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

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| CEDRIC WILLIAMS | : | CIVIL ACTION |
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| v. | : | |
| | : | |
| HOME DEPOT, U.S.A., INC. | : | NO. 98-CV-3712 |

**MEMORANDUM & ORDER**

**J. M. KELLY, J.** **OCTOBER , 1999**

Presently before the Court is Defendant Home Depot, U.S.A., Inc.'s ("Home Depot") Motion for Partial Summary Judgment. For the following reasons, Defendant's motion is granted in part and denied in part.

## I. BACKGROUND

In this action, the Plaintiff, Cedric Williams ("Williams), an African-American male, sued his former employer, Home Depot, for discrimination on the basis of race in violation of 42 U.S.C. § 1981 (1994), Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. §§ 2000e-2000e17 (1994) ("Title VII") and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. §§ 951-963 (West 1991) ("PHRA"). According to Williams' Complaint,[1] he worked for Home Depot beginning in or around September, 1994 as an Assistant Store Manager in the Defendant's Bridgeport, Connecticut store. In August of 1995, Williams voluntarily transferred to Home Depot's Cheltenham, Pennsylvania store, again working as an Assistant Store Manager.

[1] Williams' Complaint asserts a number of factually specific allegations of discrimination against Home Depot. An exhaustive discussion of the facts alleged, however, is not necessary in deciding this motion. Therefore, while the Court views the facts in the light most favorable to the nonmoving party, discussion is limited to those instances relevant to the present motion.

While Williams was employed in Cheltenham, he alleges a number of instances of racial discrimination by Home Depot. First, he claims that Cheltenham was a racially hostile environment. Specifically, he alleges that other black employees were threatened, that white employees engaged in racial slurs and demeaning name calling towards another black employee and that Williams' white supervisor interfered with the performance of his duties. Additionally, Williams alleges that black employees were given less desirable shifts than white employees and that white employees were given preferential treatment with regard to Home Depot's leave policies. The Defendant's discriminatory practices at Cheltenham culminated in the transfer of Williams to Home Depot's Willow Grove store in July 1996, allegedly because of his race and in retaliation for Williams' attempt to discipline a white employee who physically assaulted a black subordinate.

Once in Willow Grove, Williams was subject to continued discrimination. He claims he received undeservedly poor performance evaluations which resulted in the denial of a raise in January of 1997. He was offered no explanation of his performance deficiencies, and Home Depot declined to create a "Development Action Plan" for Williams to assist him in improving his alleged poor performance. Additionally, he claims his management performance statistics were wrongfully altered in an attempt to make him look like he inadequately performed his job. In April 1997, Williams was denied promotion to the position of Store Manager. Further, Williams maintains that the practice of giving preferential treatment to white employees with regard to leave existed in Willow Grove as well.

Accordingly, Williams brought suit in this Court on July 17, 1998. Home Depot moves for partial summary judgment, asking this Court to find that the statute of limitations bars

Williams from relief for certain alleged instances of discriminatory conduct occurring before the relevant statutory periods.

## II. DISCUSSION

### A. Summary Judgment Motion Standard

Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson, 477 U.S. at 247-48. The summary judgment standard requires the issue to be genuine, that is, one where a reasonable jury, based on the evidence presented, could return a verdict for the nonmoving party with regard to that issue. See id. In addition, the disputed fact must be "material," meaning it might affect the outcome under the substantive law. See Boyle v. County of Allegheny, 139 F.3d 386, 393 (3d Cir. 1998). When deciding a motion for summary judgment, the Court must draw all inferences in a light most favorable to the nonmoving party without weighing the evidence or questioning the witnesses' credibility. See id. The movant has the burden of demonstrating the absence of a genuine issue of material fact, while the nonmovant must establish the existence of each element for which it bears the burden of proving at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). When an examination of the record as a whole reveals sufficient evidence for a rational trier of fact to return a verdict in favor of the nonmovant, a genuine issue of material fact exists and

summary judgment should be denied. See, e.g., Matsushita Elec. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

**B. Section 1981 Claim**

In Count I of Williams' Amended Complaint, he alleges Home Depot violated § 1981 by discriminating against him on the basis of his race with regard to the performance, modification and termination of his employment contract as well as the terms and conditions of his employment. Home Depot urges the Court to grant partial summary judgment arguing the statute of limitations bars Williams from relief for claims arising before the statutory limitations period. Specifically, Home Depot argues that claims brought pursuant to § 1981 are subject to the applicable state's statute of limitations for personal injury, in this case two years. Therefore, because Williams filed his Complaint on July 17, 1998, Williams' relief under § 1981 is limited to conduct occurring on or after July 17, 1996.

