ERIK LAIDACKER, JR.

Plaintiff

Vs.

BERWICK OFFRAY, LLC

Defendant

IN THE COURT OF COMMON PLEAS FOR THE 26TH JUDICIAL DISTRICT, COLUMBIA COUNTY BRANCH, PENNSYLVANIA
CIVIL ACTION - LAW

CASE NO: 726 of 2019

PETER C. WOOD JR., ESQUIRE, and MATTHEW MOBILIO, ESQUIRE, Attorneys for the Plaintiff
DONNA A. WALSH, ESQUIRE, and RICHARD L. ARMEZZANI, ESQUIRE, Attorneys for the Defendant

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CLERK OF COURTS COUNTY OF COLUMBIA

January 2, 2020. JAMES, J.

OPINION

Plaintiff filed a complaint against defendant Berwick Offray alleging that Defendant revoked his offer to hire plaintiff because he tested positive for marijuana. Plaintiff counters that he is a medical marijuana patient. Plaintiff alleges in his complaint two causes of action, i.e., (1) a violation of the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101 et seq. (hereinafter, "PMMA") and (2) wrongful discharge from employment.

Defendant filed timely preliminary objections in the form of demurrers raising three primary issues[1]. **First,** whether defendant can "pursue a claim for money damages

[1] A fourth preliminary objection questions the form of the verification. At argument, that objection was withdrawn. It would have been overruled.

under the [P]MMA when the statute provides only administrative remedies." **Second,** whether defendant can "pursue a claim for money damages under a wrongful discharge theory when the source of the alleged public policy is the [P]MMA which does not afford such a remedy." **Third,** whether defendant can pursue emotional damages or punitive damages, i.e., whether such damages are allowed by statute and whether the alleged conduct at issue - failure to hire - is sufficient to warrant such relief.

A demurrer is an assertion that a complaint does not set forth a cause of action upon which relief may be granted. Balsbaugh v. Rowland, 447 Pa. 423, 426, 290 A.2d 85, 87 (1972).

The following are relevant facts alleged in the complaint:

1. On or about March 2019, plaintiff, Eric Laidacker, Jr., applied for employment with defendant Berwick Offray, LLC. (paragraph 12)

2. Plaintiff was extended and accepted a conditional offer of employment for the position of Bow Bagger. (paragraph 13)

3. Plaintiff was required to submit a pre-employment drug test as a condition of his employment. (paragraph 15)

4. Plaintiff disclosed to the third-party drug-testing facility that he was a certified marijuana user. (paragraph 19)

5. Thereafter, defendant rescinded the offer of employment because plaintiff's drug test was positive for marijuana. (paragraph 34)

6. Defendant does not recognize the protections afforded by the PMMA. (paragraph 34)

7. The proposed job did not require him to handle chemicals, operate high-voltage electricity, perform duties at heights or in confined spaces, or perform any tasks that were life threatening either to himself or other employees, or result in public health or safety risk. (paragraphs 27-31)

8. Plaintiff did not intend to use medical marijuana on defendant's premises or during work hours. (paragraph 32)

DISCUSSION

I. Whether Under The Facts Alleged In The Complaint, A Private Cause Of Action For Relief/Damages Under The PMMA Is Actionable When The Statute Only Provides Administrative Procedural Remedies.

The threshold question is whether the legislator intended to create an implied right of action for prospective or current employees, and if so, did it intend to confer upon the aggrieved party the right to redress any damages under the statute. The court finds that a prospective or current employee has a private cause of action to seek damages for violation of the Pennsylvania Medical Marijuana Act.

The Pennsylvania Medical Marijuana Act does not provide an express right of action to employees or prospective employees. 35 P.S. § 5701.2103(b). The issue before this court is a case of first impression for which there is no statutory or case law guidance.[2] Thus, we start our analysis with the legal test to determine the legislative intent of the PMMA set forth in Estate of Witthoeft v. Kiskaddon, 557 Pa. 340, 733 A.2d 623 (Pa. 1999).

Estate of Witthoeft, *supra*, 733 A.2d at 626, adopted a three prong test to determine whether a private remedy is implicit in a statute not expressly providing one, citing Cort v. Ash, 422 U.S. 66 (1975). Cort had established a three prong test to determine if a statute confers a cause of action upon a party:

> [F]irst, is the plaintiff one of the class for whose especial benefit the statute was enacted, that is, does the statute create a right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?

