Hammond v New York-Presbyt. Hosp./Columbia Univ. Med. Ctr.
2018 NY Slip Op 30472(U)
March 20, 2018
Supreme Court, New York County
Docket Number: 151700/2017
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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RAKEENA HAMMOND,

Plaintiff,

-against-

NEW YORK-PRESBYTERIAN HOSPITAL/COLUMBIA UNIVERSITY MEDICAL CENTER, 61st STREET SERVICE CORPORATION and LASHAWNA LITTLEJOHN,

Defendants.

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Index No. 151700/2017
Motion Seq: 001

DECISION & ORDER
ARLENE P. BLUTH, JSC

The motion by defendant 61st Street Service Corporation ("Service Corp") to dismiss all claims against it is granted.

Background

This action arises out of plaintiff's employment for Service Corp as a radiologic technologist at the Department of Rehabilitation and Regenerative Medicine at Columbia University Medical Center. Plaintiff's complaint mentions that she is a devout Baptist Christian and that she was purportedly ridiculed for reading a bible during breaks and for asking other staff members to give her mini bibles that came with steroid shipments so the bibles would not be thrown out.

However, the vast majority of plaintiff's complaint details the alleged wrongdoing of her co-worker, defendant Lashawna Littlejohn. Plaintiff alleges that Littlejohn tried to get plaintiff

to do Littlejohn's MRI authorization paperwork for her but plaintiff refused. Plaintiff claims that Littlejohn began a campaign of harassment after plaintiff refused to do Littlejohn's work. Plaintiff insists that the animosity between her and Littlejohn increased throughout 2014 and 2015 and culminated with an incident in October 2015 where Littlejohn allegedly tried to run over plaintiff with a car in Fort Lee, New Jersey. Plaintiff contends that she resigned from her job on November 3, 2015 citing safety concerns.

Plaintiff brings a state hostile work environment claim based on religion, a New York City hostile work environment claim based on religion, a harassment cause of action, a state retaliation claim and a New York City Human Rights Law retaliation claim.

Service Corp moves to dismiss on the ground that plaintiff failed to state a cause of action.[1] Service Corp insists that plaintiff's complaint does not state a cognizable claim because she failed to allege that she engaged in any protected activity. Service Corp contends that plaintiff did not complain about any alleged mistreatment relating to her religion; instead she complained about her co-worker, whose purported misdeeds arose out of plaintiff's refusal to do Littlejohn's work.

In opposition, plaintiff claims she has a cause of action for a hostile work environment because she was subjected to constant ridicule for her religion and religious observance. Plaintiff

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[1]The Court rejects plaintiff's attempt, in her memorandum of law in opposition, to convert Service Corp's motion to dismiss to one for summary judgment. The fact is that Service Corp submitted documents referenced in the complaint and the Hernandez affirmation explains how each document relates to specific allegations (*see* NYSCEF Doc. No. 12). "On a motion to dismiss, the court may consider documents referenced in a complaint, even if the pleading fails to attach them" (*Alliance Network, LLC v Sidley Austin LLP*, 43 Misc3d 848, 852 fn1, 987 NYS2d 792 [Sup Ct NY County 2014]). In any event, these documents were not dispositive in the Court's decision.

further contends that she alleged a constructive discharge from her employment because of the hostile work environment.

Discussion

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]).

As an initial matter, the Court observes that plaintiff's memorandum of law in opposition did not even address the branches of Service Corp's motion to dismiss relating to plaintiff's retaliation and harassment claims. Therefore, those claims (the third, fourth and fifth causes of action) are deemed abandoned and are hereby severed and dismissed as against Service Corp.

The only claims left against Service Corp are plaintiff's hostile work environment claims (the first and second causes of action) based on both state and city laws.

Hostile Work Environment

"A hostile work environment exists where 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. Various factors, such as frequency and severity of the discrimination, whether the alleged discriminatory actions were threatening or humiliating or a mere offensive utterance, and whether the alleged

actions unreasonably interfere with an employee's work are to be considered in determining whether a hostile work environment exists. The allegedly abusive conduct must not only have altered the conditions of the employment of the employee, who subjectively viewed the actions as abusive, but the actions must have created an objectively hostile or abusive environment– one that a reasonable person would find to be so" (*Chiara v Town of New* Castle, 126 AD3d 111, 125, 2 NYS3d 132 [2d Dept 2015] [internal quotations and citations omitted]).

The allegations in plaintiff's complaint do not make out a claim for hostile work environment based on her religion under either the state or local human rights laws. Plaintiff includes only three paragraphs (paragraphs 17-19) in the complaint relating to a hostile work environment based on her religion and these allegations, even when taken together, do not show a workplace permeated with intimidation and insult.

The first reference alleges that "Plaintiff was constantly subjected to ridicule for reading her Bible at her desk during her office breaks and lunch break" (NYSCEF Doc. No. 1, ¶ 17). Certainly, 'ridiculing' a co-worker for reading a Bible is unprofessional and unacceptable behavior. But even an offensive comment is not necessarily actionable (*see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 311, 786 NYS2d 382 [2004] [finding that racial epithets, uttered on three occasions over nine years, did not support a claim for hostile work environment]). And, here, plaintiff has provided no details about the exact words that were used, the frequency of these statements or how it affected her ability to do her job.

