

STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS

RECEIVED BY  
DATE 2/18/22  
TIME 9:20 AM  
OFFICE OF  
PUBLIC HEARINGS - CHRO

Commission on Human Rights and  
Opportunities, ex rel. Michelle Gallant o/b/o  
Bryce Gallant, a minor

CHRO No. 1830431

v.

February 18, 2022

Torrada Associates LLC

Ruling re: the respondent's motion to dismiss  
and  
Order re: telephonic status conference

I

Procedural history and summary of ruling

On February 21, 2018, Michelle Gallant, on behalf of her minor child, filed an affidavit of illegal discriminatory conduct (affidavit) with the Commission on Human Rights and Opportunities (commission). In her affidavit, she alleged that the respondent, Torrada Associates LLC dba Advanced Medical Imaging (Torrada), violated General Statutes § 46-64. According to Ms. Gallant, Torrada denied her son, Bryce, medical services in retaliation for the child's father, Joseph Gallant, having previously filed with the commission an affidavit of illegal discriminatory conduct against Torrada. On May 18, 2020, Ms. Gallant filed an amendment to the affidavit (amendment) alleging that Torrada had violated General Statutes §§ 46a-58a [sic], 46a-60 (b) (4) and 46-64a [sic].

On September 28, 2020, Torrada filed a motion to dismiss (motion). In its motion, Torrada argues that this tribunal lacks subject matter jurisdiction. According to Torrada, Ms. Gallant does not have standing as (1) Bryce is not one of the enumerated protected classes listed in the statutes and (2) the amendment was untimely filed. Further, Torrada argues the affidavit should be

dismissed as it fails to state a cause of action. The commission filed its objection to the motion on November 17, 2020 and Torrad filed its reply on December 22, 2020.

For the reasons set forth herein, the motion is granted in part and denied in part. The motion is granted as to § 46a-58, which is hereby dismissed. The motion is denied as to §§ 46a-46a-60 (b) (4) and 46a-64. The matter shall proceed on the issue of whether Torrad violated §§ 46-60 (b) (4) and 46a-64 by refusing to provide medical services to Bryce Gallant in retaliation for his father's filing of an affidavit of illegal discriminatory employment conduct against Torrad.

## II

### Standard

Section 46a-54-88a (d) (1) and (d) (2) of the Regulations of Connecticut State Agencies authorizes the presiding referee to dismiss a complaint for, among other reasons, lack of subject matter jurisdiction and for failure to state a legally cognizable cause of action.<sup>1</sup>

"Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it." *Sousa v. Sousa*, 322 Conn. 757, 770 (2016). "Jurisdiction of the subject-matter is the power (of the court) to hear and determine cases of the general class to which the proceedings in question belong. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it." (Citations omitted; internal quotation marks omitted.) *Henry F. Raab Connecticut, Inc. v. J.W. Fisher Co.*, 183 Conn. 108, 111-12 (1981). "When the subject matter jurisdiction of the adjudicatory body is challenged, cognizance of it must be taken and the matter passed on before it can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction. . . . The issue is not

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<sup>1</sup> Section 46a-54-88a (d) of the Regulations of Connecticut State Agencies, in relevant part, provides that: "The presiding officer may, on his or her own or upon motion by a party, dismiss a complaint or a portion thereof if the complainant or the commission: (1) Fails to establish jurisdiction [or] (2) Fails to state a claim for which relief can be granted . . . ."

whether a [complainant] will ultimately prevail but whether the [complainant] is entitled to offer evidence to support the claims." (Citations omitted; internal quotation marks omitted.) *Horn v. Dept. of Correction*, 2012 WL 1576049, 1 (OPH/WBR No. 2011-156) (March 27, 2012) (Ruling on motion to dismiss).

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action, "essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the [tribunal]." (Citation omitted; internal quotation marks omitted.) *Caruso v. City of Bridgeport*, 285 Conn 618, 627 (2008). "In deciding a motion to dismiss that challenges the court's jurisdiction, the court must take the facts alleged in the complaint, including facts necessarily implied from the allegations, and construe them in the light most favorable to the pleader. . . . Moreover, every presumption favoring jurisdiction should be indulged. (Citations omitted; internal quotations omitted.) *Kelly v. Albertsen*, 114 Conn. App. 600, 605-606 (2009).

A similarly deferential standard applies where the legal sufficiency of a complaint is challenged on a motion to dismiss, or strike, a claim for failure to state a cause of action. In determining the legal sufficiency of the complaint, all well-pleaded facts, and those facts necessarily implied from the allegations, are deemed to be admitted and they must be construed most favorably to the complainant and to sustaining legal sufficiency. "Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." *Violano v. Fernandez*, 280 Conn. 310, 318 (2006).

III

Discussion

General Statutes § 46a-58

In her amendment, Ms. Gallant alleges that Torrad violated General Statutes § 46a-58a.

Presumably, this is a reference to § 46a-58 (a) which provides that:

It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran.

