

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2007

(Argued: October 4, 2007)

Decided: November 28, 2007)

Docket No. 06-3446-cv

ELEANORA M. PATANE,

*Plaintiff-Appellant,*

–v.–

JOHN RICHARD CLARK, HARRY B. EVANS, DAVID STUHR, GEORGINA ARENDACS AND FORDHAM  
UNIVERSITY,

*Defendants-Appellees.*

Before:

CALABRESI, WESLEY, *Circuit Judges*, and BRIEANT, *District Judge*.\*

Appeal from an order of the United States District Court for the Southern District of New York (Conner, *J.*), entered on June 22, 2006, dismissing Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

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\*The Honorable Charles L. Brieant, United States District Court for the Southern District of New York, sitting by designation.

1 AFFIRMED in part, REVERSED in part, and REMANDED to the district court for proceedings  
2 in accordance with this decision.  
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6 DRITA NICAJ, Lovett & Gould, White Plains, N.Y., *for Plaintiff-Appellant*.

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8 GAIL S. COLEMAN, U.S. Equal Employment Opportunity Commission,  
9 Washington, D.C., *for Amicus Curiae*, in support of Plaintiff-Appellant.

10  
11 KEVIN J. HARRINGTON & JOHN T. A. ROSENTHAL, Harrington, Ocko & Monk,  
12 LLP, White Plains, N.Y., *for Defendants-Appellees*.  
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16 PER CURIAM:

17 Plaintiff-Appellant Eleanora M. Patane appeals from the dismissal of her Complaint in its  
18 entirety pursuant to Federal Rule of Civil Procedure (“FRCP”) 12(b)(6) by the United States District  
19 Court for the Southern District of New York (Conner, *J.*). In her Complaint, Plaintiff pressed nine  
20 claims<sup>1</sup> against each of the five Defendants-Appellees, John Richard Clark, Harry B. Evans, David  
21 Stuhr, Georgina Arendacs and Fordham University (“Fordham”), for discriminatory action, creating  
22 a hostile work environment, and retaliatory acts following Plaintiff’s initial complaints, in violation  
23 of Title VII, 42 U.S.C. § 2000e *et seq.*, New York State Executive Law (“NYSEL”) § 296 *et seq.*,  
24 and New York City Human Rights Law (“NYCHRL”) § 8-101 *et seq.* Plaintiff does not appeal the  
25 district court’s dismissal of her Title VII claims against the four individual defendants on the grounds  
26 that “individuals are not subject to liability under Title VII.” *Wrighten v. Glowski*, 232 F.3d 119, 120  
27 (2d Cir. 2000) (per curiam). However, Plaintiff appeals the district court’s dismissal of her remaining  
28 claims for failure to state a claim upon which relief could be granted.

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<sup>1</sup> Plaintiff explicitly raised only six claims, but her gender-based discrimination claim can be divided into a discriminatory action claim and a hostile work environment claim.

1 Taking Plaintiff's allegations as true, as we must, we find that her Complaint asserts claims  
2 for a hostile work environment and retaliation in violation of both the federal and state statutes  
3 against Defendant Fordham University, and in violation of the state statutes against the four  
4 individual Defendants. We vacate the district court's judgment with regard to these claims, and  
5 remand for further proceedings consistent with this opinion.

## 6 BACKGROUND

7 Plaintiff began working in 1998 as an executive secretary in Fordham University's Classics  
8 Department. One of her supervisors was Defendant John Richard Clark, a professor in the Classics  
9 Department who was also, at various times during Plaintiff's tenure, the Department's Chair.  
10 Plaintiff alleges that, from the beginning, Clark engaged in inappropriate sexually-charged conduct  
11 in their workplace.

12 For instance, Plaintiff alleges that, in 1998, Clark engaged in the gender-based harassment  
13 of a female classics professor, Dr. Sarah Peirce. Then, starting in 1999-2000, Clark spent one to two  
14 hours every day viewing "hard core pornographic" videotapes on a TV-VCR in his office. Plaintiff  
15 claims she was aware of Clark's habit because the flickering from his TV screen was visible through  
16 the glass partition of his office and because she once saw numerous pornographic videotapes  
17 scattered on the floor of his office when she knocked on his door to announce a visitor.