In response, Williams makes two arguments. First, Williams argues that, pursuant to 28 U.S.C. § 1658, the applicable statute of limitations is four years. Alternatively, Williams argues that even if the statute of limitations is two years, he is not barred from recovering for conduct which occurred prior to July 17, 1996 under the continuing violations theory. The Court will address each of these arguments in turn.

**1. Applicable Statute of Limitations**

It is well-settled in the Third Circuit that the statute of limitations for claims arising under § 1981 is borrowed from the relevant state law, in this case, Pennsylvania. See Goodman v. Lukens Steel Co., 482 U.S. 656, 662 (1987); Sminkey v. Southeastern Pa. Transp. Auth., No. CIV. A. 97-1347, 1998 WL 401686, at *2 (E.D. Pa. June 30, 1998). In Pennsylvania, the

applicable statute of limitations is that which governs personal injury actions, barring suits commenced more than two years following the date of the alleged injury. See Goodman, 482 U.S. at 662; Sminkey, 1998 WL 401686, at *2; Jordan v. SmithKline Beecham, Inc., 958 F. Supp. 1012, 1024 (E.D. Pa. 1997), aff'd, 142 F.3d 428 (3d Cir.), and cert. denied, 119 S. Ct. 168 (1997). This Court finds that this is still the case notwithstanding the enactment of § 1658.

Section 1658, enacted December 1, 1990, provides, "Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues." 28 U.S.C. § 1658. Williams argues that because § 1981 was amended by the Civil Rights Act of 1991, it should be deemed to have been enacted in 1991, thereby making § 1658 applicable. More specifically, Williams argues that because the Civil Rights Act of 1991 created new causes of action under § 1981,[2] and because the statute bears the title "An Act of Congress" on its front page, it should be deemed to have been enacted after § 1658 took effect. Home Depot argues that because § 1981 was first enacted in 1870, the four-year statute of limitations is inapplicable.

Only one court in the Third Circuit has specifically addressed this issue, with less than

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[2] Specifically, the Civil Rights Act of 1991 added subsections (b) and (c). See 42 U.S.C. § 1981(b)-(c). Prior to the amendment, § 1981 provided a cause of action for discriminatory hiring practices only. See Patterson v. McLean Credit Union, 491 U.S. 164, 180-81 (1989) (limiting scope of § 1981 to claims of discriminatory hiring and promotion disputes in which "a new and distinct" contractual relationship is at issue), superceded by statute, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071. Subsection (b), however, defined "make and enforce contracts" to include "the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship." 42 U.S.C. § 1981(b). Therefore, the amendments created a cause of action for discriminatory performance, modification and termination of the employment contract as well. See Rivers v. Roadway Express, Inc., 511 U.S. 298, 313 (1994). Subsection (c), an enforcement mechanism, provides, "The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law." 42 U.S.C. § 1981(c).

twenty courts addressing it in total.[3] In Zubi v. AT&T Corp., the United States District Court for the District of New Jersey found as a matter of law that § 1658 does not apply to claims arising under § 1981. See Zubi, 1999 U.S. Dist. LEXIS 4766, at *10. In addressing this issue, the court first noted that whether § 1981 claims are subject to the applicable state statute of limitations or § 1658 depends upon the interpretation of the phrase "an act of Congress enacted after the date of this section." See Zubi, 1999 U.S. Dist. LEXIS 4766, at *3 (citing 28 U.S.C. § 1658). Faced with arguments similar to those the parties instantly make, the Zubi court analyzed the statutory language of § 1658. See id. at *7. The court found the language of § 1658 to be clear and unambiguous; if Congress had intended § 1658 to apply to amendments, it would have stated "an act of Congress enacted or amended after" § 1658 went into effect. Id. at *8;see also Lasley, 35 F. Supp. 2d at 1321 (agreeing that "an Act of Congress enacted after 1990 is entirely distinct from an Act of Congress amended after 1990"); Lane, 13 F. Supp. 2d at 1268-70; Mason, 1998 WL 166562, at *4-5. Further, even if the statutory language were ambiguous, legislative history

