, Defendant's Reply Memorandum in Further Support of its Motion for Partial Summary Judgment (Doc. No. 16), filed on September 3, 2004, and Plaintiffs' Surreply Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment (Doc. No. 19), filed on September 21, 2004, it is hereby ORDERED that Defendant's Motion for Partial Summary Judgment is DENIED.

BY THE COURT:

S/LEGROME D. DAVIS
Legrome D. Davis, J.