SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 30

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RENEE RYAN,

Plaintiff,

-against-

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, HARLEM HOSPITAL CENTER OF NEW YORK CITY, DC37 LOCAL UNION 1549, MARTHA A. JONES, in her individual and official capacity, DAVID NADAL, in his individual and official capacity, JOHN AND JANE DOES 1-10, individually and in their official capacities, and XYZ CORP. 1-10,

Defendants.

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Index No. 152457/17
Motion Sequence 002

DECISION AND ORDER

SHERRY KLEIN HEITLER, J.S.C.

Defendants New York City Health and Hospitals Corporation (HHC), the Harlem Hospital Center of New York City (Harlem Hospital), and Martha Jones (Jones) (collectively, Defendants) move pursuant to CPLR 3211(a)(5)[1] and CPLR 3211(a)(7)[2] for an order dismissing Plaintiff Renee Ryan's (Plaintiff) complaint in its entirety. Among other things, Defendants argue that Plaintiff failed to comply with the applicable notice of claim requirements and that her claims are either time-barred or do not state a cause of action. For the reasons set forth below, Defendants' motion is granted in part and denied in part.

HHC is a public corporation established by New York State to operate New York City's municipal hospitals, including Harlem Hospital in Manhattan. Plaintiff worked for HHC in an administrative role from 2005 through the end of 2016. This action arises from an incident that

[1] CPLR 3211(a)(5) provides that a party may move to dismiss a complaint on the ground that the pleading is time-barred.

[2] CPLR 3211(a)(7) provides that a party may move to dismiss a complaint on the ground that the pleading fails to state a cause of action.

allegedly took place at Harlem Hospital on July 3, 2014. According to the complaint, while Plaintiff was walking down the hallway towards the copier room, defendant Jones confronted Plaintiff in a hostile manner.[3] After leaving the copier room Plaintiff stopped to talk to another employee, at which point Jones "immediately attacked and forcibly pushed" Plaintiff from behind, causing her to fall forward (¶¶ 33-38). Plaintiff allegedly sustained injuries to her neck, shoulder, and back. After the incident Plaintiff contacted her union and demanded that it file a grievance on her behalf. The union allegedly refused (¶¶ 48-52). Plaintiff filed a Workplace Violence Incident Reporting Form with HHC detailing the incident but no action was taken and Plaintiff continued to work in close proximity to Jones (¶¶ 53-56, 62). In December of 2015, defendant Nadel, HHC's Director of Labor Relations, allegedly informed Plaintiff's uncle that her dispute with HHC had been settled through a mediation program at Harlem Hospital. Plaintiff, however, denies that any mediation took place.[4] She then contacted her union to investigate Nadel's action (¶¶ 69-75).

Plaintiff continued to experience significant pain due to the injuries she allegedly sustained during the July 3, 2014 incident. On or about December 15, 2015, Plaintiff stopped working after her doctor ordered her not to report to work until she was medically cleared (¶78). Plaintiff applied for Workers' Compensation but allegedly was forced to void her application after HHC allegedly refused to process her paperwork. On February 3, 2016, Plaintiff filed for leave under the Family Medical Leave Act (¶79). Plaintiff later filed written complaints regarding HHC's alleged conduct with several "governmental agencies" and notified Defendants of these written complaints (¶¶ 66, 76-77, 79). On April 1, 2016, Plaintiff commenced a *pro se* lawsuit against Jones, Harlem Hospital, and her union, DC37 Local Union 1549, in the United District Court for the Southern District of

[3] Defendants' exhibit A (Complaint).

[4] It is not clear from the record why Plaintiff's uncle was involved in the matter, or why Nadel communicated with him regarding Plaintiff's dispute with HHC.

