

proper defendant under the relation-back provision of Federal Rule of Civil Procedure 15(c).

The defendants have now moved to dismiss the Amended Complaint solely as to Daugherty on the ground that as to this defendant the requirements of Rule 15(c) are not met and thus, McKnight's claim as to Daugherty is time-barred by the applicable statute of limitations.¹

Under the circumstances of this case, McKnight must meet the relation back requirements of Federal Rule of Civil Procedure 15(c) in order to save the Amended Complaint from being time barred under 42 U.S.C.A. § 2000e-5(f)(1) (West 2003). For an amendment changing a party against whom a claim is asserted to relate back to the original date the complaint was filed, the amending party must show that (1) the claim or defense asserted in the amended complaint arose out of the same conduct, transaction, or occurrence set forth in the original pleading; (2) the party to be brought in by amendment has received adequate notice of the action and will not be prejudiced in defending the merits; and (3) the party to be brought in by amendment knew or should have known that the action would be brought against it, but for a mistake concerning the proper party's identity. Fed. R. Civ. P. 15(c)(1); *see Goodman v. Praxair, Inc.*, 494 F.3d 458, 467 (4th Cir. 2007).

¹ McKnight has filed no response to the Motion to Dismiss.

It is argued that McKnight has failed to meet the third condition under Rule 15(c) with respect to her effort to add Daugherty as a new defendant. Any reasonable individual in Daugherty's position, it is claimed, would not have anticipated being sued individually for an employment discrimination claim by a person whom he never employed. The Fourth Circuit has expressly held that individuals simply acting as employer agents are not liable under the ADEA. *Birkbeck v. Marvel Lighting Corp.*, 30 F.3d 507, 510-11 (4th Cir. 1994). Thus, Daugherty asserts that he had no basis to believe he would ever individually be sued by a Ridgecrest Health Group employee for alleged age discrimination.

I agree. McKnight has not alleged any facts showing that she was employed by Daugherty, and Ridgecrest Health Group has admitted that it was McKnight's actual employer. (Def.'s Answer to Am. Compl. ¶ 5.) Thus, Daugherty would not reasonably believe that he was the proper party defendant. Because McKnight has failed to meet each required element articulated in Rule 15(c), McKnight's claim is time-barred as it pertains to Daugherty and dismissal of Daugherty from this action is appropriate.

Accordingly, the defendants' Motion to Dismiss (ECF No. 11) is GRANTED as to defendant Daugherty and he is dismissed as a party hereto.

It is so **ORDERED**.

ENTER: June 14, 2012

/s/ James P. Jones
United States District Judge