STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BONITA WILLIAMS,

Plaintiff,

v

File No. 02-22350-CL
HON. PHILIP E. RODGERS, JR.

GRAND TRAVERSE PAVILIONS,

Defendant.
/

C. Enrico Schaefer (P43506)
Attorney for Plaintiff

Thomas R. Wurst (P30177)
Elizabeth Welch Lykins (P57303)
Attorneys for Defendant

DECISION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

Plaintiff Terry "Bonita" Williams was employed as a Certified Nursing Aide at the Defendant Grand Traverse Pavilions. As a prospective employee, she had completed an employment application and signed it. The application contained the following provision:

> I agree that any action or suit against the organization arising out of my employment or termination of employment, including but not limited to claims arising under State of Federal civil rights statutes, must be brought within 180 days of the event giving rise to the claims or be forever barred.

The Plaintiff was hired on April 10, 2000 and signed an employment contract. Ultimately she resigned on September 13, 2001. On December 17, 2001, the Plaintiff filed a charge with the Michigan Department of Civil Rights which was ultimately dismissed on September 17, 2002 because she filed this lawsuit. Her Complaint states causes of action for violations of the Elliott Larsen Civil Rights Act, National Origin Discrimination, MCL 37.2101, *et seq*., defamation, and intentional infliction of emotional distress.

The Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). For the reasons stated herein, the Court grants the motion on MCR 2.116(C)(7) grounds and dismisses the Complaint with prejudice.

STANDARD OF REVIEW
MCR 2.116(C)(7)

MCR 2.116(C)(7) sets forth the following grounds for summary disposition:

> The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

In *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (2000), the Court of Appeals said:

> When a motion for summary disposition is premised on MCR 2.116(C)(7), the nonmovant's well-pleaded allegations must be accepted as true and construed in the nonmovant's favor and the motion should not be granted unless no factual development could provide a basis for recovery. *Stabley, supra* at 365; 579 NW2d 374; *Dewey v Tabor*, 226 Mich App 189, 192; 572 NW2d 715 (1997). '[T]he court must consider not only the pleadings, but also any affidavits, depositions, admissions, or documentary evidence that has been filed or submitted by the parties.' *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). If no facts are in dispute, whether the claim is statutorily barred is a question of law. *Dewey, supra* at 192; 572 NW2d 715.

I.

The Defendant claims that the Plaintiff's lawsuit is barred by the shortened statute of limitations set forth in the Plaintiff's employment application. The Plaintiff filed a response to the motion. She claims that her lawsuit is not time barred because her subsequent hire agreement supercedes the employment application, the employment application was an unenforceable adhesion contract, and the 180-day limitations period is unreasonable and unconstitutional.

II.

In *Herweyer v Clark Hwy Services, Inc*, 455 Mich 14; 564 NW2d 857 (1997), our Supreme Court restated the accepted principle that parties may contract for a period of limitation shorter than

the applicable statute of limitation provided that the abbreviated period remains reasonable. The period of limitation "is reasonable if (1) the claimant has sufficient opportunity to investigate and file an action, (2) the time is not so short as to work a practical abrogation of the right of action, and (3) the action is not barred before the loss or damage can be ascertained." *Id* at 20; 564 NW2d 857, citing *Camelot Excavating Co, Inc v St Paul Fire & Marine Ins Co*, 410 Mich 118, 127; 301 NW2d 275 (1981).

In *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234; 625 NW2d 101 (2001), lv den 464 Mich 875; 630 NW2d 624 (2001), the Court of Appeals for the first time addressed the reasonableness of a shortened, 180-day period of limitation in the context of an employment agreement. The Court found that a shortened, 180-day period of limitation in the context of an employment agreement qualified as reasonable. The Court relied upon two federal court cases, applying Michigan law, where the courts found that a six-month period of limitation contained within an employment agreement qualified as reasonable. *Myers v Western-Southern Life Ins Co*, 849 F2d 259, 260 (CA6, 1988) and *Perez v Western-Southern Life Ins Co*, 1987 WL 16355 (ED Mich, 1987). The *Timko* Court agreed with *Myers, supra* at 262, that "no inherent unreasonableness accompanies a six-month period of limitation" and found that "the 180-day period of limitation afforded plaintiff adequate time to investigate and file his age discrimination claim."

