

**Bravo v American Socy. for the Prevention of Cruelty
to Animals (ASPCA)**

2025 NY Slip Op 35260(U)

May 29, 2025

Supreme Court, New York County

Docket Number: Index No. 158548/2020

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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LOURDES BRAVO,

Plaintiff,

- v -

THE AMERICAN SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS (ASPCA), GAIL BUCHWALD

Defendant.

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INDEX NO. 158548/2020
MOTION DATE 06/03/2024
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 90, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, and after a final submission date of March 4, 2025, Defendants the American Society for the Prevention of Cruelty to Animals ("ASPCA") and Gail Buchwald ("Buchwald") (collectively "Defendants") motion for summary judgment dismissing Plaintiff's Complaint is granted in part and denied in part.

I. Background

Plaintiff was hired by ASPCA in May of 2008 and was promoted to assistant director of the adoption center in February of 2010. In December of 2014, Plaintiff was promoted to senior manager of ASPCA's Canine Annex for Recovery and Enrichment program. Plaintiff learned she was pregnant in August 2016 but did not tell anyone. On August 20, 2016, Plaintiff received a positive performance review with a 3.5% merit-based pay raise. Plaintiff eventually told Buchwald that she was pregnant. In January of 2017, Plaintiff and Buchwald began discussing coverage for Plaintiff during her pregnancy leave. Plaintiff took pregnancy leave on April 25, 2017. On April

26, 2017, Plaintiff's colleague, Ruth Allen, was promoted to Director of Shelter Services, which made her Plaintiff's superior. Plaintiff was not informed about the new title and was never given an opportunity to apply.

In August 2017, Plaintiff returned from leave, and learned Ms. Allen was her new manager. She complained about the process through which the new role was created and expressed concerns about her career growth. Plaintiff took additional parental leave beginning January 1, 2018, and used her leave intermittently to work two days per week. On May 2, 2018, Plaintiff and sixteen other employees' positions were eliminated as part of a reorganization. Plaintiff then sued Defendants for alleged gender and pregnancy discrimination and retaliation under the New York State and City Human Rights laws, caregiving and breastfeeding discrimination under the New York City Human Rights law, and breastfeeding discrimination under the New York Labor Law. Defendants move for summary judgment dismissing Plaintiff's Complaint. Plaintiff opposes.

II. Discussion

A. Standard

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

To allege employment discrimination, a plaintiff must show (a) she is a member of a protected class; (b) she was qualified for the position; (c) she suffered an adverse employment action; and (d) that the adverse action occurred under circumstances giving rise to an inference of discrimination (*Hribovsek v United Cerebral Palsy of New York City*, 223 AD3d 618 [1st Dept 2024]). While legitimate, non-discriminatory reasons may be proffered by a defendant to rebut a Plaintiff's *prima facie* show, if there is evidence that at least one of the reasons proffered is false or misleading "courts [should] be especially chary in [granting] summary judgment...because in such cases the employer's intent is ordinarily at issue" (*Bennett v Health Management Systems, Inc.*, 92 AD3d 29, 43-44 [1st Dept 2011]).

B. Pregnancy and Caregiving Discrimination

Defendants' motion for summary judgment dismissing Plaintiff's claims of pregnancy and caregiving discrimination is granted in part and denied in part. Viewing the facts in the light most favorable to the non-movant, Defendants' motion for summary judgment dismissing Plaintiff's claims for pregnancy and caregiver discrimination related to Allen's promotion to the new director position is denied. Plaintiff met her *prima facie* burden. As a pregnant woman and mother to a newborn infant, she is a member of a protected class. She was qualified for the position as she received a very positive performance review in August of 2016. She suffered an adverse employment action in being denied an opportunity to apply for a new director role which allegedly limited her growth at ASPCA and was ultimately terminated while the newly named director survived layoffs.

This occurred under circumstances giving rise to an inference of discrimination because a non-pregnant employee whose children were fully grown adult was promoted one day after Plaintiff began maternity leave and without any opportunity for Plaintiff to apply. E-mail

correspondence shows that the new role would be announced and filled “when Lourdes commences her maternity leave, in early April” (NYSCEF Doc. 101). While Defendants argue Ms. Allen was more qualified, it is for the jury to determine whether this was the true reason why Plaintiff was uninformed about the new position and not given an opportunity to apply. Given the timing of the announcement, the e-mail evidence, and Plaintiff’s work history, there are issues of fact as to whether Defendants’ proffered reason for their decisions is pretextual.

