

Jenkins v New York City Tr. Auth.

2014 NY Slip Op 30457(U)

February 25, 2014

Sup Ct, NY County

Docket Number: 153761/13

Judge: Michael D. Stallman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

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NANCY JENKINS, TERESA GARCIA, and
STEPHANIE LOPEZ,

Plaintiffs,

-against-

Index No. 153761/13

NEW YORK CITY TRANSIT AUTHORITY
and MANHATTAN AND BRONX SURFACE
TRANSIT OPERATING AUTHORITY,

DECISION and ORDER

Defendants.

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HON. MICHAEL D. STALLMAN, J.:

Defendants New York City Transit Authority (NYCTA) and Manhattan and Bronx Surface Transit Operating Authority move, pursuant to CPLR 3211 (a) (2) and (7), for an order dismissing this action. Defendants make no argument pertaining to CPLR 3211 (a) (2), which provides for dismissal when the court lacks subject matter jurisdiction over the claim asserted by the plaintiff.

The complaint alleges, on behalf of each plaintiff, a cause of action for sexual harassment and a cause of action for retaliation, both in violation of the New York City Human Rights Law (NYCHRL), Administrative Code of City of New York § 8-101 et seq. The sole question before the court is whether, as defendants assert, the NYCHRL is inapplicable to them by virtue of Public Authorities Law (PAL) § 1266 (8). That section provides, in relevant part,

"Except as hereinafter specially provided, no municipality ... shall have jurisdiction over any facilities of the [Metropolitan Transportation] authority (MTA) and its subsidiaries, and the [NYCTA] and its subsidiaries, or any of their activities or operations. The local laws ... of a municipality ..., heretofore or hereafter adopted, conflicting with this title or with

any rule or regulation of the [MTA] or its subsidiaries, or [NYCTA] or its subsidiaries, ... shall not be applicable to the activities or operations of the [MTA], and [NYCTA] and its subsidiaries"

The NYCTA was added to this section by L.2000, c. 61.

As defendants forthrightly acknowledge, the Appellate Division, Second Department, has held in two cases that, because the provisions of the NYCHRL do not conflict with any rule or regulation of the NYCTA, the NYCTA is subject to the NYCHRL. *Bumpus v New York City Tr. Auth.*, 66 AD3d 26, 37 (2d Dept 2009); *Tang v New York City Tr. Auth.*, 55 AD3d 720, 720-721 (2d Dept 2008). This court is bound by those decisions, absent a contrary decision by the Appellate Division, First Department, or the Court of Appeals.

Defendants argue that, in *Matter of Levy v City Commn. on Human Rights* (85 NY2d 740 [1995]), the Court of Appeals held that the NYCTA was subject to the jurisdiction of the New York City Commission on Human Rights, in part because, at that time, there was no statutory provision that appeared to preclude the exercise of such jurisdiction. The Court of Appeals contrasted the legal position of the NYCTA to that of the Capital District Transportation Authority, which was, generally, exempted from the jurisdiction of local laws by PAL § 1307 (7). Defendants contend that PAL § 1266 (8) is substantially similar to PAL § 1307 (7), and that, therefore, the NYCHRL is no longer applicable to the NYCTA, now that the NYCTA is within the coverage of PAL § 1266 (8).

The first sentence of PAL § 1266 (8) quoted above, is, indeed, identical to the equivalent sentence in PAL § 1307 (7), except as to the identity of the public authorities covered by the two

sections. However, the second sentence of PAL § 1266 (8), quoted above, has no counterpart in PAL § 1307 (7), and it is the basis of the holdings in *Bumpus* and *Tang*. Defendants do not argue that the NYCHRL conflicts with any rule or regulation promulgated by either of them.

The court notes that, in *Levy*, the Court of Appeals contrasted the applicability of the NYCHRL to the NYCTA to the Capital District Transportation Authority's immunity from the reach of local laws, not to any such immunity of the MTA under PAL § 1266 (8). Further, in *Rios v Metropolitan Transp. Auth.* (6 Misc 3d 1006(A), 2004 NY Slip Op 51738[U] [Sup Ct, Richmond County]) the court granted the MTA's motion to dismiss the complaint, which alleged a violation of the NYCHRL, on a number of grounds, including the plaintiff's lack of standing, but expressly declined to dismiss the complaint on the ground that the NYCHRL is inapplicable to the MTA. It is by no means clear that the Court of Appeals would hold that the NYCHRL is inapplicable to the MTA and the NYCTA by virtue of PAL § 1266 (8), were that issue to come before the Court.

Finally, defendants contend that the NYCHRL is inapplicable to them, because it differs from the State Human Rights Law, Executive Law § 296 et seq., for example, by imposing strict liability on employers. Defendants fail to explain, however, how such differences between the two statutes constitute "conflict[] with [the Public Authorities Law] or with any rule or regulation of the ... [NYCTA] or its subsidiaries."

Accordingly, it is hereby
ORDERED that the motion is denied; and it is further
ORDERED that defendants are directed to serve their answer
to the complaint within 30 days of service upon them of a copy of
this order with notice of entry.

Dated: February 28, 2014
New York, New York

ENTER:



J.S.C

MICHAEL D. STALLONE
J.S.C.