The Court further relied upon the fact that both Michigan law and federal law provide for six-month or even shorter periods of limitation in the context of various employment actions, citing MCL § 423.216(a); MSA 17.455(16)(a) ["No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission. . . ."]; MCL 15.363(1); MSA 17.428(3)(1) ["A person who alleges a violation of th[e Whistleblowers' Protection A]ct may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act."]; and 29 USC 160(b) ("[N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board. . . .") Furthermore, the Court relied upon the fact that both Michigan and federal law apply six-month periods of limitation even where an employee's civil rights are involved, citing 1999 AC, R 37.4(6) (requiring that a complaint to Michigan's Civil Rights Commission "shall be filed within 180 days from the date of the occurrence of the alleged discrimination, or within 180 days of the date when the occurrence of the alleged discrimination was

or should have been discovered"); and 42 USC 2000e-5(e)(1) ("A charge [of an unlawful employment practice] under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred. . . . ")

In conclusion, the Court said:

> The instant record reveals no explanation why the 180-day period of limitation at issue did not provide plaintiff a sufficient opportunity to investigate and to file this action within the abbreviated period, and no indication exists that the 180-day period effectively abrogated plaintiff's right to bring his age discrimination claims. Moreover, we find the approximate six-month period of limitation wholly adequate to permit plaintiff to ascertain any alleged discrimination that may have occurred during the approximate five-and-one-half-month term of plaintiff's employment with defendant. Because the 180-day period of limitation does not constitute an inherently unreasonable amount of time and because plaintiff failed to otherwise demonstrate that the shortened period unfairly deprived him of the opportunity to file his instant claims, we conclude that the 180-day period qualifies as reasonable. *Camelot, supra; Myers, supra.*

In *Timko*, the Court specifically rejected the plaintiff's argument that the 180-day period of limitation cannot be enforced because defendant is "attempting to enforce the provisions contained in the employment application as if it is a contract, a contract where the Defendants have absolutely no obligation," saying:

> The enforceability of a contract depends, however, on consideration and not mutuality of obligation. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 600; 292 NW2d 880 (1980); 1 Restatement Contracts, 2d, § 79, p 200. This Court previously has recognized that the terms of an employment application constituted part of an employee's and employer's contract of employment. *Butzer v Camelot Hall Convalescent Centre, Inc*, 183 Mich App 194, 200; 454 NW2d 122 (1989); *Eliel v Sears, Roebuck & Co*, 150 Mich App 137, 140; 387 NW2d 842 (1985). Here, defendant clearly provided plaintiff consideration to support enforcement of the terms of the application, specifically employment and wages. 1 Restatement Contracts, 2d, § 71, p 172 (consideration may constitute a return promise or a performance, including an act, a forbearance, or 'the creation, modification, or destruction of a legal relation'); Black's Law Dictionary (7th ed), p 300 (defining consideration as '[s]omething of value [such as an act, a forbearance, or a return promise] received by a promisor from a promisee').

The Court also specifically rejected plaintiff's argument that the parties' employment contract constitutes an unenforceable adhesion contract, saying:

> [B]ecause we have found the 180-day period of limitation reasonable, plaintiff's adhesion contract argument must fail. *Rembert v Ryan's Family Steak Houses, Inc*,

> 235 Mich App 118, 157; 596 NW2d 208 (1999) ('Courts will not invalidate contracts as adhesion contracts where the challenged provision is reasonable.'). [*Timko* at 245].

III.

This Court is required to follow the published decisions of the Court of Appeals unless overruled by our Supreme Court, *In re Hague*, 412 Mich 532, 552; 315 NW2d 524 (1982), or unless the published decision's precedential value is destroyed by the release of a published conflicting opinion after November 1, 1990, the date Administrative Order No. 1990-6 became effective. Thus, this Court is bound by *Timko*. Given the undisputed facts that establish Plaintiff's assent to a reasonable 180-day period of limitation regarding employment-related claims (the signed Employment Application), the Defendant is entitled to summary disposition of Plaintiff's complaint, which was filed almost 12 months after Plaintiff quit her job.

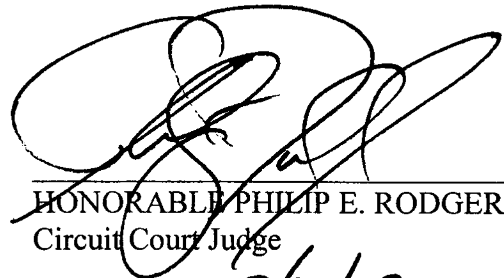
CONCLUSION

In accordance with the authorities cited herein, the Defendant's motion for summary disposition is granted. This action is dismissed with prejudice.

The Defendant may tax costs. The Defendant shall submit a taxed bill of costs, with supporting affidavit, within 14 days of the date of this decision and order, or its right to recover costs shall be considered abandoned. The Plaintiff shall file any objections to the bill of costs within 21 days of the date of this decision and order. The Court will then decide whether to schedule a hearing or dispense with oral argument.

IT IS SO ORDERED.

This decision and order resolves the last pending claim and closes the case.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 2/21/03