

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

COLLEEN SIMON,	)	
	)	
Plaintiff,	)	Case No. 1416-CV16699
	)	
v.	)	Division 2
	)	
MOST REVEREND	)	
ROBERT W. FINN, DD, et al.,	)	
	)	
Defendants.	)	

**JUDGMENT**

Comes now the Court on Defendant Bishop Robert W. Finn’s (“Bishop Finn”) Motion for Summary Judgment, filed herein November 9, 2015, and Defendant Catholic Diocese of Kansas City-St. Joseph’s (“Diocese”) Motion for Summary Judgment, filed herein November 9, 2015. After reviewing the Motions, considering the suggestions and responses, and being fully advised in the law and premises of the Motions, the Court finds the following:

As a preliminary matter, on January 22, 2016, the Court entered Judgment in favor of Bishop Finn and against Plaintiff on Count I (Fraud) of Plaintiff’s First Amended Petition (“Petition”). Therefore, Bishop Finn’s Motion for Summary Judgment as to Plaintiff’s fraud claim is no longer at issue.

**I. Summary Judgment Standard**

“Summary judgment is appropriate where the moving party has demonstrated, on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law.” *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814, 818 (Mo. 2007) (en banc). Where the parties’ pleadings and statements of uncontroverted facts reveal “two plausible, but contradictory, accounts of the essential facts,” then a “genuine issue” of material fact exists, unless the factual accountings are “merely argumentative, imaginary, or frivolous.” *Id.* The Court will review the pleadings and fact statements in the light most favorable to the non-moving

party, and summary judgment will not be granted “unless evidence could not support any reasonable inference for the non-movant.” *Id.* “[S]ummary judgment is rarely appropriate in cases involving proof of such elusive facts as intent, motive, fraud, duress, undue influence, mental capacity, and the like – which must in nearly every case be proved by circumstantial evidence.” *Wills v. Whitlock*, 139 S.W.3d 643, 654 (Mo. Ct. App. 2004) (citation omitted). “Indeed, it has been consistently held that cases in which the underlying issue is one of motivation, intent, or some other subjective fact are particularly inappropriate for summary judgment.” *Id.* However, “summary judgment may be granted with respect to a fraud claim or any other claim when the movant makes a proper showing of facts negating an essential element of the plaintiff’s case and plaintiff fails to show that such facts are genuinely disputed.” *Kenley v. J.E. Jones Constr. Co.*, 870 S.W.2d 494, 498 (Mo. Ct. App. 1994) (citation omitted).

## **II. Whether the Court has subject-matter jurisdiction to hear Plaintiff’s fraud claim against the Diocese**

“Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof.” U.S. Const. amend. I, § 1. “[T]he right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990). “The First Amendment does not preclude the court’s involvement in church disputes where the issue is one which deals purely with a religiously neutral civil law.” *State ex rel. Gaydos v. Blaeur*, 81 S.W.3d 186, 192 (Mo. Ct. App. 2002) (citing *Gibson v. Brewer*, 952 S.W.2d 239, 246-47 (Mo. 1997) (en banc)). “Courts may [ ] exercise jurisdiction in disputes having no issues of religious doctrine, policy and practice so long as courts utilize a neutral-principles-of-law approach and judges do not become entangled in questions which are essentially religious.” *Id.* at 193 (citing *Jones v. Wolf*, 443 U.S. 595, 604 (1979)).

The nine elements for establishing a fraud claim are: “(1) a representation; (2) its falsity; (3) its materiality; (4) the speaker’s knowledge of its falsity; (5) the speaker’s intent that it be acted on by the hearer in the manner reasonably contemplated; (6) the hearer’s ignorance of the falsity of the representation; (7) the hearer’s reliance on the representation being true; (8) the hearer’s right to rely on the representation; and (9) the hearer’s consequent and proximate injury.” *Joel Bianco Kawasaki Plus v. Meramec Valley Bank*, 81 S.W.3d 528, 536 (Mo. 2002) (en banc). “Fraud requires proof that it was reasonable for the plaintiff to rely on the defendant’s misrepresentation.” *Brown v. Bennett*, 136 S.W.3d 552, 555 (Mo. Ct. App. 2004) (citation omitted). “Questions of truth, falsity, malice and the various privileges that exist often take on a different hue when examined in the light of religious precepts and procedures that generally permeate controversies over who is fit to represent and speak for the church.” *Gaydos*, 81 S.W.3d at 196 (citation omitted). “Perceptions of reasonableness enter into consideration of such concepts as recklessness and malice, leaving the religious entity at the mercy of the perceptions of outsiders, who are likely to be unable to relate to or understand the religious views and practices of the organization.” *Id.* at 197 (wherein the Court of Appeals for the Western District ordered the trial court to dismiss for lack of jurisdiction plaintiff elementary principal’s underlying defamation claims against Bishop Gaydos and the Jefferson City diocese of the Roman Catholic Church).

