

IN THE CIRCUIT COURT OF THE 20th
JUDICIAL CIRCUIT IN AND FOR
COLLIER COUNTY, FLORIDA

Case No. 2020-CA-001471-0001

SCOTT MOORE, an individual,

Plaintiff,

vs.

MASON CLASSICAL ACADEMY, INC.,
A Florida not for profit corporation,

Defendant.

DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

Defendant, MASON CLASSICAL ACADEMY ("MCA"), a Florida not-for-profit corporation, by and through its undersigned counsel and pursuant to Fla. R. Civ. P. 1.140 (b)(1),(6), hereby files its Motion to Dismiss Amended Complaint of Plaintiff, SCOTT MOORE ("Moore"), and in support states as follows:

I. KEY FACTUAL ALLEGATIONS IN COMPLAINT

1. Plaintiff filed this suit on May 5, 2020 for alleged wrongful termination based on purported retaliatory conduct by MCA.

2. MCA is a private, not-for-profit corporation registered and formed in the State of Florida in July, 2012. See Am. Compl. at para. 5.

3. MCA has operated a charter school under the same name pursuant to a contract with the School Board of Collier County since 2014 ("Charter Contract"). Id.

4. Pursuant to an employment contract (“Employment Contract”), Plaintiff was hired as MCA’s compliance officer on or about Sept. 2, 2019. Id. at para. 7.

5. On March 23, 2020, MCA’s board of directors allegedly approved switching the school’s healthcare insurance to a new provider, Captivated Health. Id. at para. 9.

6. On March 26, 2020, a community member brought to the attention of MCA’s board that David Bolduc, a director, had recently begun managing Captivated Health’s Tampa-based team on March 25, 2020, which was not yet publicly disclosed. Id. at para. 10.

7. Captivated Health is a nationwide partially self-insured healthcare captive arrangement for charter schools.

8. On March 27, 2020, Plaintiff prepared and sent a signed, written complaint to MCA’s board of directors, which specifically objected to the alleged illegal activity stated in paragraphs 5-6 above. Id. at para. 11.

9. MCA’s board scheduled a meeting on April 14, 2020 to discuss Plaintiff’s complaint. Id. at para. 12.

10. At that meeting, MCA voted to terminate Moore, which he attributes to his objection to and complaint regarding Bolduc’s failure to disclose his financial ties to Captivated Health. Id. at para. 14-16.

II. PLAINTIFF FAILED TO ATTACH A COPY OF HIS EMPLOYMENT CONTRACT PURSUANT TO FLA. R. CIV. P. 1.130

11. Plaintiff added a copy of the Charter Contract between MCA and the Collier County School Board to the Amended Complaint. However, he has still failed to attach a copy of his Employment Contract.

12. Fla. R. Civ. P. 1.130 provides that all documents on which a cause of action may be brought must be incorporated in or attached to the pleading. See Safeco Ins. Co. v. Ware, 401

So. 2d 1129, 1130 (Fla. 4th DCA 1981); Winn-Dixie Stores, Inc. v. Sams, 281 So. 2d 47 (Fla. 3d DCA 1973) (it is plaintiff's responsibility to attach any documents upon which his alleged cause of action is based).

13. The purpose of this rule "is to apprise the defendant of the nature and extent of the cause of action so that he may plead with greater certainty." Diaz v. Bell Micro Products-Future Tech, Inc., 43 So. 3d 138, 140 (Fla. 3d DCA 2010).

14. The failure to attach appropriate documents is problematic because "[a] complaint based on a written instrument does not state a cause of action until the instrument or an adequate portion thereof, is attached to or incorporated in the complaint." Walters v. Ocean Gate Phase I Condo., 925 So. 2d 440 (Fla. 5th DCA 2006).

15. Plaintiff's employment and the terms governing same with MCA stems from his Employment Contract, including any alleged damages owed for back pay, lost wages or benefits or other remuneration.

16. The Employment Contract must be attached so that the Court can evaluate whether it refutes any of the allegations contained in the Amended Complaint. See Duke v. HSBC Mortg. Svcs., Inc., 79 So. 3d 778 (Fla. 4th DCA 2011) (when exhibits are attached to a complaint, the contents of the exhibit control over the allegations of the complaint); Khan v. Bank of Am., 58 So. 3d 927 (Fla. 5th DCA 2011).

17. Plaintiff has failed to state a cause of action by the absence of the Employment Contract being attached or incorporated into the pleadings.

III. THE CIRCUIT COURT LACKS SUBJECT MATTER JURISDICTION

18. Fla. Stat. section 26.012 implements the provisions of Article V, section 5(b) of the Florida Constitution by creating and defining the jurisdiction of the circuit courts. Section

26.012(2)(a) provides that the circuit courts have original jurisdiction in “all actions at law not cognizable by the county courts.” Thus, the jurisdiction of the circuit court in an action for damages is defined by the monetary limits of county court jurisdiction.

19. Section 34.01, Fla. Stat. establishes the jurisdiction of the county courts and for many years this statute provided that the county court had jurisdiction in an action for damages not exceeding \$15,000. However, section 34.01(1)(c) was amended effective January 1, 2020 to increase the monetary jurisdiction of the county courts as follows:

(1) The county courts shall have original jurisdiction:

(c) Of all actions at law, except those within the exclusive jurisdiction of the circuit court, in which the matter in controversy does not exceed, exclusive of interest, costs and attorney fees:

1. If filed on or before December 31, 2019, the sum of \$15,000.
2. If filed on or after January 1, 2020, the sum of \$30,000.
3. If filed on or after January 1, 2023 the sum of \$50,000.

