State of Connecticut
Commission on Human Rights and Opportunities
Office of Public Hearings

Commission on Human Rights and Opportunities ex rel. Cindy Saraceno, Complainant

CHRO No. 1130445

v.

Midstate Medical Center, Respondent

March 4, 2016

Ruling on Motion to Strike

Background and Procedural History

On April 26, 2011, the complainant, Cindy Saraceno, who was pro se at the time,[1] filed an Affidavit of Illegal Discriminatory Practice (the complaint) with the Connecticut Commission on Human Rights and Opportunities (CHRO) against Midstate Medical Center (respondent) alleging that the respondent discriminated against her when it terminated her employment on October 25, 2010 because of her "medical/mental disorder and use of approved FMLA"[2] in violation of the Connecticut Fair Employment Practices Act, General Statutes § 46a-60 (a) (1) (CFEPA), and the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq., as enforced through General Statutes § 46a-58 (a). The respondent filed a motion to strike the complaint, along with a supporting memorandum of law on November 2, 2015. The CHRO filed an objection on November 30, 2015.

Parties' Arguments

The respondent moved to strike the complaint on the ground that, even assuming the allegations in the complaint are true, the facts pleaded do not establish that the complainant suffered from a mental disability at the time of her termination, and therefore the complaint fails to state a claim for mental disability discrimination.

The CHRO opposes the motion to strike essentially on the grounds that the pleading requirements for a CHRO complaint are different from the more formal requirements of a complaint in court; and that the allegations of the complaint, namely, that the complainant was terminated shortly after she returned

[1] On June 7, 2012, after the complaint was filed, Attorney Fredrick M. Vollano entered an appearance on behalf of the complainant. Thereafter and while this action was pending, Attorney Vollano died and the complainant is again appearing pro se. CHRO's Objection to Respondent's Motion to Strike Complaint, footnote 1.

[2] An additional claim in the complaint, ¶ 11, asserting a pregnancy discrimination claim based on complainant's belief that she was terminated due to her "intended pregnancy", in violation of the General Statutes §§ 46a-60 (a) (7), has been abandoned. Respondent's Memorandum of Law in Support of Motion to Strike Complaint, footnote 1.

to work from taking a medical leave for "anxiety and stress related issues" and time off for her wedding and honeymoon, are sufficient to support a cause of action.

Motion to Strike Standard

A motion to strike challenges the legal sufficiency of the allegations of the complaint to state a claim upon which relief can be granted; *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498 (2003); *Doe* v. *Yale University*, 252 Conn. 641, 667 (2000); *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580 (1997); See, Practice Book § 10-39; and is tested by the facts provable under the allegations of the pleading to which the motion to strike is addressed. *Liljedahl Bros., Inc.,* v. *Grigsby,* 215 Conn. 345, 348 (1990); *Fraser* v. *Henninger*, 173 Conn. 52, 60 (1977).

"If facts provable in the complaint would support a cause of action, the motion to strike must be denied .... It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted .... Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically .... (Citations omitted; internal quotation marks omitted.) *Violano* v. *Fernandez*, 280 Conn. 310, 318 (2006). "A claim for relief may be stricken only if the relief sought cannot be legally awarded." *Rich* v. *Foye*, 51 Conn. Supp. 11, 16 (2007). "If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action ... the complaint is not vulnerable to a motion to strike." *Bouchard* v. *People's Bank,* 219 Conn. 465, 471-472 (1991); *Friedman* v. *Liberty Mutual Ins. Co.*, Superior Court, judicial district of Fairfield, Docket No. FBT CV 09 5029084 S (May 6, 2010) (2010 WL 2365449).

"The judicial policy preference to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his day in court is equally applicable in administrative proceedings as it is in court proceedings." *Kisala* v. *Malecky,* Superior Court, judicial district of New Britain, Docket No. HHBCV 13 5015760S (October 7, 2013) (56 Conn. L. Rptr. 902).

Under the rules governing these proceedings, § 46a-54-88a (d) (2) of the Regulations of Connecticut State Agencies sets out the general provisions to test the legal sufficiency of a pleading and permits a motion to dismiss for failure of the complaint to state a claim upon which relief can be granted. It provides in relevant part: "The presiding officer may, on his or her own or upon motion of a party, dismiss a complaint or a portion thereof if the complainant or the commission: ... (2) Fails to state a claim for which relief can be granted." Section 46a-54-88a (d) (2) mirrors, and is the functional equivalent of, Practice Book § 10-39.

Analysis

The complainant alleges that the respondent violated the CFEPA and the ADA, as enforced through General Statutes Section 46a-58 (a),[3] when it discriminated against her because of her medical/mental disability.

[3] To the extent that the substantive provisions of the ADA are enforceable in this forum, it is through General Statutes § 46a-58 (a), which, at the time of the action in question, provided: "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 ... color,

Under Connecticut law, it is a discriminatory practice in violation of General Statutes § 46-60 (a) (1) "[f]or an employer ... except in the case of a bona fide occupational qualification or need ... to bar or discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of ... present or past history of mental disability." "Mental disability," as defined in General Statutes § 46a-51 (20), "refers to an individual who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's 'Diagnostic and Statistical Manual of Mental Disorders'."

Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq., proscribes discrimination against individuals with disabilities in employment and hiring. Specifically, at 42 U.S.C. § 12112 (a), the ADA prohibits an employer from discriminating against "a qualified individual with a disability because of the disability of such individual in regard to the ... discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment." A disability is defined in 42 U.S.C. § 12102 (1) (A) as a "physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment ..." The ability to work is a major life activity. 42 U.S.C. § 12102 (2) (A); 29 C.F.R. § 1630.2 (i).[4]

In support of its motion, the respondent argues that the allegations in the complaint are not legally sufficient to support a cause of action because the complainant has failed to properly allege a required element of her prima facie case for mental disability discrimination, specifically, that she suffered from a mental disability as defined in the CFEPA and the ADA. And, therefore, focusing on the facts alleged and their adequacy, the complainant's condition does not reach the level of a mental disability which would entitle her to relief.