Here, Count I of Plaintiff’s Petition recites allegations of fraud against the Diocese, including reassurances by the Diocese that, although she was a lesbian in a same-sex marriage, “it would not impact her employment.” Pl.’s Pet., ¶¶ 62-73; ¶ 63. Plaintiff goes on to aver that these representations were false and, furthermore, “[t]he Diocese was aware, and alternatively acted in reckless disregard of the fact, that Ms. Simon would not be secure in her employment due to her sexual orientation and marriage to another woman.” Pl.’s Pet., ¶¶ 65-66. For the Court to inquire into the knowing falsity of the Diocesan agents’, Frs. Vowells’ and Garcia’s, representations to Plaintiff about her sexual orientation relative to her position in the Diocese would impermissibly entangle the Court in matters and decisions purely canonical, since the

Court must necessarily examine the religious views and practices of the Diocese in an attempt to perceive the reasonableness of Plaintiff's reliance on the Diocese's representations. Because also at the very heart of these fraud allegations is the Diocese's determination of Plaintiff's fitness to be its representative, such allegations take on the hue of theological propriety, and as outsider, the Court cannot but see through a glass darkly the inherent truth and falsity in Frs. Vowells' and Garcia's statements. *See Gaydos*, 81 S.W.3d at 196. Furthermore, although cloaked in the guise of ostensibly religiously-neutrally-applicable fraud claims, it can be fairly stated that Plaintiff's averments as recited in Count I come more manifestly frocked as employment discrimination claims against an ecclesiastical entity. Lest we dash our foot against the obdurate edifice of reversible error in stumbling to address what are here essentially religious questions, this Court shall instead rely on the Free Exercise Clause of the First Amendment to deprive it of subject-matter jurisdiction. Therefore, having no subject-matter jurisdiction to proceed on Plaintiff's fraud claim, Defendant Diocese's Motion for Summary Judgment is **GRANTED** as to Count I of Plaintiff's Petition.

### **III. Plaintiff's service letter claim**

In Missouri, when, within one year of an employee leaving a corporation, the employee makes a written request of the corporation:

it shall be the duty of the superintendent or manager of said corporation to issue to such employee...a letter, duly signed by such superintendent or manager, setting forth the *nature and character of service rendered* by such employee to such corporation and the duration thereof, and *truly* stating for what cause, if any, such employee was discharged or voluntarily quit such service

R.S.Mo. § 290.140.1 (2014) (emphases supplied). Where an employer's service letter fails to characterize Plaintiff employee's service or gives incorrect dates of employment, such letter fails to comply with the requirements of the statute. *Boyd v. Schwan's Sales Enters., Inc.*, 23 S.W.3d 261, 266 (Mo. Ct. App. 2000). "Failure to satisfy any of the requirements of section 290.140.1 constitutes refusal to issue the requested letter." *J & J Home Builders, Inc. v. Hasty*, 989 S.W.2d

614, 617 (Mo. Ct. App. 1999) (finding that employer’s letter omitting manager’s signature constitutes non-issuance of a service letter). To make a prima facie case for actual damages flowing from issuance of an allegedly defective service letter, Plaintiff must show: “(1) [she] was refused employment or was hindered in obtaining employment, (2) that the refusal or hindrance was caused by the absence or inadequacy of the service letter, (3) that the position [Plaintiff] had difficulty obtaining was actually open, and (4) the salary rate of the position.” *Ruzicka v. Hart Printing Co.*, 21 S.W.3d 67, 75 (Mo. Ct. App. 2000) (citation omitted). Where the evidence establishes that the employer failed to issue the requested statutory service letter, punitive damages are available. *J & J Home Builders, Inc.*, 989 S.W.2d at 616; R.S.Mo. § 290.140.2 (2014).

Here, Count II of Plaintiff’s Petition alleges violations of the Missouri Service Letter Law, R.S.Mo. § 290.140, as against Defendant Diocese only. Pl.’s Pet., ¶¶ 74-82. Among other reasons, Plaintiff posits that the Diocese’s service letter issued per Plaintiff’s request is statutorily defective because it fails to characterize Plaintiff’s service and misstates Plaintiff’s positions held while in the Diocese’s employ, as well as her dates of service. Pl.’s Pet., ¶ 78. The Diocese’s SUMF on which its Motion is predicated recites the entirety of the letter it issued June 27, 2014 in response to Plaintiff’s service letter request of May 16, 2014. Diocese’s SUMF, ¶¶ 57-58. The Diocese further avers that “Plaintiff decided not to show the service letter to any prospective employer, and no prospective employer has asked her to see it.” Diocese’s SUMF, ¶ 59.