422 U.S. 66, 78 (1975).

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[2] However, a recent Lackawanna County case, per Judge Terrance R. Nealon, with similar issues is generally in accord with this opinion and order. See Palmiter v. Cmwlth Health Sys., Inc., No 2019-CV-1315, 2019 WL 6248350 (Pa.Com.Pl. November 22, 2019).

A. Whether Plaintiff Is A Member Of The Class For Whose Especial Benefit The Statute Was Enacted.

The first prong under <u>Cort</u> asks whether plaintiff is a member of the class sought to be protected under the PMMA statute. Section §10231.2103 of the PMMA provides that:

> No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.[3]

In the instant case, plaintiff alleges that he had a job offer which was conditioned upon successfully passing a drug test. Said job offer was rescinded after he disclosed his status as a medical marijuana cardholder and after he failed the drug test.

The statute specifically states that "[n]o employer may discharge, threaten, refuse to hire or otherwise discriminate…." Plaintiff is clearly a member of the class for whose special benefit the statute was enacted. The statute prohibits discrimination based on the status of a person such as plaintiff who is certified to use medical marijuana.

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[3] 35 P.S. § 10231.2103(b)(1).

B. Whether There Is Any Legislative Intent To Create Or Deny A Statutory Remedy.

The second prong is whether there is any explicit or implied right of action in the language of the statute.

In general, the Pennsylvania Superior Court has not recognized a right of private action.[4] Likewise, the Pennsylvania Supreme Court has followed the same trend in not recognizing a right of private action.[5]

The Pennsylvania Supreme Court in Schappell v. Motorists Mut. Ins. Co., 934 A.2d 1184 (2007), faced a similar issue involving the Pennsylvania Motor Vehicle Financial Responsibility Law (PaMVFRL) (75 Pa.C.S. §1716). In Schappell, the issue was "whether a medical provider had a private right of action to recover interest in late-paid payments from insurance companies or were they restricted to an administrative remedy under 31 Pa. Code §69.26." Although Section 69.26 did not purport to create an exclusive remedy to providers, the court found that 75 Pa C.S. §1716 provides a private cause of action to the employer.

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[4] See, e.g., D'Errico v. DeFazio, 763 A.2d 424 (Pa. Super. 2000) (finding no right of action existed under official oppression law).

[5] See Estate of Witthoeft v. Kiskaddon, 557 Pa. 340, 733 A.2d 623 (1999) (finding that the Motor vehicle code 67 Pa. Code §83.3 (c) does not authorize a private cause of action for failure to comply with the notification requirements found in the motor vehicle code).

It is instructive that the Schappell court was guided by the presumptions outlined in the Statutory Construction Act 1 Pa.C.S. §1501. One such presumption is that the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable. Schappell, *supra*, 934 A.2d at 1189 (2007). The General Assembly intends the entire statute to be effective and certain. Id.

In the instant action, plaintiff argues that Section 2103 (b)(1) (anti-discrimination section) of the PMMA conspicuously does not state that the Department of Health possesses regulatory or enforcement authority over the conduct of private employers. The anti-discrimination provision under Section 2103(b)(1) contains no reference to enforcement by the Department of Health. The provision does not give an employee recourse for an employee's violation of the PMMA. However, *giving a right without a remedy* could not have been intended by the General Assembly.

Defendant asserts that the PMMA provides a statutory remedy that is temporary. Defendant also asserts that in 35 P.S. § 10231.1308 (enforcement section) violations of the act will be enforced by the Department of Health through penalties and violations.

While it is true that the PMMA statute makes reference to the Department of Health as the agency capable of

enforcing the sanctions, said statute provides no remedy addressing the antidiscrimination provision under the PMMA. 35 P.S. § 10231.1308(enforcement section).

The PMMA provisions under 35 P.S. § 10231.1308 (enforcement section) are not mandatory. The statute does not preclude the enforcement of any another remedy. The PMMA provides no authority to the Department of Health to intervene on behalf of a prospective employee. The main purpose of the PMMA is to protect individuals who are licensed cardholders from employment-related discrimination.

Applying the same statutory principles discussed in Schappell, *supra*, to the case at hand, the General Assembly did not intend a result that is absurd, impossible of execution or unreasonable. The intent of the entire statute is to be effective and certain.

The court finds that even though the Department of Heath may enforce civil and criminal violations, there is no provision that authorizes the Department of Health under the statute's anti-discrimination provision to address discriminatory claims.

Therefore, an implied right is deemed necessary to ensure the purpose of the statute itself, to protect medical marijuana card holders from employment

discrimination. The statute would be meaningless if the employee had rights without remedies.

