SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 19

22STCV35914
BRIAN JORDAN vs COUNTY OF LOS ANGELES, A PUBLIC ENTITY

September 26, 2023
10:31 AM

Judge: Honorable Stephanie M. Bowick
Judicial Assistant: Richard Duarte
Courtroom Assistant: Calvin Lam

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order Re: Defendant County of Los Angeles's Demurrer to the Second Amended Complaint and Motion to Strike

RULING

After consideration of the briefing filed and oral argument at the hearing, Defendant County of Los Angeles's Demurrer to the Second Amended Complaint is SUSTAINED, without leave to amend.

The Motion to Strike is MOOT.

Counsel for Defendant to submit a proposed judgment of dismissal.

The Court sets a Non-Appearance Care Review Re: Proposed Judgment of Dismissal for October 10, 2023, in Department 19 of the Stanley Mosk Courthouse.

Counsel for Defendant to give notice.

STATEMENT OF THE CASE

This is an employment dispute action. Plaintiff Brian Jordan ("Plaintiff") brings suit against Defendant County of Los Angeles ("Defendant") alleging the following causes of action in the Second Amended Complaint ("SAC"):
1. Violation of Labor Code Section 1102.5;
2. Retaliation in Violation of California Constitution Article I, Section 3(A), and First Amendment to the United States Constitution Right to Petition; and
3. Declaratory and Other Equitable Relief Pursuant To Los Angeles County Code of Ordinances, Title 5, Chapter 5.64, Section 5.64.240.

Defendant filed the instant Demurrer to the SAC with Motion to Strike (the "Motion").

GROUNDS FOR DEMURRER

(1) Demurrer
Pursuant to Code of Civil Procedure section 430.10, subdivision (e), Defendant demurs to each cause of action alleged in the SAC on the grounds that they fail to allege facts sufficient to constitute a cause of action.

(2) Motion to Strike

Pursuant to Code of Civil Procedure sections 435 and 436, Defendant moves to strike a new cause of action on the ground that Plaintiff did not receive leave to add it.

MEET/CONFER

The Court finds that Defendant satisfied the meet and confer requirements. (See Jason H. Tokoro Decl., ¶¶ 10-13.)

REQUEST FOR JUDICIAL NOTICE

The Court GRANTS Defendant's request to take judicial notice of Exhibits A. (Evid. Code, § 452(d).)

DISCUSSION

I. DEMURRER

A demurrer for sufficiency tests whether the complaint states a cause of action. (Hahn v. Mirda (2007) 147 Cal. App. 4th 740, 747.) When considering demurrers, courts read the allegations liberally, with a view to substantial justice between the parties. (Code Civ. Proc. § 452; Stevens v. Superior Court (1999) 75 Cal.App.4th 594, 601.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (Donabedian v. Mercury Ins. Co. (2004) 116 Cal. App. 4th 968, 994.) "We treat the demurrer as admitting all material facts properly pleaded but not contentions, deductions or conclusions of fact or law. We accept the

factual allegations of the complaint as true and also consider matters which may be judicially noticed." (Mitchell v. California Department of Public Health (2016) 1 Cal.App.5th 1000, 1007.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (Hahn, supra, 147 Cal.App.4th at 747.) "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (C.A. v. William S. Hart Union High School District (2012) 53 Cal.4th 861, 872.)

1. First Cause of Action: Violation of Labor Code Section 1102.5

Defendant demurs to the First Cause of Action on the grounds that (1) it is time barred because Plaintiff failed to timely present a claim as required under the Government Claims Act; and (2) it fails to state a claim. (Demurrer, pp. 15-18.)

i. Time Barred By Government Claims Act

The California Tort Claims Act, Government Code section 900 et seq., establishes certain conditions precedent to filing a lawsuit against a public entity. (State of California v. Superior Court (2004) 32 Cal.4th 1234, 1237.)

Government Code section 945.4 prescribes that "no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance" with Government Code sections 900 through 915.4 "until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance" with Government Code sections 900 through 915.4. (Govt. Code, § 945.4; see California School Employees Assn. v. Governing Bd. of South Orange County Community College Dist. (2004) 124 Cal.App.4th 574, 589 (citing Govt. Code, §§ 905, 945.4) ["…an action for 'money or damages' against a public entity may not proceed unless a written claim has first been presented to the governmental entity and the claim either has been granted or rejected."].) "Unless a specific exception applies, '[a] suit for 'money or damages' includes all actions where the plaintiff is seeking monetary relief, regardless whether the action is founded in 'tort, contract or some other theory.''" (California School Employees Assn., supra, 123 Cal.App.4th at 589 (quoting Hart v. County of Alameda (1999) 76 Cal.App.4th 766, 788).)

"A claim relating to a cause of action for death or for injury to person or to personal property…

shall be presented… not later than six months after the accrual of the cause of action." (Govt. Code, § 911.2(a).) "When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim." (Govt. Code, § 911.4(a).)

