

DOCKET NO. WWM-15-6009136 S

MELANIE PEREZ	:	SUPERIOR COURT
<i>Plaintiff</i>	:	
	:	JUDICIAL DISTRICT OF WINDHAM
v.	:	AT PUTNAM
	:	
STATE OF CONNECTICUT	:	
JUDICIAL DEPARTMENT	:	
<i>Defendant</i>	:	April 27, 2015

**MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

I. BACKGROUND FACTS

Plaintiff Melanie Perez brings this action against the State of Connecticut Judicial Department alleging a violation of her rights pursuant to Conn. Gen. Stat. § 46a-60 et seq., the Connecticut Fair Employment Practices Act ("CFEPA). The plaintiff alleges that she has a physical disability (Complaint, ¶ 4) and that the defendant violated her rights and subjected her to disability discrimination.

The plaintiff filed a complaint with the Commission on Human Rights and Opportunities ("CHRO") on or about January 28, 2013 and states that she received a Release of Jurisdiction from the CHRO on or about January 20, 2015. (Complaint, ¶ 8)

Plaintiff brought this action in the Judicial District of Windham at Putnam. In addition, plaintiff seeks punitive damages. Plaintiff's claim for punitive damages, interest and damages for "depletion of personal savings" must be dismissed on the grounds of sovereign immunity. Finally, this matter should be dismissed or transferred to the Judicial District of Hartford as this case is pending in the incorrect venue.

II. STANDARD OF REVIEW

“A motion to dismiss ... properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot, as a matter of law and fact, state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Housatonic Railroad Co. v. Commissioner of Revenue Services*, 301 Conn. 268, 274 (2011). “A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) *Dayner v. Archdiocese of Hartford*, 301 Conn. 759, 774 (2012). “Pursuant to the rules of practice, a motion to dismiss is the appropriate motion for raising a lack of subject matter jurisdiction.” *St. George v. Gordon*, 264 Conn. 538, 545 (2003). “[T]he question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised by any of the parties, or by the court *sua sponte*, at any time ... Moreover, [t]he parties cannot confer subject matter jurisdiction on the court, either by waiver or by consent.” (Internal quotation marks omitted.) *New Hartford v. Connecticut Resources Recovery Authority*, 291 Conn. 511, 518, 970 A.2d 583 (2009). “[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor ... clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute.” (Internal quotation marks omitted.) *Wilcox v. Webster Ins., Inc.*, 294 Conn. 206, 213–14 (2009). “It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged.” (Internal quotation marks omitted.) *Id.*, at 214. “A fundamental tenet in our law is that the plaintiff’s complaint defines the dimensions of the issues to be litigated.” *Pergament v. Green*, 32 Conn. App. 644, 650, 630 A.2d 615, cert. denied, 228 Conn. 903, 634 A.2d 296 (1993). See Practice Book § 10-31(a).

“The motion to dismiss shall be used to assert improper venue.” Practice Book § 10-31(a)(3).

III. ARGUMENT

A. PLAINTIFFS’ CLAIM FOR PUNITIVE DAMAGES, INTEREST UNDER CONNECTICUT GENERAL STATUTES § 37-3A AND DEPLETION OF PERSONAL SAVINGS ARE BARRED BY SOVEREIGN IMMUNITY

Sovereign immunity bars Plaintiffs’ claim for punitive damages against the State pursuant to Conn. Gen. Stat. § 46a-104 and interest under § 37-3a. Section 46a-104 sets forth the applicable relief in a successful civil action for discriminatory practices brought pursuant to Conn. Gen. Stat. § 46a-100:

The court may grant a complainant in an action brought in accordance with section 46a-100 such legal and equitable relief which it deems appropriate including, but not limited to, temporary or permanent injunctive relief, attorney's fees and court costs.

Conn. Gen. Stat. § 46a-104.

In *Ware v. State*, 118, Conn. App. 65, 87 (Conn. App. Ct. Nov. 24, 2009), the Appellate Court held that sovereign immunity bars punitive damages against the state under CFEPA; *see also Rheiner v. Conn. Dep’t of Educ.*, 2010 WL 2821939 at * 5, 2010 Conn. Super. LEXIS 1441, at *12 (Conn. Super. Ct. June 14, 2010). While “§ 46a-100 represents an unambiguous waiver of sovereign immunity, authorizing actions against the state for alleged discriminatory employment practices in violation of § 46a-60,” the court found that the waiver does not extend to punitive damages. *Ware*, 118 Conn. App. at 88 (*quoting Lyon v. Jones*, 291 Conn. 384, 397 (2009)) (internal quotations omitted). The court reasoned, “[t]here is no express waiver of liability in §§ 46a-100 or 46a-104” and “no necessary implication that the defendant waived its immunity to liability for punitive damages.” *Id.* at 88-89; *see also Drolett v. Town of E.*

Windsor, 2010 WL 3039597 at * 8, 2010 Conn. Super. LEXIS 1753, at *24-25 (Conn. Super. Ct. July 12, 2010); *Siuzdak v. Greater Bridgeport Cmty. Mental Health Ctr.*, 2009 WL 3740704, 2009 Conn. Super. LEXIS 2731 (Conn. Super. Ct. Oct. 9, 2009) (holding that plaintiff could not obtain punitive damages under § 46a-104 as the State had not waived its sovereign immunity for punitive damages under CFEPA, since § 46a-104 did not expressly allow plaintiff to seek punitive damages, and the State was presumed to be immune unless a statute clearly provided otherwise).