Furthermore, under the Cannon of Statutory Interpretation "*inclusio unius est exclusio alterius*", the exclusion of a few means the inclusion of others not mentioned in the PMMA.

PMMA sets forth a list of employment prohibitions that are not discriminatory:

> 1) A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than 10 nanograms of active tetrahydrocannabis per milliliter blood in serum:
> i) Chemicals which require a permit by Federal and or state government.
> ii) high-voltage electricity or any other public utility.
> 2) A patient may not perform any employment duties at heights or in confined spaces…
> 3) A patient may be prohibited from performing any task which employer deems life-threatening…
> 4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk…

35 P.S. § 10231.510.

According to the Bureau of Labor Statistics, Hand Laborers and Material Movers typically move material from one place to another, pack or wrap

products by hand, keep a record of the material they move, and clean cars, equipment and places. [6]

Here, plaintiff applied for a position as a "Bow Bagger" that fits the category of hand laborer and material mover. Plaintiff's duties would mainly consist of moving, packing and wrapping material from one place to another.

Defendant did not allege or give reason to believe that the Bow Bagger position would involve handling chemicals, high voltage-electricity, confinement to a bounded area, or a life-threatening job that brings a safety risk. Bow Bagger is not a work category that the statute specifically states is non-discriminatory because of safety concerns.

The PMMA contains provisions that explicitly exclude certain individuals from performing specific duties. Under the general cannon of interpretation, the mention of a specific matter in a general statute implies the exclusion of others not mentioned (*inclusio unius est exclusio alterius*),[7] the legislature did not intend to exclude medical marijuana cardholders from being employed as bow

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[6] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Hand Laborers and Material Movers, on the Internet at https://www.bls.gov/ooh/transportation-and-material-moving/hand-laborers-and-material-movers.htm (visited *October 07, 2019*).
[7] Cali v. Philadelphia, 177 A.2d 824, 832 (1962).

baggers. Thus, under this cannon of interpretation, the intent of the statue remains effective and certain.

Accordingly, the second prong of the Cort test is established in the complaint. Because the PMMA's statutory remedy does not regulate the anti-discrimination provision under the PMMA, there is an implied right of action under this provision.

C. Whether The Recognition Of An Implied Right Of Action Would Advance The Purpose Of The PMMA Statute.

The third prong of Cort is whether recognition of an implied right of action would advance the statute's purpose.

PMMA Section 10231.2103 provides a list of qualifying cardholders which shall not be "subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a Commonwealth licensing board or commission, solely for lawful use of medical marijuana or manufacture or sale or dispensing of medical marijuana, or for any other action taken in accordance with this act." 35 P.S. § 10231.2103.

The PMMA seeks to protect qualifying patients from arrest, prosecution, or denial of any right or privilege under the statute that would amount to employment-related discrimination. Without a right to redress violations of

the PMMA, the employee would simply have a right without a remedy. An implied right to a cause of action would advance the purposes and the protections provided under the PMMA.

Accordingly, the third Cort factor is met. Thus, there is an implied right to action under the PMMA.

D. Whether Defendant's Refusal To Hire Based On Plaintiff's Status As A Medical Marijuana Cardholder Violates The Anti-discrimination Provision Of The PMMA.

Defendant argues that plaintiff failed to allege a violation of the PMMA since the act applies only to employment actions made "solely on the basis of [an] employee's status as an individual who is certified to use medical marijuana." Further, the defendant avers it had a legitimate and non-discriminatory reason for withdrawing plaintiff's job offer, i.e., testing positive for marijuana. Thus, defendant's reason for withdrawing the employment offer is not prohibited by the PMMA.

In response, plaintiff cites Callaghan v. Darlington Fabrics Corp., 2017 R.I Super Lexis 88, 24. The Callaghan court considered the same argument, i.e., that defendant did not refuse to hire a person because of her status as a cardholder, but because of her inability to "pass a mandatory pre-employment drug screen."[8] The court in Callaghan noted that defendant's argument is "incredulous"

and that the General Assembly would be making a distinction between cardholders and users of medical marijuana.[9]

In our case, defendant's argument is equally incredulous. The whole purpose of the PMMA is to provide protection to a qualifying cardholder against employment-related discrimination. The language in the statute specifically states: "No employer may discharge, refuse to hire or otherwise discriminate…."[10]