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[3] Those courts that have addressed this issue are split as to whether § 1658 applies to § 1981 claims. Approximately half the courts have held that in spite of § 1658's creation of a four-year statute of limitations, § 1981 claims are still governed by the applicable state's statute. See Zubi v. AT&T Corp., Civ. No. 98-3424, 1999 U.S. Dist. LEXIS 4766, at *10 (D.N.J. Apr. 6, 1999); Lasley v. Hershey Foods Corp., 35 F. Supp. 2d 1319, 1322 (D. Kan. 1999); Lane v. Ogden Entertainment, Inc., 13 F. Supp. 2d 1261, 1269 (M.D. Ala. 1998); Mason v. Anadarko Petroleum Corp., No. 97-1051-WEB, 1998 WL 166562, at *5 (D. Kan. Mar. 2, 1998); Jackson v. Motel 6 Multipurposes, Inc., Nos. 96-72-CIV-FTM-17D & 96-115-CIV-FTM-17D, 1997 WL 724429, at *2 (M.D. Fla. Nov. 6, 1997); Chawla v. Emory University, No. CIV. A. 1:95CV0750JOF, 1997 WL 907570, at *14 (N.D. Ga. Feb. 13, 1997); Davis v. State of Ca. Dep't of Corrections, No. CIV. S-93-1307DFLGGH, 1996 WL 271001, at *20 (E.D. Cal. Feb. 23, 1996). The other half have held that § 1658 applies to § 1981 claims. See Miller v. Federal Express Corp., No. 98-2290 D/V, 1999 WL 430583, at *10 (W.D. Tenn. June 24, 1999); Rodgers v. Apple South, Inc., 35 F. Supp. 2d 974, 977 (W.D. Ken. 1999); Stewart v. Coors Brewing Co., No. CIV. A. 97-B-1467, 1998 WL 880462, at *5 (D. Colo. Dec. 14, 1998); Alexander v. Precision Machining, Inc., 990 F. Supp. 1304, 1308 (D. Kan. 1997).

shows Congress did not intend to give § 1658 retroactive effect. See Zubi, 1999 U.S. Dist. LEXIS 4766, at *9-10 (noting Congress rejected suggestion that statute should retroactively apply to prior legislation that lacks limitations period); see also Mason, 1998 WL 166562, at *5 (finding Congress intended § 1658 to apply prospectively only). Therefore, the court held, the appropriate statute of limitations is still that which is borrowed from the state's personal injury law notwithstanding the enactment of § 1658. See Zubi, 1999 U.S. Dist. LEXIS 4766, at *9-10; see also Lasley, 35 F. Supp. 2d at 1321-22 (holding § 1658 inapplicable to § 1981 claims); Lane, 13 F. Supp. 2d at 1268-70 (analyzing § 1658 and concluding state statute of limitations applies to § 1981 claim); Mason, 1998 WL 166562, at *5 (same); Jackson, 1997 WL 724429, at *2 (same).

This Court concurs with the Zubi court's analysis. The plain statutory language and legislative history of § 1658 clearly state that it applies only to laws created after 1990. Further, the legislative history of the Civil Rights Act of 1991 supports this view. The House Report states:

> [U]nder 42 U.S.C. § 1981, which bars intentional race discrimination in employment as well as other contractual relations, victims have a longer period of time to commence suits. In the absence of an express limitations period in section 1981, courts applying the statute have looked to analogous states statutes of limitations. There statutes typically allow two or three years, and allow up to six years in some states. Thus, under current law, women, religious minorities and members of other protected groups must file claims within 180 days while victims of intentional race discrimination may still commence suit under section 1981 long after the expiration of this period.

H.R. Rep. No. 102-40(I), at 63 (1991), reprinted in 1991 U.S.C.C.A.N. 549, 601. This indicates Congress' belief in 1991, after § 1658 was put into effect, that state statutes of limitations would continue to be borrowed for § 1981 claims following the 1991 amendments.

The Court disagrees with those courts that hold § 1658 applies to § 1981 claims.

Essentially, they reason that every act of Congress, including amendments, is an enactment within the meaning of § 1658. See Rodgers, 35 F. Supp. 2d at 976. Such an interpretation, they find, furthers Congress' intent to have § 1658 apply to new causes of action and to create uniformity in the initiation of federal claims. See id.; Miller, 1999 WL 430583, at *10. As discussed above, however, Congress used the word "enacted" and did not use the word "amended." "In short, if Congress had intended for § 1658 to apply to amendments, they could have said so." Lasley, 35 F. Supp. 2d at 1322. In the absence of a congressional statement to that effect, this Court is not inclined, nor is it at liberty, to make such an interpretation. Further, this Court finds that such an interpretation would confound, not promote, Congress' intent. If Congress intended § 1658 to apply to new causes of action, only those claims created by the 1991 amendments would be covered. This, however, would mean there are two statutes of limitations governing § 1981 claims, defeating Congress' goal of uniformity. But, there is no justification for interpreting § 1658 to apply to all § 1981 claims as those originally enacted over 100 years ago can hardly be deemed new causes of action. Further, this is inconsistent with Congress' decision not to make § 1658 apply retroactively. See H.R. Rep. No. 101-734, at 24 (1990).

