Mantione v C. Berman Assoc.
2016 NY Slip Op 30655(U)
March 1, 2016
Supreme Court, Queens County
Docket Number: 711157/15
Judge: Timothy J. Dufficy

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY **PART 35**
Justice

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DOREEN MANTIONE,

Plaintiff,

Index No.: 711157/15
Mot. Date: 1/15/16

-against-

Mot. Cal. No. 86
Mot. Seq. 1

C. BERMAN ASSOCIATES, AND PRS CONSULTING, LLC., AND PETER SCHATZEL, IN HIS INDIVIDUAL AND PROFESSIONAL CAPACITIES,

FILED
MAR -4 2016
COUNTY CLERK
QUEENS COUNTY

Defendants.

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The following papers numbered EF 5 to 8 and EF 10 to 11 read on this motion by defendants **PRS CONSULTING, LLC.** (PRS) **and PETER SCHATZEL** for aN order pursuant to CPLR 3211 and/or 3212 dismissing the plaintiff's complaint as against them.

	PAPERS NUMBERED
Notice of Motion-Affirmation-Exhibits	EF 5-7
Memorandum of Law in Support.....	EF 8
Memorandum of Law in Opposition.....	EF 10
Memorandum of Law in Reply.....	EF 11

Upon the foregoing papers, it is ordered that the motion is denied.

This is an action brought by the plaintiff pursuant to New York State Human Rights Law, Executive Law §§290 et seq. to recover damages for gender discrimination in the form of hostile work environment, sexual harassment and related allegations during her employment at a location in Port Washington with the defendant PRS CONSULTING, LLC. (PRS), as "personal assistant" to defendant PETER SCHATZEL.

The plaintiff's complaint contains very specific and detailed allegations of unwanted contact of a harassing, discriminatory, offensive and sexual nature. In her complaint, the plaintiff has explicitly alleged that the Berman and PRS defendants are single employers, providing the identical types of services using identical service providers, both having the individual defendant as an owner and agent of each business, shared clientele, and sharing a website. She further avers in her complaint that 85% of the contracts that plaintiff prepared for the individual defendant pertained to the business of defendant Berman, that she called Berman's clients and service providers on a daily basis while ostensibly working for PRS, representing that she was calling for "C. Berman Associates." Other overlapping functions are also alleged in the plaintiff's complaint.

The defendant now moves to dismiss the allegations, claiming that they fall outside the purview of the New York State Human Rights Law, since the entities involved, as well as the individual, have less than four (4) employees, and thus, fall outside the definition of an employer. Defendant's motion is without merit.

Discussion

Pleadings must be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action. (see CPLR 3103). A claim of fraud must be asserted in detail, and conclusory allegations of fraud do not suffice to meet the statutory requirement (see CPLR 3106; Scomello v Caronia, 232 AD2d 625 [2d Dept 1996]; Sforza v Health Ins. Plan of Greater N.Y., 210 AD2d 214 [2d Dept 1994]).

In considering a motion to dismiss a complaint for failure to state a cause of action (see CPLR 3211[a][7]), the facts as alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court's function is to determine only whether the facts as alleged fit within any cognizable legal theory (see Leon v Martinez, 84 NY2d 83, 87-88 [1994]; Morone v Morone, 50 NY2d 481, 484 [1980]; Rochdale Vil. v Zimmerman, 2 AD3d 827 [2d Dept. 2003]). The criterion is whether the proponent of the pleading has a cause of action, not whether it has stated one (see Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]).

" 'A party seeking dismissal on the ground that its defense is founded on documentary evidence under CPLR 3211 (a)(1) has the burden of submitting documentary evidence that "resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim' " (Sullivan v State of New York, 34 AD3d 443, 445 [2006], quoting Nevin v Laclede Professional Prods., 273 AD2d 453, 453 [2d Dept 2000]; see Leon v Martinez, 84 NY2d at 88)" (Uzzle v Nunzie Ct. Homeowners Assn., Inc., 70 AD3d 928 [2d Dept 2010]). To the extent that the defendants have moved pursuant to CPLR 3211(a)(7), the Court addresses only the pleading itself, keeping in mind that the motion should be denied if the facts alleged by the plaintiff fit within any cognizable legal theory (see Leon v Martinez, 84 NY2d 83, 87-88, 638 NE2d 511, 614 NYS2d 972 [1994]). Further, the Court must afford the pleading a liberal construction, accept the facts as alleged as true, and accord the pleading the benefit of every possible favorable inference (*id.*).

The New York State Human Rights Law, (Executive Law §292[5]), has a numerosity requirement that precludes application of the statute to business entities with less than four (4) employees by exempting them from the definition of "employer."

