

Suri v Grey Global Group, Inc.

2011 NY Slip Op 32096(U)

July 26, 2011

Supreme Court, New York County

Docket Number: 100846/11

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

SURI, RACHANA

INDEX No. 100846/11

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. No. 001

GREY GLOBAL GROUP, INC. and PASQUALE CIRULLO,

MOTION CAL No. _____

Defendants.

The following papers, numbered 1 to _____ were read on this motion to dismiss.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1 J/A

Answering Affidavits- Exhibits _____

2

Replying Affidavits _____

3

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that the motion is hereby **FILED** decided in accordance with the attached memorandum decision.

AUG 01 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/26/11

Donna M. Mills
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION
DONNA M. MILLS, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 58

RACHANA SURI,
Plaintiff,

-against-

GREY GLOBAL GROUP, INC. and PASQUALE
CIRULLO,
Defendants.

INDEX NUMBER 100846/2011
Mot. Seq. 001
DECISION & ORDER

FILED

DONNA MILLS, J.:

AUG 01 2011

Defendants Grey Global Group, Inc. (Grey) and Pasquale Cirullo (Cirullo) (together as Defendants) move to dismiss the complaint as against them, in part, pursuant to CPLR 3211 (a)

NEW YORK
COUNTY CLERK'S OFFICE

(7). Plaintiff Rachana Suri (Plaintiff) opposes.

Background

Plaintiff is a South Asian woman, who began working for Grey, an international advertising, marketing and public relations firm, at its headquarters in New York City in 2004. With about 10 years' prior experience in the advertising and media industries, she began as an analyst in Grey's financial services department. She was "steadily" promoted and, in 2007, she "held the position of Director of Integrated Business systems" in the company's Information Technology (IT) Department. Complaint, ¶ 8.

In early 2008, Plaintiff applied for the position of DDS Project Manager, but it was given to Cirullo. However, she was promoted to VP Integrated Business Systems at about the same time, making her "essentially Cirullo's peer within the IT Department." *Id.*, ¶ 12. In October 2008, Cirullo was promoted to Senior VP, Business Solutions, to whom Plaintiff would report directly. At a meeting in November 2008, Plaintiff alleged that Cirullo put a hand on her thigh

under the table. *Id.*, ¶¶ 14-15. After she rebuffed his advance, she claims his attitude towards her “became more distant and less communicative.” *Id.*, ¶ 17. Her complaint states that he subjected her “to a continuous course of hostile, disparate and discriminatory treatment.” *Id.*, ¶ 18. Unlike his treatment of white males, who predominated in the IT Department, she claimed that Cirullo assigned her relatively petty tasks and disagreed with her constantly in weekly meetings. *Id.*, ¶¶ 20-21.

Plaintiff complained about Cirullo’s treatment in a meeting with Grey’s Human Resources Department (HR) in June 2009, apparently for the first time. She states that the unnamed representative told her that it was a “man’s world,” she would have to “tip toe” around the male egos, and women would have to work harder, because it was “different for women in the workplace.” *Id.*, ¶¶ 24-25. The next week, she alleges that she was removed from a project and replaced by a white male. *Id.*, ¶ 26.

Cirullo stopped talking to her by October or November 2009, according to the complaint, and she was experiencing “tremendous levels of stress.” *Id.*, ¶¶ 27-28. Plaintiff requested another meeting with HR, but she was terminated on April 27, 2010, one day before the meeting’s scheduled date. She was told that her position was eliminated. *Id.*, ¶ 32.

Plaintiff commenced the instant action on January 21, 2011, asserting causes of action, pursuant to New York State’s Executive Law and New York City’s Administrative Code, for gender, race and/or ethnic discrimination, hostile work environment based on gender, race and/or ethnicity, hostile work environment based on her rejection of Cirullo’s sexual advance, disparate employment terms and conditions based on gender, race and/or ethnicity, disparate employment terms and conditions based on her rejection of Cirullo’s sexual advance, and employment termination based on gender, race and/or ethnicity. Additionally, she charged Grey with

violation of New York State's Executive Law, New York State's Labor Law and New York City's Administrative Code by paying her less than it paid men for the same or equivalent work.

