

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
 AT KANSAS CITY

[REDACTED])	
Plaintiff,)	
)	
v.)	Case No. [REDACTED]
)	Division [REDACTED]
)	
THE NELSON-ATKINS MUSEUM OF ART,)	
Defendant.)	

[Handwritten Signature]

ORDER DENYING DEFENDANT’S MOTION TO DISMISS AND GRANTING PLAINTIFF’S REQUEST FOR LEAVE TO AMEND

NOW on this day, the Court takes up Defendant’s Motion to Dismiss, filed on August 20, 2021. After reviewing the motion, the response thereto, and the Court’s file, the Court finds as follows:

On August 12, 2021, [REDACTED] (“Plaintiff”) filed his First Amended Petition for Damages against The Nelson-Atkins Museum of Art (“Defendant”). In his Amended Petition, Plaintiff alleges five causes of action against Defendant: I) Race and Gender Discrimination pursuant to Mo. Rev. Stat.¹ § 213.010 *et seq.*; II) Retaliation under the Missouri Human Rights Act, Mo. Rev. Stat. § 213.010, *et seq.*; III) Harassment and Hostile Work Environment pursuant to Mo. Rev. Stat. § 213.010, *et seq.*; IV) Negligent Supervision; and V) Termination. On August 20, 2021, Defendant filed its Motion to Dismiss and Supporting Suggestions seeking dismissal of Count IV and Count V of Plaintiff’s Amended Petition. Plaintiff filed his Response to the Motion on August 26, 2021 in which he agreed to dismiss Count IV of his Petition. The Court will now address arguments related to Count V (“the Termination count”).

“A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and liberally grants

¹ Unless otherwise indicated, statutory citations refer to the 2016 edition of the Revised Statutes of Missouri, updated through the 2021 Cumulative Supplement.

to plaintiff all reasonable inferences therefrom.” *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. 1993) (en banc) (citing *Sullivan v. Carlisle*, 851 S.W.2d 510, 512 (Mo. 1993) (en banc). “No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.” *Allen v. City of Greenville, MO*, 336 S.W.3d 508, 511 (Mo. Ct. App. 2011) (citing *State ex rel. Henley v. Bickel*, 258 S.W.3d 327, 329 (Mo. 2009) (en banc). “A petition must contain allegations of fact in support of each essential element of the cause sought to be pleaded.” *Berkowski v. St. Louis County Bd. of Election Com’rs*, 854 S.W.2d 819, 823 (Mo. Ct. App. 1993) (citing *Cady v. Hartford Accident and Indemnity Co.*, 439 S.W.2d 483, 485 (Mo. 1969).

Defendant argues the Termination count is a tort claim that arises from an employment relationship between Plaintiff and Defendant that is based on the same facts as those that form the bases of Plaintiff’s Missouri Human Rights Act (“MHRA”) claims and seeks the same remedies. For all of the foregoing reasons, Defendant argues the Termination count should be barred by the exclusivity rule in Mo. Rev. Stat. §§ 213.070.2 and 285.575.3. Section 213.070.2 states, “[t]his chapter, in addition to chapter 285 and chapter 287, shall provide the exclusive remedy for any and all claims for injury or damages arising out of an employment relationship.” Section 285.575.3 states, “[t]his section is intended to codify the existing common law exceptions to the at-will employment doctrine and to limit their future expansion by the courts. This section, in addition to chapter 213 and chapter 287, shall provide the exclusive remedy for any and all claims of unlawful employment practices.”

Plaintiff argues that his Termination count falls under the public policy exception to termination of an at-will employee as discussed in *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81 (Mo. 2010) (en banc). However, Plaintiff’s Termination count does not allege that it

is made pursuant to Chapters 213, 285, or 287. To reiterate, sections 213.070.2 and 285.575.3 clearly state chapters 213, 285, and 287 provide the exclusive remedy for *any and all claims* for injury or damages *arising out of an employment relationship*, including unlawful employment practices. As currently alleged, Plaintiff's Termination count relates to, and arises solely from, the employment relationship between Plaintiff and Defendant. It alleges the same set of facts as Plaintiff's MHRA claims and Plaintiff seeks the same remedies. Hence, the Termination count, as currently alleged, is barred by the exclusivity rule stated in § 213.070.2 and § 285.575.3 and would be ripe for dismissal.

However, Plaintiff in his Response, requests leave to amend his Petition pursuant to Mo. Sup. Ct. R. 55.33(a), which states, "...leave shall be freely given when justice so requires." Additionally, Defendant has not filed a Reply to Plaintiff's Response, and as such there is no objection to the request for leave to file an amended Petition. Therefore, the Court denies the Motion to Dismiss as to Count V and Plaintiff is granted leave to amend his Petition. It is therefore,

ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Dismiss as to Count IV is DENIED AS MOOT.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss as to Count V, the Termination Count, is DENIED.

IT IS FURTHER ORDERED that Plaintiff's request for leave to file an amended Petition is GRANTED and said Second Amended Petition shall be filed within 15 days of this Order.

IT IS SO ORDERED.

March 24, 2022
Date


HON. JERRIN ZHANG
Judge, Division 3