A review of the present complaint reveals that the complainant has charged the respondent with disability discrimination against her because of her "medical/mental disorder and use of approved FMLA" when it terminated her employment. Complaint, cover sheet and ¶ 11. Factually, she alleged that on September 24, 2010, she took a one-week medical leave of absence from work prior to her wedding for "anxiety and stress related issues"; Complaint, ¶ 8; that she returned to work on October 23, 2010, after taking time off for her wedding and honeymoon; Complaint, ¶ 9; and that on October 25, 2010, soon after she returned to work, she was terminated; Complaint, ¶ 10. She also alleged that the respondent treated her differently than non-disabled employees; Complaint, ¶ 7; and that she had a good track record of work performance. Complaint, ¶¶ 5 and 10.

---

race ... or physical disability." Section 46a-58 (a) was amended to add mental disability as a protected class during a special session in June, 2015; See Public Acts, Spec. Sess., June, 2015, No. 15-5, § 73 (Effective October 1, 2015).

[4] The term "major life activities" includes "caring for oneself, performing manual tasks.... and working." 42 U.S.C. § 12102 (2) (A); 29 C.F.R. § 1630.2 (i).

The pleading requirements for an administrative complaint to the Commission on Human Rights and Opportunities, as set forth at Section 46a-82 (a) of the General Statutes[5] and the corresponding regulation; Regs., Conn. State Agencies § 54-35a;[6] are more liberal than the rules for our Superior Court require. *Commission on Human Rights & Opportunities* v. *Board of Education of Cheshire,* 270 Conn. 665, 705-706 (2003). As the court in that case stated: "A complaint to the commission simply triggers the commission's evaluative, investigative and adjudicative functions. Thus, the formal requirements of pleading in civil actions filed in court do not apply to complaints filed with the commission. Indeed, as we have noted, the complainant need not have, and often will not have, an attorney, as was the case here." Id.

"'It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted." *Violano* v. *Fernandez,* supra, 280 Conn. 318. In appraising the sufficiency of a complaint, this tribunal follows the accepted rule that "the purpose of a motion to strike is to challenge the adequacy of the pleadings, not to speculate about the adequacy of potential evidence that may be presented at trial." *Samson* v. *CT State Police,* OPH/WBR No. 2010-134, 2 (Ruling on Motion to Strike) (June 28, 2010) (Fitzgerald) (2010 WL 2674861). In other words, an action should not be dismissed for failure to state a claim unless it appears that the claimant can prove no set of facts that would entitle her to relief under the direct or inferential allegations in the complaint. "Where the legal grounds for such a motion are dependent upon underlying facts not alleged in the plaintiff's pleadings, the defendant must await the evidence which may be adduced at trial, and the motion should be denied." *Liljedahl Bros., Inc.,* v. *Grigsby,* supra, 215 Conn. 348.

The complaint in the present case may be inartful. But the facts alleged, and those which may be taken as necessarily implied, when viewed as an effort by a pro se litigant to provide a basis for a disability discrimination claim, disclose the bare essentials to state a claim for which relief can be granted and are sufficient to apprise the opposing party of what is meant to be proved. The complaint contains a short and plain statement of the matters asserted including the issues presented, describes generally the action or practices complained of, and, therefore, is in accordance with the baseline pleading standards set forth in General Statutes General Statutes § 46a-82 (a) and in § 46a-54-35a of the regulations.

Ultimately, the complainant must prove that, among other things, she is within the protected class of individuals with a mental disability. The determination of whether the complainant was mentally disabled or perceived to have a mental disability within meaning of the relevant state and federal

---

[5] General Statutes § 46a-82 (a) provides in pertinent part: "The complaint shall state the name and address of the person alleged to have committed the discriminatory practice, provide a short and plain statement of the allegations upon which the claim is based and contain such other information as may be required by the commission...."

[6] Section 46a-54-35a (3) of the Regulations of Connecticut State Agencies, similarly requires the complaint to contain "[a] plain and concise statement of the facts, including any pertinent dates, constituting the alleged discriminatory practices." In addition, section 46a-54-35a (b) provides that "[a] timely filed complaint under oath is sufficient when the commission receives from the person making the complaint a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of which have occurred, are occurring or are about to occur and when."

definitions of disabled individuals involves a fact-specific, individualized inquiry. *Curcio* v. *Bridgeport Board of Education*, 477 F. Supp. 2d 515, 519 (D. Conn. 2007); *Eaddy* v. *Bridgeport*, 156 Conn App. 597, 604 (2014). Whether the complainant can establish a prima facie case and prove discrimination is an evidentiary matter for the public hearing.

Construing the complaint broadly and in the manner most favorable to sustaining its legal sufficiency; taking as true the allegations of the complaint and underlying facts not specifically alleged; and giving a pro se complainant the utmost leniency and full benefit of the doubt; it is not beyond doubt that the claimant could not prove a set of facts in support of her claim. While expressing no opinion on the ultimate merits of the complainant's claim, I conclude that the complainant has alleged sufficient facts to survive a motion to strike.

Accordingly, the respondent's motion is DENIED.

It is so ordered this 4th day of March, 2016.

Elissa T. Wright

Elissa T. Wright
Presiding Human Rights Referee

cc.
Kimberly Jacobsen, Esq. – via email only
Frederick M. Vollono, Esq. – via email only
Peter J. Murphy, Esq. – via email only