20. It follows that the circuit court has jurisdiction over any civil action for damages that does not fall within the jurisdiction of the county court as defined in the schedule in section 34.01(1)(c).

21. A plaintiff must have a valid basis to make a demand in excess of the jurisdictional limit. The mere assertion of an amount exceeding the jurisdictional minimum is not sufficient to confer jurisdiction on the circuit court if on the face of the allegation in the complaint it appears that the required minimum amount could not be claimed in good faith, or if the facts alleged cannot furnish any legal basis for the claim. See Fedan Corp. v. Reina, 695 So 2d 1282 (Fla. 3d DCA 1997); Tobin & Thompson, P.A. v. Golan, 568 So. 2d 100 (Fla. 3d DCA 1990).

22. If the facts alleged in the complaint do not support the jurisdictional claim, the complaint may be dismissed or transferred to the county court. See Curtis v. Centauri Specialty Ins. Co., 290 So. 3d 926 (Fla. 4th DCA 2020) (while a circuit court's subject matter jurisdiction is initially determined by the amount of damages alleged in good faith, if it is later determined that the amount in controversy is less than jurisdictional limits, the circuit court may transfer the case to county court).

23. The jurisdiction of the circuit court cannot be created by adding a claim for interest, costs, or attorney's fees to a claim that would otherwise fall within the jurisdiction of the county court. These items are not part of the claim for jurisdictional purposes. Rather, they are incidental to the claim. See 5 FLPRAC section 1:5: Subject Matter Jurisdiction- Circuit Courts.

24. In the case at bar, Plaintiff filed suit on May 5, 2020, seeking damages of lost wages, benefits and other remuneration. He generally alleged that his damages exceed \$30,000, and that the Court has jurisdiction pursuant to Fla. Stat. section 26.012. See Compl. at para. 1-2. However, Plaintiff was terminated on April 14, and there are no allegations that he was not paid while working at the school. As the allegations show, and as the Employment Contract will further make clear, at the time of filing suit, his damages consisted of approx. three weeks of unpaid salary from his termination date on April 14. At an annual salary of \$65,000, Plaintiff's alleged damages were approx. \$3,900. Even if including health insurance or other lost fringe benefits during that time period, Plaintiff's damages were well below the statutory threshold for the circuit court to have subject matter jurisdiction.

25. "With respect to jurisdiction over the subject matter, it is the matters set forth in the complaint together with the nature of relief sought which determine subject matter jurisdiction." Board of Trustees of Internal Imp. Trust Fund v. Walton Cty., 121 So. 3d 1166,

1171 (Fla. 1st DCA 2013); Calhoun v. New Hampshire Ins. Co., 354 So. 2d 882, 883 (Fla. 1978) (ruling that subject matter jurisdiction is “tested by the good faith allegations, initially plead, and is not dependent upon the ultimate disposition of the lawsuit”).

26. A trial court must have subject matter jurisdiction upon the filing of the complaint, and it may not be conferred upon the court by consent of the parties. Rather, it is conferred upon the court by the Florida Constitution and state statutes. MCR Funding v. CMG Funding Corp., 771 So. 2d 32, 35 (Fla. 4th DCA 2000).

27. Subject matter jurisdiction concerns the court’s power to lawfully hear and adjudicate a cause, and the lack of such jurisdiction may even be raised for the first time on appeal. Id.; Fla. R. Civ. P. 1.140(b).

28. If the alleged facts pertaining to jurisdiction are not accurate, or are contradicted by the exhibits to the complaint, the court lacks subject matter jurisdiction. Sullivan v. Nova Univ., 613 So. 2d 597 (Fla. 5th DCA 1993). “Florida is among the jurisdictions in which the mere assertion in the complaint of an amount exceeding the jurisdictional minimum is not sufficient [to confer jurisdiction] where on the face of the allegation in the complaint it appears that the required minimum amount is actually not involved, or that the facts alleged cannot furnish any legal basis for the claim raised.” Id.; 20 Am.Jur.2d Courts section 155.

29. This case falls within the exclusive jurisdiction of the county courts. Even if Plaintiff sought equitable relief, Fla. Stat. section 34.01(4) provides county court judges with the authority to hear and resolve such claims within its jurisdictional amount. This jurisdictional defect cannot be cured by subsequent events, or the passage of time, and the lack of subject matter jurisdiction renders a judgment void. See Edwards v. Jones, 221 So. 3d 770; Ricci v.

Ventures Trust, 2013, 276 So. 3d 5 (Fla. 4th DCA 2019) (lack of subject matter jurisdiction makes an order void).

WHEREFORE, Mason Classical Academy respectfully requests that this Honorable Court enter an order dismissing Plaintiff's complaint for failure to state a cause of action and/or for the lack of subject matter jurisdiction, along with such other and further relief as this Court deems just and proper.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via E-Portal this 10th day of September, 2020, to Benjamin H. Yormak, Esq., Yormak Employment & Disability Law, 9990 Coconut Road, Bonita Springs, FL 34135 (byormak@yormaklaw.com).

By: s/ Jonathan E. Kanov