

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted February 13, 2025*

Decided February 13, 2025

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 24-2311

SHUKEITHA JACKSON,
Plaintiff-Appellant,

v.

ABBVIE INC.,
Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 23-cv-03747

Mary M. Rowland,
Judge.

ORDER

Five years after AbbVie Inc. fired Shukeitha Jackson, she sued it alleging AbbVie violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–2, and the Civil Rights Act of 1866, *id.* § 1981, based on race discrimination and retaliation. The district court dismissed her suit with prejudice, concluding it was incurably untimely. Because

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Jackson's suit is untimely and she did not preserve arguments that she seeks to raise on appeal, we affirm.

Jackson's claims were dismissed on the pleadings, so we take the facts that she alleges in her complaint as true. *Schimandle v. Dekalb Cnty. Sheriff's Off.*, 114 F.4th 648, 652 (7th Cir. 2024). Throughout the first half of 2018, a coworker harassed Jackson because she was Black. Jackson complained to her supervisor about the mistreatment in May, and AbbVie fired her on July 31, 2018. Believing that AbbVie fired her illegally, two months later Jackson filed charges with the Illinois Department of Human Rights and the Equal Employment Opportunity Commission, alleging racial harassment and unlawful discharge. More than two years later, in 2020, she filed another charge with the Department and EEOC, raising the same claims but adding facts. The EEOC sent her two right-to-sue notices. First, on September 6, 2022, it notified her of her right to sue on her factually enhanced charge from 2020; then, about nine months later, on June 10, 2023, it notified her of her right to sue on her substantively identical charge from 2018 which she had elected to pursue before the Illinois Human Rights Commission. Three days after receiving the latter of the two notices, she filed this suit, alleging that AbbVie violated Title VII and § 1981 when it failed to stop harassment against her and fired her because of her race and complaints.

AbbVie moved to dismiss Jackson's complaint as untimely, citing Federal Rule of Civil Procedure 12(b)(6). (We note that a motion under Rule 12(b)(6) challenges the legal sufficiency of a claim. But an argument like AbbVie's about an affirmative defense like untimeliness does not challenge the legal sufficiency of a claim; instead, it contests the adequacy of the pleadings, which is the subject of Rule 12(c). We therefore analyze this appeal under that Rule. *See Schimandle*, 114 F.4th at 652.) It argued that she filed her Title VII claim late because 90 days had passed since she received her first right-to-sue notice, and her § 1981 claim was also untimely because the four-year limitations period (beginning in July 2018) had already expired when she sued in 2023. Jackson responded that her receipt of the second right-to-sue notice—which she received three days before suing—governed the timeliness of her suit and that the time to sue on her § 1981 claim was tolled while she exhausted her administrative remedies on her Title VII claim. The district court rejected these arguments and dismissed Jackson's complaint with prejudice, concluding that her claims were untimely and that no amendment could cure that deficiency.

Dismissal on the pleadings was correct. Jackson had 90 days after receiving her first right-to-sue notice to file her Title VII claims. *See* 42 U.S.C. § 2000e-5(f)(1).

According to her complaint, she received that right-to-sue notice on September 6, 2022. Because she sued in June 2023, six months past the 90-day deadline, her suit was untimely. And she does not provide support for her previous contention that her receipt of her second right-to-sue notice governed the timeliness of her suit. Although we have not yet addressed this scenario, the other circuits that have reached it have ruled that the receipt of a second right-to-sue notice based on a substantively identical charge that yielded an earlier notice does not extend or restart the statutory 90-day filing deadline. *See Rivera-Diaz v. Humana Ins. of P.R.*, 748 F.3d 387, 391 (1st Cir. 2014); *Soso Liang Lo v. Pan Am. World Airways, Inc.*, 787 F.2d 827, 828 (2d Cir. 1986); *Spears v. Mo. Dep't of Corrs. & Human Res.*, 210 F.3d 850, 853 (8th Cir. 2000); *Brown v. Unified Sch. Dist. 501*, 465 F.3d 1184, 1186 (10th Cir. 2006). Because Jackson does not dispute that her two charges are substantively identical, this principle applies here to time-bar her Title VII claim.

Jackson's § 1981 claim was also untimely. Because AbbVie fired Jackson in 2018 and § 1981 claims have a four-year statute of limitations, *see* 28 U.S.C. § 1658(a), Jackson needed to file her § 1981 suit before 2023, which she did not do. And statutory exhaustion requirements—like those under Title VII—do not apply to § 1981 or toll that statute's time limits. *See Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 464–66 (1975).

Jackson offers two responses on appeal, but neither is persuasive. She first argues that the district court should have given her leave to amend her complaint to include facts supporting equitable tolling of her claim-filing deadlines. It is true that, in pleading a complaint, a plaintiff need not anticipate an affirmative defense like the statute of limitations or attempt to rebut it. *Sabo v. Erickson*, __F.4th __, __, 2025 WL 354484, at *2 (7th Cir. Jan. 31, 2025) (en banc). But “we have repeatedly held that a party opposing a motion in the district court must inform the court of the factual and legal reasons why the motion should not be entered, and if it fails to do so it cannot then raise those arguments on appeal.” *O’Gorman v. City of Chicago*, 777 F.3d 885, 890 (7th Cir. 2015) (citations omitted). Once AbbVie argued in its motion to dismiss that equitable tolling would not extend Jackson's deadlines to sue on her Title VII and § 1981 claims, Jackson had to assert facts and legal reasons to counter AbbVie's position. But she did not. Nor did she ask for leave to amend to assert those facts. It is thus too late to attempt to raise those new facts for the first time on appeal. *See id.* (affirming dismissal of complaint as untimely where plaintiff failed to provide the district court with a reason not to dismiss her complaint including granting him leave to amend).

Similarly, Jackson contends that the district court should not have allowed AbbVie to argue untimeliness as a defense because she asserts, for the first time on appeal, that AbbVie concealed evidence about her claims. This is an argument for equitable estoppel. Again, Jackson had the opportunity to assert facts supporting this equitable-estoppel contention to the district court in her response to AbbVie's motion to dismiss. But she failed to do so, and therefore she may not ask us to address it now. *See Braun v. Vill. of Palatine*, 56 F.4th 542, 553 (7th Cir. 2022).

AFFIRMED