Accordingly, this Court finds as a matter of law that § 1658 is inapplicable to all claims arising under § 1981. Under Goodman then, this Court holds Pennsylvania's two-year statute of limitations applies to Williams' § 1981 claim.

**2. Applicability of Continuing Violations Theory**

Williams argues in the alternative that even if a two-year statute of limitations applies, his claims are not time-barred under the continuing violations theory. The theory is an equitable

exception to the limitations period set on discrimination claims, allowing a plaintiff to pursue a claim for discriminatory conduct that began prior to the statutory limitations period so long as "he can demonstrate that the act is part of an ongoing practice or pattern of discrimination." West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995). Home Depot argues, however, that in order to utilize the continuing violations theory, it must be clearly asserted in the plaintiff's EEOC charge as well as the complaint.

This is an issue of first impression for this Court, and it has yet to be addressed by the Third Circuit. The United States District Court for the Western District of Pennsylvania dealt with the issue briefly, however, in Hopson v. Dollar Bank, 994 F. Supp. 332, 337-38 (W.D. Pa. 1997). There, the court held that the plaintiff's failure to assert the continuing violations theory in his administrative filing and complaint was "fatal," granting summary judgment to the defendant on that ground. See id. In reaching its decision, the Hopson court cited a number of cases from the Second Circuit, the only circuit to really address this issue. See id. (citing Miller v. International Tel. & Tel. Corp., 755 F.2d 20, 25 (2d Cir. 1985); Brown v. City of New York, 869 F. Supp. 158, 168 (S.D.N.Y. 1994); Watlington v. University of Puerto Rico, 751 F. Supp. 318, 325 (D.P.R. 1990)).

In its analysis of this issue, the Second Circuit generally reasons that a continuing violation must be asserted in the administrative charge and the complaint because that is the only way to extend the scope of an employment discrimination cause of action. In order for the theory to apply, "discriminatory conduct related to time-barred conduct [must] have taken place within the statute of limitations." Harris v. New York Times, No. 90 Civ. 5235 (CSH), 1993 WL 42773, at *10 (S.D.N.Y. Feb. 11, 1993). An allegation of a continuing violation provides the

necessary relatedness. Without such an allegation, there is merely continuity of employment with what may be no more than sporadic instances of discriminatory conduct, and "[m]ere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination." Delaware State College v. Ricks, 449 U.S. 250, 257 (1980); see Miller, 755 F.2d at 24-25; Harris, 1993 WL 42773, at *10.

This Court agrees with the Second Circuit's analysis and therefore adopts its rule. In order to invoke the continuing violations theory in an employment discrimination case, the doctrine must be clearly pled in both the administrative filing and the complaint. As applied to the instant case, upon examination of Williams' EEOC charge and his Amended Complaint, this Court sees no mention of the continuing violations theory. Accordingly, Williams is barred from asserting it here.

**3. Effect on Section 1981 Claim**

This Court holds that the two-year statute of limitations applies to Williams' § 1981 claim and that he is barred from asserting the continuing violations theory. Therefore, Williams is precluded from any relief for alleged violations of § 1981 that occurred prior to July 17, 1996 and Home Depot's motion is granted.[4]

Home Depot argues additionally that the instances of discrimination that allegedly occurred while Williams was employed at the Cheltenham store, including his transfer to Willow

[4] Even though Williams is denied relief for conduct occurring outside the applicable statutory limitations period, he is not precluded from using these instances as evidence in support of his viable claims. See United Air Lines, Inc. v. Evans, 431 U.S. 553, 558 (1977) ("A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed, . . . [but] [i]t may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue . . . .").

Grove, are time-barred because they occurred prior to July 17, 1996. The Court agrees in part and disagrees in part.

As stated above, Williams is barred from relief for all violations of § 1981 occurring prior to July 17, 1996, which includes most of his employment at the Cheltenham store. The Court finds, however, that there is a genuine issue of material fact as to when Williams' transfer to Willow Grove became effective and therefore summary judgment on this issue is inappropriate.

