

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT LEXINGTON
CASE NO.: 5:18-cv-00351-KKC

NICHOLAS CHARLES BREINER

PLAINTIFF

v.

ANSWER TO REMANDED COMPLAINT
Electronically Filed

BOARD OF EDUCATION OF MONTGOMERY COUNTY

DEFENDANT

* * * * *

Comes the Defendant, Montgomery County Board of Education, by and through counsel, and for its Answer to the Plaintiff's Remanded Complaint states as follows:

FIRST DEFENSE

The Remanded Complaint fails to state a claim for which relief may be granted against this Defendant and therefore, should be dismissed and held for naught.

SECOND DEFENSE

This Defendant affirmatively pleads that service of process upon the Board of Education of the Remanded Complaint was insufficient, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

THIRD DEFENSE

This Defendant affirmatively pleads that the Remanded Complaint should be dismissed in whole or in part as barred by the applicable statute of limitations of actions in such cases made and provided.

FOURTH DEFENSE

This Defendant affirmatively pleads that the Plaintiff failed to exhaust all available administrative remedies, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

FIFTH DEFENSE

This Defendant affirmatively pleads governmental immunity as a bar in whole or in part to Plaintiff's Remanded Complaint.

SIXTH DEFENSE

This Defendant affirmatively pleads that at the time and upon the occasion complained of, any actions taken by this Defendant were of a discretionary nature and function, and were not ministerial functions and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

SEVENTH DEFENSE

This Defendant affirmatively pleads that at all times alleged herein, none of the activities engaged in by this Defendant, if any, were done with malice, and therefore, this Defendant affirmatively pleads good faith immunity as a bar in whole or in part to Plaintiff's Remanded Complaint.

EIGHTH DEFENSE

This Defendant affirmatively pleads that the Plaintiff failed to mitigate his damages, if any, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

NINTH DEFENSE

This Defendant affirmatively pleads that no disparate conditions of employment existed at the time and upon the occasion complained of in Plaintiff's Complaint, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TENTH DEFENSE

This Defendant affirmatively pleads that the conduct of the Plaintiff, himself, violated the policies and procedures of the Defendant, Montgomery County Board of Education, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

ELEVENTH DEFENSE

This Defendant affirmatively pleads that no adverse employment action was taken against the Plaintiff, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWELFTH DEFENSE

This Defendant affirmatively pleads that there were objective non-gender or sexual orientation related neutral reasons to non-renew the Plaintiff, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

THIRTEENTH DEFENSE

This Defendant affirmatively pleads that a subsequent replacement for the Plaintiff's position was filled by a more qualified candidate, also of a protective class, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

FOURTEENTH DEFENSE

This Defendant affirmatively pleads that pursuant to Statute, the Plaintiff was not vested with the Constitutional Right to have a specific position within the school system, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

FIFTEENTH DEFENSE

This Defendant affirmatively pleads that the Plaintiff has failed to plead the requisite elements for a claim for punitive damages, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint. Alternatively, this Defendant relies on KRS § 411.184 as a bar to the Plaintiff's punitive damages claims.

SIXTEENTH DEFENSE

This Defendant affirmatively pleads that the Plaintiff's claim for punitive damages pursuant to KRS 411.184, as modified by the Supreme Court of Kentucky in Williams v. Wilson, 972 S.W.2d 260 (Ky. 1998), against this Defendant cannot be sustained because an award of punitive damages under Kentucky law, or an award of punitive damages under Kentucky law for the purpose of compensating plaintiffs for elements of damage not otherwise recognized by Kentucky law, without proof of every element beyond a reasonable doubt would violate this Defendant's rights under the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and under Section Sections 2, 3, 13, and 17 of the Kentucky Constitution; and this Defendant pleads and relies upon same as a bar in whole or in part to Plaintiff's Remanded Complaint.

SEVENTEENTH DEFENSE

The claim of Plaintiff for punitive damages against this Defendant cannot be sustained because an award of punitive damages under Kentucky law is subject to no predetermined limit, such as a maximum multiple compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose would violate this Defendant's due process right guaranteed by the Fourteenth Amendment to the United States Constitution and by Section Two of the Kentucky Constitution; and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

EIGHTEENTH DEFENSE

This Defendant affirmatively pleads that to the extent the Defendant was negligent in the non-renewal of the Plaintiff at the time and upon the occasion complained of, such negligence as a matter of law does not give rise to a claim for punitive damages and this Defendant pleads and relies upon same as a bar in whole or in part to Plaintiff's Remanded Complaint.

