[Cite as *Rohrig v. The Ohio State Univ.*, 2024-Ohio-856.]

IN THE COURT OF CLAIMS OF OHIO

KYLE ROHRIG Plaintiff v. THE OHIO STATE UNIVERSITY Defendant	Case No. 2023-00408JD Judge Lisa L. Sadler Magistrate Gary Peterson DECISION

{¶1} On December 14, 2023, Defendant filed a combined Motion for Judgment on the Pleadings and Motion for Summary Judgment. Plaintiff did not file a response. The Motions are now before the Court for a non-oral hearing pursuant to L.C.C.R. 4(D). For the following reasons, Defendant's Motions are GRANTED.

Standards of Review

{¶2} Rule 12(C) of the Ohio Rules of Civil Procedure generally permits a party to move for judgment on the pleadings after the pleadings are closed. Civ.R. 12(C) provides: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." A motion for judgment on the pleadings "presents only questions of law." *Fontbank, Inc. v. CompuServe, Inc.*, 138 Ohio App.3d 801, 807, 742 N.E.2d 674 (10th Dist.2000). The standard for a motion for judgment on the pleadings under Civ.R. 12(C) "is similar to the standard for evaluating a Civ.R. 12(B)(6) motion to dismiss, except that Civ.R. 12(C) permits the court to consider the complaint and answer, where a Civ.R. 12(B)(6) motion limits the court's consideration to the complaint." *Daudistel v. Village of Silverton*, 1st Dist. Hamilton No. C-130661, 2014-Ohio-5731, ¶ 20.

{¶3} In construing a motion to dismiss for plaintiff's failure to state a claim for relief, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery

before the court may dismiss the complaint. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975).

{¶4} When a court reviews a Civ.R. 12(C) motion, a court "is limited to only the allegations contained in the complaint and answer, and any writings properly attached to such, and the trial court may not consider any evidentiary materials." *S.E.A. Inc. v. Dunning-Lathrop & Assocs.*, 10th Dist. Franklin Nos. 03AP-1051, 03AP-1052, 2004 Ohio App. LEXIS 3734, at *10 (Aug. 5, 2004). Under Civ.R. 12(C), a dismissal "is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief. * * * Thus, Civ.R. 12(C) requires a determination that no material factual issues exist and that the movant is entitled to judgment as a matter of law." *State ex rel. Midwest Pride IV v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996). However, the court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Stainbrook v. Ohio Secretary of State*, 2017-Ohio-1526, 88 N.E.3d 1257, ¶ 11 (10th Dist.). Indeed, "[o]nly claims supported by factual allegations can avoid dismissal." *Id.*

{¶5} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C). Civ.R. 56(C) states, in part, as follows:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

See also Gilbert v. Summit Cty., 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564, ¶ 6, citing *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317, 364 N.E.2d 267 (1977).

{¶6} "The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact." *Starner v. Onda*, 10th Dist. Franklin No. 22AP-599, 2023-Ohio-1955, ¶ 20, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). "The moving party does not discharge this initial burden under Civ.R. 56 by simply making conclusory allegations." *Id.* "Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.*

{¶7} If the moving party meets its burden, the nonmoving party bears a reciprocal burden. "Once the moving party discharges its initial burden, summary judgment is appropriate if the non-moving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial." *Hinton v. Ohio Dept. of Youth Servs.*, 2022-Ohio-4783, 204 N.E.3d 1174, ¶ 17 (10th Dist.), citing *Dresher* at 293; *Vahila v. Hall*, 77 Ohio St.3d 421, 430, 674 N.E.2d 1164 (1997); Civ.R. 56(E).

Background

{¶8} Plaintiff's Complaint alleges premises liability, negligence (including negligent security, gross inadequate security, and inadequate security), breach of contract, legal malpractice, defamation, fraud, and hostile work environment against Defendant and other named persons.

{¶9} R.C. 2743.02(E) provides that "[t]he only defendant in original actions in the court of claims is the state." The Court of Claims is a court of limited jurisdiction, having exclusive jurisdiction over civil actions against the *state* for money damages that sound in law. *Windsor House, Inc. v. Ohio Dept. of Job & Family Servs.,* 10th Dist. Franklin No. 11AP-367, 2011-Ohio-6459, ¶ 15 (emphasis added).

{¶10} The term "state" is defined in R.C. 2743.01(A) as "the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state

officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state." Therefore, according to statute, the only defendant in this case is The Ohio State University (OSU).