The Court recognizes that plaintiff was not required to include specific details in her complaint. However, when Service Corp moved to dismiss, plaintiff had an opportunity to amplify her allegations with an affidavit or to bring on a cross-motion to amend her complaint.

Instead, plaintiff only offers a memorandum of law in opposition to the instant motion. Therefore, this Court is left with a complaint that vaguely refers to ridicule plaintiff supposedly received an unspecified number of times.

Paragraph 18 states that "Plaintiff was constantly subjected to ridicule for asking other staff members to give her the mini Bibles that would come in with shipments of steroids. The staff would usually throw these Bibles away and Plaintiff wanted to donate them, so she alerted the staff to give her the Bibles" (NYSCEF Doc. No. 1, ¶ 18). This allegation cannot support a cause of action for a hostile work environment (under either the state or city human rights laws). The Court does not know how many times plaintiff was 'ridiculed,' exactly what was said to plaintiff or what 'ridiculed' means to plaintiff. Making jokes at the expense of a co-worker, even unkind comments, does not automatically support a hostile work environment claim. Without knowing the nature of these comments or even whether plaintiff subjectively viewed these comments as abusive, the Court is unable to conclude that there is a cognizable cause of action. For example, calling her cheap for wanting to save mini bibles, and giving her nasty nicknames related to being cheap would be viewed differently from daily insults directly related to plaintiff's belief in the bible's teachings and her deeply held religious convictions.

Paragraph 19 alleges that "Plaintiff was often ridiculed about her scrubs not being tight enough on her body and that they were too baggy. However, Plaintiff wore the uniforms made specifically for her job and wearing a baggy uniform was a conscious decision Plaintiff made with respect to her religion" (*id.* ¶ 19). This allegation does not support a hostile work environment claim because it is unclear whether plaintiff was being made fun of because her uniform did not fit well or because of her religion. Moreover, plaintiff does not claim that she

told anyone that she wore a baggy uniform because of her religion. Obviously, a co-worker might make a nasty comment about someone's appearance. But that, standing alone, cannot form the basis of a hostile work environment based on religion.

Even when taken together, these three allegations do not show that plaintiff worked in an abusive environment due to her religion. The Court is unable to discern the frequency and severity of the alleged discrimination that plaintiff supposedly faced from the complaint. The Court observes that plaintiff does not allege that she complained to a superior about this hostility based upon religion or how that purportedly abusive behavior affected her ability to do her job.

The remaining allegations in the complaint focus on the actions of defendant Littlejohn–but plaintiff does not allege that Littlejohn's animosity was based on plaintiff's religion. Instead, plaintiff contends that Littlejohn disliked plaintiff because plaintiff refused to do Littlejohn's work for her. Even the allegations listed under the first cause of action (the state hostile work environment claim) reference only Littlejohn's actions and leave out any mention of religion, except for the title of this claim (*id.* at 9-10). And the second cause of action (the city hostile work environment claim) does not mention religion either (*see id.* at 10-11).

Accordingly, the first and second causes of action are severed and dismissed.

Summary

The motion and opposition discuss constructive discharge. To the extent that plaintiff sought to allege a constructive discharge cause of action (although this was not listed in the five causes of action identified by plaintiff in the complaint), that claim is dismissed because plaintiff alleges that she "submitted her letter of resignation, stating that due to safety concerns and future

career preservation, her resignation would be effective immediately" (*id.* ¶ 75). The only plausible reading of the complaint is that plaintiff's resignation in November 2015 was the result of Littlejohn's alleged attempt to run plaintiff over with a car (i.e., plaintiff's safety concerns). Plaintiff does not allege that she left because of the alleged ridicule she received about her religious observance or that Littlejohn's purported acts were based on plaintiff's religion. Therefore, plaintiff does not have a cause of action for constructive discharge based on her religion.

The Court observes that plaintiff's self-created titles for her causes of action for hostile work environment both list: "Hostile Work Environment (Religion)." Therefore, the Court must assume that these claims were based on supposed religious discrimination faced by plaintiff. But the complaint does not detail an unbearable work environment based on plaintiff's religion. Instead, it refers to an unbearable work environment caused by a out-of-control co-worker who was upset that plaintiff would not do the co-worker's job. Whether that might make out a cause of action is beyond the scope of this opinion. Here, the Court is only focused on the hostile work environment claims based on religion alleged against Service Corp and plaintiff has not stated a cause of action based on religious discrimination against the moving defendant.

From this case's docket on e-filing, it appears that the only defendant remaining is Littlejohn because plaintiff discontinued the action against defendant New York Presbyterian (NYSCEF Doc. No. 8). Therefore, there shall be a preliminary conference scheduled for July 10, 2018 at 2:15 p.m.

Accordingly, it is hereby

ORDERED that the motion to dismiss by 61st Street Service Corporation is granted and all claims against this defendant are severed and dismissed.

This is the Decision and Order of the Court.

Dated: March 20, 2018
New York, New York

ARLENE P. BLUTH, JSC.

HON. ARLENE P. BLUTH