

CAUSE NO. DC-21-16308

PATRICK O'CALLAGHAN,	§	IN THE DISTRICT COURT
<i>Plaintiff</i>	§	192nd
	§	
vs.	§	_____ JUDICIAL DISTRICT
	§	
DALLAS COLLEGE,	§	
<i>Defendant</i>	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff, Patrick O'Callaghan ("O'Callaghan") files this Plaintiff's Original Petition (the "Petition") against Defendant Dallas College ("Dallas College") on the following grounds:

I. Discovery Control Plan

1.1 Plaintiff affirmatively pleads that discovery should be conducted in accordance with discovery control plan, level 3, under Rule 190.4 of the Texas Rules of Civil Procedure.

II. Parties and Service

2.1 Plaintiff, Patrick O'Callaghan, (last three digits of SSN: 149; last three digits of TX DL: 678), is an individual residing in Tarrant County, Texas.

2.2 Defendant is a college district organized and existing pursuant to the laws of the State of Texas for the purpose of operating a system of college campuses in and around Dallas County, Texas. Also, Defendant is a "state actor" within the meaning of applicable law and the actions complained of herein comprise "state action." The address of Defendant's administrative office is 1601 S. Lamar Street, Dallas, Dallas County, Texas 75215. Defendant may be served with process by serving its Chancellor, Joe D. May Ed.D. (the "Chancellor"), at the foregoing address pursuant to the Texas Rules of Civil Procedure.

III. Jurisdiction and Venue

3.1 This Court has subject matter jurisdiction over this action because: (i) Plaintiff, Patrick O’Callaghan resides in the State of Texas; (ii) Defendant, Dallas College, is organized under the laws of the State of Texas; (iii) the agreements that are the subject of this suit and the acts and omissions complained of in this suit took place, in whole or in part, in the State of Texas; and (iv) the amount in controversy is within this Court’s jurisdictional limits.

3.2 Venue is mandatory in Dallas County, Texas under Section 15.0151 of the Texas Civil Practice and Remedies Code because Defendant is a political subdivision, as that term is defined, located in Dallas County, Texas. Additionally, venue is proper in Dallas County, Texas under Section 15.002(a)(1) of the Texas Civil Practices and Remedies Code because all or a substantial part of the events or omissions giving rise to the claim occurred within Dallas County, Texas, as well as Section 15.002(a)(3) of the Texas Civil Practices and Remedies Code because Defendant’s principal office is located in Dallas County, Texas.

3.3 Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiff states that at this time he seeks monetary relief of over \$200,000.00 but not more than \$1,000,000.00.

IV. Factual Background

4.1 Plaintiff O’Callaghan has been an employee of Dallas College (formerly known as Dallas County Community College District) for nine years, serving in its records management department as the designated Senior Manager of Records & Retention. During his tenure, O’Callaghan has shown himself to be an exceptional employee and a go-to expert regarding all record retention matters. Until his termination in 2021, O’Callaghan was the only person in the entire district employed as the designated Senior Manager of Records & Retention.

4.2 Defendant terminated Plaintiff under the pretext of Dallas College's "re-organization" and elimination of the position Plaintiff currently held. However, Defendant is required by law to have a designated Senior Manager of Records & Retention and is required to have an employee in that role. Defendant merely used the pretext of its "re-organization" as an excuse for terminating Plaintiff as a means to hide the real reason for Plaintiff's termination, because of Plaintiff seeking reasonable accommodations for his disabilities, as discussed below.

4.3 Because of his asthma, obesity, and high blood pressure, Plaintiff became even more concerned about protecting his health when the Covid-19 pandemic began. As a preventative safety measure for his health, Plaintiff sought reasonable accommodations from Defendant. Defendant responded to these requests for reasonable accommodations by unnecessarily delaying their response, penalizing Plaintiff by taking away his direct reports, and not allotting Plaintiff the full accommodations that were reasonably due to him.

4.4 Plaintiff's former position was not, and cannot, be eliminated because Defendant is required by law to have that position and to have it filled by an employee. To date, Defendant has not filled the position. These facts further demonstrate that Defendant's termination of Plaintiff due to "re-organization" is pre-textual in that Plaintiff's former position was not, and could not have been, "re-organized" away.

V. Causes of Action

5.1 ***Alternative Pleadings.*** To the extent necessary, each of the claims set forth below is pleaded in the alternative.