{¶11} In seeking judgment on the pleadings, OSU contends that Plaintiff's complaint for premises liability, negligence, breach of contract, legal malpractice, defamation, and fraud does not meet the notice pleading standard of Civ.R. 8(A)(1) and (E). Defendant asserts that this failure means that Plaintiff cannot state a claim for which relief can be granted, and those claims should be dismissed.

{¶12} In seeking summary judgment, OSU contends that under R.C. 4112.02, *employers* are prohibited from discrimination with respect to conditions of employment. OSU asserts that there is no genuine dispute of material fact regarding Plaintiff's claim of a hostile work environment because OSU does not have any record of Plaintiff working for it thus, it was not an employer under the statute.

Judgment on the Pleadings

{¶13} Plaintiff's Complaint contains a form complaint stating, in part:

> The OSU is allowing multiple harm and crimes to be done to the Plaintiff while I was working for them and after involuntarily quitting. Then allowing multiple people to lie about what happened during my employment and have been currently hungout (sic) to dry while people paint falsehoods about me in court with no recourse by OSU, yet OSU had no problem illegally firing and I proved my innonce (sic) and got my job back.
>
> (Plaintiff's Complaint p. 2).

{¶14} Plaintiff's Complaint also includes a multiple page attachment outlining nine counts of civil claims against Defendant. Under each count, Plaintiff states:

> On or around Jan 2023, Walter Messenger, on behalf of clients, have falsely acclaimed the Plaintiff has been incredibly violent, etc since 2018, and yet he is the only named Defendant in that court case despite the above-named Defendants disprove that theory and several other while knowing the lawsuit has been filed against the Plaintiff.
>
> (Plaintiff's Complaint pp. 8, 9, 10, 11, 12, 13, 15, 16, and 17).

{¶15} In alleging premises liability, negligence, breach of contract, and legal malpractice, Plaintiff states that he suffered wrongful arrests, civil protection orders, loss of income, and pain and suffering, however, he does not state where this harm occurred or how OSU was involved. (Complaint pp. 8, 10, 11, 12, 13, 15).

{¶16} In his Complaint, Plaintiff, under the counts for premises liability, negligent security, gross inadequate security, inadequate security, and breach of contract, states, "Defendants breached their duty by allowing the lies in which even the Defendants have already sided with the Plaintiff since he was hired back to OSU on Steve Paas, Et.AL lies and failed to protect under the proximate cause of foreseeable harm of not coming to court and/or taking actions against them." (Complaint pp. 8, 9, 10, 12, and 13).

Premises Liability

{¶17} Under Ohio law, the duty owed by an owner or occupier of premises generally depends on whether the injured person is an invitee, licensee, or trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 315, 662 N.E.2d 287 (1996). An owner or occupier of premises generally owes invitees the greatest duty, "a duty of ordinary care in maintaining the premises in a reasonably safe condition and has the duty to warn its invitees of latent or hidden dangers." *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 5.

{¶18} In construing Plaintiff's material allegations in the Complaint as true, Plaintiff has failed to assert a location where any harm occurred to him, let alone that the location was on OSU property. Additionally, it is unclear how OSU is connected to any of the "lies" of which Plaintiff complains and how that relates to any claim for premises liability. The Court finds that there is no set of facts upon which Plaintiff could prove that he is entitled to relief on the basis of premises liability.

Negligence

{¶19} In his Complaint Plaintiff alleges negligent security, gross inadequate security, and inadequate security, which amount to claims of negligence.

{¶20} To prevail on a claim for negligence, Plaintiff must prove by a preponderance of the evidence that "(1) the defendant owed the plaintiff a duty, (2) the defendant

breached that duty, and (3) the breach of the duty proximately caused the plaintiff's injury." *Jenkins v. Ohio Dept. of Rehab & Corr.,* 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 6.

{¶21} Here, Plaintiff has not asserted any facts that amount to an actionable duty for OSU regarding Plaintiff's security. Plaintiff merely claims that OSU failed to protect him from lies. Plaintiff fails to allege any facts that would establish any duty on behalf of OSU. Accordingly, the Court finds beyond doubt, in construing the facts as Plaintiff presented them in the Complaint as true, that Plaintiff can prove no set of facts entitling him to recovery on the counts of negligent security, gross inadequate security, and inadequate security.