18 Plaintiff also alleges that some of Clark's behavior was specifically directed at her. Once, she  
19 discovered "hard core pornographic websites" on her computer. She alleges that Clark used her  
20 computer to view these sites during his weekend trips to the office. After discovering the sites, she  
21 obtained a password to protect her computer and had all of the offensive material deleted. Moreover,  
22 Plaintiff alleges that Clark regularly had videotapes "concerning masochism and sadism" shipped

1 to the office, which, as his secretary, she was responsible for opening and delivering to his mailbox.

2 Sometime before 2001, Plaintiff showed one of the videotapes delivered to Clark's office to  
3 Defendant Georgina Arendacs, the Director of the Equity and Equal Opportunity ("EEO")  
4 Department at Fordham's Bronx campus, who was charged with handling discrimination claims.  
5 Arendacs took no remedial action beyond reporting Plaintiff's complaint to Defendant David Stuhr,  
6 the Associate Vice-President of Academic Affairs at Fordham's Bronx campus. Plaintiff continued  
7 to report Clark's behavior to Arendacs and Stuhr throughout 2004 – including showing them the  
8 collection of thirty-six pornographic videotapes that Clark kept in his office.

9 Plaintiff alleges that, by 2001, Clark was "clearly aware" that she had reported his behavior  
10 and began to retaliate against her. He "removed virtually all of her secretarial functions, kept her  
11 entirely out of the departmental information 'loop,' refused to speak to her, and communicated with  
12 her only by e-mail." Indeed, Plaintiff alleges that Defendant Harry B. Evans, another professor in the  
13 Classics Department and Clark's friend, advised Clark not to "give [Plaintiff] any more work" in  
14 order to "make her leave."

15 In the fall of 2004, Evans became the Chair of the Classics Department and, Plaintiff alleges,  
16 he continued Clark's campaign of retaliation. Plaintiff contends that Evans sought to take  
17 disciplinary action against Plaintiff on the pretext that she had inaccurately prepared a time sheet;  
18 he constantly monitored her whereabouts and picked up her telephone; and he issued a negative  
19 performance evaluation, which Plaintiff alleges was materially false.

20 On November 10, 2004, Plaintiff filed a Charge of Discrimination with the United States  
21 Equal Employment Opportunity Commission ("EEOC"). The EEOC issued Plaintiff a Notice of  
22 Right to Sue, which she received on September 9, 2005. On December 6, 2005, Plaintiff filed the

1 Complaint which is the subject of the instant appeal. Shortly thereafter, the Defendants moved to  
2 dismiss pursuant to FRCP 12(b)(1) and 12(b)(6) and, in the alternative, to strike certain allegations  
3 from the Complaint pursuant to FRCP 12(f). On June 21, 2006, the district court (Conner, *J.*) granted  
4 Defendants’ motion to dismiss the Complaint in its entirety for failure to state a claim upon which  
5 relief could be granted, declined to reach Defendants’ 12(b)(1) motion, and found their 12(f) motion  
6 to be moot. *Patane v. Clark*, 435 F. Supp. 2d 306, 309 & 319 (S.D.N.Y. 2006). This appeal followed.

### 7 DISCUSSION

8 Plaintiff now appeals the district court’s dismissal of her federal and state claims against  
9 Fordham, and of her state claims against the four individual Defendants.<sup>2</sup> She argues that her  
10 Complaint states claims for: (1) gender-based discriminatory action in violation of Title VII,  
11 NYSEL, and NYCHRL; (2) the creation of a hostile work environment in violation of Title VII,  
12 NYSEL, and NYCHRL; and (3) retaliation in violation of Title VII, NYSEL, and NYCHRL.

13 We review *de novo* a district court’s decision to dismiss a complaint for failure to state a  
14 claim pursuant to FRCP 12(b)(6). *Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir. 2000). We must  
15 accept all well-pleaded facts as true and consider those facts in the light most favorable to the  
16 plaintiff. *Global Network Commc’ns, Inc. v. City of New York*, 458 F.3d 150, 154 (2d Cir. 2006).

