

STATE OF MINNESOTA

DISTRICT COURT

Employment

COUNTY OF BECKER

SEVENTH JUDICIAL DISTRICT

Margaret Campbell,  
Plaintiff,

Court File No. 03-CV-19-266

vs.

**MEMORANDUM IN SUPPORT  
OF DEFENDANT'S  
MOTION TO DISMISS COUNT 1  
FOR LACK OF SUBJECT  
MATTER JURISDICTION**Honor the Earth,  
Defendant.

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**INTRODUCTION**

Generally, a claim of discrimination must be brought within one-year of the last, related, discriminatory act alleged. Plaintiff filed a *Complaint* with two (2) Counts under the Minnesota Human Rights Act (MHRA) 363A *et seq*; Count 1 *Sex Discrimination* within the meaning of Minn. Stat. § 363A.03, subd. 13, 42, and 43 and Count 2 *Reprisal* Minn. Stat. § 363A.15.

This motion to dismiss for lack of subject matter jurisdiction is brought only against Count 1 as untimely filed from the beginning, under the one-year statute of limitation. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Minn. R. Civ. Pro. 12.08(c). The motion to dismiss Count 1 must prove the necessary, factual *elements* are contained in the Complaint and treated as a summary judgment, where Plaintiff's allegations in the Complaint are taken for true.

## FACTS

Plaintiff asserts in the Introduction of her *Complaint* that

during 2014 and 2015 she was sexually harassed by a co-worker at Honor the Earth. She also learned that the co-worker, who did youth organizing at Honor the Earth, had been credibly accused of using his status as a spiritual leader to commit sexual violence against Native boys. She was extremely disappointed when Honor the Earth failed to take these accusations seriously.

Complaint, Intro. However, the Complaint does not *actually* contain any allegations of any acts of sexual harassment by a co-worker at Honor the Earth in 2015.

Plaintiff's Complaint does allege that "on January 29, 2016, Plaintiff filed a charge regarding the events in this complaint with the Minnesota Department of Human Rights (MDHR)."<sup>1</sup> Plaintiff clearly alleges that "After the Denver trip, Campbell never returned to her rented cabin." (Complaint #55) The cabin Plaintiff and another woman who worked for Honor the Earth, McQuaid. (Complaint #38), shared with Michael Dahl, the co-worker at Honor the Earth that Plaintiff alleges acts of sexual harassment.

Plaintiff's Complaint is void of any further allegations of contact or encounters or other sexual harassment acts, anywhere or any time after the 2014 Denver trip, with

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<sup>1</sup> See Exhibit M – Charge of Discrimination to the Minnesota Department of Human Rights Prepared by Legal Counsel Christy Hall dated 1-29-2016. Previously attached to Rule 36 Request for Admissions as Exhibit M.

Michael Dahl, the co-worker at Honor the Earth Plaintiff alleges acts of sexual harassment. Complaint *passim*.

### ANALYSIS

A motion for judgment on the pleadings requires a determination whether the pleadings set forth a legally sufficient claim for relief. See Abel v. Abbott Northwestern Hospital, 947 N.W.2d 58, 68 (2020), citing Zutz v. Nelson, 788 N.W.2d 58, 61 (Minn. 2010) (motion for judgment on the pleadings); Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550, 553 (Minn. 2003) (motion to dismiss). A claim is legally sufficient “if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” Walsh v. U.S. Bank, N.A., 851 N.W.2d 598, 603 (Minn. 2014). “The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” Bodah, 663 N.W.2d at 553.

Here, Defendant has identified the three facts necessary in the Complaint, which satisfy the elements or factors of a statute of limitations *objection* for pleading for dismissal. First, Defendant alleges the charge was filed with MDHR on January 29, 2016. Second, the last alleged sexual harassment act by Plaintiff’s co-worker

Dahl is in Denver, CO in December 2014. Third, the Complaint is void of any other  
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alleged acts of sexual harassment by Dahl after December 2014 trip to Denver, CO. (Complaint #55) These are the only the facts alleged in Plaintiff's Complaint, but necessary and sufficient for a motion for judgment to dismiss Count 1.

### **MDHR Corroboration Analysis**

Plaintiff's Complaint clearly states that on "December 6, 2018, Plaintiff received notice that MDHR closed her complaint and informing her of her right to bring a lawsuit. This complaint follows." (Complaint #7). This statement is true for the Reprisal charge, but not the Discrimination charge. The MDHR letter<sup>2</sup> Defendant received states that the Minnesota Dept. Human Rights

will not pursue this charge further, the charging party may bring a private civil action against the respondent in state district court within 45 days, pursuant to Minnesota Statutes, §363A.33, subd. 1(2).

Here the Commissioner clearly states that MDHR "will not pursue this charge further." The reason the Commissioner stated that MDHR will not pursue this charge further for sexual discrimination was for untimely filing beyond the applicable one-year Minnesota Human Rights Act statute. The relevant part of the Commissioners

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<sup>2</sup> See Exhibit P, letter from Kevin M. Lindsey, Commissioner, Minnesota Department of Human Rights dated November 30, 2018, REF: 66093, Campbell v Honor the Earth "to inform you that the appeal of the No Probable Cause determination issued in this case has been completed. Enclosed is the order affirming the prior determination.

