

<b>Karayiorgou v Trustees of Columbia Univ.</b>
2021 NY Slip Op 30144(U)
January 14, 2021
Supreme Court, New York County
Docket Number: 150788/18
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

MARIA KARAYIORGOU

INDEX NO. 150788/18

- v -

MOT. DATE

MOT. SEQ. NO. 002

THE TRUSTEES OF COLUMBIA UNIVERSITY et al.

The following papers, numbered to were read on this motion to/for summary judgment
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits No(s)
Notice of Cross-Motion/Answering Affidavits — Exhibits No(s)
Replying Affidavits No(s)

Plaintiff, Maria Karayiorgou, seeks to recover for alleged employment discrimination. Plaintiff has asserted causes of action for "marital" and "gender" discrimination under only the New York City Human Rights Law. Defendant The Trustees of Columbia University (Columbia) moves for summary judgment in its favor. Plaintiff opposes the motion. Issue has been joined and the motion was timely brought after note of issue was filed. Therefore, summary judgment relief is available. The court's decision is as follows.

The following facts are alleged in the complaint. Plaintiff commenced her employment at Columbia as a Professor of Psychiatry in 2006. In 2010, she became the Acting Director of the Medial Genetics Division in the Department of Psychiatry. Prior to joining Columbia, plaintiff was the principal of her research laboratory, Karayiorgou Laboratory, which was affiliated with The Rockefeller University from 1996 through 2006. As a distinguished research scientist, plaintiff identified the first genetic risk factor in schizophrenia through her human genetic studies and was credited for her use of mouse modeling studies. Plaintiff has received acclaim for her research and other academic and scholarly accomplishments as referenced in her curriculum vitae.

In or about 1998, Dr. Joseph Gogos, plaintiff's husband, who was a neuroscience post-doctoral candidate at Columbia, began moonlighting as a visiting fellow at the Karayiorgou Laboratory at Rockefeller Institute, where he allegedly worked with plaintiff on applications of the mouse modeling research. Plaintiff alleges that over the next ten years, Gogos transitioned from working on olfaction research to working with plaintiff on a full-time basis supporting her efforts with the mouse modeling research and its application to schizophrenia, all of which continued after plaintiff joined Columbia in 2006.

Dated: January 14, 2021

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER
3. Check if appropriate: [ ] SETTLE ORDER [ ] SUBMIT ORDER [ ] DO NOT POST
[ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

In 2012/2013, Columbia established the Zuckerman Institute to bring together prestigious scientists in the fields of engineering, research and psychology in order to work toward interdisciplinary and collaborative research in mind, brain and behavior. In May 2013, plaintiff was the featured speaker at a fundraiser event for the Zuckerman Institute where plaintiff alleges that Dr. Thomas Jessell's introduction at the event highlighted the strength of plaintiff's research and her innovation of combining human genetic studies with mouse modeling research. In April 2014, plaintiff alleges that she received a formal invitation to join the Zuckerman Institute from Dr. Jessell and Dr. Charles Zuker.

Meanwhile, in December 2014, plaintiff and Dr. Gogos finalized their divorce. Plaintiff alleges that in March 2015, Drs. Jessell and Zuker rescinded her invitation to the Zucker Institute because they were "afraid" that following her divorce from Gogos there would be tension and they "did not want to start the Institute with controversy". Plaintiff further alleges that she received an email on April 29, 2015, from David Greenberg, who was the then Executive Director and Chief Operating Officer of the Zuckerman Institute, that received an invitation to the Zuckerman "because of" her research collaboration with Gogos and stated his understanding the plaintiff would "no longer be collaborating with Doctor Gogos" even though plaintiff's research began long before she started working with Gogos.