New York. By order dated November 4, 2016, the court dismissed certain claims but granted Plaintiff leave to file an amended complaint.[5]

By letter dated December 21, 2016, HHC advised Plaintiff that her employment had been terminated (Defendants' exhibit B):

> Our records reflect that you have been absent from your position cumulatively 1 year due to a medical leave of absence for a non-work related illness or injury. In accordance with Section 7.3.4(b) of the New York City Health and Hospitals Corporation Personnel Rules and Regulations, your services may be terminated if you have not returned to duty within one year.
>
> Since you did not respond to our letter dated November 20, 2016, and since you have not returned to duty, your services as a Clerical Associate III are terminated effective close of business December 21, 2016.[6]

On February 2, 2017, Plaintiff's newly retained counsel[7] filed an amended complaint in the federal action. By order dated February 21, 2017, however, the court dismissed that action in its entirety for lack of subject matter jurisdiction.[8] On February 22, 2017, Plaintiff filed charges against Defendants with the Equal Employment Opportunity Commission (¶ 26).[9]

Plaintiff commenced this action on March 15, 2017.[10] Essentially the Complaint alleges that Defendants discriminated against Plaintiff, subjected her to a hostile work environment because of her disabilities, and retaliated against her for engaging in whistleblower activities. The Complaint asserts 14 causes of action sounding in civil assault, civil battery, negligence, negligent supervision, breach of contract, disability discrimination, retaliation, breach of the duty of fair representation,

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[5] Defendants' exhibit C.

[6] Plaintiff claims that she sent her medical records to Defendants showing that she was totally disabled (Complaint ¶ 84).

[7] Plaintiff is represented in this action by the same law firm that represented her in the federal action.

[8] Defendants' exhibit D.

[9] To the court's knowledge, the EEOC did not pursue Plaintiff's claims.

[10] By stipulation dated September 20, 2017 Plaintiff discontinued this action as against defendant DC37 Local Union 1549.

and fraud.[11] In lieu of an answer, Defendants filed this motion to dismiss, arguing that Plaintiff's various causes of action either are time-barred, are not actionable because there was no notice of claim filed, or fail to state a cause of action.

DISCUSSION

On a CPLR 3211 motion to dismiss the court must give the pleadings a liberal construction, must accept the facts as alleged in the complaint as true, and must provide Plaintiff the benefit of every favorable inference. *Roni LLC v Arfa*, 18 NY3d 846, 848 (2011); *see also Leon v Martinez*, 84 NY2d 83, 87-88 (1994) ("We . . . determine only whether the facts as alleged fit within any cognizable legal theory"). A motion to dismiss will fail if "from [the Complaint's] four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law . . . ." *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977); *see also Rovello v Orofino Realty Co.*, 40 NY2d 633 (1976). On the other hand, while factual allegations contained in a complaint should be accorded a favorable inference, bare legal conclusions and inherently incredible facts are not entitled to preferential consideration. *Beattie v Brown & Wood*, 243 AD2d 395, 395 (1st Dept 1997).

I. Claims against Harlem Hospital

Defendant argues, and Plaintiff does not dispute, that Harlem Hospital lacks capacity to be sued. *See Bonnen v Coney Island Hosp.*, 2017 US Dist. LEXIS 145171, *14 (EDNY Sept. 6, 2017); *Lewis v Health & Hosps. Corp.*, 2013 US Dist. LEXIS 77668, *8 (SDNY May 31, 2013); *see also* NYC Charter § 396; McKinney's Uncons. Laws of NY § 7385(1). Accordingly, all claims against Harlem Hospital are dismissed.

[11] Plaintiff's duty of fair representation cause of action is dismissed as moot as a result of Plaintiff discontinuing this action against defendant DC 37 Local Union 1549.

II. Intentional Tort Claims

Plaintiff's intentional tort claims (Counts 1 and 2) arise from an altercation that allegedly occurred on July 14, 2014, almost three years before Plaintiff commenced this action on March 15, 2017. Because the statute of limitations period for intentional torts is one year from the date of accrual (*see* CPLR 215(3)), Plaintiff's first and second causes of action must be dismissed as time-barred.

