SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER Justice

PART 15

Index Number : 154091/2013
HUDSON, MONIQUE
vs
RELATED MANAGEMENT COMPANY LP
Sequence Number : 001
DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1, 2, 3

Answering Affidavits — Exhibits _____ | No(s). 3 4

Replying Affidavits _____ | No(s). 5

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 9/23/13

_____, J.S.C.
HON. EILEEN A. RAKOWER

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

----------X

MONIQUE HUDSON,

Plaintiff,

Index No.
154091/2013

- against -

DECISION

Mot. Seq. 1

RELATED MANAGEMENT COMPANY LP and
KELLEY HATTRICH, INDIVIDUALLY,

Defendants.

----------X

HON. EILEEN A. RAKOWER

Plaintiff Monique Hudson ("Plaintiff") brings this action against defendants Related Management Company LP ("Related"), her former employer, and Kelley Hattrich ("Hattrich"), her former supervisor at her former employer (collectively, "Defendants"), alleging claims of retaliation and discrimination under New York State Executive Law (Human Rights Law) ("NYSHRL") §296 and Administrative Code of the City of New York, §8-107.

More specifically, Plaintiff's Complaint alleges claims under NYSHRL §296 for retaliation based on Plaintiff's complaints about discriminatory treatment on the basis of her gender (first cause of action), pregnancy/disability (second cause of action), and race (third cause of action) and discrimination based on Plaintiff's gender (fourth cause of action), pregnancy/disability (fifth cause of action), and race (sixth cause of action). Additionally, the Complaint alleges claims under the Administrative Code of the City of New York §8-107 for retaliation for Plaintiff's complaints about discriminatory treatment on the basis of her gender (seventh cause of action), pregnancy/disability (eighth cause of action), and race (ninth cause of action),

as well as claims under §8-107 for discrimination based on gender (tenth cause of action), pregnancy/disability (eleventh cause of action) and race (twelfth cause of action).

According to the Complaint, Plaintiff was hired by Related on or about October 2010 as a Resident Service Specialist and, in October 2010, became pregnant. Due to pregnancy complications, Plaintiff "had regular doctor's appointments and needed to use the restroom more frequently." Plaintiff alleges that "[a]s a result of Plaintiff's severe health problems, Plaintiff's boss, Kelley Hattrich, regularly belittled her and made no effort to provide her with reasonable accommodations related to her health and pregnancy."

Plaintiff alleges that, on January 10, 2011, Plaintiff spoke with Hattrich to request the day off because she was not feeling well, and that Hattrich approved the request but reprimanded her the following day. Plaintiff further alleges that following a January 11, 2012 [sic] conversation with Hattrich at which Hattrich advised Plaintiff that "she could no longer come in later or leave early for doctor's appointments" and to "try to find a new employer," "Plaintiff made a formal complaint to Human Resource in hopes of gaining some assistance against the discrimination."

Plaintiff alleges that she thereafter met with Vicki Hobson of Human Resources, but that other than this conversation with Hobson, "Related did nothing to investigate Plaintiff's human resources complaint or cure the pregnancy discrimination Plaintiff was suffering." Plaintiff alleges that she thereafter took Family and Medical Leave Act leave in July 2011, returned to work on October 2011, and "the disparaging treatment towards Plaintiff continued after she returned from maternity leave." Plaintiff specifically contends that Plaintiff "was wrongfully reprimanded for incidents that allegedly occurred while Plaintiff was on maternity leave" and that "[d]espite Plaintiff's absence, Hattrich concocted these incidents to punish Plaintiff for her maternity leave and in retaliation for Plaintiff's complaint." Plaintiff claims she was "treated negatively and punished for her lawful choice to have a family." The Complaint alleges that she was terminated from her employment on or about September 2012.

Defendants now move, pursuant to CPLR §3211(a)(7), to dismiss Plaintiff's claims for discrimination and retaliation based on race alleged

under New York State Human Rights Law ("NYSHRL") §296 and Administrative Code of the City of New York, §8-107.

Plaintiff opposes, and additionally requests that, if the Court finds the allegations of the Complaint insufficient to make out a discrimination and retaliation claim based on race, that Plaintiff be granted leave pursuant to CPLR §3025 to amend the complaint. Plaintiff attached the proposed amended complaint to the opposition motion, which reflects an addition of the following four paragraphs:

> (27) Plaintiff was treated differently than non-minority employees who were similarly situated.
>
> (28) Plaintiff was discriminated against on the basis of her race as she was the only employee singled out for the aforementioned treatment.
>
> (29) Similarly situated Caucasian employees did not endure this type of treatment.
>
> (30) The disparate treatment to Plaintiff by the Defendants herein was due to her race and gives rise to an inference of race discrimination.

CPLR §3211 provides, in relevant part:

> (a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
>
> (7) the pleading fails to state a cause of action;

On a motion to dismiss for failure to state a cause of action under CPLR §3211(a)(7), "...the court's task is to determine only whether the facts as alleged, accepting them as true and according plaintiff every possible favorable inference, fit within any cognizable legal theory." (*Ladenburg Thalmann & Co., Inc. v. Tim's Amusements, Inc.*, 275 A.D.2d 243 [1st Dept. 2000]; *People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91[1st Dept. 2003]) (internal citations omitted) (see CPLR §3211[a][7]).