5.2 ***Breach of Contract.*** To the extent necessary, the Factual Background of this Petition is hereby referenced and fully incorporated herein by this specific reference, as though fully set forth herein. Defendant implemented a policy that became a contractual part of

O'Callaghan's relationship with Dallas College in that both parties were obligated to follow the implemented policies. Dallas College failed to follow the its own policy, and in fact, breached its policies by misuse of policy procedures pertinent to FMLA leave and failing to process and honor his request for reasonable accommodations needed for his disabilities. As a result, Plaintiff has been damaged, for which he now sues.

5.3 ***Deprivation of Property Interests without Procedural Due Process.*** Plaintiff has a property interest in his contractual relationship, particularly the contractual relationship involving the policies as mentioned above. Defendant wrongfully deprived him of that interest by taking adverse employment actions against him and ultimately terminating him without affording him any antecedent procedural due process in violation of his constitutional rights. As a result, he has been damaged, for which he now sues.

5.4 ***Reservation of Rights Regarding Americans with Disabilities Act Claims.*** Additionally, and alternatively if necessary, Defendant wrongfully refused to grant Plaintiff the reasonable accommodations to which he was entitled under the Americans with Disabilities Act. Plaintiff is filing the appropriate charge forms with the appropriate agencies and will amend this Petition to include an ADA charge upon the receipt of a right to sue letter. Plaintiff reserves his right to amend his pleadings herein to assert and pursue such claims.

VI. Damages and Remedies

6.1 ***Actual Damages.*** Each of the acts or omissions of the Defendant described above was the proximate cause of damages to Plaintiff, and the Plaintiff is seeking to recover an award of the full amount of actual, compensatory, special, consequential and/or economic damages incurred by Plaintiff and caused by the acts and/or omissions of Defendant. As a direct and proximate result

of the wrongful conduct complained of herein, Plaintiff has suffered in the past, and in all probability will suffer in the future, damages for which Plaintiff pleads and seeks to recover, including:

- (a) loss of wages suffered in the past;
- (b) loss of wages that, in reasonable probability, Plaintiff will sustain in the future;
- (c) mental anguish sustained in the past; and
- (d) mental anguish that, in reasonable probability, Plaintiff will sustain in the future.

6.2 ***Mental Anguish Damages.*** The acts and omissions of the Defendant complained of herein were committed knowingly, and as a result such acts and omissions, Plaintiff sustained a high degree of mental pain and distress of such nature, duration and severity that would permit him to seek and recover mental anguish damages under applicable Texas law in connection with the claims asserted herein against Defendant; thus, O'Callaghan is hereby suing in an amount in excess of the minimum jurisdictional limits of this Court for his mental anguish damages.

6.3 ***Exemplary Damages.*** The acts and omissions of the Defendant complained of herein were committed intentionally, knowingly, fraudulently, grossly negligently, and/or maliciously, in complete disregard of the rights and welfare of the Plaintiff. Moreover, such actions have been taken by the Defendant with the intent to injure Plaintiff. Exemplary damages are being sought solely for the tortious conduct outlined above, not the Breach of Contract claim.

6.4 ***Attorney's Fees and Costs.*** Plaintiff has retained the law firm of Hill Gilstrap, P.C. to represent him in connection with this matter, and has agreed to pay the law firm any and all reasonable and necessary attorney's fees and costs in connection with such representation. Pursuant to Chapter 38 of the Texas Civil Practices and Remedies Code, as well as under general equitable principles, Plaintiff is entitled to and seeks to recover, from Defendant, Dallas College,

all of his reasonable and necessary attorney's fees and costs incurred and to be incurred in bringing this suit, and to the extent permitted by law, in all appeals of this suit.

6.5 ***Interest.*** Plaintiff is also entitled to and seeks to recover costs of court, along with pre-judgment and post-judgment interest at the maximum rate permitted by law.

VII. Conditions Precedent

7.1 All conditions precedent to the Plaintiff's recovery on the claims alleged herein have been performed or have occurred.

VIII. Demand for Jury Trial

8.1 Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Plaintiff requests a jury trial and has tendered, or will tender, the requisite fee.

Prayer for Relief

ACCORDINGLY, Plaintiff respectfully requests judgment against Defendant for the following:

- (a) actual economic damages in an amount within the jurisdictional limits of this Court;
- (b) mental anguish damages in an amount within the jurisdictional limits of this Court;
- (c) exemplary damages in the maximum amount that may be awarded under applicable law;
- (d) loss of past and future wages in an amount within the jurisdictional limits of this Court;
- (e) his attorney's fees;
- (f) costs of court, pre-judgment and post-judgment interest, as allowed by law; and
- (g) such other and further relief, both general and special, at law or in equity, to which he may be justly entitled.

Respectfully submitted,

/s/ Frank Hill

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