| **Burgess v MTA Constr. & Dev. Co.** |
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| 2026 NY Slip Op 30879(U) |
| January 21, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 160414/2024 |
| Judge: Gerald Lebovits |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. GERALD LEBOVITS** **PART** **07**

***Justice***

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**INDEX NO.** 160414/2024

DUQUOIN BURGESS,

**MOTION SEQ. NO.** 001

Plaintiff,

- v -

MTA CONSTRUCTION AND DEVELOPMENT COMPANY and LAURA SMITH,

**DECISION + ORDER ON MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21

were read on this motion for DISMISSAL.

*Bell Law Group, PLLP*, Syosset, NY (Mary E. Bianco of counsel), for plaintiff.
*Ryan Ryan Deluca LLP*, Bridgeport, CT (Patrick J. Corcoran of counsel), for defendants.

Gerald Lebovits, J.:

Plaintiff, Duquoin Burgess, brings this discrimination action against defendant MTA Construction and Development Co. (MTACD), his employer, and defendant Laura Smith, his coworker at MTACD.

Defendants move under CPLR 3211 (a) (2) to dismiss plaintiff's action. That branch of the motion is denied. Defendants also move to dismiss plaintiff's claims under CPLR 3211 (a) (7). That branch of the motion is granted in part and denied in part.

## BACKGROUND

Plaintiff is a black, gay male over the age of 40 with COVID-19 related disabilities. (NYSCEF No. 16 at ¶ 13-16.) Plaintiff accepted a job with the MTACD at its New York City office in May 2023. (*Id.* at ¶ 12.) The position was in-person, with the option to telecommute one day a week. (NYSCEF No. 7.)

Plaintiff alleges that toward the end of May 2023, Smith began a pattern of discriminatory and harassing behavior that continued until August 2023. According to plaintiff, Smith interrogated plaintiff about his sexual orientation and race. Plaintiff alleges that he objected to these conversations but that Smith continued to question him anyway. (NYSCEF No. 16 at ¶¶ 19-26.) Plaintiff claims that he reported the harassment to his supervisors. (*Id.* at ¶ 27.)

In June 2023, plaintiff was hospitalized due to COVID-19 complications and respiratory issues. (*Id.* at ¶ 28.) Plaintiff asserts that Smith phoned him daily, harassing him with personal questions about his medical condition. (*Id.* at ¶ 29-30.) When he returned to the office, plaintiff alleges that Smith and other employees made unwelcome comments to him. (*Id.* at ¶ 32.) Plaintiff objected to this treatment. (*Id.* at ¶ 34.)

Plaintiff then requested, and received, work-from-home accommodations. Plaintiff claims that although he received the accommodations, he was harassed by Smith and others about receiving them. (*Id.* at ¶¶ 35-36.)

On August 21, 2023, plaintiff submitted a doctor's note stating that he must work remotely on August 21 and 22, 2023. (*Id.* at ¶ 37.) On August 25, 2023, Sean Moore, Luz Pacheco, and Dianne Nardi met with plaintiff to discuss his performance. (*Id.* at ¶ 38.) After the meeting, plaintiff received an email and certified letter notifying him of his immediate termination. (*Id.* at ¶ 40.)

Plaintiff asserts eight causes of action arising from defendants' alleged discriminatory and retaliatory conduct. On the first, second, and third causes of action, plaintiff alleges discrimination, hostile work environment, and retaliation in violation of the New York State Human Rights Law (NYSHRL). On the fourth, fifth, and sixth causes of action, plaintiff alleges discrimination, hostile work environment, and retaliation in violation of New York City Human Rights Law (NYCHRL). On the seventh and eighth causes of action, plaintiff raises NYSHRL and NYCHRL aiding-and-abetting claims.

Defendants move under CPLR 3211 (a) (2) and (7) to dismiss plaintiff's complaint. The CPLR 3211 (a) (2) branch of the motion is denied. The CPLR 3211 (a) (7) branch of the motion is granted in part and denied in part.

## DISCUSSION

### I. CPLR 3211 (a) (2): Lack of Subject-Matter Jurisdiction

Defendants argue that plaintiff's action should be dismissed for lack of subject-matter jurisdiction. This court disagrees.

