DOCKET NO. HHD-CV 18-6090687

CATHERINE M. KOEHLER

v.

SOUTHERN CONN. ST. UNIVERSITY

SUPERIOR COURT

JUDICIAL DISTRICT

OF HARTFORD

FEBRUARY 26, 2019

MEMORANDUM OF DECISION RE: MOTION TO DISMISS (# 102)

The plaintiff, Catherine M. Koehler, alleges the following facts in her complaint: The plaintiff was employed by the defendant, Southern Connecticut State University, as a full-time, tenure track science education faculty member. At all times relevant to the present action, the defendant was aware that the plaintiff was forty years old or older. During the academic year of 2012-2013, the defendant hired the plaintiff as a tenure track assistant professor. The defendant issued the plaintiff successive annual renewals for the next three years. During the fourth annual renewal process, the defendant denied the plaintiff's application for a fifth academic year of employment on May 17, 2016. Following the denial, the plaintiff accepted a final annual appointment that expired on May 31, 2017 which also ended the plaintiff's employment.

The defendant employed Steve Breese as the dean of the School of Arts and Sciences. Breese recommended that the plaintiff not be renewed after performing the evaluation that determined whether the plaintiff should be contractually renewed. The defendant adopted Breese's nonrenewal recommendation. Article 4.11.9 of American Association of University Professors' labor agreement (AAUP labor agreement) sets forth the criterion for recommending full-time teaching. The plaintiff alleges that Breese failed to utilize, follow, and comply with the criterion set forth in the AAUP labor agreement by using at least one extra-contractual criterion when he evaluated the plaintiff, which violated the collective bargaining agreement.

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A union grievance was filed in connection with the defendant's decision not to renew the plaintiff's contract. An arbitration committee rendered an opinion and award on the plaintiff's grievance of the nonrenewal on March 6, 2017. The arbitration committee ordered the defendant to engage in a contractually compliant process in evaluating the plaintiff for reappointment. On March 14, 2017, the defendant notified the plaintiff that her renewal was denied, after Breese conducted the reappointment evaluation and recommended that the plaintiff not be renewed.

On March 16, 2017, the plaintiff filed a complaint against the defendant with the Connecticut Commission on Human Rights and Opportunities (CHRO) asserting claims of age and gender discrimination. On June 15, 2017, the plaintiff filed a second complaint against the defendant with the CHRO. On December 6, 2017, the plaintiff received a release of jurisdiction from the CHRO.

On March 8, 2018, the plaintiff filed a two count complaint against the defendant alleging age discrimination and retaliation in violation of the Connecticut Fair Employment Practices Act (CFEPA), General Statutes § 46a-60. In its prayer for relief, the plaintiff seeks appropriate damages that include compensatory damages, damages for back pay, front pay, prejudgment interest, postjudgment interest, and an injunction requiring removal of any and all adverse information contained in the plaintiff's personal file.

On June 4, 2018, the defendant filed a motion to dismiss on the ground that the court lacks jurisdiction for the claims found in both counts one and two because: (1) sovereign immunity bars the claims for injunctive relief, interest, and consequential damages, (2) the complaint and summons fail to name an individual defendant in his or her official capacity as required for a claim of injunctive relief and there is no jurisdiction for such an action against a

state agency, and (3) the Court lacks jurisdiction for the claims prior to September 17, 2016 pursuant to § 46a-82 because the plaintiff filed the underlying administrative complaint with the Commission on Human Rights and Opportunities on March 16, 2017 and subsequent complaint on June 15, 2017. The plaintiff filed an objection to the motion on July 27, 2018. The defendant filed a reply to the objection on September 4, 2018. On October 29, 2018, the parties' arguments were heard at short calendar.

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." *Beecher* v. *Mohegan Tribe of Indians of Connecticut*, 282 Conn. 130, 134, 918 A.2d 880 (2007). "When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) *Conboy* v. *State*, 292 Conn. 642, 651, 974 A.2d 669 (2009). "In contrast, if the complaint is supplemented by *undisputed facts* established by affidavits submitted in support of the motion to dismiss . . . other types of undisputed evidence . . . and/or public records of which judicial notice may be taken . . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. . . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]." (Citations omitted; emphasis in original;

footnote omitted; internal quotation marks omitted.) Id., 651-52. Furthermore, "[w]here a motion to dismiss implicates subject matter jurisdiction, the court may dismiss portions of a complaint, including individual paragraphs within counts." *Harmon* v. *University of Connecticut*, Superior Court, judicial district of Hartford, Docket No. CV-15-67056506-S (October 7, 2015, *Peck, J.*).

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FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

"It is a settled principle of administrative law that, if an adequate administrative remedy exists, it must be exhausted before the Superior Court will obtain jurisdiction to act in the matter." (Internal quotation marks omitted.) *LaCroix* v. *Board of Education*, 199 Conn. 70, 83-84, 505 A.2d 1233 (1986). "The failure to exhaust administrative remedies implicates the subject matter jurisdiction of the court." *Johnson* v. *Dept. of Public Health*, 48 Conn. App. 102, 108, 710 A.2d 176 (1998).

"General Statutes § 46a–100 permits a person to file an action in Superior Court claiming violation of the CFEPA after that person has filed a complaint with the CHRO and obtained a release from the commission. [C]ourts have consistently upheld the requirement that complainants exhaust their administrative remedies or obtain a release of administrative jurisdiction from the CHRO as a prerequisite to Superior Court jurisdiction over the complainant's claims." (Footnote omitted; internal quotation marks omitted.) *Bjorlin* v. *MacArthur Equities, Ltd.*, Superior Court, judicial district of Fairfield, Docket No. CV-11-6021296-S (December 11, 2014, *Bellis, J.*).

"Under our exhaustion of administrative remedies doctrine, a trial court lacks subject

matter jurisdiction over an action that seeks a remedy that could be provided through an administrative proceeding, unless and until that remedy has been sought in the administrative forum. . . . In the absence of exhaustion of that remedy, the action must be dismissed." (Internal quotation marks omitted.) *Hinde* v. *Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 746, 84 A.3d 895 (2014).

"A primary purpose of the doctrine is to foster an orderly process of administrative adjudication and judicial review, offering a reviewing court the benefit of the agency's findings and conclusions. It relieves courts of the burden of prematurely deciding questions that, entrusted to an agency, may receive a satisfactory administrative disposition and avoid the need for judicial review." (Internal quotation marks omitted.) *Stepney, LLC v. Fairfield*, 263 Conn. 558, 564, 821 A.2d 725 (2003). "Finally, it is the plaintiff's burden to plead facts sufficient to show that it exhausted its administrative remedies when required." (Internal quotation marks omitted.) *Bjorlin* v. *MacArthur Equities, Ltd.*, supra, Superior Court, judicial district of Fairfield, Docket No. CV-11-6021296-S.

The defendant argues that the court lacks jurisdiction over discrete acts of alleged discrimination pleaded in support of the plaintiff's CFEPA claims that occurred prior to the statutory filing period because such claims are untimely and were not independently exhausted. The defendant argues, pursuant to § 46a-82, that the court lacks jurisdiction for any claims prior to September 17, 2016, because the plaintiff filed the underlying administrative complaint with the CHRO on March 16, 2017. The plaintiff counters with several arguments: (1) the failure to meet the 180 day time limit pursuant to § 46a-82 (f) is not a jurisdictional defect, (2) the defendant admits that any actionable harm within September 17, 2016, and June 15, 2017, would

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