November 30, 2018 *appeal response* is provided here for convenience and explains the MDHR analysis at page 3 for section

## B. Sexual Harassment

17. As noted above, charging party claimed that she was subjected to various acts of verbal sexual harassment by a male coworker, the last of which she alleged occurred in December 2014. She did not file her charge of discrimination, however, until January 29, 2016.
18. As the investigator properly noted, "A claim of an unfair discriminatory practice must be brought as a civil action ... or filed in a charge with the commissioner within one year after the occurrence of the practice." Minn. Stat. 363A.28, Subd. 3. Since the discrimination charge was filed more than one year after the last alleged act of sexual harassment, the investigator determined that the sexual harassment claim was untimely.
19. On appeal, charging party argued that her sexual harassment claim should be considered timely under the "continuing violation" exception discussed in *Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 595 (Minn. Ct. App. 1994). In that sexual harassment case, the Court of Appeals recognized that an exception to the one-year limitations rule is appropriate where "the unlawful employment practice manifests itself over time, rather than in a series of discrete acts." *Id.*
20. Charging party's reliance on *Giuliani*, however, is misplaced. In that case, the court went on to explain, "To establish a continuing violation, a plaintiff must show that at least one incident of harassment occurred within the limitations period." *Id.*, 512 N.W.2d at 595 (emphasis added).
21. Charging party contended that her alleged retaliatory suspension and constructive discharge -- two separate discrimination claims, which allegedly occurred within the limitations period -- render her sexual harassment claim timely under the continuing violation exception. In making this contention, however, charging party

mischaracterized the above-quoted statement from the Giuliani decision, substituting the word "discrimination" for "harassment."

22. Here, charging party conceded that no act of sexual harassment occurred during the limitations period. Her allegations that respondent committed different discriminatory acts within the limitations period are insufficient to invoke the continuing violation exception on her sexual harassment claim.
23. Accordingly, the investigator correctly determined that charging party's sexual harassment claim was untimely.

(Id. **Emphasis added.**)

Defendant asserts the same legal arguments as MDHR concluded, above and objects because the instant Complaint does not identify any specific allegations of acts of sexual harassment by the co-worker at Honor the Earth *committed* in 2015. Direct contact allegations ended in December 2014, “[a]fter the Denver trip, Campbell never returned to her rented cabin.” (Compl. #55) The cabin Plaintiff shared with Michael Dahl, the co-worker at Honor the Earth Plaintiff alleges acts of sexual harassment, and another woman who worked for Honor the Earth, McQuaid. (Compl #38).

Consequently, when Plaintiff filed her charge with MDHR on January 29, 2016, well more than one-year had passed since another alleged act of sexual harassment by co-worker Dahl and Plaintiff failed to file timely and the statute of limitations for Count 1 expired in 2014. *See* Ex. P.

In Abel, the 2020 Minnesota Supreme Court found that applying the continuing violations doctrine was appropriate in part of the Abel case, but openly concluded the HtE Motion to Dismiss for Lack of Subject Matter Jurisdiction Court File No. 03-CV-19-266 February 1, 2021, p. 6

continuing violations doctrine did not save all of Abel's claims. The Court explained critical question is "whether any present violation exists" within the statute of limitations period. Sigurdson v. Isanti County, 448 N.W.2d 62, 67 (Minn. 1989). The Abel Court explained that

[i]n deciding whether one or more related acts fell within the limitations period, "[o]ne must distinguish between discriminatory acts and discriminatory effects; the proper focus is upon the time of the discriminatory acts, not upon the time at which the consequences of the acts became most painful." Sigurdson, 448 N.W.2d at 67 (citation omitted) (internal quotation marks omitted). As we stated in Sigurdson, "[i]n one sense, a discriminatory act always has some continuing consequences. There is always the effect of the loss of 'what should have been.' But if a mere continuing effect will extend the limitation period, the statute of limitations would be effectively emasculated. This cannot be." *Id.* We do not doubt that the consequences of the alleged discrimination continued to be painful for Abel following the termination of her practicum. Nevertheless, we conclude that the education and public accommodation discrimination claims against Allina are barred by the statute of limitations and were therefore properly dismissed.

Abel at 72-73 citing Sigurdson.

Here, the proper focus is upon the time of the discriminatory acts, not upon the time at which the consequences of the acts became most painful. Plaintiff's Complaint did not allege any discriminatory acts by her co-worker Dahl after the Denver, CO trip in December 2014. See Complaint #56 forward. Consequently the continuing violation doctrine fails.



Defendant objects to Count 1 continuing as a viable claim before this Court because:

1. There were no continuing acts of sexual harassment alleged by Plaintiff in her Complaint after December 2014,
2. the statute of limitation for bring an action under Minn. Stat. 363A for discrimination alleged for Count 1 expired in December 2015,
3. The Minnesota Department of Human Rights found twice that Campbell's charge was filed untimely,
4. Consistent with Abel and Sigurdson,
5. lack of subject matter jurisdiction Minn. R. Civ. Pro. 12.08(c),
6. failure to state a claim upon which relief can be granted Rule 12.02(e).

### CONCLUSION

This Court must dismiss Count 1 in Plaintiff's Complaint.

Respectfully submitted,

Dated: February 1, 2021

/s/ Frank Bibeau

Frank Bibeau (Mn# 306460)

Attorney for Defendant Honor the Earth