Defendants argue that plaintiff neither lived nor worked in New York—he worked remotely—and therefore any alleged discriminatory acts had no impact on New York City. Plaintiff asserts that he is a resident of Queens, New York and that some of alleged discrimination occurred while he was working in MTACD's New York City office.

In *Hoffman v Parade Publications* (15 NY3d 285, 289 [2010]), which held that plaintiffs who neither live nor work in New York City may not avail themselves of NYCHRL protections unless they can demonstrate that the alleged discrimination had impact, or was felt, within New York City. (*Id.* at 289; *accord Pakniat v Moor*, 192 AD3d 596, 597 [1st Dept 2021] [holding that an employee who lived and worked in Canada was required to allege that discriminatory conduct made an impact in New York to assert NYSHRL claims].) For impact purposes, courts generally

rely on plaintiff's physical location at the time of the alleged discriminatory acts. (*See e.g. Benham v eCommission Solutions, LLC*, 118 AD3d 605, 606 [1st Dept 2014].)

Here, defendants submit evidence showing that plaintiff entered MTACD's New York City office and used a MTACD metro card on only four occasions (NYSCEF No. 11) and that the addresses MTACD had on file for plaintiff were in Georgia and Florida (NYSCEF No. 10). Defendants also argue that online information reflects that plaintiff's Georgia residence was sold only in May 2024; that he never sold his Florida residence; and that he is registered to vote in Florida. (NYSCEF No. 18 at 2 n 1.) But none of this evidence conclusively refutes plaintiff's assertion that he moved to Queens, New York, when he got the job at MTACD. (NYSCEF No. 14 at ¶ 24.)

The branch of defendants' motion to dismiss plaintiff's complaint for lack of subject-matter jurisdiction is denied.

## II. CPLR 3211 (a) (7): Failure to State a Cause of Action[1]

### A. Discrimination in Terms of Employment and Termination (First and Fourth Causes of Action)

To state NYSHRL and NYCHRL discrimination claims, plaintiff must allege that he (1) "is a member of a protected class"; (2) "qualified for the position"; (3) subjected to an adverse employment action (under State HRL)" or "treated differently or worse than other employees (under City HRL)"; and (4) "that the adverse or different treatment occurred under circumstances giving rise to an inference of discrimination." (*Harrington v City of New York*, 157 AD3d 582, 584 [1st Dept 2018].)

It is undisputed that plaintiff is a member of a protected class. He is a gay person of color over the age of 40 who suffers from COVID-19-related disabilities. It is also undisputed that plaintiff was qualified for the position with the MTACD and that he suffered an adverse employment action: termination. The parties dispute only whether plaintiff was discriminated against during employment and then terminated.

Defendants argue that plaintiff has alleged no discriminatory conduct. Defendants contend that plaintiff simply alleges that co-defendant Smith was "merely curious and possibly boorish." (NYSCEF No. 15 at 9.) Plaintiff alleges that defendant Smith interrogated him about his sexual orientation and race. (NYSCEF No. 16 at ¶¶ 19-26.) In opposition, plaintiff contends that he was treated differently because he required a breathing device and because Smith made comments about plaintiff's weight loss. (NYSCEF No. 15 at 9.) He also argues he was denied a reasonable accommodation to work from home. (*Id.*)

Plaintiff alleges that defendant repeatedly asked intrusive questions about his sexual orientation, race, gender roles, and medical conditions. (NYSCEF No. 16 at ¶ 19-34.) Although

[1] This court considers only plaintiff's original complaint. Plaintiff did not timely file his amended complaint under CPLR 3025 (a).

defendants argue that plaintiff made no explicit statements of discrimination, the complaint provides detailed allegations of express discriminatory conduct. (*Id.* at ¶ 19-34.) As alleged in the complaint, Smith asked plaintiff when he first knew he was gay. (*Id.* at ¶ 20.) Plaintiff asserts that Smith asked plaintiff how his race played into his sexual orientation and how his family responded to his sexual orientation. (*Id.* at ¶ 21.) Plaintiff states that Smith asked plaintiff what "role" he played in his relationship, more specifically, whether he was more feminine or masculine. (*Id.* at ¶ 22.) Plaintiff alleges that Smith commented on plaintiff's physical appearance, use of breathing machine, and medication following his hospitalization. (*Id.* at ¶ 32-34.)