Plaintiff alleges that Columbia permitted Gogos to use plaintiff's proprietary mouse models and his reliance on her decades worth of scientific research, apportioning her life's work for himself. She maintains that Columbia has incorrectly attributed the mouse modeling research to Gogos and failed to attribute credit to plaintiff or her lab, thereby dismissing her standing in her field and impacting her ability to obtain funding, recognition and awards, thus impacting her career. Plaintiff filed a formal complaint of workplace discrimination based on her marital status and gender with the Columbia Office of Equal Opportunity and Affirmative Action in or about April 2017, which determined plaintiff's claims were unfounded/unsubstantiated.

### Arguments

Defendant argues that it is entitled to summary judgment dismissing plaintiff's discrimination claims on the basis of "marital status" and "gender. Specifically, defendant asserts that based on uncontradicted testimony that plaintiff's invitation to the Zucker Institute had been extended because of her collaboration with Gogos and that her invitation was rescinded when Columbia reps (Zuker and Jessell) learned that Gogos was "no longer interested in collaborating at the Institute with Plaintiff". Defendant has provided the affidavit of Zuker, who is a Professor of Biochemistry and Molecular Biophysics and of Neuroscience at Columbia. Zuker states that Karayiorgou was invited to have a "limited presence" at the institute "in connection with her work with Dr. Gogos" and that he "understood [Dr. Gogos] to have been collaboration closely with Dr. Karayiorgou" and that plaintiff's "offer to have a presence at the Institute was therefore entirely dependent in my view upon her continued research collaboration" with Gogos.

Defendants also annex the affidavit of Gogos, who claims that in April 2014 "[I] understood at the time that Drs. Zuker and Jessell extended this invitation to Dr. Karayiorgou because of my research collaboration with her, and that the offer was therefore entirely dependent upon her continued research collaboration with me" and that on March 2015 I emailed Zuker and Jessell to "let them know about the status of our personal and professional relationship, and specifically to let them know that I did not want to work with Dr. Karayiorgou at the Zuckerman Institute". Defendants further contend that plaintiff's invitation was not as a full member but merely to have a presence at the MBBI.

Defendants maintain that Columbia has provided a legitimate, non-discriminatory reason for the challenged employment action and because plaintiff cannot rebut that explanation, the court should grant summary judgment dismissing plaintiff's claims.

Plaintiff, in turn, argues that Columbia's actions constitute textbook marital status discrimination solely under the New York City Human Rights Law. Karayiorgou maintains that because Columbia made decisions about her based on her marriage to Gogos, plaintiff established a claim under Morse v. Fidessa Corp., 165 AD3d 61 [1<sup>st</sup> Dept 2018]. She further argues that her marital status was a "motivating factor" in Columbia's decision, "particularly since Columbia told her that her marital status motivated its decision to withdraw her invitation to the MBBi" and therefore, summary judgement must be denied under the "mixed motive" analysis.

Plaintiff also contends that in addition to establishing a claim under Morse and the "mixed motive" analysis, that she establishes a claim under "any other framework". Karayiorgou maintains that there is "direct evidence that Columbia's actions were motivated by Karayiorgou's marital status and that both Jessell and Zuker told plaintiff "- while rescinding her invitation - that she was no longer welcome because 'you guys got divorced'" and that Columbia's argument that plaintiff's testimony should be dismissed as "self-serving" is improper. Finally, plaintiff asserts that while it is not necessary for her to do so, plaintiff satisfies the McDonnell Douglas framework, known as "the Bennett burden-shifting framework" under the City law and that it is clear that plaintiff was treated "less well" because of her marital status, which is all that the City law requires. These claims, plaintiff argues, raise triable issues of fact sufficient to defeat the motion.

## Discussion

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]). Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

A prima facie case of discrimination requires a showing by the plaintiff that: [1] she is a member of a protected class; [2] she was qualified to hold the position; [3] she was terminated from employment or suffered another adverse employment action; and [4] the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination." (*Forrest v. Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]). Only if these elements are satisfied will there be a rebuttable presumption of discrimination which the employer can then rebut by proving a legitimate, independent, non-discriminatory reason for the adverse employment action (*id.* citing *Ferrante v. American Lung Association*, 90 NY2d 623 [1997]; see also *McDonnell Douglas Corp. v. Green*, 411 US 792 [1973]). If the employer is successful, the burden then shifts back to plaintiff who has to prove that the reason being offered is a pretext, and therefore false.