Government Code section 945.6, subdivision (a) provides as follows:

Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b), any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced:
(1) If written notice is given in accordance with Section 913, not later than six months after the date such notice is personally delivered or deposited in the mail.
(2) If written notice is not given in accordance with Section 913, within two years from the accrual of the cause of action. If the period within which the public entity is required to act is extended pursuant to subdivision (b) of Section 912.4, the period of such extension is not part of the time limited for the commencement of the action under this paragraph.
(Govt. Code, § 945.6(a).)

A failure to satisfy the claim requirements bars the plaintiff from bringing suit against that entity. (State of California v. Superior Court, supra, 32 Cal.4th at 1237 (citing Govt. Code, § 945.4).) Since compliance with the claims requirements is an element of a cause of action against a public entity, failure to sufficiently allege compliance with the claim requirements "subjects a claim against a public entity to a demurrer for failure to state a cause of action." (Id. at 1239-1240; see, e.g., Del Real v. City of Riverside (2002) 95 Cal.App.4th 761, 767 ["The filing of a claim is a condition precedent to the maintenance of any cause of action against the public entity and is therefore an element that a plaintiff is required to prove in order to prevail."]; Wood v. Riverside General Hospital (1994) 25 Cal.App.4th 1113, 1119 ["…the timely filing of a claim is an essential element of a cause of action against a public entity and failure to allege compliance with the claims statute renders the complaint subject to a general demurrer or to a motion for judgment on the pleadings."].)

The Court finds, as argued by Defendant, that Plaintiff seeks economic damages, and therefore Plaintiff was required to present a claim not later than six months after the accrual of the claims before he filed a lawsuit.

Plaintiff contends that the First Cause of Action is not time barred pursuant to the continuing violation doctrine, because Defendant continued to retaliate against him through December 2022, or almost two (2) years after the SAC alleges that Plaintiff "honorably retired," by "materially affecting his right to a retirement badge…." (Opposition, pp. 3-4.)

The SAC alleges that "[o]n November 9, 2022 Plaintiff filed a Government Claim in accordance with Government Code §910 et seq.,…." (SAC, ¶ 25, Ex. 1.) The SAC alleges that "[o]n January 4, 2023, Plaintiff filed an amended Government Claim" that "adds ongoing facts occurring subsequent to the prior filing." (Id. at ¶ 27, Ex. 2.)

The Court agrees with Defendant that the First Cause of Action is time barred. The Court fails to find Plaintiff's arguments persuasive. As argued by Defendant, Plaintiff's Labor Code section 1102.5 claim accrued no later than January 19, 2021, when Plaintiff alleges he retired (see SAC at ¶ 26), because "a prerequisite to asserting a Labor Code section 1102.5 violation is the existence of an employer-employee relationship at the time the allegedly retaliatory action occurred." (Hansen v. California Dept. of Corrections and Rehabilitation (2008) 171 Cal.App.4th 1537, 1546 (citing Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 288).) Thus, Plaintiff's continuing violation doctrine argument lacks merit. Further, the legal authority cited by Plaintiff, (see Opposition at p. 3 (citing Sada v. Robert F. Kennedy Medical Center (1997) 56 Cal.App.4th 138, 161; Robinson v. Shell Oil Co. (1997) 519 U.S. 337; Hashimoto v. Dalton (9th Cir. 1997) 118 F.3d 671, 674)), did not involve a claim under Labor Code section 1102.5. As stated above, the required employer-employee relationship failed to exist at the time the alleged retaliatory action occurred. (See Hansen, supra, 171 Cal.App.4th at 1546 (citing Soukup, supra, 39 Cal.4th at 288).)

Since Plaintiff's Labor Code section 1102.5 could not be based on any acts after January 19, 2021, and the SAC alleges that the claims were filed on November 9, 2022 and January 4, 2023, more than six months after the accrual of the cause of action, and Plaintiff fails allege that he applied for leave to file a late claim, the Court finds that it appears from the face of the SAC that Plaintiff's First Cause of Action is necessarily time barred, including any claims regarding the Notice of Intent To Terminate. (Stueve Bros. Farms, LLC v. Berger Kahn (2013) 222 Cal.App.4th 303, 313 (quoting Baright v. Willis (1984) 151 Cal.App.3d 303, 311 (other internal citations and quotations omitted).)

Accordingly, the Court SUSTAINS Defendant's demurrer to the First Cause of Action.

2. Second Cause of Action: Retaliation in Violation of California Constitution Article I, Section 3(A), and First Amendment to the United States Constitution Right to Petition

As an initial matter, the Court notes that Plaintiff contends in opposition that the Second Cause of Action "is brought under California Constitution, Art. I, sec. 3, and 42 USC sec. 1983." (Opposition at p. 5.)

In the Court's ruling on Defendant's demurrer to the First Amended Complaint, the Court granted Plaintiff leave to amend the claim for "Retaliation in Violation of California Constitution Article I, Section 3(A), and First Amendment to the United States Constitution Right to Petition" to clear up ambiguity, reasoning that the FAC "is unclear as to what Plaintiff is alleging…, especially when considering Plaintiff's assertions in Opposition that '[e]ven though the FAC did not refer to 42 United States Code section 1983, the allegations, read as a whole, provided a basis for liability under section 1983.'" (April 3, 2023 Minute Order, pp. 10-11.)