Breach of Contract

{¶22} In order "[t]o recover upon a breach of contract claim, a plaintiff must prove the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff." *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, 878 N.E.2d 66, ¶ 18. (Internal quotation omitted). Defendant will "breach" a contract when it "fail[s] without legal excuse to perform any promise which forms a whole or part of a contract, including the refusal of a party to recognize the existence of the contract or the doing of something inconsistent with its existence." *Hopkins v. Car Go Self Storage*, 135 N.E.3d 1229, 2019-Ohio-1793, ¶ 13 (10th Dist.), quoting *Natl. City Bank of Cleveland v. Erskine & Sons, Inc.,* 158 Ohio St. 450, 110 N.E.2d 598 (1953) (internal quotation marks omitted).

{¶23} In Plaintiff's breach of contract section, he states "All Defendants breached and/or aided/betted a breach of court order contract". (Complaint, p. 12). In construing the facts in the Complaint as true, Plaintiff has failed to allege a contractual relationship between himself and OSU.[1] The Court finds that Plaintiff can prove no set of facts entitling him to relief for breach of contract claim.

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[1] Civ.R. 10(D)(1) provides: "[w]hen any claim or defense is founded on an account or other written instrument, a copy of the account or written instrument must be attached to the pleading. If the account or written instrument is not attached, the reason for the omission must be stated in the pleading." Plaintiff did not attach any written instrument to his complaint or explain the reason for the omission.

Legal Malpractice

{¶24} As stated in *Vahila v. Hall*, 77 Ohio St.3d 421, 674 N.E.2d 1164 (1997), to establish a claim for legal malpractice: "a plaintiff must show (1) that the attorney owed a duty or obligation to the plaintiff, (2) that there was a breach of that duty or obligation and that the attorney failed to conform to the standard required by law, and (3) that there is a causal connection between the conduct complained of and the resulting damage or loss."

{¶25} Plaintiff states in his legal malpractice section that "OSU and Flannagan's Dublin had an attorney-client relationship with the Plaintiff as he worked for them." (Complaint, p. 16). Plaintiff, however, failed to allege that he and OSU entered an attorney-client relationship and the mere allegation that Plaintiff was an employee of OSU does not demonstrate the existence of any attorney-client relationship. Construing the facts in the complaint as true, Plaintiff has not alleged an attorney-client relationship between himself and OSU. Accordingly, the Court finds that Plaintiff can prove no set of facts entitling him to relief under the principles of legal malpractice.

Defamation

{¶26} To establish defamation, "a plaintiff must show (1) the defendant made a false statement, (2) the statement was defamatory, (3) the statement was published, (4) the plaintiff was injured as a result of the statement, and (5) the defendant acted with the required degree of fault." *Webber v. Ohio Dept. of Pub. Safety*, 10th Dist. Franklin No. 17AP-323, 2017-Ohio-9199, ¶ 36.

{¶27} In alleging defamation Plaintiff states, "[a]ll Defendants have allowed the False Statements of Plaintiff's character on multiple social medias, different states, courts,etc." Also, "[a]ll Defendants openly allow people to call the Plaintiff a stalker and harasser and yet they openly and obviously come near him". (Complaint p. 16). Further Plaintiff stated, "Franklin County tried stating the Plaintiff willfully put hands on Rodney which is ORC Falsification since Fairfield County stated that was not true first and Franklin County CPO court words are ORC Falsification". (Complaint p. 17). Plaintiff does not allege that *OSU* made false statements about him but that it *allows* others to make false statements; he does not state who the others are or how they are connected to OSU.

{¶28} Therefore, the Court finds, Plaintiff can prove no set of facts entitling him to relief for defamation.

Fraud

{¶29} In his Complaint, Plaintiff makes the following assertions with respect to his fraud claim. "All Defendants have represented and/or duty disclose each other's lies like Columbus In-Line Dance Collective is not our legal name, yet multiple Defendants prove that it is their legal name and indirect violation of wire/mail fraud * * * by stating its no their legal names to avoid a lawsuit." "All Defendants have allowed and/or cover up the changing of money on Columbus In-Line Dance Collective name and have even been printed on advertisements to put on peoples cars while on competitors premise aka Tequila Cowboys Columbus". "All Defendants are knowingly and willfully allowing other Defendants to defraud the courts, libel and slander the Plaintiff, while profiting openly and obviously by putting on events under that name for over 5 years plus." And finally, "[a]ll Defendants definitely rely upon the name of Columbus In-Line Dance Collective to generate money and get people thru their door." (Complaint p. 18).