Legal Standards

On a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211 (a) (7), the pleading is afforded a liberal construction. The court "accept[s] the facts as alleged in the complaint as true, accord[s] plaintiffs the benefit of every possible favorable inference, and determine[s] only whether the facts as alleged fit within any cognizable legal theory." *Leon v Martinez*, 84 NY2d 83, 87-88 (1994). However, "[i]t is well settled that bare legal conclusions and factual claims, which are either inherently incredible or flatly contradicted by documentary evidence, . . . are not presumed to be true on a motion to dismiss for legal insufficiency." *O'Donnell, Fox & Gartner, P.C. v R-2000 Corp.*, 198 AD2d 154, 154 (1st Dept 1993).

To establish a prima facie case of discrimination under New York State and City laws, plaintiff must show that "(1) she is a member of a protected class; (2) she was qualified to hold the position; (3) she was terminated from employment or suffered another adverse employment action; and (4) the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination." *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 (2004). After a plaintiff has demonstrated a prima facie case of discrimination, the burden then shifts to the defendant to rebut plaintiff's prima facie case of discrimination with a legitimate reason for the adverse employment action. *Stephenson v Hotel Empls. & Rest. Empls., Union Local 100 of AFL-CIO*, 6 NY3d 265, 270 (2006).

Discussion

Defendants note that, in spite of her allegation of employment discrimination, she had been promoted "steadily" up until Cirullo's hiring as project manager, the job she wanted, and

beyond, when she was promoted to VP Integrated Business Systems. They assert several times that Plaintiff made no complaint of unlawful discrimination, harassment or retaliation while employed. They say that she never said anything to Cirullo, HR or anyone at Grey about Cirullo's unwelcome touch. They claim that, in the meeting with HR in June 2009, Plaintiff told the representative "that she was not satisfied with the projects and job duties that Cirullo assigned to her, and that she perceived a lack of diversity in her department and on her assignments." Memorandum of Law in Support at 2. They characterize her remarks as "generalized, vague comments and gripes." *Id.* However, according to the complaint, at that meeting, "plaintiff discussed the fact that the working environment was dominated by White males and the lack of diversity in the department and the projects she was working on." Complaint, ¶ 24. This allegation is more than generalized and vague considering that Grey fails to address Plaintiff's allegation that, at the time of her termination, she "was the only minority at her level or higher within her Department [and] . . . was the only woman within her Department and projects." Complaint, ¶¶ 40-41. If her allegations about the status of minorities and women in the IT Department at the time of her termination were true, then the situation could not have been worse 10 months earlier when she met with HR. Plaintiff's undisputed allegations about the composition of the IT Department offer a reasonable basis about her expressed concerns about employment discrimination.

Grey maintains that Plaintiff was terminated in April 2010 "as part of a multi-layered reduction-in-force, due to a restructuring and consolidation" of its IT Department. Memorandum of Law in Support at 1. However, it provides no evidence of such a wide-spread program that,

incidentally, affected Plaintiff.¹ Such an official-sounding, far-reaching effort must surely have been documented in order to console and counsel affected employees, as well as to reassure the survivors.

On the whole, Grey moves against the complaint because of Plaintiff's alleged failures to complain sooner, louder and maybe longer. However, her allegations about Grey's conduct remain. The complaint states facts that fit within a cognizable legal theory. Under these circumstances the motion to dismiss shall be denied.

Accordingly, it is

ORDERED that Defendants' motion to dismiss the complaint as against them pursuant to CPLR 3211 (a) (7), is denied; and it is further

ORDERED that Defendants are directed to serve an answer to the complaint within 20 days after service of this order with notice of entry.

FILED

AUG 01 2011

DATED: July 26, 2011

NEW YORK
COUNTY CLERK'S OFFICE

ENTER:



DONNA M. MILLS, J.S.C. J.S.C.

¹Defendants somewhat deceptively claim that "Plaintiff acknowledges [that] Grey underwent a substantial reduction in force in early 2010, and Plaintiff's position was eliminated." Reply Memorandum of Law at 8. However, the complaint's paragraphs 31 and 32, which they cite as the source of this declaration, actually read:
"31. On April 27, 2010, plaintiff was terminated.
32. The reason given for plaintiff's termination was that her position was eliminated."