NINETEENTH DEFENSE

This Defendant affirmatively pleads that the Plaintiff has failed to assert the requisite elements for any claim for embarrassment, or harassment, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWENTIETH DEFENSE

This Defendant affirmatively pleads that the Plaintiff has failed to allege facts sufficient to state a cause of action under Title VII, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWENTY-FIRST DEFENSE

This Defendant affirmatively pleads that the Plaintiff has failed to allege facts sufficient to state a cause of action under KRS Chapter 344, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWENTY-SECOND DEFENSE

This Defendant affirmatively pleads that the injuries, if any, sustained by the Plaintiff were caused by prior circumstances not under the control of this Defendant, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWENTY-THIRD DEFENSE

This Defendant affirmatively pleads that the Plaintiff's claimed injuries, if any there were, were the result of subsequent acts by the Plaintiff over which this Defendant had no involvement, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWENTY-FOURTH DEFENSE

This Defendant pleads the affirmative defenses of laches as a bar, in whole or in part, to Plaintiff's Remanded Complaint.

TWENTY-FIFTH DEFENSE

This Defendant affirmatively pleads that the actions alleged in Plaintiff's Complaint as asserted were allegedly the actions of individuals, and do not as a matter of law, in fact, constitute any official policy or decision of the Defendant, and therefore, this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWENTY-SIXTH DEFENSE

This Defendant affirmatively pleads and relies upon all other affirmative defenses as may become available or apparent during the course of discovery and reserves the right to amend their Answer to assert those affirmative defenses.

TWENTY-SEVENTH DEFENSE

This Defendant affirmatively pleads that the Plaintiff was non-renewed for failure to properly do the job duties expected of him, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWENTY-EIGHTH DEFENSE

This Defendant affirmatively pleads that the Plaintiff did not comply with policies and procedures regarding any alleged administrative remedies, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

TWENTY-NINTH DEFENSE

This Defendant affirmatively pleads that the EEOC investigation regarding Plaintiff's allegations against this Defendant were unsubstantiated and this Defendant

pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

THIRTIETH DEFENSE

This Defendant affirmatively pleads that Plaintiff has failed to set forth the requisite elements for a claim for defamation, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

THIRTY-FIRST DEFENSE

This Defendant states that the Plaintiff was not discharged from employment with this Defendant, but rather was non-renewed, and this Defendant pleads and relies upon the same as a bar in whole or in part to Plaintiff's Remanded Complaint.

THIRTY-SECOND DEFENSE

1. This Defendant admits the factual allegations contained in numerical paragraphs 1, 2, 6, 7, and 8 of Plaintiff's Remanded Complaint.

2. This Defendant lacks sufficient knowledge or information upon which to form a belief as to the truthfulness of the factual allegations contained in numerical paragraphs 3, 4, 5, and 11 of Plaintiff's Remanded Complaint, and therefore deny the same.

3. This Defendant admits and denies the factual allegations contained herein above, and herein below in response to numerical paragraph 17 of Plaintiff's Remanded Complaint as if incorporated herein by reference.

4. This Defendant denies the factual allegations contained in numerical paragraphs 8, 9, 10, 12, 16, 18, 19, 21, 22, and 23 of Plaintiff's Remanded Complaint.

5. This Defendant denies the allegations contained in numeral paragraphs 13 and 14 relating to “pink slip” as that is not a defined term in the Remanded Complaint, but admits that the Plaintiff was non-renewed.

6. Regarding numerical paragraphs 15 and 20 of Plaintiff’s Remanded Complaint, the Defendant admits that the position was subsequently filled by a female, but denies Plaintiff’s allegation that it was “his position” or any allegations of the orientation of the female.

7. This Defendant denies each and every allegation not heretofore admitted.

WHEREFORE, the Defendant, Montgomery County Board of Education, by and through counsel, and respectfully requests that the Plaintiff’s Remanded Complaint be dismissed and held for naught; for its costs herein expended, including reasonable attorney’s fees; and for any and all other relief to which it may appear entitled, including trial by jury.

Respectfully submitted,

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BY: /s/ JOHN G. MCNEILL
ATTORNEY FOR DEFENDANT
MONTGOMERY COUNTY BOE

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has this 25th day of November, 2020, been electronically mailed to the following:

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BY: /s/ JOHN G. MCNEILL
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