SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M
Justice

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KATHY BREIDING,

Plaintiff,

- v -

HIGH HOPES FILMS, LLC, DENNIS PILIERE,

Defendant.

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INDEX NO. 152385/2023

MOTION DATE 05/08/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendants Dennis Piliere a/k/a Dennis Cabrini ("Piliere") and High Hopes Films, LLC's ("HHF") (collectively, "Defendants") motion for an Order dismissing Plaintiff Kathy Breiding's ("Plaintiff") claims against them for failure to state a claim, is denied in its entirety. Plaintiff's cross-motion for an Order directing HHF to appear in this action by an attorney, is granted.

I. Background and Procedural History

Defendant Piliere is a part time film director, SAG signatory producer and actor (NYSCEF Doc. 3 at p. 1). Piliere created Defendant HHC "for the purposes of producing low budget independent films in which he and other ad hoc performers can demonstrate and advance their talents" (NYSCEF Doc. 3 at p. 8). Plaintiff alleges that she was occasionally employed by Piliere, through HHC, as an independent contractor to act in his films (NYSCEF Doc. 2 at ¶ 1).

On April 24, 2023 Plaintiff brought the instant action against Defendants alleging sexual harassment and gender discrimination, retaliation under the New York State Human Rights Law ("NYSHRL") and New York City Human Rights Law ("NYCHRL"), Intentional Infliction of

Emotional Distress, defamation, breach of contract and tortious interference with business relations (NYSCEF Doc. 2). Subsequently, on May 8, 2023 Defendants, *pro se*, brought the instant motion to dismiss Plaintiff's Complaint for failure to state a claim (NYSCEF Doc. 3).[1]

II. Discussion

Pursuant to CPLR 3211(a)(7), "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that …the pleading fails to state a cause of action…." In considering a motion pursuant to CPLR 3211(a)(7) to dismiss a complaint for failure to state a cause of action, "the court must give the pleading a liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference" (*J.P. Morgan Sec. Inc. v Vigilant Ins. Co.* 21 NY3d 324, 334 [2013]). "[T]he sole criterion is whether the pleading states a cause of action, and therefore if from its four corners factual allegations are discerned which if taken together can manifest any cause of action, a motion for dismissal must fail" (*Kusher v King* 126 AD2d 446, 467 [1st Dept 1987]).

a. Defendants' Motion to Dismiss Plaintiff's First Cause of Action for Sexual Harassment and Gender Discrimination is Denied

It is well established that to state a claim for sexual harassment, a "plaintiff must show that (1) [they] belong to a protected group, (2) [they were] subject to unwelcome sexual harassment and (3) the harassment complained of was based on [their] sex" (*Farrugia v North Shore Univ. Hosp.*, supra, 13 Misc 3d at 745). As Plaintiff's Complaint alleges that "Defendants discriminated against Plaintiff on the basis of her sex and gender by targeting her female characteristics for sexual harassment, and on account of her status as a women altering the terms and conditions of her work, creating a hostile work environment, interfering with her ability to carry out her work duties, and

[1] While Defendants erroneously cite to Federal Rule of Civil Procedure 12(b)(6), the Court deems their motion as filed pursuant to CPLR 3211(a)(7).

ultimately terminating her employment," Plaintiff has made sufficient allegations to state a claim for sexual harassment and gender discrimination. Accordingly, Defendants' motion to dismiss Plaintiff's First Cause of Action is denied.

b. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action for Retaliation Under NYSHRL and NYCHRL is Denied

In order to state a claim for retaliation under the NYSHRL "a plaintiff must show that (1) [they were] engaged in a protected activity, (2) [their] employer was aware that [they] participated in such activity, (3) [they] suffered an adverse employment action based upon [their] activity, and (4) there is a causal connection between the protected activity and the adverse action" (*Herskowitz v State of New York*, 2023 NY App. Div. Lexis 6990 [1st Dept 2023]).

Similarly, "to make out an unlawful retaliation claim under the NYCHRL, a plaintiff must show that (1) he or she engaged in a protected activity as that term is defined under the NYCHRL, (2) his or her employer was aware that he or she participated in such activity, (3) his or her employer engaged in conduct which was reasonably likely to deter a person from engaging in that protected activity, and (4) there is a causal connection between the protected activity and the alleged retaliatory conduct" (*Brightman v Prison Health Serv., Inc.*, 108 AD3d 739, 740 [1st Dept 2013]).

Here, Plaintiff alleges in her Complaint that "Defendants retaliated against Plaintiff for complaining about discrimination, by redoubling their efforts to create a hostile work environment based upon sexual harassment, by attacking and undermining her professional reputation, and by terminating her employment," resulting in damages to Plaintiff (NYSCEF Doc. 2 at ¶ 70, 81). Affording Plaintiff the benefit of every possible favorable inference, the Court finds that Plaintiff has successfully stated claims for retaliation under both the NYSHRL and the NYCHRL. Accordingly, Defendants' motion to dismiss Plaintiff's Second Cause of Action is denied.

c. Defendants' Motion to Dismiss Plaintiff's Third Cause of Action for Intentional Infliction of Emotional Distress is Denied

The First Department has held that "[t]o state a claim for intentional infliction of emotional distress a party must allege '(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress'" (*Drimer v Zionist Org. of Am.*, 194 AD3d 641, 642 [1st Dept 2021]) citing (*Scollar v City of New York*, 160 AD3d 140, 145-146 [1st Dept 2018]). While the standard for outrageous conduct is "strict," "rigorous," and "difficult to satisfy," "that is not the case when there is a deliberate and malicious campaign of harassment or intimidation" (*Scollar v City of New York*, 160 AD3d 140, 146 [1st Dept 2018] [internal quotations omitted]).