III. Notice of Claims

Service of a notice of claim within 90 days after the accrual of a claim is a condition precedent to commencing a tort or whistleblower action against HHC. McKinney's Uncons. Laws of NY § 7401(2); General Municipal Law (GML) § 50-e(1)(a); *Scantlebury v New York City Health & Hosps. Corp.*, 4 NY3d 606, 609 (2005); *Rose v New York City Health & Hosps. Corp.*, 122 AD3d 76, 81 (1st Dept 2014); *Matter of Moynihan v New York City Health & Hosps.* Corp., 120 AD3d 1029, 1031 (1st Dept 2014); *Barnaman v New York City Health & Hosps. Corp.*, 90 AD3d 588, 588 (2d Dept 2011). An application to file a late notice of claim "may be made before or after the commencement of the action but not more than one year and 90 days after the cause of action accrued. . ." *Pierson v New York*, 56 NY2d 950, 954 (1982). The intent underlying the notice of claim requirement "is to protect the [public corporation] from unfounded claims and to ensure that it has an adequate opportunity 'to explore the merits of the claim while information is still readily available.'" *Porcaro v City of New York*, 20 AD3d 357, 357 (1st Dept 2005) (*quoting Teresta v City of New York*, 304 NY 440, 443 [1952]); *see also Brown v City of New York*, 95 NY2d 389, 392 (2000) ("To enable authorities to investigate, collect evidence and evaluate the merit of a claim, persons seeking to recover in tort against a [public corporation] are required, as a precondition to suit, to serve a Notice of Claim"). These statutory requirements are to be strictly construed. *See Varsity Tr., Inc. v Board of Educ. of City of N.Y.*, 5 NY3d 532, 536 (2005).

A. Notice of Claim Requirements

Plaintiff argues that while she did not file a formal notice of claim within the 90-day period, the spirit of the notice of claim requirement was satisfied based upon her actions leading up to this case, namely filing the workplace violence incident report, mailing correspondence to Harlem Hospital regarding her complaints about it to governmental agencies, filing charges with the EEOC, and commencing the federal action. However, none of these actions, even collectively, substitute for a formal notice of claim, which, as set forth at GML 50-e(2), requires that the notice:

> . . . be in writing, sworn to by or on behalf of the claimant, and shall set forth: (1) the name and post-office address of each claimant, and of his attorney, if any; (2) the nature of the claim; (3) the time when, the place where and the manner in which the claim arose; and (4) the items of damage or injuries claimed to have been sustained so far as then practicable. . .

The notice of claim must also (GML 50-e(3):

> . . . be served on the public corporation against which the claim is made by delivering a copy thereof personally, or by registered or certified mail, to the person designated by law as one to whom a summons in an action in the supreme court issued against such corporation may be delivered, or to an attorney regularly engaged in representing such public corporation. . . .

Plaintiff has not shown that the workplace violence incident report is a "sworn" statement as required by GML 50-e(2) or that Plaintiff's letter to HHC regarding her complaints was served in a manner prescribed by GML 50-e(3). EEOC complaints cannot substitute for a notice of claim. *See Santiago v Newburgh Enlarged City Sch. Dist.*, 434 F. Supp. 2d 193, 196 (SDNY 2006). Nor can the complaint in the federal action substitute for a notice of claim. To hold otherwise would allow plaintiffs to avoid notice of claim requirements simply by commencing a lawsuit.

B. Tort Claims arising from July 14, 2014 Incident

The real issue is whether the court should permit Plaintiff to file a late notice of claim, which is authorized by GML 50-e(5) so long as the extension does not "exceed the time limited for the commencement of an action by the claimant against the public corporation." Again, an application to file a late notice of claim "not more than one year and 90 days after the cause of

action accrued. . ." *Pierson*, 56 NY2d at 954. In this case, Plaintiff raised the issue of filing a late notice for the first time on August 29, 2017 with the filing of her opposition papers - well more than one year and 90 days after the July 2, 2014 incident or the alleged December 2015 fraud. Therefore the court cannot permit Plaintiff to file a late notice of claim with respect to Plaintiff's tort-based causes of action (counts 3-7, 13), which are hereby dismissed in their entirety.