However, the "single employer" doctrine, applicable here, creates an exception to the numerosity requirement, in cases in which certain criteria are established. As originally promulgated by the NLRB, the single employer doctrine sets forth four criteria to determine whether two or more companies are sufficiently interrelated to constitute a single entity: (1) interrelation of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control of the entities in question (see Matter of Argyle Realty Assocs. v. New York State Div. of Human Rights, 65 AD3d 273, 278-279 [2d Dept. 2009]). Of the four criteria, centralized control of labor relations is generally considered the most significant (see Armbruster v Quinn, 711 F2d 1332, 1337 [2d Cir. 1983]).

Separate companies are considered a "single employer" if they are "'part of a single integrated enterprise.'" (Clinton's Ditch Coop. Co. v NLRB, 778 F2d 132, 137 [2d Cir. 1985] quoting NLRB v. Browning-Ferris Indus., Inc., 691 F2d 1117, 1122 [3d Cir. 1982] cert. denied 479 US 814 [1986]). The Supreme Court's four-factor test in Radio & Television Broadcast Technicians Local Union 1264 v Broadcast Service of Mobile, Inc.,

(380 US 255, 256, [1965] [per curiam]), examines the "interrelation of operations, common management, centralized control of labor relations and common ownership." Also relevant are the use of common office facilities and equipment and family connections between or among the various enterprises. (see Three Sisters Sportswear Co., 312 N.L.R.B. 853 [N.L.R.B. Sept. 30, 1993]); Goodman Investment Co., 292 N.L.R.B. 340 [N.L.R.B. Jan. 17, 1989]). To demonstrate single employer status, not every factor need be present, and no particular factor is controlling. see Three Sisters, supra). "Ultimately, single employer status depends on all the circumstances of the case and is characterized by absence of an 'arm's length relationship found among unintegrated companies.'" (Al Bryant, 711 F2d at 551 [3d Cir. 1983]; see Lihli Fashions Corp. v. NLRB, 80 F3d 743, 747 [2d Cir. 1996]).

The propriety of applying the single employer doctrine is further underscored by the Legislature's directive that "[t]he provisions of [the Human Rights Law] shall be construed liberally for the accomplishment of the purposes thereof" (Executive Law §300; see e.g. Matter Cahill v Rosa, 89 NY2d 14, 20 [1996]; 300 Gramatan Ave. Assoc. v State Div. of Human Rights, 45 NY2d 176, 183 [1978]). The purpose of the statute is to ensure that "every individual within this state is afforded an equal opportunity to enjoy a full and productive life" (Executive Law § 290 [3]). The purpose of the employee-numerosity requirement may be "to spare very small firms from the potentially crushing expense of mastering the intricacies of the antidiscrimination laws, establishing procedures to assure compliance, and defending against suits when efforts at compliance fail" (Papa v Katy Indus., Inc., 166 F3d 937, 940 [7th Cir. 1999] cert denied 528 US 1019 [1999]). However, where, as here, the discrimination occurred at the hands of defendant Schatzel, who is the "sole owner" of the complainant's employer, PRS, and an agent of C. Berman, which is alleged to be intertwined in a business context with PRS, such purpose would be undermined, since a refusal to apply the single employer doctrine would allow both employers to evade the Human Rights Law altogether.

As the movant, the defendants bear the burden of pointing to "documentary evidence that utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (McCully v Jersey Partners, Inc., 60 AD3d 562 [1st Dept. 2009]; see generally CPLR 3211[a][1]). There is an overlap alleged, not only of

management and purpose, but of the daily operations, in which the employees, while paid by one entity, identify themselves to clients and providers as representing the other company. The nature and scope of the two businesses is somewhat ambiguous. The plaintiff's allegations that C. Berman and PRS Consulting are a "single employer", whose business functions are functionally integrated , controlled and managed by defendant Schatzel as part of the same business enterprise, raise issues of fact that have not been utterly refuted by the defendants' submissions. The scant two-page , nine paragraph affidavit by individual defendant Peter Schatzel, does not utterly refute the plaintiff's allegations of commonality among the two business defendants as a matter of law, much less make any effort to even address the detailed and specific substantive allegations of wrongdoing in the plaintiff's complaint. Thus, it is entirely proper to aggregate the employees of both entities in order to find that the plaintiff has established the employer requirement of the New York State Human Rights Law.

The Court notes that the Nassau County Human Rights Law has no provision defining "employer" and does not limit its scope based upon the number of employees (see Jones v Bellerose Terrace Fire District, 2012 NY Slip Op 30329(U) [Sup Ct. Nassau Co. 2012]).

Accordingly, it is hereby,

ORDERED, that motion by the Defendants PRS Consulting, LLC. and Peter Schatzel, in his individual and professional capacities, is denied.

The foregoing constitutes the decision and order of this Court.

Dated: March 1, 2016

TIMOTHY J. DUFFICY, J.S.C.