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MAY 24 2024

**SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON**

DOCKET NO. KNL-CV21-6051268-S : SUPERIOR COURT
MASSARO, NICOLE : JUDICIAL DISTRICT OF
V. : NEW LONDON
OCEAN STATE JOB : MAY 24, 2024
LOT OF CT2009, LLC

MEMORANDUM OF DECISION
MOTION TO STRIKE

The issue before the court is whether the defendant's motion to strike the plaintiff's complaint, which alleges that she was wrongfully terminated from her employment in violation of General Statutes § 31-49 on the ground that the count fails to sufficiently allege a cause of action against the defendant for wrongful discharge should be granted. The defendant further moves to strike the plaintiff's complaint on the ground that the plaintiff has statutory and administrative remedies available to her, which precludes her from pursuing a common law wrongful discharge claim.

FACTS

The plaintiff, Nicole Massaro, filed a one count substituted complaint on March 20, 2023 (Entry No. 128), against the defendant, Ocean State Job Lot of CT2009, LLC. In that complaint, the plaintiff alleges that the defendant owns and operates a retail department store located at 128 Boston Post Road in Waterford, Connecticut. The plaintiff was employed by the defendant at the Waterford store from February 2019 to August 23, 2020. In or around July 2019, the defendant brought in a new manager, "John," for the store. The plaintiff alleges that John showed "inappropriate interest" in her; that he "singled her out for unwarranted personal scrutiny; forced

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her to watch management videos alone with him in his office; that he would ask her "numerous questions whereas he did not pose the same or similar questions to her coworkers;" that he would blame her for mistakes which were not hers; that he "was constantly bothering and harassing" her; that he was watching her every move and stalking her, that he got in her face and "screamed at her, belittling her in front of other coworkers;" and that he followed her into a back office and refused to allow her to leave, while "asking Massaro questions and acting aggressively."

The plaintiff also alleges that she spoke to both Human Resources and her District Manager about the inappropriate behavior on multiple occasions and that she informed both of them that she was scared of John and what he might do to her. In response to the complaints about John, the head of the defendant's Human Resources department went to the store in Waterford and met with all the employees. During this meeting, the plaintiff directly informed the head of Human Resources that she felt uncomfortable and that she was afraid of John. The plaintiff alleges that the defendant took no action to stop John's behavior and she was forced to continue to interact with John, though she tried to not be alone with him. Though the plaintiff was told that she would have a meeting with human resources about the incidents, no meeting ever occurred. The plaintiff resigned from her position at Ocean State Job Lot on August 23, 2020.

The plaintiff alleges that the defendant's failure to address the inappropriate behavior of its store manager made it untenable for her to remain employed at the store and, therefore, the defendant violated its public policy duty under Connecticut General Statutes § 31-49. The defendant filed a motion to strike the substituted complaint on August 10, 2023 (Entry No. 134).

The plaintiff filed her opposing motion and accompanying memorandum on November 3, 2023 (Entry No. 137).

DISCUSSION

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 349, 63 A.3d 940 (2013). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Internal quotation marks omitted.) *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580, 693 A.2d 293 (1997). "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, 594 A.2d 1 (1991). "Thus, we assume the truth of both the specific factual allegations and any facts fairly provable thereunder. In doing so, moreover, we read the allegations broadly, rather than narrowly." *Advanced Financial Services, Inc., v. Associated Appraisal Services, Inc.*, 79 Conn. App. 22, 37, 830 A.2d 240 (2003).

To balance the competing interests of employers and employees, the court recognizes a public policy limitation on the traditional employment at-will doctrine. *Haberern v. Goodrich Pump & Engine Control System*, 598 F. Supp. 2d 268 (2009). "[W]e sanctioned a common law cause of action for wrongful discharge in situations in which the reason for the discharge involved impropriety . . .

derived from some important violation of public policy." *Parsons v. United Technologies Corp., Sikorsky Aircraft Division*, 243 Conn. 66, 76, 700 A.2d 655 (1997). "[T]he public policy exception to the general rule allowing unfettered termination of an at-will employment relationship is a narrow one that is only to be invoked when the reason for [the employee's] discharge. . . involves impropriety derived from some important violation of a public policy. . . courts should not lightly intervene to impair the exercise of managerial discretion or to foment unwarranted litigation. . . Nevertheless, when there is a relevant state statute we should not ignore the statement of public policy that it represents." (Citations omitted; internal quotation marks omitted.) *Id.*, at 79. "[T]his body of law expresses a clear and defined public policy requiring an employer who conducts business in Connecticut to provide a reasonably safe workplace to its employees. . . ." *Id.*