17 \_\_\_\_\_ On a motion to dismiss, the issue is “whether the claimant is entitled to offer evidence to  
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<sup>2</sup> Plaintiff also appeals the district court’s consideration of material “extraneous” to her Complaint – namely, the employee appraisal form that she referenced in her Complaint – without converting Defendants’ motion to dismiss into a motion for summary judgment as required by FRCP 12(b). This Court has held that a complaint includes “documents that the plaintiffs either possessed or knew about and upon which they relied in bringing the suit.” *Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir. 2000) (citation omitted). Thus, the district court was correct to treat the appraisal form as part of Plaintiff’s Complaint, because she referenced it in the Complaint and relied upon it in stating her claims for retaliation.

1 support the claims.” *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds by*  
2 *Davis v. Scherer*, 468 U.S. 183 (1984). In order to withstand a motion to dismiss, a complaint must  
3 plead “enough facts to state a claim for relief that is plausible on its face.” *Bell Atlantic Corp. v.*  
4 *Twombly*, 127 S. Ct. 1955, 1974 (2007). In assessing the legal sufficiency of a claim, the court may  
5 consider those facts alleged in the complaint, as well as “documents that the plaintiffs either  
6 possessed or knew about and upon which they relied in bringing the suit.” *Rothman*, 220 F.3d at 88.

## 7 I

8 The *sine qua non* of a gender-based discriminatory action claim under Title VII is that “the  
9 discrimination must be *because of sex*.” *Leibovitz v. N. Y. City Transit Auth.*, 252 F.3d 179, 189 (2d  
10 Cir. 2001). “It is axiomatic that mistreatment at work . . . is actionable under Title VII only when it  
11 occurs because of an employee’s sex, or other protected characteristic.” *Brown v. Henderson*, 257  
12 F.3d 246, 252 (2d Cir. 2001). Moreover, to be actionable under Title VII, the action that is alleged  
13 to be gender-based must rise to the level of an “adverse employment . . . action.” *Dawson v. Bumble*  
14 *& Bumble*, 398 F.3d 211, 216 (2d Cir. 2005). We have explained that an action must cause a  
15 “materially adverse change in the terms and conditions of employment,” and not just “mere  
16 inconvenience,” in order to qualify as “adverse.” *Fairbrother v. Morrison*, 412 F.3d 39, 56 (2d Cir.  
17 2005)(internal quotation marks and citations omitted). In the instant case, the district court was  
18 correct to conclude that Plaintiff failed to state a claim for discriminatory action in violation of Title  
19 VII, 42 U.S.C. § 2000e *et seq.*, because she failed “to plead any facts that would create an inference  
20 that any [adverse] action taken by . . . [any] defendant was based upon her gender.”<sup>3</sup> *Patane*, 435 F.

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<sup>3</sup> This reason given by the district court for dismissing Plaintiff’s claim is, by itself, legally sufficient. *See* Fed. R. Civ. P. 8(a)(2) (requiring “a short and plain statement of the claim showing that the pleader is entitled to relief”). This is notwithstanding the fact that there is some

1 Supp. 2d at 315.

2 Plaintiff's Complaint does not allege that she was subject to any specific gender-based  
3 adverse employment action by Clark or any of the other defendants, nor does it set forth any factual  
4 circumstances from which a gender-based motivation for such an action might be inferred.<sup>4</sup> It does  
5 not, for instance, allege that Clark (or any of the other defendants) made any remarks that could be  
6 viewed as reflecting discriminatory animus. *See, e.g., Ostrowski v. Atl. Mut. Ins. Cos.*, 968 F.2d 171,  
7 182 (2d Cir. 1992). Nor does it allege that any male employees were given preferential treatment  
8 when compared to Plaintiff.<sup>5</sup> *See, e.g., Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252  
9 (1981). Indeed, the only specific employment actions that might qualify as "materially adverse"—  
10 being stripped of "virtually all of her secretarial functions" — Plaintiff characterizes as retaliatory and  
11 not gender-based.