Williams alleges that he was transferred on July 22, 1996, while Home Depot argues the transfer was effective on July 15, 1996. In support of his argument, Williams points to his own affidavit, dated August 12, 1999 and appended to his reply to Home Depot's motion. In the affidavit, Williams states:

> 4. I understand that in this Motion Home Depot contends I was transferred from Cheltenham to Willow Grove "effective July 15, 1996" based on an "Employee Action Notice" with my name at the top and someone's signature on the bottom. This is not true. I was not transferred to Willow Grove on July 15, 1996 nor was I "effectively" transferred on that date.
>
> 5. On Saturday July 20, 1996 I was informed . . . that I was being transferred to Willow Grove effective Monday July 22, 1996. That is why I put July 20, 1996 as the earliest date of discrimination complained of, when I filed my discrimination charge with EEOC in July 1997, while I was still employed with Home Depot. The EEOC Charge is based on the retaliatory transfer from Cheltenham and my punishment at Willow Grove for having tried to protect Terrence Ingram at Cheltenham.

Plaintiff's Affidavit Opposing Defense Motion for Partial Summary Judgment ¶¶ 4-5, at 2. This affidavit, however, contradicts Williams' sworn deposition testimony. At his May 25, 1999 deposition, the parties stated:

> Q: Mr. Williams, I'm going to show you what's been marked for identification as Cedric 17. I want to ask you, at the time when you were transferred from the Cheltenham store to the Willow Grove store, if you

look at box F of that document, that deals with the store transfer 4109 to 4107. Are those the store numbers of Cheltenham and Willow Grove respectively?

A: Yes.

Q: Okay. And then to the right of that, it says, "Effective date of change," 7/15/96. Is that when your transfer to Willow Grove became effective?

A: Yes.

Williams 5/25/99 Deposition at 262-63.

The general rule is that in deciding a motion for summary judgment, the court must take all facts in a light most favorable to the nonmoving party. See Boyle, 139 F.3d at 393. It is well-settled in the Third Circuit, however, that the nonmoving party cannot create a genuine issue of material fact simply by contradicting his own prior deposition testimony. See Martin v. Merrill Dow Pharm., Inc., 851 F.2d 703, 705 (3d Cir. 1988) (affirming district court's holding that no genuine issue of material fact existed where plaintiff contradicted earlier sworn deposition testimony with later affidavit); Maietta v. United Parcel Serv., 749 F. Supp. 1344, 1359 (D.N.J. 1990) ("A party may not create a genuine issue of material fact to prevent summary judgment by submitting an affidavit of a witness which contradicts that witness' prior sworn testimony."), aff'd, 932 F.2d 960 (3d Cir. 1991). The Third Circuit has recognized exceptions to this rule, namely where the witness was confused at the earlier deposition or misspoke. See Martin, 851 F.2d at 705. Additionally, the court must consider whether an explanation was offered in the affidavit for the discrepancy. See id. at 706.

In the present case, there is no evidence that Williams was confused about the subject upon which he was being questioned. Further, he made no attempt to explain why he

contradicted his earlier testimony. He argues instead that the Employee Action Notice upon which Home Depot also relies to support its contention that Williams was transferred July 15, 1999 was irregular, thereby creating a genuine issue of material fact.

Specifically, Williams asserts that he had never seen, nor did he have knowledge of the Employee Action Notice documenting the transfer date as July 15, 1996 prior to his May 25, 1999 deposition. He points to the fact that neither he nor his supervisor signed the form as evidence of its irregularity, claiming company policy normally requires the employee express his assent to the transfer by signing the Employee Action Notice. Absent the appropriate signatures, he claims the document could have been prepared after suit was filed and then backdated.

Home Depot counters that the absence of these signatures is not indicative of anything; the Employee Action Notice documenting Williams' transfer from Home Depot's Orange, Connecticut store to its Bridgeport, Connecticut store bears neither the signature of Williams nor his supervisor. Nevertheless, because the Court must view the facts in a light most favorable to the nonmoving party, Williams has raised a genuine issue of material fact as to this particular issue and Home Depot's motion for partial summary judgment is denied.

**C. Title VII Claim**

In Count III of Williams' Amended Complaint, he alleges Home Depot violated Title VII of the Civil Rights Act of 1964 by subjecting him to a racially hostile and demeaning workplace. Home Depot raises the statute of limitations, arguing that Williams should be precluded from relief for any instances of discriminatory conduct occurring outside of Title VII's statutory limitations period.

