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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN PART 52

Justice

Index Number : 113678/2007
OBASI, VIRGINIA
vs.
DEPARTMENT OF EDUCATION
SEQUENCE NUMBER : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to ____, were read on this motion to/for summary judgment.

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

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

Replying Affidavits _____ No(s). 5

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

MOTION DETERMINED PURSUANT TO
ANNEXED DECISION AND ORDER

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

Dated: 4.4.14

HON. MARGARET A. CHAN, J.S.C.

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
NEW YORK COUNTY

VIRGINA OBASI,

Plaintiff,

-against-

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK , AUREA PORRATA-DORIA, FORMER PRINCIPAL OF P.S. 18 , MS. MEIJA, PRINCIPAL OF P.S. I.S. 18, MARTHA MADERA, COMMUNITY SUPERINTENDENT OF DISTRICT 6,

Defendants.

Index Number: 113678/2007

DECISION/ORDER

HON. MARGARET CHAN
Justice, Supreme Court

Plaintiff, a teacher employed by defendant Department of Education of the City of New York (DOE), initiated this action in 2007 by order to show cause to enjoin defendants from conducting a medical examination of plaintiff pursuant to NY Education Law §2568. Another Justice of this Court initially granted plaintiff a temporary restraining order (TRO), but after motion practice the court rendered a decision and order that vacated the TRO and denied plaintiff's motion for a preliminary injunction (*see Obasi v DOE et al*, Index # 113678/07, March 27, 2008, J. Feinman, annexed to Defts' Mot as Exh A). The court also dismissed plaintiff's challenge to the constitutionality of NY Education Law §2568 (*id.*).

Plaintiff served an amended complaint with leave from the court on defendants in February 2011 (*see* DOE's Mot, Exh B)[1]. Plaintiff's causes of action sound in harassment, racial discrimination, hostile work environment, and an additional claim to hold unconstitutional NY Education Law §2568 (*see id.*). Plaintiff also sought to set aside unsatisfactory "U" ratings she received while working. The amended complaint sought damages for *inter alia*, pain and suffering, emotional and physical distress, and punitive damages (*see* DOE's Mot, Exh B). Defendants make the instant motion for summary judgment. Plaintiff submitted opposition papers, to which defendants replied. The decision and order on the motion is as follows:

Plaintiff began her employment with the DOE as a teacher in 1992. The school in which plaintiff worked closed in 2006 and she was reassigned to the Absent Teachers' Reserve (ATR) in

[1] Plaintiff's amended complaint is annexed to defendants' motion as Exhibit A. There are twenty causes of action. Although plaintiff is represented by counsel, the amended complaint appears to be drafted by plaintiff herself as it refers to herself in the first person and asserts causes of action that are not decipherable as a legal claim (*e.g.*plaintiff's second cause of action is "Wrongfully sending me home." It is unclear if that cause of action refers to plaintiff being terminated or her being asked leave on a particular date without pay or something else entirely.). However, it is curious that plaintiff's attorney endorsed the amended complaint as if he wrote it and annexed plaintiff's verification to the amended complaint.

P.S./ I.S. 18. On August 31, 2007, an incident occurred between plaintiff and defendant Principal Aurea Porrata-Doria where the police were called (*see* Defts' Mot, Exh F). Principal Porrata-Doria reported that plaintiff interrupted a meeting in her office. Plaintiff became loud and unruly, but eventually returned to her teaching assignment as directed (*id.*). As a result of this incident, defendant Martha Madera, Community Superintendent for Community School District 6, directed a medical examination of plaintiff pursuant to NY Education Law §2568. Plaintiff was medically examined on June 5, 2008 and was found fit to perform her teaching duties.

Plaintiff received unsatisfactory "U" ratings for the 2007-2008, 2008-2009, 2009-2010 school years. Plaintiff appealed those ratings before the Chancellor's Committee and the ratings were sustained. Plaintiff was also served with disciplinary charges in December 2010 pursuant to NY Education Law § 3020-a, for unprofessional behavior during the 2008-2009 and 2009-2010 school years. A variety of specifications were sustained against plaintiff, and she was ordered to pay a fine of $5,000.00 and to attend courses on the topics of classroom management and differentiation of instruction (*see* Defts' Mot, Exh T).[2] The disciplinary proceeding's opinion and award is particularly illustrative in piecing together the events that occurred at I.S. 18 surrounding plaintiff's employment. The opinion and award is over thirty pages long and based on evidence taken over a five (5) day hearing. The report indicated that while plaintiff committed professional misconduct, was insubordinate and neglectful of her teaching duties, she was, however, charged with teaching a curriculum invented by Principal Porrata-Doria for which she received hardly any professional guidance or development (*see id.* at pp 31 - 33).

Plaintiff alleged that she was treated unfairly at I.S. 18 because she is black. Plaintiff expanded that she heard rumors that Principal Porrata-Doria did not like black people (*see* Defts' Mot, Exh E, p 61). However, when asked about her poor treatment at I.S. 18, plaintiff responded that Principal Porrata-Doria was biased against ATR teachers and non-Spanish speaking teachers. Indeed, when asked about why she believed she was treated differently, she responded that it was because of her ATR status (*see* Defts' Mot, Exh E, pp 60, 91, and 100). Plaintiff was able to identify several other black teachers at I.S. 18 and others that were black and non-Spanish speaking. However, plaintiff did not claim that those teachers were treated unfairly (*see* Defts' Mot, Exh E, pp 61, 69 -71). Plaintiff did not provide any facts that would seem to support a claim of racial animus by any staff member of I.S. 18 or by the Superintendent. Undoubtedly, when asked specifically about naming the superintendent in this lawsuit, plaintiff stated that she had never met defendant Superintendent Martha Madera and does not believe that she ever was personally discriminated against by her (*see* Defts' Mot, Exh E, p 99).