12 Because "a complaint must include . . . a plain statement of the claim . . . [that] give[s] the  
13 defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests" in order  
14 to avoid dismissal under FRCP 12(b)(6), and because Plaintiff's Complaint fails to do so with

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question as to whether the district court applied the correct standard of review to Plaintiff's Complaint, because it recounted the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), standard for establishing a prima facie case at the beginning of its discussion of Plaintiff's discriminatory action claim. *Patane*, 435 F. Supp. 2d at 314; *see Amron v. Morgan Stanley Inv. Advisors, Inc.*, 464 F.3d 338, 343 (2d Cir. 2006) (*McDonnell Douglas* standard inappropriate in 12(b)(6) context). Nonetheless, as the district court noted, Plaintiff failed to allege even the basic elements of a discriminatory action claim.

<sup>4</sup> We consider Plaintiff's claim for a gender-based hostile work environment separately below.

<sup>5</sup> Neither Plaintiff's Complaint nor her brief sets forth a disparate impact-based claim for discriminatory action. There is no need to consider the plausibility of such a claim in these circumstances.

1 regards to her Title VII discriminatory action claim, that claim was properly dismissed by the district  
2 court.<sup>6</sup> *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (internal quotation marks and citation  
3 omitted) (discussing FRCP 8(a)(2)). As a result, Plaintiff’s discriminatory action claims under  
4 NYSEL § 296 *et seq.* and NYCHRL § 8-101 *et seq.* must also be dismissed against all of the  
5 Defendants. New York courts examine claims under those statutes with the same analytical lens as  
6 corresponding Title VII-based claims. *See Cruz v. Coach Stores, Inc.*, 202 F.3d 560, 565 n.1 (2d Cir.  
7 2000) (citing *Leopold v. Baccarat, Inc.*, 174 F.3d 261, 264 n.1 (2d Cir.1999) (state law); *Landwehr*  
8 *v. Grey Adver. Inc.*, 211 A.D.2d 583, 583 (N.Y. 1st Dep’t 1995) (city law)).

9 **II**

10 To state a claim for a hostile work environment in violation of Title VII, a plaintiff must  
11 plead facts that would tend to show that the complained of conduct: (1) “is objectively severe or  
12 pervasive – that is, . . . creates an environment that a reasonable person would find hostile or  
13 abusive”; (2) creates an environment “that the plaintiff subjectively perceives as hostile or abusive”;  
14 and (3) “creates such an environment because of the plaintiff’s sex.” *See Gregory v. Daly*, 243 F.3d  
15 687, 691-92 (2d Cir. 2001) (internal citations and punctuation omitted). Because Plaintiff has pled  
16 facts sufficient to satisfy each prong of this test, the district court erred in dismissing her hostile work  
17 environment-related claims.

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<sup>6</sup> Plaintiff argues that in the event that her Complaint failed to state a claim, the district court still erred in failing to provide her with an opportunity to amend it pursuant to FRCP 15(a). We review a district court’s denial of a motion for leave to amend for abuse of discretion. *Jones v. N.Y. State Div. of Military & Naval Affairs*, 166 F.3d 45, 49 (2d Cir. 1999). A district court may properly deny a motion to amend when it finds that amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962). In the instant case, the district court did not abuse its discretion in determining that any amendment of Plaintiff’s gender-based discriminatory action claim would be futile.



1           The district court concluded that Plaintiff’s Complaint did not assert that the work  
2 environment was *objectively* hostile. *Patane*, 435 F. Supp. 2d at 316. The Supreme Court has held  
3 that a work environment’s hostility should be assessed based on the “totality of the circumstances.”  
4 *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993). Factors that a court might consider in  
5 assessing the totality of the circumstances include: (1) the frequency of the discriminatory conduct;  
6 (2) its severity; (3) whether it is threatening and humiliating, or a mere offensive utterance; and (4)  
7 “whether it unreasonably interferes with an employee’s work performance.” *Id.* Ultimately, to avoid  
8 dismissal under FRCP 12(b)(6), a plaintiff need only plead facts sufficient to support the conclusion  
9 that she was faced with “harassment . . . of such quality or quantity that a reasonable employee  
10 would find the conditions of her employment altered for the worse,” and “we have repeatedly  
11 cautioned against setting the bar too high” in this context. *Terry v. Ashcroft*, 336 F.3d 128, 148 (2d  
12 Cir. 2003) (emphasis omitted).