C. Whistleblower Claims arising on or after December 21, 2016

Plaintiff's whistleblower claims seemingly accrued on December 21, 2016, less than one year and 90 days before commencing this action. As such the court may therefore consider whether a late notice of claim should be allowed. Among the factors to be considered in determining whether to permit service of a late notice of claim are whether the plaintiff has a reasonable excuse for the failure to serve a timely notice of claim, whether the defendant acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, and whether the delay would substantially prejudice the defendant in maintaining its defense. *Moody v New York City Health & Hosps. Corp.*, 29 AD3d 395, 395 (1st Dept 1006); *see also Matter of Todd v New York City Health & Hosps. Corp.*, 129 AD3d 433, 433 (1st Dept 2015); *Matter of Hampson v Connetquot Cent. Sch. Dist.*, 114 AD3d 790, 790 (2d Dept 2014). The determination to grant leave to serve a late notice of claim lies within the court's discretion. *See Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 465 (2016); *Cohen v Pearl Riv. Union Free School Dist.*, 51 NY2d 256, 265 (1980) (court's decision to grant or deny a motion to serve a late notice of claim is "purely a discretionary one."); *Matter of Jaffier v City of New York*, 148 AD3d 1021, 1022 (2d Dept 2017). A court should deny an application to file a late notice of claim outright if the claims are "patently meritless." *Caldwell v 302 Convent Ave. Hous. Dev. Fund Corp.*, 272 AD2d 112, 114 (1st Dept 2000).

The facts and circumstances of this case weigh in Plaintiff's favor. While it is true that Plaintiff offers no excuse for failing to timely file a notice of claim, especially after she retained counsel and the federal action was dismissed, Defendants cannot argue that they are not aware of the essential facts constituting Plaintiff's claims. On July 8, 2014, only a few days after the incident, Defendants received the Workplace Violence Incident Report which put them on notice of Plaintiff's alleged assault. Defendants could have investigated accordingly. Since then, Defendants have allegedly received written correspondence notifying them that Plaintiff had filed complaints regarding Defendants' alleged conduct. Defendants also have documentation regarding Plaintiff's termination and the pleadings from the federal action. Collectively, these documents are enough to place Defendants on notice of Plaintiff's claims herein. In turn, Plaintiff has met her "threshold burden" of demonstrating the absence of substantial prejudice to Defendants. *Matter of Ruiz v City of New York*, 2017 NY App. Div. LEXIS 7509, *4 (2d Dept 2017); *see also Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 466 (2016). Thus, Plaintiff may be entitled to file a late notice with respect to her whistleblower claims. However, as set forth below, such claims are without merit and must be dismissed.

IV. Whistleblower Claims – Labor Law 740

New York has several whistleblower statutes, but the one at issue here, Labor Law 740, was designed to prevent health care employers from taking retaliatory action against a health care employee who "discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud." Labor Law 740(2)(a); *see also* 2002 NY ALS 24. In order to proceed with a claim under Labor Law 740, a plaintiff must identify the "substantial and specific danger to the public health and safety" that was disclosed or threatened to be disclosed. *Id.* Further,

where a plaintiff asserts Labor Law 740 claims, "[t]he law requires that there be not only an actual, as opposed to a possible violation, but also an actual and substantial present danger to the public health. Reasonable belief as a basis for protection under Labor Law § 740 will not suffice." *Remba v Federation Empl. & Guidance Serv.*, 149 AD2d 131, 135 (1st Dept 1989) *aff'd* at 76 NY2d 801 (1990); *see also Webb-Weber v Community Action for Human Servs., Inc.*, 23 NY3d 448, 452 (2014) ("in order to recover under a Labor Law § 740 theory, the plaintiff has the burden of proving that an actual violation occurred, as opposed to merely establishing that the plaintiff possessed a reasonable belief that a violation occurred").

Fatal to this Plaintiff's whistleblower claim is her inability to identify a "substantial and specific danger to the public health and safety." Instead the Complaint vaguely refers to "criminal activities at HHC and Harlem Hospital and the safety violations that [Plaintiff] observed . . ." (Complaint ¶ 5). This is not to say that Plaintiff's allegations are not serious, only that her injuries arose from her own alleged personal interactions with Jones and the resulting but targeted alleged discrimination and retaliation that followed. Critically, there is nothing in the Complaint that would indicate that the Defendants' discriminatory practices were widespread or that Defendants' actions somehow endangered hospital patients or the public at large.