In addition, applying the cited reasons explained by the court in *Ware* also provides direction to this court with regard to dismissing Plaintiff's claim for interest. To circumvent the doctrine of sovereign immunity, a plaintiff must show that "(1) the legislature, either expressly or by force of a necessary implication, statutorily waived the state's sovereign immunity . . . or (2) in an action for declaratory or injunctive relief, the state officer or officers against whom such relief is sought acted in excess of statutory authority, or pursuant to an unconstitutional statute." *Lyon*, 291 Conn. at 397 (citation and internal quotations omitted). There is no specific legislation waiving sovereign immunity with regard to collecting interest under CFEPA, and there is no basis to find a necessary implication to overcome sovereign immunity for interest. A waiver of suit under CFEPA does not necessarily imply a waiver of immunity from all aspects of liability. See *Struckman v. Burns*, 205 Conn. 542, 559 (1987) (statutory waiver of sovereign immunity from suit was not waiver of immunity from prejudgment interest); *State v. Chapman*, 176 Conn. 362, 366 (1978) (statutory waiver of sovereign immunity from suit was not waiver of immunity from costs).

In *Chouhan v. University of Connecticut Health Center*, 2013 WL 6335273 at *11-12 (Conn. Super. 2013) the court dismissed plaintiff's claims for both punitive damages and interest finding that they were both barred by sovereign immunity.

Furthermore, the reasoning of the Appellate Court in *Ware* with regard to punitive damages equally applies to the plaintiff's claim for interest. See, e.g., *Struckman v. Burns*, 205 Conn. 542, 558–59, 534 A.2d 888 (1987) (statutory waiver of sovereign immunity from suit not waiver of immunity from prejudgment interest), citing *State v. Chapman*, 176 Conn. 362, 366, 407 A.2d 987 (1978) (“In the absence of a specific statutory provision allowing the taxation of costs against the state, this court is required to adhere to the widely recognized principle that statutes relating to costs and authorizing the imposition of costs in various kinds of actions or proceedings, or under various prescribed circumstances, which do not in express terms mention the state, are not enough to authorize imposing costs against the state”). For the foregoing reasons, the defendant's motion to dismiss the plaintiff's claims for punitive damages and interest is granted.

Chouhan v. Univ. of Connecticut Health Ctr., No. CV096002439S, 2013 WL 6335273, at *11-12

Moreover, there is no provision under CFEPA allowing plaintiff to recover for "depletion of personal savings." Plaintiff has already sued for lost wages. By asking for "depletion of personal savings" it appears that plaintiff is seeking damages in addition to lost wages. Such an item is not authorized under CFEPA. In context of a sister provision within CFEPA, Conn. Gen. Stat. § 46a-99, the court has held that indefinite language as to the nature of remedies available against the state, bars suit for monetary damages against the state. See *Prigge v. DCF*, 2004 Conn. Super. LEXIS 804, at * 11-12 (Conn. Super. Ct. Mar. 26, 2004). The language in § 46a-99 reads: “for appropriate relief” and provides the court power to “grant such relief, by injunction or otherwise, as it deems just and suitable.” The court in *Prigge* held that such language was too indefinite to overcome sovereign immunity, and thus, a plaintiff was only entitled to injunctive and declaratory relief against the state and was not entitled to monetary damages. *Id.*; accord *Lyon v Jones*, 104 Conn. App. 547 (2007), *reversed on other grounds*, 291

Conn. 384 (2009) (sovereign immunity issue of § 46a-99 not reached). Plaintiff should not be able to obtain punitive damages, interest or monies for "depletion of personal savings" under CFEPA because the legislature has not "clearly and unambiguously" expressed the intent to subject the state to such damages under CFEPA. *See Comm'n on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, at 346 and 352 (1996) (state employment discrimination cases governed by § 46a-60 only which specifically prohibits discriminatory employment practices. Accordingly, the specific, narrowly tailored cause of action embodied in § 46a-60 supersedes the general cause of action embodied in § 46a-58(a).) Subsection (b) of § 46a-86 sets forth the remedies available to a victim of a "discriminatory employment practice" and the remedies do not include "depletion of personal savings." *Comm'n on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, 347, 680 A.2d 1261, 1267 (1996).

Accordingly, the State's immunity from interest under CFEPA has not been waived, and plaintiff's claims for punitive damages, interest and monies for depletion of personal savings should be dismissed.

B. THIS ACTION MUST BE DISMISSED AND/OR THE MATTER TRANSFERRED FOR IMPROPER VENUE

Practice Book §10-31 states that a motion to dismiss shall be used to assert "3) improper venue." Under Connecticut General Statutes § 46a-100, this action was filed in the improper venue.

More specifically § 46a-100 provides, "[a]ny person who has timely filed a complaint with the Commission on Human Rights and Opportunities in accordance with section 46a-82 and who has obtained a release from the commission in accordance with section 46a-83a or 46a-101, may also bring an action in the superior court for the judicial district in which the discriminatory practice is alleged to have occurred or in which the respondent transacts business, *except any*

action involving a state agency or official may be brought in the superior court for the judicial district of Hartford.” (Emphasis added).

This action involves a state agency and a state official. Accordingly this action should have been brought in the Judicial District of Hartford. Because plaintiff has not commenced this action in the proper jurisdiction, this case should either be dismissed and/or the matter transferred to the Judicial District of Hartford.

IV. CONCLUSION

For the foregoing reasons, the Defendant respectfully requests that this Court dismiss the claims for punitive damages, interest and "depletion of personal savings". In addition, defendant moves that this case be dismissed or in the alternative transferred to the Judicial District of Hartford.

DEFENDANT

STATE OF CONNECTICUT
JUDICIAL DEPARTMENT

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CERTIFICATION

I hereby certify that on April 27, 2015 a copy of the foregoing Memorandum of Law in Support of Motion to Dismiss was sent by United States mail, first class postage prepaid, to the following:

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