Here, Plaintiff's Complaint alleges that Defendants, knowing that Plaintiff was emotionally vulnerable and with the intention to cause her severe emotional distress, "purposely drew upon Defendant Piliere's status as a mental health professional to terrorize Plaintiff and worsen her mental health," resulting in, *inter alia*, extreme humiliation and mental anguish (NSYCEF Doc. 2 at ¶¶ 83, 86). Affording Plaintiff the benefit of every possible favorable inference, the Court finds that Plaintiff has successfully stated a claim for intentional infliction of emotional distress. Accordingly, Defendants' motion to dismiss Plaintiff's Third Cause of Action is denied.

d. Defendants' Motion to Dismiss Plaintiff's Fourth Cause of Action for Defamation is Denied

It is well established that "[t]o prove a claim for defamation, a plaintiff must show: (1) a false statement that is (2) published to a third party (3) without privilege or authorization, and that (4) causes harm, unless the statement is one of the types of publications actionable regardless of harm" (*Stepanov v Dow Jones & Co., Inc.*, 120 AD3d 28, 34 [1st Dept 2014]).

Here, Plaintiff's Complaint alleges that Defendants "knowingly and maliciously and/or recklessly published false information about Plaintiff's acting and film producing skills to colleagues in the film industry, without privilege or authorization," intending to injure Plaintiff, and that "Defendant Piliere published false information imputing unchastity to Plaintiff" (NYSCEF Doc. 2 at ¶¶ 88-89). As statements imputing unchastity to a woman constitute defamation *per se*, in light of the foregoing, the Court finds that Plaintiff has successfully stated a claim for Defamation. Accordingly, Defendants' motion to dismiss Plaintiff's Fourth Cause of Action for failure to state a claim is denied.

e. Defendants' Motion to Dismiss Plaintiff's Fifth Cause of Action for Breach of Contract is Denied

To state a claim for breach of contract, "a plaintiff must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages" (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013]).

Plaintiff's Complaint alleges that Plaintiff had enforceable verbal and written contracts with Defendants under which Plaintiff performed, that Defendants breached the contracts by terminating Plaintiff's services, and that Defendants breach caused Plaintiff to suffer monetary damages (NYSCEF Doc. 2 at ¶¶ 93-94). In light of the foregoing, the Court finds that Plaintiff has successfully stated a claim for breach of contract. Accordingly, Defendants' motion to dismiss Plaintiff's Fifth Cause of Action for failure to state a claim is denied.

f. Defendants' Motion to Dismiss Plaintiff's Sixth Cause of Action for Tortious Interference with Business Relations is Denied

The First Department has held that "[t]o prevail on a claim for tortious interference with business relations in New York, a party must prove (1) that it had a business relationship with a

third party; (2) that the defendant knew of that relationship and intentionally interfered with it; (3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and (4) that the defendant's interference caused injury to the relationship with the third party (*Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47 [1st Dept 2009]).

Plaintiff's Complaint alleges that she had business relations with colleagues in the film industry which were destroyed as a result of Defendants' interference (NYSCEF Doc. 2 at ¶ 97). Further Plaintiff's Complaint alleges that Defendants interfered with Plaintiff's business relations with the sole purpose of causing harm to Plaintiff (*Id.*). In light of the foregoing, the Court finds that Plaintiff has successfully stated a claim for Tortious Interference with Business Relations. Accordingly, Defendants' motion to dismiss Plaintiff's Sixth Cause of Action for failure to state a claim is denied.

g. Plaintiff's Cross-Motion for an Order directing HHF to Appear in this Action by an Attorney is Granted

CPLR 321(a) states that "a corporation or voluntary association shall appear by an attorney." Further, the First Department has held that, pursuant to CPLR 321(a). a corporate defendant may be properly held in default for failure to appear by an attorney (*World on Columbus, Inc. v L.C.K. Restaurant Group, Inc.*, [1st Dept 1999]).

As it is undisputed that Defendant HHF is an LLC that has not appeared by an attorney, this matter shall be stayed for 30 days to afford HHF a reasonable time to obtain and appear by counsel. Failure of HHF to appear by counsel within 30 days will risk HHF being found in default.

Accordingly, it is hereby,

ORDERED that Defendants Dennis Piliere a/k/a Dennis Cabrini and High Hopes Films, LLC's motion to dismiss Plaintiff Kathy Breiding's Complaint for failure to state a claim, is denied in its entirety; and it is further

ORDERED that within 30 days of entry, Defendant High Hopes Films, LLC shall appear by counsel in this action. Failure of HHF to appear by counsel within 30 days will risk HHF being found in default; and it is further

ORDERED that on or before March 5, 2024 all parties are directed to submit a proposed Preliminary Conference Order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov. If the parties are unable to agree to a proposed Preliminary Conference Order, the parties are directed to appear for an in-person preliminary conference with the Court in Room 442, 60 Centre Street, on March 6, 2024 at 9:30 a.m.; and it is further

ORDERED that within ten (10) days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on Defendants; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

1/12/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

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