

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CHARLENE S. SMITH,	:	
	:	
Plaintiff,	:	NO. 3:05cv1149 (MRK)
	:	
v.	:	
	:	
CINGULAR WIRELESS,	:	
	:	
Defendant.	:	

RULING AND ORDER

Before the Court is Defendant's Motion to Dismiss [doc. #35]. Defendant argues that Counts Three through Nine of Plaintiff's Second Amended Complaint [doc. #31] are barred by the applicable statutes of limitations. In those counts, Plaintiff asserts various state law claims and a 42 U.S.C. § 1981 claim arising out of Plaintiff's employment with Defendant between August 30, 1999, and October 25, 2001. Second Amended Complaint [doc. # 31] ¶¶ 42-70.¹ As Defendant points out, the relevant statute of limitations for each of the claims in question is either two years or three years. Brief in Support of Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) [doc. # 36] at 3-6. Because Plaintiff's employment with Defendant ended on October 25, 2001, the relevant statute of limitations on each of Plaintiff's claims expired, at the very latest, by October 2003 (in the case of a two-year limitation period) or October 2004 (in the case of a three-year period), well before Plaintiff filed this action on July 18, 2005. *Id.*

Plaintiff does not dispute that her claims are time barred, but instead argues that Defendant

¹ The counts in question are as follows: Count Three, Negligent Supervision; Count Four, Wrongful Discharge; Count Five, Negligent Infliction of Emotional Distress; Count Six, Negligence; Count Seven, Intentional Infliction of Emotional Distress; Count Eight, Recklessness; and Count Nine, 42 U.S.C. § 1981.

may not raise a statute of limitations defect on a motion to dismiss. Citing several state-court decisions, Plaintiff argues that "Statute of Limitations arguments must be raised by way of Answer or Summary Judgment Motion." Memorandum of Law in Opposition to Defendant's Motion to Dismiss [doc. #37] at 4. However, this action is pending in federal, not state, court, and therefore federal procedural rules govern. Under the federal rules, a federal court may entertain a statute of limitations argument in a motion to dismiss. *See* 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1360, at 78 (3d ed. 2004) (noting that federal courts have "permit[ted] affirmative defenses, such as . . . statute of limitations, to be raised by a motion to dismiss for failure to state a claim under Rule 12(b)(6)"); *see, e.g., Dontigney v. Paramount Pictures Corp.*, 411 F. Supp. 2d 89, 91-92 (D. Conn. 2006) (dismissing plaintiff's claims under Rule 12(b) because they were barred by state-law statutes of limitations); *Barile v. City of Hartford*, 386 F. Supp. 2d 53, 55 (D. Conn. 2005) (same). Because Counts Three through Nine are time barred on the face of Plaintiff's complaint, Defendant's Motion to Dismiss [doc. #35] is GRANTED, and those counts are hereby dismissed.

IT IS SO ORDERED,

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: April 10, 2006.