DOCKET NO: CV-20-6027562-S : SUPERIOR COURT

TIMOTHY BEGLEY : J.D. OF MIDDLESEX

V. : AT MIDDLETOWN

STATE OF CONNECTICUT ET AL. : MAY 3, 2024

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Superior Court
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Judicial District of Middlesex
State of Connecticut

MEMORANDUM OF DECISION REGARDING DEFENDANTS' MOTION TO DISMISS AND/OR STRIKE JURY CLAIM (#192.00)

The defendants, the State of Connecticut, James Rovella, and Stavros Mellekas, move to dismiss and/or strike the plaintiff's claim for a jury because (1) the plaintiff's claim for a jury was untimely filed and the docket correctly lists this matter as a court trial; (2) sovereign immunity bars a jury trial on the plaintiff's Connecticut Fair Employment Practices Act claims (CFEPA); and (3) the plaintiff's claim for a jury on his Title VII claim is also barred by sovereign immunity to the extent the plaintiff, Timothy Begley, seeks equitable relief, including lost wages. The plaintiff has filed an objection. The matter was marked take papers on the March 11, 2024 short calendar.

I
BACKGROUND

On February 4, 2020, the plaintiff, Timothy Begley (plaintiff), filed a three-count complaint against the defendants, the State of Connecticut (state), James Rovella (Rovella), and Stavros Mellekas (Mellekas). In the complaint, the plaintiff asserted retaliation claims against the state and Rovella pursuant to the Connecticut Fair Employment Practices Act, General Statutes § 46a-60 (b) (4) and (5). The plaintiff initially alleged that the plaintiff had been unlawfully removed from his position in the Connecticut State Police Counter-Terrorism Unit in retaliation for having reported a former detective, who had previously worked for Rovella, for egregious sexual harassment.

The plaintiff filed the operative second amended complaint on March 24, 2022, which included new allegations of fact and claims relating to incidents that occurred in June and September of 2022. The amended complaint alleges that the state, Rovella, and Mellekas retaliated against the plaintiff in violation of General Statutes § 46a-60 (b) (4), Title VII/42 U.S.C. § 2000e-3 (a), and General Statutes § 31-51q. See Docket Entry No. 137. The plaintiff alleges that, in June and September of 2021, while this case was pending, the defendants engaged in a second set of retaliatory acts. The plaintiff contends that the defendants attempted to coerce the plaintiff into withdrawing his CFEPA claim by conditioning an earned promotion to Lieutenant, scheduled to occur in June 2021, on plaintiff's withdrawal or settlement of his retaliation claim. After the plaintiff refused to withdraw or settle his retaliation claim, the plaintiff contends that the defendants denied him his earned promotion and issued a two-day suspension for a frivolous internal affairs investigation as retaliation.

The defendants filed their answer and special defenses on November 18, 2022. See Docket Entry No. 152. The matter was assigned for a court trial by judicial notice dated December 5, 2022. The plaintiff filed a late reply to the answer and special defenses and a certificate of closed pleadings on February 24, 2023. See Docket Entry Nos. 155, 156. The plaintiff then filed a claim for a jury on February 27, 2024.

II
LEGAL STANDARD

General Statutes § 51-239b provides that: "[i]n civil actions a jury shall be deemed waived unless requested by either party in accordance with the provisions of section 52-215." Similarly, Practice Book § 14-10 provides that: "all claims of cases for the jury shall be made in writing, served on all other parties and filed with the clerk within the time allowed by General Statutes § 52-215." General Statutes § 52-215 provides in pertinent part that: "[t]he following-

named classes of cases shall be entered in the docket as jury cases . . . civil actions. . . .When, in any of the above-named cases an issue of fact is joined, the case may, within ten days after such issue of fact is joined, be entered in the docket as a jury case upon the request of either party made to the clerk." Pursuant to General Statutes § 52-215, a plaintiff is required to file a claim for a jury either (1) within 30 days after the return day, or (2) within 10 days after an issue of fact to be tried by a jury was joined in the action. See *Home Oil Co.* v. *Todd,* 195 Conn. 333, 339, 487 A.2d 1095 (1985).

III
DISCUSSION

The defendants contend that because the plaintiff failed to file a jury claim within ten days after the defendants filed their answer and special defenses, this matter was properly designated for a court trial and that the jury claim should be stricken. "It is well settled that a claim for a jury trial must be filed no later than ten days after the pleadings have been closed." *Masto* v. *Board of Education,* 200 Conn. 482, 488, 511 A.2d 344 (1986). "[H]owever, it might be argued that its filing of an amended answer . . . reopened the ten day period in which the plaintiff might claim a jury trial. This argument would have merit *only* if the amended answer had introduced a new issue of fact into the case." (Emphasis added.) Id.

The defendants argue that the plaintiff's CFEPA and Title VII jury claims are barred by sovereign immunity. The plaintiff objects and argues that the plaintiff timely filed his jury claim for count three within the ten-day period of any issues of fact being joined by filing his reply to the defendants' affirmative defenses and thereby joining the issues. Additionally, the plaintiff contends that, under Title VII, the plaintiff is entitled to a jury trial on liability and the award of emotional distress damages. Finally, the plaintiff argues that the defendants waived their right to

dismiss the jury claim by waiting over eleven months after the plaintiff filed his claim to a jury and the pleadings were closed before filing the present motion.