Pennsylvania's statutory scheme is premised on making a distinction between medical and nonmedical use of marijuana.[11] If this court assumes defendant's interpretation of the statute, the protections afforded under the statute would be meaningless, and every medical marijuana patient could be screened out by a facially neutral drug test.[12]

As such, the General Assembly could not have intended to provide less protection to people who are licensed to use the medical marijuana. The title of 35 P.S. §

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[8] Callaghan, 2017 R.I Super Lexis 88 at 25.
[9] Id.
[10] 35 P.S. §10231.2103 (b)(1).
[11] See Callaghan v. Darlington Fabrics Corp., 2017 R.I Super Lexis 88, 26. (concluding that a similar interpretation of the statute would leave a patient, who has to use medical marijuana once or twice a week, in a worse condition than a recreational user. The recreational user could cease to smoke long enough to pass the drug test and get hired while the medical user would not be able to cease long enough even though his or her use is necessary to treat and alleviate symptoms related to the medical condition).
[12] Id.

10231.2103 highlights its clear intent: "Protection for patients and caregivers."

The Act is not oblivious to the possible negative effects on employers. The Act explicitly states that the Act shall not limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence when the employee's conduct falls below the standard of care normally accepted for that position.

Therefore, it can be reasonably inferred that employers cannot refuse to hire qualifying patients who are cardholders of a medical marijuana license.

Defendant also argues that the different treatment of medical marijuana under state and federal law precludes a finding that medical marijuana users have a right to employment as a matter of public policy.[13] Defendant argues that use and possession of marijuana remain unlawful under federal law. Thus, it argues, it cannot be a violation of public policy to adhere to a drug free work-place policy or to refuse to hire an applicant who tests positive for marijuana.[14]

[13] Defendant's P.O. at 9-10.
[14] Id.

However, plaintiff alleges in the complaint that he will not use or possess marijuana on defendant's work premises. PMMA provides that:

> (2) Nothing in this act shall require an employer to make accommodations of the use of medical marijuana on the property or premises of any place of employment.
>
> (3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.

35 P.S. § 10231.2103 (b)(3).

When examining a statute we are bound by its plain language. Accordingly, we should not insert words into the Act that are plainly not there. Frazier v. Workers' Comp. Appeal Bd., 52 A.3d 241, 245 (2012).

Defendant argues that the PMMA conflicts with federal law. Plaintiff argues that PMMA does not conflict with the U.S. Controlled Substance Act, 21 U.S.C. § 801 et seq. Plaintiff cites the conclusion reached by the court in Chance v. Kraft Heinz Foods Co., 2018 Del. Super. LEXIS 1773 (Super. Ct. 2018): "While the CSA classifies marijuana as a Schedule I substance and does not currently make exceptions for medical use, it does not make it illegal to employ someone who uses marijuana, nor does it support to regulate employment matters within this context."

While it is true that the General Assembly acknowledged the PMMA is a temporary measure[15] and the employer is not required to accommodate marijuana use on its property or commit any act that contravene federal law, defendant's argument fails because the PMMA does not make it illegal to hire someone who use medical marijuana as prescribed under the act.

Drug possession, use, manufacture, and distribution of certain substances remain illegal under USCSA which also includes marijuana. Gonzales v. Raich, 545 U.S. 1, 14, (2005).

The USCSA classifies marijuana as Schedule I which is categorized as such because of its high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised.[16]

Despite the use of marijuana remaining illegal under federal law, Congress has expressed in the USCSA that it does not intend to prohibit the states from implementing their own laws related to drug possession, use, or distribution unless there exists a "positive conflict"

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[15] 35 P.S. § 10231.102 (4).
[16] 21 U.S.C.S. § 812 (b).

between the two provisions.[17]

The PMMA prohibits a qualifying a patient from being subject to arrest, prosecution, or denied any right or privilege. It also prohibits employment-related discrimination based on the status of an individual as a licensed card holder.[18]

Additionally, under the PMMA an employer is not required to provide accommodations to the use of medical marijuana in the workplace which is consistent with the CSA.[19] As such, medical marijuana may not be permitted on the employer's premises.

While there is some overlap between the USCSA and the PMMA, USCSA neither states or creates the positive conflict set forth in 21 U.S.C.S. § 903 nor addresses employment matters or forbids employing someone who is a marijuana cardholder.

Similarly, the PMMA presents no positive conflict with the Pennsylvania CSA.[20] PMMA states that:

> The growth, processing, manufacture, acquisition, transportation, sale, dispensing, distribution,

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[17] 21 U.S.C.S. § 903 ("No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together.").

