

Reaume v De Beers Diamond Jewelers US, Inc.

2013 NY Slip Op 33214(U)

December 17, 2013

Sup Ct, NY County

Docket Number: 156995/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT:

PART 15

Index Number : 156995/2013
 REAUME, DIANNE
 vs
 DE BEERS DIAMOND JEWELERS
 Sequence Number : 003
 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). 4

Replying Affidavits _____ No(s). 5, 6

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: 12/17/13

 _____, 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

DIANNE REAUME,

Plaintiff,

Index No.
156995/2013

- against -

DECISION

Mot. Seq. 03

DE BEERS DIAMOND JEWELERS US, INC.,

Defendant.

-----X

HON. EILEEN A. RAKOWER

Plaintiff Dianne Reaume (“Plaintiff”) brings this action against defendants De Beers Diamond Jewelers US, Inc. (“De Beers”), her former employer, and LVHM Moet Hennessy Louis Vuitton, Inc., alleging claims under the New York City Human Rights Law (“NYCHRL”) for discrimination based on gender (first cause of action), disability (second cause of action), and age (third cause of action), as well as retaliation (fourth cause of action). Plaintiff alleges that she was discriminated against based on her gender, disability, and age, that she was subjected to a hostile work environment based on these protected categories, and that she was retaliated against for her complaints about discrimination.

The action has been discontinued as against LVHM Moet Hennessy Louis Vuitton, Inc, a previously named defendant.

Defendant De Beers now moves for an Order pursuant to CPLR § 3211(a)(7) to dismiss the first cause of action for discrimination based on gender, the second based on disability and the third based on age. De Beers does not move with respect to the fourth cause of action for retaliation.

Plaintiff agrees to the dismissal and/or withdrawal of her claims of discrimination and hostile work environment based on gender and age (first and third cause of actions), but opposes dismissal of her second cause of action for discrimination based on disability.

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;

In determining whether dismissal is warranted for failure to state a cause of action, the court must “accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory.” (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91[1st Dept. 2003]) (internal citations omitted) (*see* CPLR §3211[a][7]).

Plaintiff’s second cause of action alleges discrimination under NYCHRL. Plaintiff alleges, “Defendants engaged in unlawful discriminatory practice in violation of the NYC Human Rights Law, §8-107(1)(a), by discriminating against Plaintiff, subjecting Plaintiff to a hostile work environment, and discharging Plaintiff based on her disability and/or perceived disability.”

Under the NYCHRL, it is an unlawful discriminatory practice for an employer, because of an individual’s disability, to refuse to hire or to discharge such individual, or otherwise to discriminate against such individual in the terms, conditions and privileges of employment. (*Miloscia v. B.R. Guest Holdings LLC*, 33 Misc. 3d 466 (N.Y. Sup. Ct. 2011) (citing Admin. Code 8-107(1)(a)).

The NYCHRL defines “disability” as “any physical, medical, mental or psychological impairment, or a history or record of such impairment.” Admin. Code 8-102(16)(a)).

“In order to state a cause of action for disability discrimination under the State [or City] HRL, the complaint must allege that the plaintiff suffers a disability and that the disability caused the behavior for which the individual was terminated.” *Krause v. Lancer & Loader Group, LLC, et. al.*, 40 Misc.3d 385, 396 (Sup. Ct., NY Cty 2013) (citations omitted).

A “hostile work environment exists [w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.” (*Forest v. Jewish Guild for the Blind*, 3 NY3d 295 [2004]). Under NYCHRL, a plaintiff can state a claim for a hostile work environment if plaintiff alleges that she “has been treated less well than other employees because of a [protected status].” *Williams v. NYC Housing Authority*, 61 A.D.3d 62, 78 [1st Dept 2009].

The Verified Complaint alleges that Plaintiff is “pre-diabetic with a pronounced family history of diabetes” and “[a]s a result, occasionally suffers from low blood sugar levels, which requires her to manage her food intake by consuming several small meals per day at regular intervals.” Plaintiff alleges that she informed her manager, Gabriel Danaher, and De Beers’ Human Resources Manager Denise Garrigan of “this need for a reasonable accommodation related to her required regularly-timed food consumption breaks,” that her “modest accommodation request was asking Defendant to merely permit her to take her scheduled lunch breaks on time, in order to avoid prolonged periods of fasting and the associated perils of low blood glucose levels related to her condition, and that “[i]n plainly discriminatory fashion, Danaher repeatedly ignored Plaintiff's request by preventing her from timely taking - or interrupting her during - her lunch break.” Plaintiff further alleges that she “complained to Garrigan about Danaher's behavior, which was causing Plaintiff great physical and emotional distress, yet the sum total of Defendant's corrective action was to advise Plaintiff that, ‘everyone’s diabetic’” and that “[t]he overall discriminatory treatment was harmful to Plaintiff's health” causing her to have to take a week off of work.”

Accepting all allegations as true, Plaintiff's second cause of action states a claim.

Wherefore it is hereby,

ORDERED that defendant De Beers Diamond Jewelers U.S., Inc.'s motion to dismiss is granted to the extent that Plaintiff's first and third causes of action are dismissed without opposition; and it is further

ORDERED that plaintiff's second and fourth causes of action are severed and shall proceed.

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

DATED: DECEMBER 17, 2013



EILEEN A. RAKOWER, J.S.C.