In response, Plaintiff controverts the Diocese’s characterization of her service letter request as “incomplete,” since Plaintiff’s entire May 16, 2014 missive to the Diocese quotes verbatim those portions of R.S.Mo. § 290.140 pertinent to the mandated content of the Diocese’s service letter. Pl.’s Resp. to Diocese’s SUMF, ¶ 57. Also, Plaintiff objects to the Diocese’s publication of the June 27, 2014 letter in its SUMF as “argumentative.” Pl.’s Resp. to Diocese’s SUMF, ¶ 58. Plaintiff’s response goes on to argue that the Diocese was “incomplete and inaccurate” in its characterization of Plaintiff’s unwillingness to proffer the service letter to

prospective employers, since “Plaintiff testified that she could not show the letter to any prospective employer because it is inaccurate.” Pl.’s Resp. to Diocese’s SUMF, ¶ 59. Moreover, Plaintiff disputes that Diocese’s cited testimony supports its contention that no prospective employer sought the service letter, and, since Plaintiff alleges that the Diocese circulated the service letter to media outlets, that no future employer was aware of the service letter is an issue to be resolved by the trier of fact. Pl.’s Resp. to Diocese’s SUMF, ¶ 59. Both Plaintiff and Diocese having recounted two plausible, but contradictory, accounts of facts essential to Count II of the Petition, the parties have thus raised genuine issues of material fact, and this Court cannot say that no reasonable inference can be drawn that the Diocese’s service letter was statutorily defective. Therefore, Diocese’s Motion for Summary Judgment must be **DENIED** as to Count II of Plaintiff’s Petition.

#### **IV. Plaintiff’s wage and hour claim**

Under Missouri’s Minimum Wage Law (“MMWL”), R.S.Mo. § 290.500, *et seq.*, employers must pay their employees the minimum wage for all hours worked. *Tolentino v. Starwood Hotels & Resorts Worldwide, Inc.*, 437 S.W.3d 754, 757 (Mo. 2014) (en banc). “No employer shall employ any of his employees for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.” R.S.Mo. 290.505.1. Under the MMWL, an “employer” is “any person acting directly or indirectly in the interest of an employer in relation to an employee.” R.S.Mo. § 290.500(4). An “employee” is “any individual employed by an employer.” R.S.Mo. § 290.500(3). “[T]he MMWL...is a remedial statute with the purpose of ameliorating the unequal bargaining power as between employer and employee and to protect the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others.” *Tolentino*, 437 S.W.3d at 761. Such remedial statutes as the MMWL “are construed broadly to effectuate the statute’s purpose,” and, further, “doubts about the applicability of a remedial statute are resolved in favor of applying the statute.”

Here, Bishop Finn's Statement of Uncontroverted Material Facts ("SUMF") recites that "[a]t no time was Bishop Finn the employer of Plaintiff." Bishop Finn's SUMF, ¶ 9. However, Plaintiff's Response to Bishop Finn's ("SUMF") controverts that statement as both self-serving and inconsistent with the definition of "employer" under the MMWL. Pl.'s Resp. to Bishop Finn's SUMF, ¶ 9. In refuting Bishop Finn's statement that Plaintiff's sole employer was Diocese, Plaintiff alleges that she had "more than one employer," and, "[a]s the executive administrator of the Diocese, Bishop Finn was also the employer of Plaintiff," since "he acted directly or indirectly in the interest of the Diocese in relation to Ms. Simon." Pl.'s Resp. to Bishop Finn's SUMF, ¶ 10. Having thus created a genuine issue of material fact as to whether Bishop Finn was Plaintiff's employer for purposes of her MMWL claims, a permissible inference as to this fact for Plaintiff precludes summary judgment.

The Diocese's allegation that Plaintiff's annual salary of \$37,000 "was paid regardless of the number of hours she worked" is uncontroverted. Pl.'s Resp. to Diocese's SUMF, ¶ 101. However, what remains unaddressed in either Bishop Finn's or the Diocese's Motion for Summary Judgment are the issue of a) whether Plaintiff was not exempt from the MMWL overtime provisions; b) whether both Defendants failed to pay Plaintiff at one-and-one-half times her regular rate of pay for hours worked beyond 40 in a given week; and c) whether the Diocese "was aware of the obligation to pay wages as required by law, and willfully refused to do so." Pl.'s Pet., ¶¶ 87-89. These unsettled, but dispositive, factual issues are the province of the jury and not appropriate for summary judgment. Therefore, and for all of the foregoing, Bishop Finn's Motion for Summary Judgment and the Diocese's Motion for Summary Judgment must be **DENIED** as to Count III of Plaintiff's Petition.

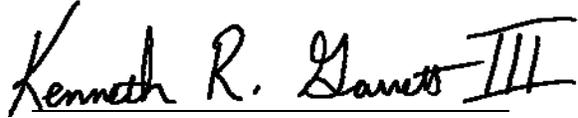
IT IS THEREFORE **ORDERED** that Defendant Bishop Robert W. Finn's Motion for Summary Judgment is no longer at issue as to Plaintiff's fraud claim and **DENIED** in all other respects.

IT IS FURTHER **ORDERED** that Defendant Diocese's Motion for Summary Judgment is **GRANTED** as to Count I (Fraud) of Plaintiff's First Amended Petition and **DENIED** in all other respects.

IT IS FURTHER **ORDERED** that judgment is hereby entered for Defendant Catholic Diocese of Kansas City-St. Joseph and against Plaintiff Colleen Simon on Count I of Plaintiff's First Amended Petition.

**IT IS SO ORDERED.**

February 16, 2016  
Date

  
Judge Kenneth R. Garrett, III

I certify a copy of the above was sent via the E-filing system this day to all counsel of record:



By: Jedd C. Schneider, Law Clerk to The Honorable Kenneth R. Garrett, III, Division 2