If the allegations are not "sufficiently particular to give the court and parties notice of the transactions intended to be proved and the material elements of each cause of action," the cause of action will be dismissed. (*Calli v. Lindenman*, 40 A.D.2d 714, 715 [2d Dept. 1972], *aff'd*, 33 N.Y.2d 1002, 353 N.Y.S.2d 965 [1974]). Furthermore, where a Plaintiff's allegations are merely conclusory, such allegations fail to demonstrate "good ground" to support causes of action for discrimination. *See DuBois v. Brookdale Univ. Hosp.*, 29 A.D.3d 731 [2d Dept. 2006]) (granting motion to dismiss discrimination claims because complaint's factual allegations are "insufficient to state a prima facie case of illegal discrimination.").

Plaintiff's Race Discrimination Claims under the NYSHRL and Administrative Code of the City of New York (Sixth and Twelfth Causes of Action)

Plaintiff's sixth and twelfth causes of action allege discrimination on the basis of race under both NYSHRL §296 and the Administrative Code of the City of New York, §8-107, respectively.

NYSHRL §296(1)(a) provides, in relevant part:

> It shall be an unlawful discriminatory practice for an employer...because of an individual's...race...to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions, or privileges of employment.

Administrative Code of the City of New York, §8-107(1)(a), provides, in relevant part:

> It shall be an unlawful discriminatory practice for an employer... because of...race...of any person, to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

A plaintiff who alleges discrimination in employment has the initial burden to establish a prima facie case of discrimination by showing that "(1) she is a member of a protected class; (2) she was qualified to hold the position; (3) she...suffered [an] adverse employment action; and (4) the...adverse action occurred under circumstances giving rise to an inference

of discrimination." (*Forrest v. Jewish Guild for the Blind*, 3 N.Y. 3d 295 [2004]) (citations omitted). The burden is the same for race discrimination claims under both the NYSHRL and the New York City Human Rights Law. (*See Baldwin v. Cablevision Sys. Corp.*, 65 A.D.3d 961, 965 [1st Dept. 2009]).

Here, while Plaintiff alleges she is a member of the protected class as an African-American and was qualified to hold the position at Related, Plaintiff's Complaint does not allege any factual allegations that any alleged adverse employment action "occurred under circumstances giving rise to an inference of discrimination" based on race, the fourth element of a discrimination claim. Rather, the factual allegations contained in the Complaint pertain to Plaintiff's alleged discrimination based on gender and disability, not race. As such, Plaintiff's sixth and twelfth causes of action fail to state a claim for discrimination based on race under NYSHRL §296 and the Administrative Code of the City of New York, §8-107.

As for Plaintiff's request to amend the Complaint if the Court finds the factual allegations insufficient to make out a claim for discrimination, Plaintiff fails to file a proper cross motion for such relief. Nonetheless, Plaintiff's proposed additional four paragraphs do not cure the deficiency of Plaintiff's claims for discrimination on the basis of race and are insufficient to support Plaintiff's discrimination claims, in any event. The four additional paragraphs state: (27) Plaintiff was treated differently than non-minority employees who were similarly situated, (28) Plaintiff was discriminated against on the basis of her race as she was the only employee singled out for the aforementioned treatment, (29) similarly situated Caucasian employees did not endure this type of treatment, and (30) the disparate treatment to Plaintiff by the Defendants herein was due to her race and gives rise to an inference of race discrimination. These statements are nothing more than recitations of the elements of a discrimination claim, and are merely conclusory in nature of Plaintiff's allegations. See generally *Forrest v. Jewish Guild for the Blind,* 3 N.Y.3d 295, 298 [2004]).

Plaintiff's Retaliation Claims under NYSHRL and Administrative Code of the City of New York, §8-107(1)(a) (Third and Ninth Causes of action)

Plaintiff's third and ninth causes of action allege retaliation against Plaintiff by Defendants under both NYSHRL and Administrative Code of the City of New York, §8-107(1)(a), for making complaints to her employer about discriminatory treatment on the basis of her race.

NYSHRL §296(1)(e) provides, in relevant part:

> It shall be an unlawful discriminatory practice for an employer...to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

Administrative Code of the City of New York, §8-107(7) provides, in relevant part:

> Retaliation. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter . . .

To make out a retaliation claim under either the NYSHRL or the New York City Administrative Code, the "plaintiff must show that (1) she has engaged in protected activity, (2) her employer was aware that she participated in such activity, (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action." (*Forrest v. Jewish Guild for the Blind*, 3 N.Y. 3d 295, 312-13 [2004]; *Fletcher v. Dakota*, 99 A.D.3d 43, 51 [1st Dept. 2012]).

Here, Plaintiff's complaint alleges that Plaintiff filed a complaint with Related's Human Resources department about the disparate treatment she has experienced from Hattrich surrounding her pregnancy/disability. However, Plaintiff's Complaint is void of any factual allegations that Plaintiff also complained to human resources about any discriminatory treatment on the

basis of her race. Thereby, Plaintiff's complaint fails to support the first element of a retaliation claim, that she "has engaged in a protected activity" concerning any alleged discrimination employment practices to which she was subject based on her race. Additionally, Plaintiff's complaint fails to provide any factual allegations, other than conclusory statements, of a causal connection between her filing the human resources complaint and the alleged adverse action on the basis of her race. Furthermore, the Court notes that Plaintiff's proposed amended Complaint does not contain any additional provisions or allegations to cure this deficiency.

Wherefore it is hereby,

ORDERED that Defendants' motion to partially dismiss is granted and Plaintiff's third, sixth, ninth, and twelfth causes of action are dismissed as against Defendants.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: 9/23/13

EILEEN A. RAKOWER, J.S.C.