{¶30} As stated in *Dunlop v. Ohio Dept. of Job & Family Servs*., 10th Dist. Franklin No. 11AP-929, 2012-Ohio-1378, ¶ 19.

> The elements of a fraud claim are: (1) a representation (or concealment of a fact when there is a duty to disclose); (2) that is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred; (4) with intent to mislead another into relying upon it; (5) justifiable reliance; and (6) resulting injury proximately caused by the reliance.

{¶31} "A party bringing a claim for fraud is held to a heightened standard of pleading." *RAE Assocs., Inc. v. Nexus Communications, Inc.*, 2015-Ohio-2166, 36 N.E.3d 757, ¶ 15 (10th Dist.). Specifically, "Civ.R. 9(B) provides that '[i]n all averments of fraud * * * the circumstances constituting fraud * * * shall be stated with particularity.'" *Ettayem v. Land of Ararat Invest. Group, Inc.*, 2017-Ohio-8835, 100 N.E.3d 1056, ¶ 44 (10th Dist.). "To satisfy this requirement, a pleading must contain allegations

of fact that tend to show every element of a claim for fraud." *Adams v. Margarum*, 10th Dist. Franklin No. 16AP-515, 2017-Ohio-2741, ¶ 14. "Typically, the requirement of particularity includes the time, place, and content of the false representation, the fact represented, the individual who made the representation, and the nature of what was obtained or given as a consequence of the fraud." *Id.*

{¶32} The allegations of the Complaint do not state with specificity the time, place, or content of the alleged false representation or any connection to OSU. There is no allegation regarding what OSU actions were fraudulent or what transaction OSU was involved in with Plaintiff that was fraudulent and no allegation that Plaintiff was injured due to any reliance thereon. Therefore, the Court finds that Plaintiff can prove no set of facts entitling him to relief for fraud.

Summary Judgment

{¶33} Attached to Defendant's Motion for Summary Judgment is an Affidavit of Daniel T. Miller (Miller), an employee of OSU. (Affidavit ¶ 1). Miller averred that OSU maintains records of its employees in an electronic database and he has access to that database. (Affidavit ¶ 2). Miller also averred that in searching the database he found no record of Plaintiff ever having been employed by OSU. (Affidavit ¶ 3).

{¶34} Plaintiff failed to contradict the evidence put forth by Defendant. Civ.R. 56(E) provides: "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party." Because Plaintiff failed to meet his reciprocal burden, the Court must conclude that he was not an employee of OSU at any time.

Hostile Work Environment

{¶35} *Hinton v. Ohio Dept. of Youth Services*, 2022-Ohio-4783, 204 N.E.3d 1174, ¶ 33 (10th Dist.), citing *Chapa v. Genpak, LLC*, 10th Dist. Franklin No. 12AP-466, 2014-Ohio-897, ¶ 33, states in pertinent part:

> To prevail on a claim for hostile work environment * * * a plaintiff must demonstrate: (1) the employee is a member of a protected class, (2) the harassment was unwelcome, (3) the harassment was based on [the protected class], (4) the harassment had the effect or purpose of unreasonably interfering with the employee's work performance or of creating an intimidating, hostile, or offensive work environment, and (5) employer liability through respondeat superior.

{¶36} Because the undisputed facts show that Plaintiff was never employed by Defendant, the Court finds no genuine issue of material fact on Plaintiff's hostile work environment claim and Defendant is entitled to judgment as a matter of law.

Conclusion

{¶37} Based upon the foregoing, the Court concludes that Defendant is entitled to judgment as a matter of law and no material factual issues exist on Plaintiff's claims for premises liability, negligence, breach of contract, legal malpractice, defamation, and fraud as there is no set of facts that plaintiff could prove to support his claims after drawing all reasonable inferences in his favor. Further, there is no genuine dispute of material facts and Defendant is entitled to judgement as a matter of law on Plaintiff's claim for hostile work environment.

LISA L. SADLER
Judge

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IN THE COURT OF CLAIMS OF OHIO

{¶38} For the reasons stated in the decision filed concurrently herewith, Defendant's Motions for Summary Judgment and Judgment on the Pleadings are GRANTED, and judgment is rendered in favor of Defendant. All previously scheduled events are VACATED. Court costs are assessed against Plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge

Filed February 16, 2024
Sent to S.C. Reporter 3/8/24