13           Specifically, the district court concluded that Plaintiff failed to allege that she faced an  
14 objectively hostile work environment, “because [she] never saw the videos, witnessed Clark watch  
15 the videos, or witnessed Clark performing sexual acts.” *Patane*, 435 F. Supp. 2d at 316. However,  
16 Plaintiff *does* allege that she regularly observed Clark watching pornographic videos. This Court has  
17 specifically recognized that the mere presence of pornography in a workplace can alter the “status”  
18 of women therein and is relevant to assessing the objective hostility of the environment. *Wolak v.*  
19 *Spucci*, 217 F.3d 157, 160-61 (2d Cir. 2000). Moreover, Plaintiff alleges that she was regularly  
20 required to handle pornographic videotapes in the course of performing her employment  
21 responsibilities of opening and delivering Clark’s mail; and that she once discovered hard core  
22 pornographic websites that Clark viewed on *her* workplace computer. Combined with Plaintiff’s

1 other allegations regarding Clark’s sexually inappropriate behavior in the workplace, including her  
2 allegation regarding his earlier harassment of Dr. Peirce, *see Cruz*, 202 F.3d at 571 (holding that  
3 discriminatory behavior not directed at plaintiff can still contribute to the creation of an overall  
4 hostile work environment), and with Fordham’s failure to take any action notwithstanding Plaintiff’s  
5 numerous complaints, a jury could well conclude that Plaintiff was subject to frequent severely  
6 offensive conduct that interfered with her ability to perform her secretarial functions. *See Torres v.*  
7 *Pisano*, 116 F.3d 625, 631 (2d Cir. 1997) (concluding that “general allegations of constant abuse”  
8 create a jury question as to severity and pervasiveness “even in the absence of specific details about  
9 each incident”). Though whether a particular work environment is objectively hostile is necessarily  
10 a fact-intensive inquiry, we conclude that Plaintiff has alleged sufficient facts to be “entitled to offer  
11 evidence to support [her] claim[.]” *See Scheuer*, 416 U.S. at 236.

12 Defendants also argue that Plaintiff has not alleged that the harassing conduct was *aimed at*  
13 *her* – let alone aimed at her *because of her sex*. However, some of the conduct that Plaintiff has  
14 alleged was undoubtedly aimed at her – for instance, the hard core pornographic websites on her  
15 computer and the pornography-containing mail that Clark knew she was responsible for handling.  
16 Moreover, a plaintiff need only allege that she suffered a hostile work environment because of her  
17 gender, not that all of the offensive conduct was *specifically* aimed at her. In *Petrosino v. Bell*  
18 *Atlantic*, we recognized that sexually charged conduct in the workplace may create a hostile  
19 environment for women notwithstanding the fact that it is also experienced by men. 385 F.3d 210,  
20 223 (2d Cir. 2004). In that case, we endorsed the Fourth Circuit’s reasoning in *Ocheltree v. Scollon*  
21 *Products., Inc.*:

22 The employer contended that the offensive conduct could not be deemed

1 discriminatory based on sex “because it could have been heard [or seen] by anyone  
2 present in the shop and was equally offensive to some of the men.” The court  
3 disagreed, concluding that a jury could find “[m]uch of the conduct . . . particularly  
4 offensive to women and . . . intended to provoke [plaintiff’s] reaction as a woman.”

5 *Id.* at 222 (quoting *Ocheltree v. Scollon Prods., Inc.*, 335 F.3d 325, 332 (4th Cir. 2003) (*en banc*)  
6 (alterations in original; internal citations omitted)). As in *Ocheltree*, Plaintiff pleads facts sufficient  
7 to allow a jury to find much of Clark’s complained of conduct particularly offensive to women and  
8 intended to provoke Plaintiff’s reaction as a woman.