After consideration of the specific facts of this matter and the case law, the court finds that the jury claim was not timely filed. The dispositive issue is whether the plaintiff's request for a jury trial was timely by virtue of having enlarged the existing issues or having raised new issues of fact in his amended complaint. Even though the plaintiff amended the complaint, the ten-day period for making a jury election does not automatically restart unless the amended complaint raises completely new issues of fact. See *Flint* v. *National R.R. Passenger Corp.*, 37 Conn. App. 162, 165-166 (1995), aff'd, 238 Conn. 282, 285, 679 A.2d 352 (1996) ("We conclude that the trial court was correct in determining that the amended complaint did not enlarge the issues involved or raise any new issues so as to create any right in the plaintiff to claim a jury trial at that stage of the proceedings").

The plaintiff relies on the filing of his reply to the special defenses as starting a new 10-day period. The plaintiff's reply to the answer and special defenses is a one-paragraph general denial and contends that it is the relevant pleading because eight of the ten of the defendant's special defenses raised new issues of fact. In the defendants' second and third special defenses, the defendant alleges that they had legitimate non retaliatory reasons for any and all employment decisions with regard to the plaintiff and that they would have taken the same actions with respect to the plaintiff regardless of any protected activity. Furthermore, the defendants' fourth, sixth, and eighth special defenses allege that some or all of the plaintiff's claims are barred, either by statutory limitations, time limitations, or failure to exhaust alternate administrative remedies. The plaintiff explains, however, that it is the defendant's answer and special defenses

that have inserted new facts into the case and that the plaintiff's reply is the pleading that joins the facts and starts the new ten-day window.

Here, the amended complaint raised new issues of fact. "If a new issue of fact is introduced by the amended pleading, requiring the filing of a responsive pleading, then the new ten-day period within which the parties may elect a jury trial begins to run from the time that the responsive pleading is filed and the parties are again at issue." *Javit* v. *Marshall's, Inc.*, 40 Conn. App. 261, 266, cert. denied, 236 Conn. 915, 673 A.2d 1142 (1996). Thus, the ten-day period ran from the filing of the answer and special defenses, which would have been November 18, 2022 and not the date of the plaintiff's reply. See also *Masto* v. *Board of Education*, supra, 200 Conn. 488; *Home Oil Co.* v. *Todd*, supra, 195 Conn. 339.

The running of the new ten-day period would have been from the filing of the answer and special defenses. See *Home Oil Co.* v. *Todd*, supra, 195 Conn. 340-41; *People's Bank* v. *Dauphin*, Superior Court, judicial district of Tolland, Docket No. CV-94-56120-S (July 13, 1997, *Rittenband, J.*) (19 Conn. L. Rptr. 614). Filing a special defense, however, does not automatically extend the time period for filing a jury claim. That is because "there are special defenses that do not allege issues of material fact for a jury to decide but [are] questions of law." *McCleese* v. *Labbe*, Superior Court, judicial district of Danbury, Docket No. CV-17-5012606-S (January 30, 2019, *Krumeich, J.*). Indeed, "[w]hen a jury determination of the facts raised by special defense is not necessary, the special defense will not be submitted to the jury but, rather, will be resolved by the trial court prior to the rendering of judgment." *Bennett* v. *Automobile Ins. Co.*, 230 Conn. 795, 806, 646 A.2d 806 (1994). Moreover, at the time the defendants filed their special defenses, the complaint had four counts and included claims under General Statutes § 31-51q, CFEPA, and Title VII. The defendants explain that they pleaded certain special defenses out

of an abundance of caution to ensure they were not waived in the event they became necessary. The special defenses did not allege new factual issues for purposes of the plaintiff's Title VII claim for emotional distress damages. The special defenses speak to the plaintiff's CUTPA claim, and that some or all of the plaintiff's claims may be barred based on the applicable statute of limitations or by failure to exhaust all other administrative remedies, but none allege or even address additional factual issues to support the plaintiff's Title VII claim for emotional distress damages. Accordingly, the special defenses did not reset the ten-day limit for the plaintiff to file a jury claim.

Even if the ten-day period could have run from the filing of the reply, the plaintiff filed his reply late and did not seek any extensions of time. See *Palumbo* v. *Barbadimos*, 163 Conn. App. 100, 121 (2016) ("it is clear that the plaintiff sought to exercise her right of voluntary withdrawal as a procedural tactic to avoid a bench trial, which the defendant had acquired a right to as a result of the plaintiff's waiver"); *King* v. *Hubbard*, 217 Conn. App. 191, 205, 288 A.3d 218 (2023) ("A plaintiff should never be permitted to abuse its right to voluntarily withdraw an action. Such abuse may be found if, in executing its right of withdrawal, the plaintiff unduly prejudices the rights of an opposing party or the withdrawal interferes with the court's ability to control its docket or to enforce its rulings"); *Cummings* v. *Liberty Mutual Group, Inc.*, Superior Court, judicial district of Tolland, Docket No. CV-18-5011646-S (July 13, 2023, *Gordon, J.*) ("The plaintiff was not entitled to abuse her right of unilateral withdrawal in order to pursue a second, identical action to avoid the consequences of her waiver. . . . Accordingly, in *Palumbo*, this court concluded that the trial court's denial of the defendant's motion to restore reflected an abuse of its discretion, reversed the judgment of the trial court, and remanded the case to the trial court with direction to grant the defendant's motion to restore the original action to the docket").