Defendants’ motion for summary judgment dismissing Plaintiff’s claims alleging pregnancy and caregiver discrimination based on her termination is denied. Defendants proffer a reduction in force as a non-discriminatory reason for Plaintiff’s termination. However, Plaintiff has proffered sufficient evidence to show the reduction in force explanation may be a pretext. While 17 employees across the organization were terminated, when looking solely at Plaintiff’s department, only she and one other employee were terminated. Moreover, the newly created role which Plaintiff was denied an opportunity to apply survived the reduction in force (*see, e.g. Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 25 [1st Dept 2014]).

Susan Britt, who assessed operational efficiency and made recommendations as to which positions should be eliminated, recommended Plaintiff be terminated because her communication was abrupt, and her staff found her inaccessible. (NYSCEF Doc. 85). However, Ms. Britt also stated she did not consider the fact that Plaintiff was working only two days a week and on parental leave. In other words, a jury might find that in recommending Plaintiff be terminated, Plaintiff was discriminated against because she was “inaccessible” due to using her statutorily allotted parental leave. These raise issues of fact as to the veracity of Defendants’ proffered reason for Plaintiff’s termination.

However, Defendants' motion for summary judgment dismissing Plaintiff's claims of discrimination due to a delayed performance review is granted. Performance review delays were organization wide and numerous other employees who were not pregnant or new mothers experienced delayed reviews (*see* NYSCEF Doc. 71). There is no inference of discrimination in the delayed performance review. Moreover, although Plaintiff claims she received "commendable" instead of "exceptional" on her performance review, she still received a 3% pay raise because of the review, and therefore she fails to show she suffered an adverse employment action (*see Mejia v Roosevelt Island Medical Associates*, 95 AD3d 579 [1st Dept 2012]).

C. Gender & Breast-Feeding Discrimination

Defendants' branch of the motion for summary judgment dismissing Plaintiff's Gender and Breast-Feeding discrimination claims is granted. While Plaintiff has shown that she may have suffered adverse employment actions based on pregnancy and caregiver-status discrimination, there is no evidence that she was discriminated against because she was a woman. The Director position which Plaintiff complains she was kept in the dark about was given to a woman, and multiple other women survived the reduction in force. Likewise, Plaintiff's claim of discrimination related to breast-feeding is denied. There is no dispute that Plaintiff was provided a room for her to lactate, and when questioned at her deposition, she admitted she never communicated to anyone that she felt she was discriminated against for taking time to lactate (NYSCEF Doc. 44 at 256; 286-88). Therefore, the claims related to gender, and breast-feeding discrimination are dismissed.

D. Retaliation

Defendants' motion for summary judgment dismissing Plaintiff's retaliation claim is granted. Plaintiff's only argument in opposition to dismissal of her retaliation claim is that she complained that meetings interfered with her lactating schedule. But this is contradicted by her

deposition testimony, and Plaintiff cannot submit an affidavit contradicting prior testimony to raise an issue of fact (*see, e.g. Alston v Elliott*, 159 AD3d 575 [1st Dept 2018]).

E. Buchwald's Alleged Aiding and Abetting

Defendants' motion for summary judgment dismissing Plaintiff's aiding and abetting claims against Buchwald is granted in part and denied in part. Plaintiff's alleged gender and breastfeeding discrimination claims, and her retaliation claim are dismissed. Thus, the aiding and abetting allegations tied to those claims must also be dismissed. Likewise, any allegation that Buchwald aided and abetted in discriminating against Plaintiff based on Plaintiff's performance evaluation is dismissed.

However, there is evidence that Buchwald was directly involved in the decision to create a new position over Plaintiff, and Buchwald played a role in keeping Plaintiff uninformed about the position. Buchwald decided to promote Plaintiff's colleague the day after Plaintiff began parental leave. Because Plaintiff's claims of pregnancy and caregiver discrimination related to this role survive, and Buchwald played a direct role in the circumstances giving rise to that claim, this portion of the aiding and abetting claim against Buchwald also survives. Because this position was not eliminated in the reduction in force, and had Plaintiff been given an opportunity to apply and be hired she may have not been terminated, the aiding and abetting claim against Buchwald related to Plaintiff's discrimination claims related to her termination also survives.

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment dismissing Plaintiff's Complaint is denied to the extent that Plaintiff's claims for pregnancy discrimination under the New York State Human Rights Law and pregnancy and caregiving discrimination under the New York City Human Rights Law related to her termination and related to Defendants' failure to

provide Plaintiff an opportunity to apply for the new director title survive, and Plaintiff's claim against Defendant Buchwald for aiding and abetting of the aforementioned claims survive; and it is further

ORDERED that Defendants' motion for summary judgment dismissing the remainder of Plaintiff's Complaint is granted, and the remainder of Plaintiff's Complaint is dismissed; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/29/2025
DATE

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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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