Plaintiff argues that workplace violence constitutes a public hazard, citing *Knighton v Municipal Credit Union*, 2009 NY Misc. LEXIS 3976, *13 (Sup. Ct. NY Co. Jan. 12, 2009). However, *Knighton* is not binding authority and it is distinguishable on its facts. Moreover, it is "not sufficient to allege in a conclusory manner that [an employee] is capable of erratically violent behavior and, therefore, poses a danger to … members of the public. The pleading must describe how the supposedly illegal activities in question (which conduct must be contrary to law, rule or regulation), imperil the health or safety of the public." *Connolly v Harry Macklowe Real Estate Co., Inc.*, 555 NYS.2d 790, 792 (1st Dept 1990), overruled on other grounds by *Webb-Weber v*

Community Action for Human Servs., Inc., 23 NY3d 448 (2014). The plain meaning of "a specific and substantial danger to public health and safety" suggests that the danger must extend beyond a potential for harm to one or two employees and it must be more than just an isolated incident. *Slay v Target Corp.*, 2011 US Dist. LEXIS 82515, *12 (SDNY July 20, 2011). At most the pleadings in this case allege that Jones targeted Plaintiff as well as some other HHC employees. The names of these other employees and the details of those incidents are not set forth. Under the circumstances, Plaintiff has not sufficiently alleged a "specific and substantial danger to public health and safety" as required to proceed with her Labor Law 740 claim. Accordingly, Plaintiff's Labor Law 740 claim (count 14) is hereby dismissed in its entirety.

V. Breach of Contract Claim

Plaintiff alleges that HHC and Harlem Hospital breached their zero-tolerance policy for workplace violence, bullying, harassment, and discrimination by allowing Jones to attack Plaintiff and other employees. But this ignores the fact that, as a union member, the terms and conditions of Plaintiff's employment were governed by her collective bargaining agreement. Also, New York law is clear that a company's anti-discrimination and anti-harassment policies may not serve as a basis for a breach of contract claim. *See Blaise-Williams v Sumitomo Bank, Ltd.*, 189 AD2d 584, 586 (1st Dept 1993); *see also Johnson v County of Nassau,* 2014 US Dist. LEXIS 133175, *72 (SDNY Sept. 22, 2014). The only case Plaintiff cites to the contrary is *Nice v Combustion Eng'g*, 193 AD2d 1088 (4th Dept 1993), which is distinguishable on its facts. There, an at-will employee sued her former employer for wrongful demotion and termination, alleging that her company was required to give her oral warnings before demoting or terminating her. The trial court dismissed the employee's breach of contract action, but the Fourth Department reversed, finding that "a limitation on the employer's right to terminate an employment of indefinite duration might be imported from an express provision therefor found in the employer's handbook on personnel policies and

procedures." *Id.* at 1089-90. The Plaintiff in this case, unlike the plaintiff in *Nice*, was not an at-will employee since she was in a union, and there is no claim that Harlem Hospital's alleged company policy limited the conditions by which she could be terminated. Accordingly, Plaintiff's breach of contract claim (count 7) is dismissed.

VI. Fraud Claim[12]

To proceed with a claim for fraud under New York law a plaintiff must allege "a representation of material fact, falsity, scienter, reliance and injury. . . . The circumstances constituting the fraud must be stated in detail (CPLR 3016 (b))." *Small v Lorillard Tobacco Co.*, 94 NY2d 43, 57 (1999). The Court of Appeals explained these requirements in *Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491-92 (2008) (citations omitted):

> The purpose of section 3016(b)'s pleading requirement is to inform a defendant with respect to the incidents complained of. We have cautioned that section 3016(b) should not be so strictly interpreted "as to prevent an otherwise valid cause of action in situations where it may be 'impossible to state in detail the circumstances constituting a fraud. . . .'"
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> * * * *
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> Critical to a fraud claim is that a complaint allege the basic facts to establish the elements of the cause of action. Although under section 3016(b) the complaint must sufficiently detail the allegedly fraudulent conduct, that requirement should not be confused with unassailable proof of fraud. Necessarily, then, section 3016(b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct. . . .

See also Eurycleia Partners, LP v Seward & Kissel, LLP, 12 NY3d 553, 559 (2009).

Plaintiff's fraud allegations arise from defendant Nadel's alleged communications with Plaintiff's uncle (Complaint ¶¶ 69-70, 145):

> In fact, in or about December 2015, Defendant Nadel . . . falsely, untruthfully and intentionally represented to Plaintiff's uncle and his attorney that Plaintiff had already mediated and settled her disputes with Harlem Hospital and HHC by allegedly appearing at mediation with Carla Vasquez from the Human Resources department at Harlem Hospital.
>
> Nadel's statements and representations are untrue and a clear continuous attempt by Defendants to cover-up Defendants Jones' criminal behavior and Defendants HHC and

[12] Plaintiff's fraud claim is procedurally barred for the reasons stated *infra*. The court writes further to address Plaintiff's fraud claim on the merits.