In this case, there is no allegation that Bryce was denied services because of his religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran. The affidavit and amendment clearly allege that the denial of services was the result of retaliation and that Bryce's protected status is "based upon his association with my husband and his prior CHRO complaint." Affidavit, ¶ 12. See also Affidavit, ¶ 9 and Amendment, ¶ 2. As retaliation is not an enumerated basis in § 46a-58 (a) and as no other state or federal laws are identified that would be applicable to a §46a-58 (a) claim, the motion to dismiss is granted as to § 46a-58 (a).

General Statutes §§ 46a-60 (b) (4) and 46a-64

In her affidavit and amendment, Ms. Gallant alleges that Torrad violated General Statutes §§ 46a-60 (4) and 46a-64. Section 46a-60 (b) provides in part that: "It shall be a discriminatory practice in violation of this section . . . (4) For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84". The protected class listed in § 46a-64 are race, creed, color, national origin, ancestry, sex,

gender identity or expression, marital status, age, lawful source of income, intellectual disability, mental disability, physical disability, mothers breastfeeding their children, and persons using guide dogs.

Torrant argues that this claim should be dismissed because Ms. Gallant did not allege that Bryce is in one of the protected classes delineated in §§ 46a-60 or 46a-64. Bryce's claim, however, is not based on whether he falls within those enumerated classes. The affidavit and amendment clearly allege the denial of services was the result of retaliation and that Bryce's protected status is "because of his association with his father, Joseph Gallant, who filed a previous CHRO employment discrimination claim against Respondent in 2006." Amendment, ¶ 2. ("Respondent is illegally retaliating against my minor child for the above referenced CHRO complaint filed by my husband." Affidavit, ¶ 9; "I charge respondent with illegal discrimination and retaliation in denying services to my minor child based upon his association with my husband and his prior CHRO complaint." Affidavit, ¶12.) The question, then, is whether §§ 46a-60 (b) (4) and 46a-64 provide a cause of action for associational discrimination. This tribunal concludes that they do.

"Although we are not bound by federal interpretation of Title VII provisions, '[w]e have often looked to federal employment discrimination law for guidance in enforcing our own antidiscrimination statute.' *Department of Health Services v. Commission on Human Rights & Opportunities*, 198 Conn 479, 489, 503 A.2d 1151 (1986)." *State v. Commission on Human Rights & Opportunities*. 211 Conn. 464, 470, 559 A.2d 1120 (1989). The Second Circuit Court of Appeals has found a cause of action for associational discrimination at least twice, once in a matter involving an alleged violation of Title VII (*Holcomb v Iona College*, 521 F.3d 130 (2nd Cir. 2008) and once in a matter involving the federal Rehabilitation Act (*Loeffler v Staten Island University Hospital*, 582 F.3d 268 (2nd Cir. 2009).

"Most often, retaliation is a distinct and independent act of discrimination, motivated by a discrete intention to punish a person who has rocked the boat by complaining about an unlawful employment practice." (Citation omitted.) *Jackson v. Water Pollution Control Authority*, 278 Conn. 692, 708, 900 A.2d 498 (2006). Clearly, if a respondent was allowed to deny services to a family member as punishment for an employee having filed an affidavit of unlawful employment practice, such retaliatory action would likely dissuade a reasonable person from making or supporting a charge of discrimination, *Burlington Northern & Santa Fe Railway Co. v. White*, 126 U.S. 2405, 2415 (2006), and have a chilling effect on the filing of complaints alleging unlawful employment practices.

Torrada argues that to extend §46a-60 (b) (4) protections against retaliation to non-employees "would create the absurd and unworkable result that a medical provider must provide medical services in perpetuity to any and every relative of a former or current employee of the practice simply because the employee at one time filed a claim with the CHRO (no matter the merit of the claim)." (Motion, 7). Not so. A medical provider may deny services, but not for prohibited discriminatory reasons, one of which is in retaliation against family members for their association with an employee who had filed a claim.

#### Timeliness

Torrada contends that the §46a-60 (a) (4) claim is untimely because it was not raised until the amendment, which was filed more than 180 days after Torrada declined to treat Bryce. While the § 46a-60 (b) (4) box may not have been checked off until after 180 days had transpired, the affidavit itself, which was timely filed, clearly and unequivocally alleges that Torrada "is illegally retaliating against my minor child for the above-referenced CHRO complaint filed by my husband", Affidavit ¶ 9, and is being charged "with illegal discrimination and retaliation [for] denying services to my minor child based upon his association with my husband and his prior CHRO complaint"

Affidavit, ¶12. Torrad was clearly, and timely, placed on notice that this was a retaliation claim arising from Joseph Gallant's prior filing with CHRO of an affidavit of illegal discriminatory conduct by Torrad

Failure to state a cause of action

Torrad also argues that the affidavit should be dismissed because it fails to state a claim for which relief may be granted. As discussed earlier, this tribunal is recognizing associational discrimination. Therefore, the affidavit and amendment do state a claim for which relief can be granted.

IV

Telephonic status conference

A telephonic status conference will be held on March 4, 2022 at 1:00 PM. The purposes of the conference include discussion of issues related to the production of documents and the status of the case, as well as the scheduling of dates for pre-public hearing matters. The parties are instructed to call 1-866-741-9936 and enter participant code 7022515 at the scheduled date and time.

*/s/ Jon P. FitzGerald*  
Hon. Jon P. FitzGerald  
Presiding Human Rights Referee