Plaintiff does not dispute the legal standards that are asserted by Defendant with respect to the Second Cause of Action, including the following elements:

To bring a First Amendment retaliation claim, the plaintiff must allege that (1) it engaged in constitutionally protected activity; (2) the defendant's actions would "chill a person of ordinary firmness" from continuing to engage in the protected activity; and (3) the protected activity was a substantial motivating factor in the defendant's conduct—i.e., that there was a nexus between the defendant's actions and an intent to chill speech.
(Arizona Students' Association v. Arizona Board of Regents (9th Cir. 2016) 824 F.3d 858, 867.)

Nor does Plaintiff dispute that "a public employee cannot present a cognizable section 1983 claim challenging a retaliatory employment decision made by her government-employer unless her litigation involves a matter of public concern." (Rendish v. City of Tacoma (9th Cir. 1997) 123 F.3d 1216, 1223 (citing Connick v. Myers (1983) 461 U.S. 138, 147).)

The Court finds that it appears from the face of the SAC that the instant lawsuit does not involve any matter of public concern, but rather, Plaintiff is seeking remedy for purely personal grievances. Further, Plaintiff fails to allege any constitutional violation during the time that he was an employee of Defendant. Hence, Plaintiff fails to set forth sufficient allegations regarding a "chilling effect" or sufficient facts regarding Defendant's policies.

Finally, the Court finds that the Second Cause of Action is a claim brought pursuant to 42 U.S.C.

Section 1983 for violations of the free speech protections contained in both the United States Constitution and California Constitution. Accordingly, the Court agrees with Defendant that the SAC fails to sufficiently allege facts to hold Defendant liable pursuant to the Monell doctrine. (Monell v. Department of Social Services of City of New York (1978) 436 U.S. 658, 691; see Complaint, ¶ 26.)

Accordingly, the Court SUSTAINS Defendant's demurrer to the Second Cause of Action.

3. Third Cause of Action: Declaratory and Other Equitable Relief Pursuant To Los Angeles County Code of Ordinances, Title 5, Chapter 5.64, Section 5.64.240

Defendant demurs to the Fourth Cause of Action on the grounds that (1) it seeks the same relief as the specific performance cause of action alleged in the First Cause of Action, (Demurrer at pp. 22), which the Court sustained on the ground that specific performance is a contract remedy, (see April 3, 2023 Minute Order at p. 11), and (2) it is time barred. (Demurrer at p. 22.)

Further, the Third Cause of Action alleged in the SAC fails for the same reasons the Fourth Cause of Action alleged in the First Amended Complaint fails. The Court agrees that this type of relief is not available through a declaratory relief cause of action, as Plaintiff cannot seek "specific performance" in light of the Court's previous demurrer ruling. In addition, the Court did not grant Plaintiff leave to add a new Third Cause of Action.

Lastly, Plaintiff concedes, the Third Cause of Action is a remedy, not a "cause of action," and he seeks remedies available pursuant to the Second Cause of Action. (Opposition at p. 6.)

As such, since the Court sustains Defendant's demurrer to the Second Cause of Action, the Court also SUSTAINS Defendant's demurrer to the Third Cause of Action.

Given the ruling on the Demurrer, the Motion to Strike is MOOT.

II. LEAVE TO AMEND

Where the defect raised by a motion to strike or by demurrer is reasonably capable of cure, leave to amend is routinely and liberally granted to give the plaintiff a chance to cure the defect in question. (Velez v. Smith (2006) 142 Cal.App.4th 1154, 1174; see also McKenney v. Purepac Pharmaceutical Co. (2008) 167 Cal.App.4th 72, 78.) The burden of demonstrating a reasonable possibility that the defect can be cured by amendment "is squarely on the plaintiff." (Id.; see also

Goodman v. Kennedy (1976) 18 Cal.3d 335, 349 [“Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.”].)

The Court has already granted Plaintiff leave to amend once, and Plaintiff has failed to cure the defects.

The Court does not find that there is a reasonable probability that Plaintiff can amend the SAC to cure the defects with respect to the First Cause of Action being time barred and Plaintiff fails to allege protected activity or retaliation that occurred while he was an employee and before his retirement. In addition, the Court finds, as argued by Defendant, that the additional arguments and proposed allegations concerning a transfer in May 2020 are insufficient to demonstrate a reasonable probability that the defects with respect to the First Cause of Action can be cured by amendment since the claim, whether it includes the allegations surrounding the 2020 transfer or not, is time barred.

Further, the Court does not find that there is a reasonable probability that Plaintiff can amend the SAC to cure the defects with respect to the Second Cause of Action since it is apparent from the face of the SAC that the instant lawsuit does not involve any matter of public concern, as Plaintiff is seeking remedy for purely personal grievances, and Plaintiff fails to state a constitutional claim.

Finally, since Plaintiff contends that the Third Cause of Action seeks remedies pursuant to the Second Cause of Action, (Opposition at p. 6), the Court also DENIES leave to amend as to the Third Cause of Action.

In sum, the Court finds that leave to amend would be futile.

Certificate of Mailing is attached.