The enforcement provision of Title VII requires that an injured party, after filing suit with

the appropriate state or local agency, file a charge with the EEOC within 300 days after the alleged unlawful employment practice occurred. See 42 U.S.C. § 2000e-5(e)(1). This 300-day filing requirement acts as a statute of limitations, barring relief for conduct which occurred outside the statutory period. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385 (3d Cir. 1994); Pittman v. Continental Airlines, Inc., 35 F. Supp. 2d 434, 441 (E.D. Pa. 1999). This requirement is, however, subject to equitable relief, such as the continuing violations doctrine, in the proper circumstances. See Pittman, 35 F. Supp. 2d at 441.

As discussed above, Williams' failure to raise the continuing violations doctrine in his EEOC charge and Complaint precludes him from raising it now. Therefore, this Court holds as a matter of law that because Williams filed his administrative charge on July 22, 1997, he is barred from relief for any discriminatory conduct occurring prior to September 25, 1996, or 300 days prior to the filing of his charge. Home Depot's motion is granted as to this issue.

**D. PHRA Claim**

Count IV of Williams' Amended Complaint alleges Home Depot violated the PHRA, which prohibits discrimination in employment. Home Depot again moves for partial summary judgment based on the statute of limitations, asking the Court to bar Williams from relief for all instances of discriminatory conduct occurring outside of the applicable statutory limitations period.

The PHRA requires that a charge of discrimination be filed within 180 days of the alleged discriminatory act. See 43 Pa. Cons. Stat. Ann. § 959(h). Similar to Title VII claims, this 180-day time requirement acts as a statute of limitations, barring recovery for conduct occurring outside the set time frame. See Hudson v. Pennsylvania Turnpike Comm'n, No. CIV. A. 95-

5786, 1996 WL 668524, at *13 (E.D. Pa. Nov. 14, 1996); Brethwaite v. Cincinnati Milacron Marketing Co., No. CIV. A. 94-3621, 1995 WL 29030, at *2 (E.D. Pa. Jan. 26, 1995); Sendall v. Boeing Helicopters, 827 F. Supp. 325, 330 (E.D. Pa. 1993), aff'd, 22 F.2d 303 (3d Cir. 1994).

Williams filed his charge on July 22, 1997. Therefore, this Court holds as a matter of law that he is barred from relief for discriminatory conduct occurring before January 23, 1997.

## III. CONCLUSION

In sum, the Court grants in part and denies in part Home Depot's Motion for Partial Summary Judgment. More specifically, Williams' § 1981 claim is subject to a two-year statute of limitations. Therefore, all incidences of discrimination occurring before July 17, 1996 are time-barred and Defendant's motion on this issue is granted. Home Depot's motion as to the effective date of Williams' transfer to the Willow Grove store is denied; the Court finds there is a genuine issue of material fact regarding the date of transfer. Home Depot's motion regarding Williams' Title VII claim, however, is granted and the Plaintiff is barred from relief for all discriminatory conduct occurring prior to September 25, 1996, or 300 days before the administrative charge was filed. Finally, Home Depot's motion to bar relief under the PHRA for conduct occurring prior to January 23, 1997, or 180 days before the administrative charge was filed, is also granted.

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

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| CEDRIC WILLIAMS | : | CIVIL ACTION |
| | : | |
| v. | : | |
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| HOME DEPOT, U.S.A., INC. | : | NO. 98-CV-3712 |

**O R D E R**

**AND NOW**, this day of OCTOBER, 1999, in consideration of Defendant Home Depot's Motion for Partial Summary Judgment (Doc. 17), Plaintiff Cedric Williams' response and the multitude of replies thereto, it is ORDERED:

1. The Motion for Partial Summary Judgment as to Williams' 42 U.S.C. § 1981 claim is GRANTED and Plaintiff is therefore barred from relief for conduct occurring prior to July 17, 1996.
2. The Motion for Partial Summary Judgment as to the effective date of Williams' transfer from Cheltenham to Willow Grove is DENIED.
3. The Motion for Partial Summary Judgment as to Williams' Title VII claim is GRANTED and Plaintiff is therefore barred from relief for conduct occurring prior to September 25, 1996.
4. The Motion for Partial Summary Judgment as to Williams' PHRA claim is GRANTED and Plaintiff is therefore barred from relief for conduct occurring prior to January 23, 1997.

BY THE COURT:

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JAMES McGIRR KELLY, J.