9 Because Plaintiff has pled facts sufficient to satisfy all three prongs of the test for a hostile  
10 work environment in violation of Title VII, we vacate the district court’s dismissal of her claim  
11 against Fordham, and remand for proceedings consistent with this opinion. As a result, we also  
12 vacate and remand the district court’s dismissal of all of Plaintiff’s NYSEL and NYCHRL-based  
13 hostile work environment claims.<sup>7</sup> *See Cruz*, 202 F.3d at 565 n.1.

### 14 III.

15 To state a claim for retaliation in violation of Title VII, a plaintiff must plead facts that would  
16 tend to show that: (1) she participated in a protected activity known to the defendant; (2) the  
17 defendant took an employment action disadvantaging her; and (3) there exists a causal connection  
18 between the protected activity and the adverse action. *Feingold v. New York*, 366 F.3d 138, 156 (2d  
19 Cir. 2004). In the instant case, the district court erred in dismissing Plaintiff’s retaliation-related

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<sup>7</sup> The district court dismissed Plaintiff’s NYSEL and NYCHRL claims against Defendants Stuhr and Arendacs on the grounds that New York law requires employer/principal liability (*i.e.*, Fordham, Clark and/or Evans) to be established before an individual without the power to hire or fire a plaintiff can be held liable as an aider and abettor. *Patane*, 435 F. Supp. 2d at 317-18; *see DeWitt v. Lieberman*, 48 F. Supp. 2d 280, 293 (S.D.N.Y. 1999) (citing *Murphy v. ERA United Reality*, 251 A.D.2d 469, 471 (N.Y. 2d Dep’t 1998)). Because we vacate and remand the district court’s dismissal of Plaintiff’s claims against Fordham, Clark, and Evans, we also vacate and remand the court’s dismissal of her claims against Stuhr and Arendacs.

1 claims, because she has sufficiently alleged that: (1) Defendants were aware that she complained to  
2 Arendacs, and later Stuhr, about the harassment she faced from Clark and Evans; (2) Clark stripped  
3 her of virtually all of her secretarial duties (among other retaliatory actions taken by Clark and  
4 Evans); and (3) there was a causal connection between the above two occurrences.

5 Defendants contend that Plaintiff has not pled facts in support of her claim that Clark knew  
6 that she reported his conduct to Arendacs and Stuhr, as required by the first prong. Defendants are  
7 wrong. First, Plaintiff does allege facts from which a reasonable inference of Clark’s knowledge  
8 could be drawn: she complained about Clark’s conduct to a Fordham employee whose job it was to  
9 investigate and resolve such complaints. *See also Phillips v. Girdich*, 408 F.3d 124, 130 (2d Cir.  
10 2005) (holding that the notice pleading rules “do not require a plaintiff to plead the . . . facts . . .  
11 underlying his claim”). It is not inappropriate at this stage in the litigation to assume that in  
12 investigating Plaintiff’s complaint, Arendacs made Clark aware of its existence. And, second,  
13 “[n]either this nor any other circuit has ever held that, to satisfy the knowledge requirement, anything  
14 more is necessary than general corporate knowledge that the plaintiff has engaged in a protected  
15 activity.” *Kessler v. Westchester County Dep’t of Soc. Servs.*, 461 F.3d 199, 210 (2d Cir. 2006)  
16 (quoting *Gordon v. N. Y. City Bd. of Educ.*, 232 F.3d 111, 116 (2d Cir. 2000)). In the instant case,  
17 Plaintiff has certainly pled facts showing that Fordham was aware of her protected activity, since she  
18 alleges that she complained directly to a university employee.