Thus, the plaintiff has untimely filed regardless of whether the ten-day period is measured from November 18, 2022 or December 18, 2022, when his reply should have been filed. See *Javit* v. *Marshall's, Inc.*, supra, 40 Conn. App. 266. "If amended pleadings are later filed, this can reopen the ten day period in which to claim a jury trial, but only if the new pleading introduces a new issue of fact into the case." (Emphasis added.) *Palumbo* v. *Barbadimos*, supra, 163 Conn. App. 117-18. "A party that neglects to file its jury claim in timely fashion does so at its peril. The ten-day rule is clear and straight forward. In most cases it should be . . . and has been . . . strictly enforced." *Dietz* v. *Yale-New Haven Hosp., Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-94-368317 (June 22, 1998, *Silbert, J.*) (22 Conn. L. Rptr. 358). Furthermore, "[t]rial level decisions uniformly enforce the ten-day rule, unless the plaintiff presents a reasonable factual basis for the court not to do so." *Moeller* v. *St. Luke's Foundation, Inc.*, Superior Court, Judicial District of Stamford-Norwalk, Docket No. CV-04-0199334-S (July 1, 2005, *Hiller, J.*).

The plaintiff does not dispute that first, there is no right to a jury on count two alleging a violation of CFEPA because it is barred by sovereign immunity, and second, that the jury determination on count three concerning the Title VII claim is limited to his emotional distress claim. Regarding the state's sovereign immunity regarding the CFEPA claims, the plaintiff instead claims that the defendants waived their right to challenge the jury claim. This argument of waiver directly violates the principles of sovereign immunity and the law is clear that it cannot be waived. "The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law.... It has deep roots in this state and our legal system in general, finding its origin in ancient common law." (Internal quotation marks omitted.) *Harvey* v. *Dept. of Correction*, 337 Conn. 291, 301, 253 A.3d 931 (2020). Our Supreme

Court "has recognized three exceptions to, sovereign immunity: (1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity ... (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights ... and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority." (Internal quotation marks omitted.) *Traylor* v. *State*, 332 Conn. 789, 802 n.14, 213 A.3d 467 (2019). Because the legislature did not expressly and affirmatively provide a right to a jury trial in actions brought pursuant to §46a-60 or §46a-100, CFEPA claims against the State must be tried to the court. See *Canning* v. *Lensink*, 221 Conn. 346, 354, 603 A.2d 1155 (1992) ("[i]n the absence of such a specification, we have concluded that the legislature intended that the action should be tried without a jury").

Regarding the Title VII claim in count three, the defendants argue that the plaintiff's claim for a jury on his Title VII count is barred by sovereign immunity to the extent that it is an equitable claim. The defendants concede that the only claim that the plaintiff could arguably file a jury claim for is a Title VII claim for emotional distress but that it would still be untimely, as discussed above.

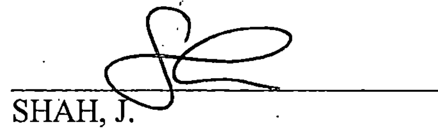
"Prior to the passage of the [Civil Rights Act of 1991], a plaintiff seeking a monetary award for disparate treatment and disparate impact claims under Title VII could recover only back pay and front pay. Because back pay and front pay have historically been recognized as equitable relief under Title VII, neither party was entitled to a jury trial; both disparate treatment and disparate impact claims were tried to the bench. . . . The 1991 Act enhanced Title VII's remedial scheme for disparate treatment claims. In addition to back pay and front pay, it

authorized the recovery of compensatory and punitive damages in disparate treatment disputes ... and afforded a jury trial where these additional remedies are sought....” (Citations omitted; footnote omitted.) *Robinson* v. *Metro-North Commuter Railroad Co.*, 267 F.3d 147, 157-58 (2d Cir. 2001), cert. denied, 535 U.S. 951 (2002) (122 S. Ct. 1349) (152 L. Ed. 2d 251) (70 U.S.L.W. 3579). “Because a lost wages award - whether in the form of back pay or front pay - is an equitable remedy, a party is generally not entitled to a jury determination on the question.” *Broadnax* v. *City of New Hav*en, 415 F.3d 265, 271 (2d Cir. 2005). Thus, the plaintiff does not have a right to a jury trial regarding any equitable relief that he claims under Title VII.

IV
CONCLUSION

For the foregoing reasons, the defendants' motion is granted. It is so ordered.

BY THE COURT,



SHAH, J.