> Harlem Hospital's obvious negligence in handling this matter and their negligent supervision of Jones.
>
> Defendants, especially Defendant Nadel, knowingly made false representations that Plaintiff engaged in mediation regarding her claims against HHC and Harlem Hospital, and entered into a settlement agreement regarding those claims, with the obvious intent to deceive and third party into believing that these egregious accusations against Defendants have been settled.

Without more, such bare-bones allegations are not sufficient to sustain a fraud claim. It is noteworthy that the alleged fraudulent statements were not made to the Plaintiff, but to her uncle and his attorney. Their connection to this case is tenuous and unclear. More importantly, there is no allegation that anyone – Plaintiff, her uncle, or his attorney – relied on Nadel's statements to Plaintiff's detriment. This would of course be especially difficult given Plaintiff's admission that she knew Nadel's alleged claims to be false (Complaint ¶¶ 71-72). Plaintiff's fraud claim (count 13) is therefore without merit and hereby dismissed in its entirety.

VII. Negligence Claims[13]

In addition to being procedurally barred, Plaintiff's negligence-based claims are substantively barred because an employee cannot maintain an action for negligence against her government employer absent the existence of a special duty. *See Blanc v City of New York*, 223 AD2d 522, 523 (2d Dept 1996) ("It is well settled that absent a special relationship between the injured party and the public entity which allegedly committed the negligent act or omission, a governmental agency cannot be held liable for negligent acts committed in the performance of its governmental functions.") A special relationship is created only "when the governmental agency assumes a duty to act on behalf of the injured party and that party justifiably relies on that assumption of duty to his or her detriment." *Id.* The elements of a special relationship are "(1) an assumption by the municipality through promises of an affirmative duty to act on behalf of the party

[13] Plaintiff's negligence claims are procedurally barred for the reasons *infra*. The court writes further to address these claims on the merits.

who was injured, (2) knowledge on the part of the municipality's agents that inaction could lead to harm, (3) some form of direct contact between the municipality's agents and the injured party, and (4) the justifiable reliance on the municipality's affirmative undertaking." *Ennis v Northeast Mines*, 200 AD2d 553, 554 (2d Dept 1994). In this case, Plaintiff has failed to allege any facts in the complaint to establish a special relationship between herself and Defendants sufficient to create a special duty.

VIII. New York State and New York City Human Rights Law Claims

Plaintiff's disability discrimination and retaliation claims are predicated upon violations of New York State's Human Rights Law (Executive Law 296, *et seq.*) and New York City's Human Rights Laws (NYC Administrative Code 8-107, *et seq.*), which in pertinent part provide (Executive Law 296(1)(a), NYC Administrative Code 8-502):

> It shall be an unlawful discriminatory practice . . . for an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.
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> * * * *
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> [A]ny person claiming to be a person aggrieved by an unlawful discriminatory practice . . . an act of discriminatory harassment or violence . . . shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate.

The New York State Human Rights Law affords greater disability protection that the Americans with Disabilities Act, and the New York City Human Rights Law "provides even broader protections still." *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 (1st Dept 2009).

Actions brought under the New York State Human Rights Law or the New York City Human Rights law must be analyzed under both the *McDonnell Douglas* framework (*McDonnell Douglas Corp. v Green*, 411 US 792 [1973]) and the mixed-motive framework (*Bennett v Health Mgt. Sys., Inc.*, 92 AD3d 29, 45 [1st Dept 2011]), the latter of which imposes a "lesser burden"

on the plaintiff. *Hamburg v New York Univ. Sch. of Medicine*, 2017 NY App. Div. LEXIS 6630, *10 (1st Dept 2017). At the pleading stage, however, "the requirements for establishing a prima facie case under McDonnell Douglas [do not] apply." *Swierkiewicz v Sorema, N.A.*, 534 US 506, 510-511 (2002). On a motion to dismiss, a plaintiff alleging employment discrimination "need not plead [specific facts establishing] a prima facie case of discrimination" but need only give "fair notice" of the nature of the claim and its grounds. *Id.* at 514-51. In fact, on a motion to dismiss based upon the pleadings, the courts "task is necessarily a limited one. The issue is not whether the plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Id.* at 510-511.