A movant seeking summary judgment in its favor must make "a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The evidentiary proof tendered must be in admissible form (*see Friends of Animals v Assoc. Fur Manufacturers*, 46 NY2d 1065 [1979]). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a summary judgment

[2] Of the specifications brought against plaintiff, more were dismissed than sustained.

motion (*Zuckerman v City of New York*, 49 NY2d at 562).

A cause of action invoking protections under both the New York State and City Human Rights Laws, Executive Law § 296 *et seq.*, and Administrative Code of the City of New York § 8-107 *et seq.*, respectively, require plaintiff to assert that she is a member of a protected class, that she was qualified for her position, that she suffered an adverse employment action, and that the adverse action was due to circumstances that could be deemed discriminatory (*see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]). In accord with federal standards of recovery under title VII of the Civil Rights Act of 1964, State Human Rights Law first place the burden on plaintiff to establish a *prima facie* case of discrimination by a preponderance of the evidence (*see Ferrante v American Lung Assn.*, 90 NY2d 623, 629 [1997], *citing Texas Dept. of Community Affairs v Burdine*, 450 US 248, 252–253). Then the burden shifts to defendants to show a legitimate, nondiscriminatory reason for the adverse action after which the burden shifts back to the plaintiffs to prove that the legitimate reason proffered by the defendant is merely a pretext for discrimination. (*id.*; Executive Law § 296 *et seq*).

Under City Human Rights Law, as amended by the Restoration Act, an "independent liberal construction analysis in all circumstances" is required (*Williams v New York City Housing Authority*, 61 AD3d 62 [1st Dept 2009]). City Human Rights Law was made uniquely broad and remedial in nature, and thus its protections go beyond its state and federal counterparts (*see Bennett v Health Management Systems, Inc.*,92 AD3d 29, 34-35 [1st Dept 2011]). A court must analyze if a defendant has sufficiently met its burden, as the moving party, rather than focusing exclusively on plaintiff's *prima facie* burden (*id.* at *38-40*).

At the outset, plaintiff claims challenging the DOE's request that plaintiff appear for a medical examination are dismissed as they are untimely. Pursuant to Education Law § 3813(1), the time limit to bring a claim against the DOE is three (3) months after accrual of the claim. The medical examination took place on June 5, 2008. Plaintiff filed three notices of claim concerning the actions alleged in this matter. The earliest of which was filed on July 6, 2009 – over a year after the medical examination occurred.

In any event, Education Law §2568 empowers the DOE to require a medical examination "whenever it has been recommended in a report in writing that such examination should be made". In this instance, the medical examination was recommended after an incident in which plaintiff made somewhat threatening statements to Principal Porrata-Doria and the police were called to the school. Plaintiff did not proffer any facts that would point to a racially biased motivation for the recommendation of the medical evaluation.

Moreover, another Justice of this court in this matter has already reviewed the impetus for the medical examination. Justice Feinman, in consideration of a preliminary injunction motion, stated plaintiff failed to show that the request for a medical examination was improper where it was ordered based on the Principal's "own observations of plaintiff's actions on August 31 and September 6, 2007" (*Obasi v DOE et al*, *supra* at 5). Further, in discussing Education Law §2568 itself, Justice Feinman found that the law was not unconstitutional, nor was it a punishment or disciplinary measure (*id.* at 6). Therefore, all claims regarding the medical examination have been dealt with in this court and do not rise to the level of an adverse action taken against plaintiff.

Therefore, plaintiff's claims regarding the medical examination are dismissed.

As to the remaining actions taken by the DOE and the personally named defendants, plaintiff's status as an ATR did not place her in a protected class. Plaintiff's inability to speak Spanish also did not put her in a protected class as language, by itself, does not identify members of a protected class (*see Soberal-Perez v Heckler*, 717 F2d 36 [2d Cir, 1983]). Plaintiff otherwise failed to establish that she suffered an adverse action that was based on racial animus. As defendants have pointed out, plaintiff did not produce anything other than speculation that she was discriminated against based on race. There was no direct or circumstantial evidence of discriminatory conduct by defendants based on race. Moreover, this court must give probative weight to the lengthy opinion and award by a neutral arbitrator that sustained various specifications against plaintiff (*see Collins v New York City Transit Authority*, 305 F3d 113 [2d Cir, 2002]). Therefore, plaintiff's claims sounding in discrimination, harassment, and hostile work environment based on race are dismissed.

To the extent that plaintiff asserted an unspecified tort against defendants, plaintiff has failed to articulate a claim nor did she provide facts as to the elements of such a claim, and therefore any claims of an unspecified tort are dismissed.

Accordingly, defendants' motion is granted in its entirety and plaintiff's action is dismissed.

This constitutes the decision and order of the court.

Dated: April 4, 2014

Margaret A. Chan , *J.S.C.*