# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. RICHARD LATIN** **PART** **46V**

***Justice***

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DERRICK RENO,

Plaintiff,

- v -

STRUCTURETECH NEW YORK, INC.,GERRY CORMICAN, WILLIAM HUNT, JOHN SMYTH

Defendant.

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**INDEX NO.** 160158/2021

**MOTION DATE** 06/21/2022

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ordered that defendants' motion to dismiss plaintiff's complaint pursuant to CPLR 3211 is determined as follows:

Plaintiff, a Black man, was hired by defendant StructureTech New York, Inc. (StructureTech) in or around October 2015. In his complaint, plaintiff alleges that around mid-2019, defendant Hunt, an employee of StructureTech, referred to plaintiff as "boy" on numerous occasions. On at least one occasion, Hunt said, "dance for me boy." When plaintiff inquired what he meant by that, Hunt responded, "that's what they used to say back in the day." Additionally, Hunt said to plaintiff, "I have never been racist but working here is making me racist" and told plaintiff in reference to a Spanish co-worker, "tell him I'm gonna slap him to death."

At some time after these comments were made, plaintiff alleges that he complained to Human Resources. A short meeting took place, but no corrective action was taken to stop Hunt from making such comments. Plaintiff alleges that after his complaint, defendant Hunt and defendant Smyth, another employee at StructureTech, "retaliated against Plaintiff by hyper-

scrutinizing his work." Defendant Hunt treated plaintiff differently by micromanaging his work and demanding unreasonable job performance. Defendant Smyth left plaintiff out of meetings and failed to tell him where to go after promising other workers plaintiff would be at a job site. After returning to work from an injury around October 2020, plaintiff was held responsible for issues at a job site that he did not work at prior to his injury and was not kept "in the loop" of information pertaining to his job title. When a co-worker tested positive for COVID-19 from December 2020 through January 2021, Smyth placed "unreasonable responsibilities" on plaintiff.

On March 17, 2021, Smyth gave plaintiff a "final warning" and subsequently terminated plaintiff's employment. Plaintiff further alleges that defendants generally "maintained a practice of racist and discriminatory policies" by overburdening Black and Brown employees with work to get them to quit or be fired.

On November 8, 2021, plaintiff commenced this action by filing a summons and complaint. Plaintiff filed an amended complaint. Plaintiff's first cause of action alleges discrimination and hostile work environment under the New York State Human Rights Law, Executive Law § 296 (NYSHRL). Plaintiff's second causes of action alleges discrimination and hostile work environment under the New York City Human Rights Law, New York City Administrative Code § 8-107 (NYCHRL). Plaintiff's third cause of action alleges retaliation under the NYSHRL. Defendants now move to dismiss all causes of action.

On a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the court "must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory" (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). Employment discrimination cases are "generally

reviewed under notice pleading standards" (*Vig v New York Hairspray Co.*, L.P., 67 AD3d 140, 145 [1st Dept 2009]). Whether plaintiff can ultimately prevail on his claims is not relevant on this pre-answer motion to dismiss (*see Lieberman v Green*, 139 AD3d 815, 816 [2d Dept 2016]).

A plaintiff claiming discrimination under the NYSHRL and the NYCHRL must allege that "(1) [he or she] is a member of a protected class; (2) [he or she] was qualified to hold the position; (3) [he or 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]; *see Harrington v City of New York*, 157 AD3d 582, 584 [1st Dept 2018]).

Here, plaintiff has sufficiently pled that he was a member of a protected class (a Black man), was qualified to hold the position, and was terminated from his employment. As to the fourth element, plaintiff alleged defendant Hunt repeatedly referred to plaintiff as "boy" and put that word in context by stating on one occasion, "that's what they used to say back in the day" (*see Cadet-Legros v New York Univ. Hosp. Ctr.*, 135 AD3d 196, 204-205 [1st Dept 2015] (noting that the discriminatory intent of language is context dependent); *see also Ash v Tyson Foods, Inc.*, 546 US 454, 456, 126 S Ct 1195, 1197 [2006]). These comments were followed by defendants Hunt and Smyth's alleged actions micro-managing his work and setting unreasonable demands, ultimately leading up to plaintiff's "final warning" and termination. Thus, plaintiff has sufficiently alleged at this stage that his termination occurred under circumstances giving rise to an inference of discrimination.

As to plaintiff's hostile work environment claims, it is unlawful discriminatory practice under the NYSHRL "for an employer . . . to subject any individual to harassment because of the individual's . . . race" (Executive Law § 296[1][h]). To plead an actionable claim for hostile work

environment, a plaintiff must allege he or she was subjected to "inferior terms, conditions or privileges of employment" because of membership in a protected category; plaintiff need not show that the conduct was severe or pervasive (*id.*). Under the NYCHRL, a plaintiff must show that he or she has been treated less well than other employees because of his or her protected status (*see Williams v New York City Hous. Auth.*, 61 AD3d 62, 78 [1st Dept 2009]). Under both State and City law, petty slights and trivial inconveniences are not actionable (*see Franco v Hyatt Corp.*, 189 AD3d 569, 570 [1st Dept 2020]); *Williams*, 61 AD3d at 80).

As discussed above, defendant Hunt repeatedly referred to plaintiff as "boy," adding "that's what they used to say back in the day," and defendants Hunt and Smyth additionally subjected plaintiff to micro-management and unreasonable work demands, which was allegedly typical of how they treated non-white employees. Plaintiff's allegations of defendants' conduct, taken as a whole, is thus sufficient to state a claim for hostile work environment.

Plaintiff's third cause of action alleges retaliation under the NYSHRL. In order to plead a claim for retaliation, plaintiff must allege: "(1) [he or she] has engaged in protected activity, (2) [his or her] employer was aware that [he or she] participated in such activity, (3) [he or she] suffered an adverse employment action based upon [his or her] activity, and (4) there is a causal connection between the protected activity and the adverse action" (*Forrest*, 3 NY3d at 313).

Plaintiff engaged in protected activity when he complained to Human Resources. Plaintiff alleges that defendants Hunt and Smyth's hyper-scrutinized plaintiff's work and made unreasonable demands of plaintiff from the time of his complaint to Human Resources until his termination. Accepting the alleged facts as true, and providing plaintiff the benefit of every possible inference, the complaint adequately sets forth a cause of action for retaliation.

Accordingly, it is ORDERED that defendants' motion to dismiss plaintiff's complaint is denied in its entirety.

This constitutes the decision and order of the Court.

8/25/2022
DATE

RICHARD LATIN, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | X | NON-FINAL DISPOSITION | | |
| | | GRANTED | X DENIED | | GRANTED IN PART | | OTHER |
| APPLICATION: | | SETTLE ORDER | | | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | FIDUCIARY APPOINTMENT | | REFERENCE |