Applying these "liberal pleadings standards" to this case (*Walzer v Metropolitan Transp. Auth.*, 117 AD3d 525, 525 [1st Dept 2014]), Plaintiff's allegations are sufficient to survive Defendants' motion to dismiss. The Complaint indicates that Plaintiff was disabled due to her injuries, that she was qualified to do her job, and that she was terminated from her position under circumstances that give rise to an inference of discrimination. Immediately following the incident Plaintiff complained to her union and filled out an incident report with Harlem Hospital. Despite doing so, and more importantly despite notifying her supervisors about having to work with pain in her neck, back and shoulders, Harlem Hospital allegedly never offered Plaintiff an accommodation or took any remedial action against Jones. She then allegedly had to void her Workers' Compensation application due to her employer's alleged refusal to assist her in filling out her paperwork and was forced to take leave under the Family Medical Leave Act. During this time period Plaintiff complained about her treatment to various agencies, notified the Defendants of those complaints, and commenced an employment discrimination lawsuit in federal action. Instead of extending her leave period or attempting to work out an accommodation, Plaintiff was terminated. Assuming these facts are true, as is the court's

function on a motion to dismiss (*Leon v Martinez*, 84 NY2d at 88), Plaintiff's claims should be permitted to proceed to discovery.

To the extent Defendants assert that an accommodation could not have alleviated the problem given Plaintiff's admission that she was totally disabled, this will necessarily require the parties to conduct depositions and analyze Plaintiff's medical records. At this stage of the litigation, what matters is Plaintiff's allegation that she advised Defendants of her disability and of Jones' continued hostile conduct. Also relevant are Defendants' alleged failure to alleviate either situation and the fact that Plaintiff was allegedly terminated without first being offered an accommodation. These facts, taken together with the other allegations in the Complaint, are sufficient to place Defendants on notice of the nature of the claims asserted against them. *See Beaton v Metro. Transp. Auth. N.Y. City Transit*, 2016 U.S. Dist. LEXIS 78277, *26 (SDNY Jun. 15, 2016) ("in cases in which the disability was known or obvious, and the employer thus knew or reasonably should have known of the need for an accommodation, an employee need not issue an express request for accommodation." Defendants' motion to dismiss Plaintiff's disability discrimination and retaliation claims (counts 8-11) is therefore denied.

IX. Punitive Damages

To the extent Defendants' move to strike Plaintiff's prayer for punitive relief, New York law is clear that punitive damages are not available against HHC and its employees to the extent they acted in their official capacities. *See Krohn v N.Y. City Police Dep't*, 2 NY3d 329, 336 (2004). Punitive damages are also not available under the New York State Human Rights Law. *Thoreson v Penthouse Int'l*, 179 AD2d 29, 34 (1st Dept 1992). The branch of Defendants' motion seeking to strike the prayer for punitive relief is granted accordingly.

CONCLUSION

In light of all of the foregoing, it is hereby

ORDERED that Defendants' motion is granted in part and denied in part; and it is hereby

ORDERED that all claims against defendant Harlem Hospital Center of New York City are dismissed; and it is further

ORDERED that Plaintiff's first, second, third, fourth, fifth, sixth, seventh, twelfth, thirteenth, and fourteenth causes of action are dismissed; and it is further

ORDERED that Plaintiff is directed to file an amended prayer for relief consistent with this decision and order within 20 days of the date of entry of this decision and order; and it is further

ORDERED that Defendants' motion is otherwise denied; and is further

ORDERED that Plaintiff shall be permitted to proceed with its eighth, ninth, tenth, and eleventh causes of action under the New York State Human Rights Law and the New York City Human Rights Law; and it is further

ORDERED that counsel for all parties appear for a preliminary conference in Part 30, Room 412, at 60 Centre Street, New York, NY 10007, on January 22, 2018 at 9:30AM.

This constitutes the decision and order of the court.

ENTER:

DATED: 12-15-17

SHERRY KLEIN HEITLER, J.S.C.