

**Anderson v City of New York**

2014 NY Slip Op 30080(U)

January 15, 2014

Sup Ct, New York County

Docket Number: 155400/2013

Judge: Kathryn E. Freed

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

PRESENT: KATHRYN E. FREED Justice

PART 5

ANDERSON, KIM

INDEX NO. 155400/2013

- v -

MOTION DATE

CITY OF NEW YORK

MOTION SEQ. NO. 001

The following papers, numbered 1 to , were read on this motion to/for dismiss.

Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s) 1,2 (Ex A-D)

Answering Affidavits - Exhibits No(s) 3

Replying Affidavits No(s) 4

Upon the foregoing papers, it is ordered that this motion is denied with leave to renew on proper papers.

See attached Decision/Order.

DATED: 1/15/2014 JAN 15 2014

KATHRYN E. FREED JUSTICE OF THE SUPREME COURT

- 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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 5

----- X  
KIM ANDERSON,

Plaintiff,

- against-

DECISION/ORDER  
Index No. 155400/13  
Seq. No. 001

CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT, CAPTAIN HEDY HUBBARD,  
SUPERVISOR JEANETTE GONZALEZ and  
INSPECTOR MICHAEL PILECKI, each being sued in  
their individual and official capacities,

Defendants.  
----- X

**KATHRYN FREED, J.:**

RECITATION, AS REQUIRED BY CPLR§2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF  
THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	1-2.(Ex A-D)
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....	.....
ANSWERING AFFIDAVITS.....	.....3.....
REPLYING AFFIDAVITS.....	..... 4.....
EXHIBITS.....	.....
OTHER.....Memo of Law.....	.....5,6.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

The defendants City of New York, New York City Police Department, Captain Hedy  
Hubbard, Supervisor Jeanette Gonzalez, and Inspector Michael Pilecki (defendants) move,  
pursuant to CPLR 3211 (a) (2), (5), and (7) for an order dismissing the amended complaint.

The plaintiff Kim Anderson (plaintiff) is employed by the defendants as a Traffic  
Enforcement Agent. This is an action to recover damages under the New York State Human

Rights Law (Executive Law § 290 *et seq.*) and the New York City Human Rights Law (New York City Administrative Code § 8-107 [7]); for alleged race and gender discrimination, and for retaliatory discipline.

On March 29, 2011 plaintiff filed a complaint with the New York State Division of Human Rights. After investigation, on June 9, 2011 the New York State Division of Human Rights, finding no probable cause, dismissed the complaint. On August 3, 2012 plaintiff filed a second complaint with the New York State Division of Human Rights. After investigation, on January 30, 2013, the New York State Division of Human Rights, finding no probable cause, dismissed the complaint. This action was filed on June 12, 2013.

In support of the motion, defendants argue that all claims prior to June 12, 2010 are time-barred, the complaint is barred by the doctrine of election of remedies and collateral estoppel, and the complaint fails to state a claim.

In opposition to the motion, plaintiff argues that her claims are not barred because they involve new misconduct, and a new period of time.

On a motion to dismiss a complaint for legal insufficiency, the court accepts the facts alleged as true and determines simply whether the facts alleged fit within any cognizable legal theory (*Morone v Morone*, 50 NY2d 481 [1980]). The pleading is to be liberally construed, accepting all the facts alleged therein to be true and according the allegations the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). The credibility of the parties is not under consideration (*S.J. Capelin Assocs. v Globe Mfg. Corp.*, 34 NY2d 338 [1974]). The only question properly before the court is whether plaintiff has alleged a prima facie case (*Brathwaite v Frankel*, 98 AD3d 444 [1<sup>st</sup> Dept 2012]).

A plaintiff alleging discrimination in employment must allege 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 (*Ferrante v American Lung Assn.*, 90 NY2d 623, 629 [1997]). This burden is “de minimis” (*Schwaller v Squire Sanders & Dempsey*, 249 AD2d 195, 196 [1st Dept 1998]).

In order to make out an unlawful retaliation claim under the Executive Law § 296 (7) and Administrative Code of the City of NY § 8-107 (7), a plaintiff must allege that “(1) she has engaged in protected activity, (2) her employer was aware that she participated in such activity, (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action” (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 312-313 [2004]).

A civil rights claim is a personal injury claim governed by the three-year statute of limitations set forth in CPLR 214 (5) (*Alaimo v Board of Educ. of the Tri-Valley Cent. Sch. Dist.*, 650 F Supp 2d 289 [SD NY 2009]), .

The motion is denied, with leave to renew on proper papers, for failure to attach a copy of the complaint. Despite the volume of the papers submitted on the motion, including a 16-page legal memorandum and photocopies of case law, the defendants have not seen fit to include a copy of the key document, the complaint. The court cannot determine either the legal sufficiency, or the timeliness of a complaint that it has not read.

Upon renewal, the parties are specifically directed to address Administrative Code § 8-130, which provides:

"The provisions of this title [i.e., the New York City Human Rights Law] shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and

human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed."

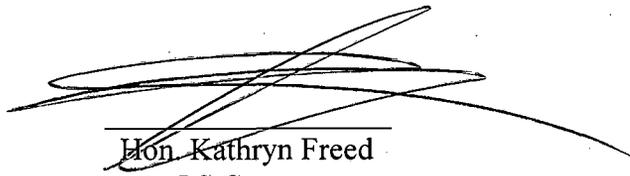
Accordingly, it is

ORDERED that the motion is denied with leave to renew on proper papers.

Dated: 1/15/14

Enter:

JAN 15 2014



Hon. Kathryn Freed

J.S.C.

**HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT**