Sigmone v Walsh
2004 NY Slip Op 30376(U)
July 7, 2004
Supreme Court, New York County
Docket Number: 100433/04
Judge: Karen S. Smith

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 44

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NEYDA SIGMONE,

Plaintiff,

-against-

EDWARD WALSH, individually and as Senior Director for Financial Management of The Joan and Sanford I.Weill Medical College of Cornell University, PAT KANE, individually and as Controller of The Joan and Sanford I. Weill Medical College of Cornell University, STEVE BORHI, individually and as Assistant Controller of The Joan and Sanford I. Weill Medical College of Cornell University, and THE JOAN AND SANFORD I.WEILL MEDICAL COLLEGE OF CORNELL UNIVERSITY,

Defendants.

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Index No.: 100433/04
Mot. Seq.: 001
Motion Date: May 13, 2004

DECISION AND ORDER

PRESENT: KAREN S. SMITH, J.:

Defendants' motion for an order, pursuant to CPLR §§ 3211(a)(1) and (7), dismissing the complaint, is granted to the extent that the third and fourth causes of action are dismissed.

The following are facts alleged in the verified complaint. Plaintiff Neyda Sigmone is sixty two year old female who has suffered from chronic bronchial asthma for the last twenty years. Plaintiff was employed by defendant The Joan and Sanford I.Weill Medical College of Cornell University ("WMC") for thirty four years, the last twenty nine of them as a payroll manager. Plaintiff worked in defendant WMC's Department of Finance office located at 100 Broadway, New York City, near the World Trade Center. Plaintiff supervised a five person staff and was the oldest manager. On September 11, 2001, plaintiff and other members of the payroll department were forced to leave the office due to the terrorist attack. Thereafter, plaintiff's asthma was exacerbated and she began to

suffer mental distress and anxiety associated with the events of September 11, 2001. As a result of the attack on September 11, 2001, WMC temporarily moved its Department of Finance uptown to 1300 York Avenue, New York City. The department continued to function at the uptown office until November 2001, when defendant WMC informed the department's employees that the office was going to move back downtown on November 19, 2001. Plaintiff requested that she remain at the uptown office as she began to experience exacerbated asthma symptoms and increased anxiety. Defendants refused plaintiff's request stating that unless she return to the downtown office she would have to take leave under the Family Medical Leave Act. Plaintiff hired counsel. Thereafter, defendants acquiesced and allowed plaintiff to remain uptown. Plaintiff asserts that from then on, defendants retaliated against her, making it impossible for her to do her job and subjecting her to multiple adverse employment actions and to a hostile work environment. Plaintiff states that she was forced to retire as a result of defendants' unlawful discrimination on the basis of her age and her disability.

In the complaint, plaintiff Neyda Sigmone alleges four causes of action: (1) defendants violated New York Executive Law, article 15 §§ 290 *et seq.* individually and jointly, on the basis of age and disability, (2) defendants violated New York City Administrative Code §§ 8-101, *et seq,* individually and jointly, on the basis of age and disability, (3) defendant Weill Medical College failed to supervise adequately plaintiff's supervisors, and said failure constitutes negligence, (4) defendant Weill Medical College failed to train adequately its employees, including but not limited to defendants Walsh, Kane and Borhi, and that failure constitutes negligence.

Defendants move for dismissal on the following grounds: (a) The first and second causes of action for age and disability discrimination under the New York State Human Rights Law, Executive Law §§ 290 *et seq.* ("SHRL") and the New York City Administrative Code §§ 8-101, *et seq.*

("CHRL") respectively, establish that plaintiff did not suffer and adverse employment action, that plaintiff was not constructively discharged and that plaintiff was not subject to a hostile work environment, (b) The first and second causes of action for age and disability discrimination against the individual defendants, Edward Walsh, Pat Kane, Steve Borhi are devoid of any specific discriminatory or retaliatory conduct attributable to these defendants and the complaint's allegations do not establish individual liability under the SHRL and CHRL, (c) There are no facts alleged in the complaint that would establish age-based discrimination or retaliation, and the only age-related fact alleged is indisputably false (in the alternative, this claim should be dismissed on summary judgment under the provisions of CPLR § 3211(c)), (d) The claims for disability discrimination in the complaint establish that defendants offered plaintiff a reasonable accommodation, and after that was rejected, offered plaintiff the accommodation she demanded, and (e) The third and fourth causes of action, asserted against Weill Medical College only, allege injuries that are barred by the exclusive remedy provisions of the New York State Worker's Compensation Law §§ 10, 11, 29(6).

On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must accept as true the facts alleged in the pleading and submissions in opposition to the motion, and accord the plaintiff the benefit of every possible favorable inference *(See, 511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 N.Y.2d 144, 151-152 [2002]). To make out a claim of discrimination, a plaintiff must demonstrate (1) that she is a member of the class protected by the statute; (2) that she was actively or constructively discharged; (3) that she was qualified to hold the position from which she was terminated; and (4) that the discharge occurred under circumstances giving rise to an inference of discrimination. *(Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 629 [1997]). Instructive is the recent decision of the United States Supreme Court which stated that a

complaint for employment discrimination need not contain "specific facts establishing a prima facie cause of discrimination" only that it contain "a short and plain statement of the claim showing that the pleader is entitled to relief.'" *(Swierkiewicz v. Sorema N.A.*, 534 US 506, 508 [2002]).

Applying these principles to this action, including according the plaintiff the benefit of every possible favorable inference, the facts contained in the verified complaint sufficiently state a cause of action for age and disability discrimination, which necessarily include allegations of adverse employment action or a hostile work environment, sufficient to defeat this motion. *(cf , Belle v Zelmanowicz,* 305 AD2d 272 [1st Dept 2003]). While defendants arguments on the law regarding claims for discrimination are persuasive, the vast majority of the cases cited involve motions for summary judgment or post-discovery motions, therefore, those cases are not dispositive on a pre-answer motion to dismiss. Nor does the documentary evidence submitted conclusively resolve all factual issues as a matter of law.

The complaint alleges, however scant, a claim for discrimination on the basis of age: (1) that she is a member of the class protected by the statute as she is sixty two years old; (2) that she was actively or constructively discharged; (3) that she was qualified to hold the position from which she was terminated; and (4) that the discharge occurred under circumstances giving rise to an inference of discrimination. *(Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 629 [1997]). While the complaint does not separate the discriminatory acts based on plaintiff's age from those based on her disability, at this juncture it is not for the court to unravel and the claim survives, notwithstanding the incorrect assertion that plaintiff was the oldest manager.

Although generally employers are the targets of Human Rights Law claims, not employees, an employee may be individually subject to suit if he is shown to have an ownership interest or any

power to do more than carry out personnel decisions made by others. *(Patrowich v Chemical Bank,* 63 NY2d 541, 542 [1984]). While the facts alleged in the complaint against the individual defendants are not specific, they do amount to a short and plain statement of the claim showing that plaintiff is entitled to relief, sufficient to defeat a motion to dismiss the complaint.

Defendants' motion is granted to the extent that the third and fourth causes of action for failure to properly supervise and for failure to properly train its employees, are dismissed. These causes of action sound in negligence and thus are precluded by the Workers' Compensation Law. *(See, Burlew v American Mut Ins. Co.,* 63 NY2d 412, 413 [1984]).

Accordingly, it is

ORDERED that defendants' motion to dismiss the complaint is granted to the extent that the third and fourth causes of action for negligent supervision and training are dismissed; and it is

ORDERED that the balance of the motion is denied; and it is

ORDERED that defendants are directed to serve an answer to the complaint within ten days after service of a copy of this order with notice of entry. This constitutes the decision and order of the court.

The parties are to appear for a preliminary conference on August 26, 2004 at 11:30AM in Part 44, Room 581 at 111 Centre Street.

This constitutes the decision and order of the court.

Dated: July 7, 2004

ENTER:

J.S.C.