The City HRL, Administrative Code § 8-107 [1], provides in relevant part as follows:

It shall be an unlawful discriminatory practice:

(a) For an employer or an employee or agent thereof, because of the actual or perceived . . . marital status . . . of any person: . . .

- (2) To refuse to hire or employ or to bar or to discharge from employment such person; or
- (3) To discriminate against such person in compensation or in terms, conditions or privileges of employment"

In support of its motion, Columbia argues that “even if plaintiff could meet her burden of establishing a *prima facie* case, Columbia has offered a legitimate, independent and nondiscriminatory reason for the decision to withdraw Plaintiff’s invitation to join the Zuckerman Institute”. Defendant contends that the emails Gogos sent to Jessell and Zuker in 2015 describe the status of his relationship with plaintiff, which was “very bad”, that Zuker’s testimony was corroborated by the EOAA’s interview with Dr. Jessell, whose count matched that of Zuker and Gogos, that the rationale for rescinding he invitation was conveyed internally to the COO of the Zuckerman Institute, David Greenberg, and that plaintiff’s own emails and deposition testimony corroborate Gogo’s testimony vis a vis their deteriorated relationship. Based on these reasons, defendant argues that the withdrawal of their invitation to plaintiff was based on legitimate non-discriminatory reasons: that they believed Gogos and plaintiff were no longer actively collaborating and that Gogos did not want to work with plaintiff.

Plaintiff disagrees and argues that Plaintiff’s invitation to join MBBi was rescinded because of her marital status and that the evidence shows that plaintiff’s marital status was a “motivating factor” in Columbia’s decision, “particularly since Columbia told her that her marital status motivated its decision to withdraw her invitation to the MBBi. Plaintiff further argues that Columbia’s argument that plaintiff’s testimony should be dismissed as “self-serving” is improper and should not be rejected merely because she is the plaintiff. Plaintiff contends that her gender motivated Columbia to attribute a supporting role to plaintiff to Gogos rather than crediting Plaintiff with her breakthrough genetic discovery and mouse model to study and that it was inappropriate to diminish plaintiff by citing that she was not granted tenure. Finally, plaintiff argues that the evidence shows that Columbia’s proffered explanation for why it withdrew plaintiff’s invitation to join MBBi is a pretext.

Defendants are not entitled to summary judgment dismissing the marital discrimination claim. Here, plaintiff has met her burden of establishing a *prima facie* case of discrimination based on marital status. Plaintiff has shown that she was qualified as a leading researcher and scientist to join the Zuckerman Institute, that an offer to join the Zuckerman Institute was made to her and that her offer was rescinded in March 2015 only after Colombia learned that plaintiff and Gogos divorced in December 2014.

The court disagrees with defendant’s factual assertion that the “invitation to the Zucker Institute had been extended because of her collaboration with Gogos”. There is nothing in the record to support that characterization. In fact, defendant’s claim that the offer was extended because of her collaboration with Gogos or as per Zuker, plaintiff was only offered a “limited presence in connection with work with Gogos” is not supported in the record before the court. If the invitation was extended to plaintiff because of her collaboration with Gogos, then that same invitation would have been extended to plaintiff in 2009, the same year Gogos received his invite. Columbia’s invitation came almost five years later in 2014. Furthermore, the invitation to plaintiff in early 2014 did not reference she was invited because of Gogos or to play a supporting role to Gogos. Moreover, plaintiff and Gogos were collaborating for years. A jury could justifiably find that defendants discriminated against plaintiff based on her marital status. Plaintiff also satisfies her burden under a mixed motive analysis.

