Entered 26-CI-00306 07/10/2026 Diane Thompson, Nelson Circuit Clerk

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE
10TH JUDICIAL CIRCUIT, DIVISION 2
NELSON CIRCUIT COURT
CASE NO. 26-CI-306

SANDRA STONE PLAINTIFF

vs **ORDER**

THE BARDSTOWN BOURBON COMPANY, LLC
f/k/a CLARION DISTILLERIES, LLC
d/b/a LOFTED SPIRITS DEFENDANT

This case came before the Court on July 1, 2026 on Defendant's motion to dismiss this action.[1] The issues were briefed. The Court heard oral arguments and took the matter under submission. After reviewing the pleadings, relevant case law, and considering the arguments of counsel, the Court is now prepared to render its decision.

STANDARD OF REVIEW

"A motion to dismiss for failure to state a claim upon which relief may be granted admits as true the material facts of the complaint. So a court should not grant such a motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved.... Accordingly, the pleadings should be liberally construed in the light most favorable to the plaintiff, all

[1] Defendant's motion cites to Civil Rule 12.06, which deals with motions to strike, on the first page but later cites to Civil Rule 12.02. Defense counsel stated in oral arguments the citation to 12.06 was a typographical error. The Court believes this to be the case as the content of the motion is clearly a motion to dismiss and the Court shall treat it as such.

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allegations being taken as true…. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?"[2]

ANALYSIS

Defendant makes four arguments as to why their motion to dismiss the claims in this case should be granted: 1) that Plaintiff's claims for gender and/or age discrimination are barred by the statute of limitations; 2) that Plaintiff has not pled facts to toll the statute of limitations; 3) that Kentucky law does not recognize causes of action based upon policies set forth in an employee handbook; and 4) that Plaintiff has failed to plead facts to support the fraud claims. Plaintiff has presented counterarguments to refute these points.

Statute of Limitations Issues

Defendant argues that Plaintiff's claims for gender and/or age discrimination are subject to a three-year statute of limitations pursuant to KRS 413.115(2). Plaintiff argues KRS 413.115(2) was enacted after her claim accrued and should not be applied retroactively so the prior five-year statute of limitations applies.

KRS 413.115(2) states that violations of KRS 344.030 through KRS 344.110 are subject to a three-year statute of limitations. That range of statutes includes KRS 344.040, which prohibits employers from discriminating against individuals based on certain classifications, including age and gender. KRS

[2] *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010)(internal citations omitted).

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413.115 was passed by the Kentucky General Assembly as part of House Bill 320 during the 2024 legislative session and became effective on July 15, 2024. Kentucky law states that "No statute shall be construed to be retroactive, unless expressly so declared."[3] The Kentucky Supreme Court has stated that this express declaration can be manifested through the language of the statute in question or the clear intent of the General Assembly.[4] KRS 413.115 does not contain language applying it retroactively. Additionally, the Court has reviewed the available legislative history materials related to the statute and can find no indication that retroactivity was intended. Based on this information, the Court finds that the previous five-year statute of limitations applies to Plaintiff's gender and/or age discrimination claims.

The complaint which initiated this action was filed on May 6, 2026. The record does not contain what date Plaintiff was allegedly passed over for a promotion in favor of a younger man; however, she resigned from her position in December 2022. The Court finds that, assuming the pled facts to be true, the Plaintiff could prove the alleged acts took place within five years of the complaint being filed. As the Court has determined that the claims are not barred by the statute of limitations, whether facts have been pled that would toll the statute of limitations need not be addressed at this time.

[3] KRS 446.080.
[4] *Baker v. Fletcher*, 204 S.W.3d 589, 597 (Ky. 2006).

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Cause of Actions Based on Employee Handbooks

Defendant argues that Kentucky does not recognize causes of action for breach of contract based upon policies set forth in an employee handbook. Specifically, Defendant relies on the theory that by including a disclaimer containing language that the handbook is not a contract and may be modified at any time, a contract is not formed and cannot be relied upon or form the basis of a cause of action. A review of relevant case shows this is the controlling legal principle on this issue according to the Kentucky Supreme Court.[5] Such a disclaimer is contained in introduction of Defendant's employee handbook.[6] As such, the Court finds Plaintiff cannot prove they are entitled to relief on her breach of contract claim so Defendant's motion to dismiss shall be granted as to Count 3 of Plaintiff's complaint. Additionally, as Plaintiff's claim for breach of implied covenant of good faith and fair dealing is based on the terms of the handbook constituting an agreement, Count 4 of Plaintiff's complaint is likewise dismissed.

Fraud Claims

Defendant argues Plaintiff has failed to plead facts sufficient to establish the necessary elements for succeeding on a fraud claim. Specifically, Defendant argues that fraudulent misrepresentation cannot be based upon statements that are promissory in nature and related to future conduct. Plaintiff argues that the

[5] *Furtula v. University of Kentucky*, 438 S.W.3d 303 (Ky. 2014).
[6] See "Operations, Sales & Administration Employee Policies and Procedures Manual", page 6, filed with Plaintiff's Complaint on May 6, 2026.

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fact-intensive nature of her equitable claims require the motion to dismiss be denied so discovery may be allowed to continue. While in general fraud must be based on an existing fact rather than a future promise, this is not an absolute rule.

> An accepted rule is, a misrepresentation, to be actional, must concern an existing or a past fact, and not a future promise, prophecy, or opinion of a future event, unless declarant falsely represents his opinion of a future happening. One may commit 'fraud in the inducement' by making representations as to his future intentions when in fact he knew at the time the representations were made he had no intention of carrying them out[.][7]

While the Court believes that Plaintiff may have an uphill battle ahead proving their allegations and satisfying the exceptions to the not-based-on-future-promises rule, when taking the alleged facts as true for the purposes of a motion to dismiss, the Court finds there is a possibility of Plaintiff proving she is entitled to relief. As such, Defendant's motion to dismiss Plaintiff's fraud claims is denied.

After consideration and based on the preceding rationale, the Court hereby orders as follows:

1. Defendant's motion to dismiss is granted as to Counts 3 and 4 of Plaintiff's complaint.
2. Defendant's motion to dismiss is denied as to all other counts.

/s/ JUDGE JOE G. BALLARD
electronically signed
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JOE G BALLARD, JUDGE

[7] *Bear, Inc. v. Smith*, 303 S.W.3d 137, 142 (Ky.App. 2010) (internal citations omitted).

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