Section 31-49 provides in relevant part: "It shall be the duty of the master to exercise reasonable care to provide for his servant a reasonably safe place in which to work" Section 31-49 "reflect[s] a broad legislative concern for the physical welfare and safety of Connecticut employees . . . [The] public policy that these statutes embody gives a Connecticut employee a cause of action for wrongful discharge against an employer transacting business in Connecticut if the employee is discharged for refusing to work under conditions that pose a substantial risk of death, disease, or serious physical harm and that are not contemplated within the scope of the employee's duties." *Parsons v. United Technologies Corp.*, *supra*, 243 Conn. 80. "[A]n at-will employee [cannot] contest his or her discharge based on a *subjective* belief that an employer's directive would

pose a threat to the employee's health and safety. . . It remains the burden of the employee who contests his or her discharge as a violation of the safe workplace public policy to prove that the condition or situation in which the employee is directed to work poses an *objectively* substantial risk of death, disease, or serious physical harm." (Emphasis altered.) *Parsons v. United Technologies Corp* supra, 243 Conn. 86.

In the present case, the defendant moves to strike the complaint on the grounds that the plaintiff fails to sufficiently allege a cause of action against the defendant under § 31-49. In response, the plaintiff argues that her constructive termination violated Connecticut public policy requiring an employer to provide its employees with a reasonably safe place to work, as demonstrated by § 31-49.

Here, the plaintiff did not sufficiently allege a cause of action against the defendant under § 31-49. In *Parsons*, the Supreme Court held that, to withstand a motion to strike, a plaintiff's complaint must "clearly allege facts that, when taken as a whole and considered in the light most favorable to the plaintiff, [are] sufficient to establish that the plaintiff was terminated for refusing to follow an employer's directive that would have posed a serious threat to the plaintiff's health and safety." *Parsons v. United Technologies Corp.*, supra, 243 Conn. 86. In *Parsons*, the plaintiff alleged that he was directed by his employer to travel to Bahrain, informed his employer that he refused to travel to Bahrain because of a perceived threat to his safety, and was terminated from his employment shortly after. In denying the defendant-employer's motion to strike, the court stated that, though the plaintiff's complaint did not set forth "the exact place, time, and type of

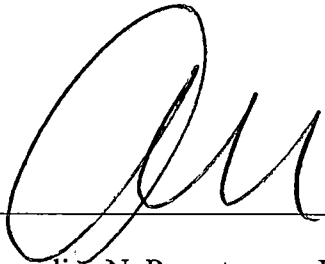
danger to which the plaintiff would be exposed," the plaintiff did state that the proposed place of employment was a staging ground for allied air attacks and included a detailed travel advisory from the State Department advising all Americans to "defer all nonessential travel" due to the ongoing military invasion of the Persian Gulf and unstable conditions in the area.

The present case differs from *Parsons*, as the plaintiff's complaint does not "clearly allege facts that, when taken as a whole and considered in the light most favorable to the plaintiff, [are] sufficient to establish that the plaintiff was terminated for refusing to follow an employer's directive that would have posed a serious threat the plaintiff's health and safety." *Parsons v. United Technologies Corp.*, supra, 243 Conn. 86. The complaint alleges that John's behavior made the plaintiff feel "uncomfortable," that the plaintiff "was afraid of John," and that the plaintiff "felt at risk of being physically harmed." The standard in *Parsons* is objective. Though the plaintiff states that John's questions and behavior made her uncomfortable and fearful, it cannot be reasonably inferred that the plaintiff was working under conditions that posed an objectively substantial risk of death, disease, or serious physical harm. Further, though the plaintiff is not required to set forth the "exact place, time, and type of danger to which the plaintiff would be exposed," the plaintiff's allegations fail to show that she was directed by the defendant to work under conditions that "pose an objectively substantial risk of death, disease, or serious physical harm." *Id.*, 82. Though the plaintiff alleges that the defendant did not take appropriate steps to address the complaints she made about John, she does not allege that the defendant directed her to continue working and that she was

terminated for refusing to do so. Therefore, the allegations in the plaintiff's complaint do not meet the requirements established in *Parsons* to sustain a cause of action under § 31-49.

CONCLUSION

The plaintiff does not sufficiently allege a cause of action against the defendant for wrongful discharge. Defendant's Motion to Strike is granted.



Angelica N. Papastavros, Judge