[18] 35 P.S. § 10231.2103.

[19] 35 P.S. § 1-231.2103 (b)(3).

[20] 35 Pa. Stat. Ann. § 780-104.

> possession and consumption of medical marijuana permitted under this act shall not be deemed to be a violation of the [CSA]. [i]f a provision of the Controlled Substance, Drug, Device and Cosmetic Act relating to marijuana conflicts with a provision of this act, this act shall take precedence.[21]

In Commonwealth v. Jezzi, 208 A.3d 1108 (Pa. Super. 2019), the Appellant faced convictions for marijuana possession under 35 Pa. Stat. Ann. § 780-104. Appellant argued that a marijuana conviction under the CSA is irreconcilable with the MMA because marijuana now has medical value, and it no longer fits within the definition of a Schedule I Controlled Substance under the CSA.[22]

The court in Jezzi[23] disagreed and found that there is no conflict between Pennsylvania MMA and the CSA statutes. Both statutes can be read in harmony and given full effect. Where the PMMA was not intended to remove marijuana from the list of Schedule I substances under the CSA, the PMMA was intended to provide a controlled program for lawful access to medical marijuana under specific circumstances and criteria for special medical needs[24]. The courts in

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[21] 35 Pa. Stat. Ann. § 10231.2101.
[22] Jezzi, 208 A.3d at 1109.
[23] Id. at 1105.
[24] Id. at 1115.

Callaghan[25] and Nooffsinger[26] both reached a similar conclusion.

Accordingly, because there is no positive conflict between the PMMA and the USCSA that would preempt PMMA by federal law, the PMMA and the Pennsylvania CSA can both live in harmony. Employers are not in violation of any federal or state law if they hire a marijuana cardholder.

II. Whether Plaintiff States A Cause Of Action (Violation Of Public Policy) For A Wrongful Discharge Claim by A Prospective Employee.

In the alternative, in Count II plaintiff argues that defendant's rescission of plaintiff's job offer constitutes a wrongful discharge in violation of Pennsylvania public policy.[27]

Plaintiff further contends that if the discharge of an at- will employee violates public policy, the employee may

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[25] Callaghan v. Darlington Fabrics Corp., 2017 R.I Super Lexis 88, 43 (in considering the question whether CSA preempted the Hawkins- Slater Act, the court finds the purpose of the CSA -illegal importation (…) to be quite distant from the real of employment and anti-discrimination law… [t]he CSA is concerned with stopping the illegal trafficking and use of controlled substances).

[26] Noffsinger v. SSC Niantic Operating Co. LLC, 273 F. Supp. 3d 326, 336 (D. Conn. 2017) (in addressing the question whether Puma is pre-empted by the CSA, the court found that nowhere prohibits employers from hiring applicants who may be engaged in illegal drug use, defendant has not established the sort of "positive conflict" between § 21a-408p(b)(3) and the CSA that is required for preemption under the very terms of the CSA. *See* 21 U.S.C. § 903. Nor does any tension between § 21a-408p(b)(3) and the CSA rise to the level of the "sharp" conflict required to establish obstacle preemption under the case law. The CSA does not preempt § 21a-408p(b)(3)).

[27] Complaint at 41-42.

bring a wrongful discharge claim against the employer if there is no other statutory remedy available.[28]

The right of a court to declare what is or is not in accord with public policy is so obviously for or against public health, safety, morals, or welfare that there is a virtual unanimity of opinion in regard to it.[29] Further, only in the clearest of cases may a court make public policy the basis of its decision.[30]

However, at this stage of the proceedings it is unclear whether rescission of a conditional employment offer to a prospective employee would violate public policy under the PMMA. Defendant's demurrer in the nature of preliminary objection to the wrongful discharge claim are denied without prejudice.

III. Whether Plaintiff States A Cause Of Action For Punitive Damages And Emotional Damages.

Plaintiff seeks punitive and emotional damages in both counts of the complaint. Defendant objects.

First, plaintiff alleges that defendant's acknowledgement, that it does not recognize the protections afforded by the PMMA, constitutes willful conduct.

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[28] Id.
[29] Weaver v. Harpster, 601 Pa. 488, 975 A.2d 555, 563 (2009).
[30] Id.