With respect to his termination, plaintiff alleges he was terminated after "he requested reasonable accommodations to work additional days from home because of his disabilities." (*Id.* at 7.) Plaintiff alleges in his complaint that the accommodations were seemingly granted but that he was then terminated shortly after. (*Id.* at ¶¶ 35-40.) Drawing inferences in plaintiff's favor, one can reasonably infer discriminatory motivation for these repeated and intrusive questions.

The branch of defendants' motion to dismiss plaintiff's discriminatory employment and termination claim is denied.

**B. Harassment/Hostile Work Environment (Second and Fifth Causes of Action)**

Plaintiff claims that defendants violated the NYSHRL and NYCHRL by permitting a hostile work environment at MTACD's New York office.

To plead a hostile work environment marred with discrimination under the NYSHRL, plaintiff must allege that "that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." (*Reichman v City of New York*, 179 AD3d 1115, 1118 [2d Dept 2020].) In contrast, "[u]nder the NYCHRL, a plaintiff claiming a hostile work environment need only demonstrate that he or she was treated less well than other employees because of the relevant characteristic." (*Id.* [internal quotation marks omitted])

Smith repeatedly questioned plaintiff about his sexual orientation, race, and medical condition between May and August 2023. (NYSCEF No. 16 at ¶¶ 19-26; *see Black v ESPN, Inc.*, 2021 NY Slip Op 50118[U], *5 [Sup Ct, NY County 2021] [holding that plaintiff's allegations that his supervisor asked him questions about his skin condition in front of other employees and treated plaintiff worse after telling finding out about plaintiff's condition pleaded a hostile work environment].) Plaintiff alleges that he was humiliated by Smith's questions. (NYSCEF No. 16 at ¶¶ 41-115.)

The court concludes that the alleged persistent personal inquiries go beyond typical workplace interactions and support the existence of a hostile work environment. The branch of defendants' motion to dismiss plaintiff's hostile-work-environment discrimination claims is denied.

**C. Retaliation (Third and Sixth Causes of Action)**

Plaintiff claims that defendants retaliated against him after he requested reasonable accommodations for his disabilities. (NYSCEF No. 16 at 7.) To state a claim for retaliation under the NYSHRL, plaintiffs must show that (1) they "engaged in a protected activity; (2) the employer was aware that they "participated in such activity," (3) they "suffered an adverse employment action based upon [the] 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, 313 [2004].) For an NYCHRL retaliation claim, "the test is similar, though rather than an adverse action, the plaintiff must show only that the defendant took an action that disadvantaged him or her." (*Harrington v City of New York*, 157 AD3d 582, 585 [1st Dept 2018] [internal quotation marks omitted].)

A protected activity is one taken to oppose or complain about unlawful discrimination. (*Forrest*, 3 NY3d at 313.) Here, plaintiff does not allege that he took a protected action and then that defendants retaliated against him. To the extent plaintiff argues that his request for accommodation is a protected activity, that is not the case. (*See Witchard v Montefiore Med. Ctr.*, 103 AD3d 596, 596 [1st Dept 2013] ["[A] request for reasonable accommodation is not a protected activity for purposes of a retaliation claim."].)

The branch of defendants' motion to dismiss plaintiff's retaliation claims is granted. The court need not consider whether plaintiff properly pleaded the remaining elements of those claims.

**D. Aiding and Abetting Discrimination (Seventh and Eighth Causes of Action)**

Defendants put forth no arguments in support of dismissing these claims. The branch of defendants' motion to dismiss these claims is denied.

Accordingly, it is

ORDERED that the branch of defendants' motion to dismiss plaintiff's complaint under CPLR 3211 (a) (2) is denied; and it is further

ORDERED that defendants' motion to dismiss the first and fourth causes of action under CPLR 3211 (a) (7) is denied; and it further

ORDERED that defendants' motion to dismiss plaintiff's second and fifth causes of action under CPLR 3211 (a) (7) is denied; and it is further

ORDERED that the branch of defendants' motion to dismiss the third and sixth causes of action under CPLR 3211 (a) (7) is granted; and it is further

ORDERED that the parties appear for a telephonic preliminary conference on February 16, 2026.

1/21/2026
DATE

HON. GERALD LEBOVITS
J.S.C.

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|---|---|---|---|---|---|---|---|
| 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 |