19 The district court faulted Plaintiff for not specifying the “severity or degree” of Clark’s  
20 alleged retaliatory reduction of her job responsibilities, and concluded that, as pled, that reduction  
21 did not rise to the level of adverse employment action required to satisfy the second prong. *Patane*,  
22 435 F. Supp. 2d at 317. The district court’s conclusion is flawed for several reasons. First, Plaintiff’s

1 allegation that Clark removed “virtually all of her secretarial functions” in response to her reporting  
2 his conduct to Arendacs was both specific enough and severe enough to qualify as an adverse  
3 employment action at the time the district court issued its opinion.<sup>8</sup> Only a statement of facts so  
4 conclusory that it fails to give notice of the basic events and circumstances on which a plaintiff relies  
5 should be rejected as legally insufficient under 12(b)(6). *See, e.g., Martin v. N. Y. State Dep’t of*  
6 *Mental Hygiene*, 588 F.2d 371, 372 (2d Cir. 1978) (per curiam). There is no question that Plaintiff’s  
7 factual statement is detailed enough to avoid dismissal under this standard. Moreover, we have  
8 specifically recognized “significantly diminished material responsibilities” as the sort of employment  
9 action “sufficiently disadvantageous to constitute an adverse employment action” in a Title VII case.  
10 *Williams v. R.H. Donnelley, Corp.*, 368 F.3d 123, 128 (2d Cir. 2004) (citing *Galabya v. N. Y. City*  
11 *Bd. of Educ.*, 202 F.3d 636, 640 (2d Cir. 2000)) (discussing Title VII’s discriminatory action  
12 provision).

13 Second, in a decision issued the day after the district court’s in the instant case, the Supreme  
14 Court held that the scope of Title VII’s anti-retaliation provision is broader than that of its  
15 discriminatory action provision, and that any action that “could well dissuade a reasonable worker  
16 from making or supporting a charge of discrimination” could constitute retaliation. *Burlington N.*  
17 *& Sante Fe Ry. Co. v. White*, 126 S. Ct. 2405, 2409 (2006). In addition to her allegations about her  
18 reduction in job responsibilities, Plaintiff alleges that Clark and Evans specifically conspired to “not  
19 give [her] work” in order to “make her leave.” These allegations surely meet *Burlington Northern’s*  
20 standard. Any reasonable employee that believed that her employers would engage in a concerted

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<sup>8</sup> In the particular circumstances of this case, plaintiff’s other allegations regarding Clark’s retaliatory conduct, including that he “kept her entirely out of the departmental information ‘loop,’” would not have been sufficient, on their own, to constitute retaliation.

1 effort to drive her from her job if she engaged in Title VII protected activity would think twice about  
2 doing so. Defendants’ argument to the contrary – that because Plaintiff herself was not dissuaded  
3 from again reporting Clark’s harassment, the complained of conduct could not have been retaliatory  
4 under *Burlington Northern* – is entirely unconvincing, since it would require that *no* plaintiff who  
5 makes a second complaint about harassment could *ever* have been retaliated against for an earlier  
6 complaint.

7 Finally, Defendants argue that Plaintiff does not adequately allege the sort of causal  
8 connection between her protected activity and Defendants’ retaliation required by the third prong,  
9 because “[w]hile a plaintiff may allege [such] a causal connection . . . through temporal proximity,  
10 case law requires that such proximity in time must be ‘very close.’” Defendants argue that, in the  
11 instant case, Plaintiff fails to allege such proximity because there was a year between when she first  
12 reported Clark’s conduct to Arendacs in 2000 and Clark’s removal of her secretarial functions in  
13 2001. Even setting aside the fact that a date in 2000 may be as proximate to a date in 2001 as one  
14 day, Plaintiff’s claim of causal connection is not based only – or even primarily – on temporal  
15 proximity. Instead, Plaintiff alleges that she specifically overheard Clark and Evans conspiring to  
16 drive her out of her job and that Evans issued a negative performance review that specifically  
17 complains about her attitude towards Clark.

18 Because Plaintiff has pled facts sufficient to satisfy all three prongs of the test for retaliation  
19 in violation of Title VII, we vacate the district court’s dismissal of her claim against Fordham, and  
20 remand for proceedings consistent with this opinion. We also vacate and remand the district court’s  
21 dismissal of Plaintiff’s NYSEL and NYCHRL-based retaliation claims against all Defendants. *See*  
22 *Cruz*, 202 F.3d at 565 n.1.

**CONCLUSION**

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The judgment of the district court is AFFIRMED in part, REVERSED in part, and REMANDED

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to the district court for proceedings in accordance with this decision.