Plaintiff alleges that defendant affirmatively and unambiguously stated that it does not and will not adhere to the anti-discrimination protections mandated by the PMMA.[31]

In response, defendant asserts that failure to hire is insufficient as matter of law to warrant the imposition of punitive damages.[32]

Under Pennsylvania law, punitive damages should be awarded only when Defendant engages in willful, malicious, wanton, reckless or oppressive conduct.[33] When deciding the award one must look the act itself, together with all the circumstances, including the motive of the wrongdoer, and the relations between the parties[34]. Further, one must look for evidence of aggravated conduct involving bad motive or reckless indifference.[35]

Regarding punitive damages, the issue is whether Defendant's alleged failure to hire due to a positive test for marijuana, amounts to willful and malicious conduct when they communicated that they do not recognize the

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[31] Id.

[32] Defendant's P.O. at 11-12; See Sesening v. Spring Glen Farm Kitchen, Inc. 16 Pa. D.& C. 4th 394 (Lancaster County 1992)(finding that termination of employment insufficient to substantiate request for punitive damages).

[33] Pittsburgh Outdoor Advert. Co. v. Va. Manor Apartments, Inc., 260 A.2d 801, 803 (1970).

[34] Id.

[35] Franklin Music Co. v. Am. Broad. Cos., 616 F.2d 528, 542 (3d Cir. 1979).

statutory protections under the PMMA. Such flaunting of those statutory protections may give rise to punitive damages. See Field v. Philadelphia Elec. Co., 388 Pa. Super. 400, 565 A. 2d 1170 (1988).

Defendant's preliminary objection to punitive are denied without prejudice.

In regard to the claim for emotional damages, plaintiff argues that he suffered emotional damages as a result of defendant's violation of the MMA.[36] Plaintiff highlights and makes a distinction that plaintiff is not pursuing a cause of action for intentional infliction of emotional distress as the defendant alleges in the preliminary objections.[37]

Additionally, plaintiff's contends that employment discrimination statutes have allowed recovery for emotional distress, and cites two cases: Jones v. Pennsylvania State Police [38] and Jones v. Amerihealth Caritas.[39]

One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such

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[36] Pl.'s Memo at 18.
[37] Id.
[38] Jones v. Pa. State Police, 2018 U.S. Dist. LEXIS 80550, at 16 (E.D. Pa. May 11, 2018)(finding that Title VII and the PHRA contemplate damages for emotional damages).
[39] Jones v. Amerihealth Caritas, 95 F. Supp. 3d 807 (E.D. Pa. 2015)(finding that at the current state of the proceedings, Plaintiff

emotional distress, and if bodily harm to the other results from it, for such bodily harm.[40]

Courts have held that intangible injuries such as sleeplessness, headaches, and feelings of humiliation and embarrassment are sufficient to support an award of compensatory damages.[41]

In the instance case, plaintiff failed to allege specific injuries that would support a claim for emotional damages under the PMMA. Plaintiff does not plead a cause of action for infliction of emotional distress. Such damages are not inherently damages attached to the two counts pleaded by plaintiff.

Accordingly, this court grants Defendant's preliminary objections to plaintiff's claim for emotional distress.

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may pursue compensatory damages for emotional distress in a FLSA retaliation claim).

[40] Hunger v. Grand Cent. Sanitation, 670 A.2d 173, 177 (Pa. Super. 1996).

[40] Jones, supra note 40, at 16.

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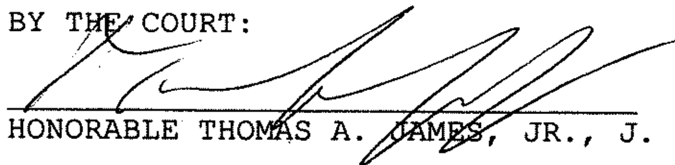
ORDER

AND NOW, this 2nd day of January 2020, after consideration of defendant Berwick Offray LLC's preliminary objections, it is ORDERED AND DECREED:

1. Defendant's preliminary objections in the form of a demurrer to Count I (the cause of action under the PMMA) are **DENIED**.
2. Defendant's preliminary objections in the form of a demurrer to Count II (wrongful discharge) are **DENIED WITHOUT PREJUDICE**.
3. Defendant's preliminary objections in the form of a demurrer plaintiff's claim for punitive damages are **DENIED WITHOUT PREJUDICE**.
4. Defendant's preliminary objections in the form of a demurrer plaintiff's claim for emotional distress are **GRANTED**. Said claim is **DISMISSED**.

Defendant shall file an answer to plaintiff's complaint within forty (40) days of this date.

BY THE COURT:



HONORABLE THOMAS A. JAMES, JR., J.