Under each evidentiary framework, Morse, mixed motive and McDonnell-Douglas, a jury could find that defendants' actions were motivated by plaintiff's marital status. Defendants reasons were offered only after Gogos' March 2015 email that he and plaintiff had divorced. A jury could find that Columbia rescinded its invitation only after it received Gogos email on March 1, 2015 because of plaintiff's marital status. Indeed, there is no dispute that the parties were in the midst of a divorce in 2014 at the time the invitation was extended to plaintiff.

With regard to plaintiff's gender discrimination claim, defendant argues that plaintiff has offered no evidence that her gender played any role in the decision by Zuker and Jessell, other than the fact that she is a woman, and that Columbia chose Gogos over her. Defendant contends that Gogos and plaintiff were not similarly situated at the time the invite was rescinded, the administrative decision made represents "a business judgement not subject to judicial second-guessing" and that there is no evidence that the decision to rescind plaintiff's invite was motivated by invidious discrimination.

Plaintiff contends that she does not have to prove her gender discrimination case to survive summary judgment. Plaintiff argues that by rescinding her invitation to the institute, Columbia reduced plaintiff to being a supportive figure to Gogos even though she was the one who had made the breakthrough genetic discovery and created the mouse model. Plaintiff points to the Kandel email that states "so when the acrimonious separation happened, there was little choice but to back Joseph". Plaintiff vehemently disputes Columbia's claims that she as not actually invited to the Institute but was merely offered a "presence" based on her "collaboration" with Gogos. She maintains that she was invited to the Institute based on her own merits and professional accomplishments. Finally, plaintiff argues that Columbia's claim that plaintiff was offered merely a "presence" at the Institute is a misrepresentation that defendants created after plaintiff complained about the discrimination.

The court agrees with plaintiff. Similar to the above analysis, a jury could find that Karayiorgou's gender was, in fact, a motivating factor in Columbia's decision to rescind her invitation thereby precluding summary judgment. Here, the evidence shows that Columbia invited plaintiff to join the Institute in 2014 and then withdrew the invitation, claiming that plaintiff was only offered a "presence" based on her "collaboration" with Gogos which could be construed as a pretext for discrimination by a jury. Plaintiff has outlined her professional accomplishments and scientific discoveries in her CV. Clearly, Columbia concluded that plaintiff and/or her scientific research/discoveries had something to offer the Institute, otherwise it would not have invited her, whereas Gogos had a spot in the Institute because he was a member of the Neuroscience Department, which, as a department, was joining the Institute. When Columbia learned plaintiff and Gogos were divorced in March 2015, it rescinded the invite. Further the Kandel and Jessell email exchange in June 2016 states in part "when the acrimonious separation happened, there was little choice but to back Joseph". Further, the court rejects Columbia's argument in its reply that plaintiff failed to produce evidence of pretext or motive. The record before the court, a jury could infer that the Columbia's decision to withdraw the invitation was based on marital status and gender to preclude granting summary judgment. Plaintiff's invite was extended to her in 2014 the very year Columbia claims plaintiff and Gogos stopped collaborating. It was only when Columbia learned of the divorce in March 2015 that it did withdraw the invite. Based on the foregoing, summary judgment must be denied.

Finally, defense counsel Wegrzyn's characterization of plaintiff is not only insulting but borders on sexism. Plaintiff's credentials, including her discovery on the 22q11 gene which is widely recognized in the scientific community, the grants and awards she has received and the papers she has written belie counsel's gross mischaracterization of plaintiff. While zealous advocacy is welcome and often appreciated, the insinuation that plaintiff played a secondary or subservient role to Gogos and that her career as a scientist was as a result of Gogos is an inappropriate mischaracterization of the facts.

Accordingly, it is hereby **ORDERED** that defendant's motion for summary judgment is denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: January 14, 2021  
New York, New York

So Ordered:

  
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**Hon. Lynn R. Kotler, J.S.C.**