

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

866.1

CA 24-00445

PRESENT: SMITH, J.P., CURRAN, MONTOUR, GREENWOOD, AND KEANE, JJ.

PAULINE HOFFMAN, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ST. BONAVENTURE UNIVERSITY, DEFENDANT-APPELLANT.

BOND, SCHOENECK & KING, PLLC, BUFFALO (STEPHEN A. SHARKEY OF COUNSEL),
FOR DEFENDANT-APPELLANT.

LAW OFFICE OF LINDY KORN, PLLC, BUFFALO (LINDY KORN OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Cattaraugus County
(Ronald D. Ploetz, A.J.), entered December 27, 2023. The order denied
the motion of defendant for summary judgment.

It is hereby ORDERED that the order so appealed from is
unanimously reversed on the law without costs, the motion is granted,
and the amended complaint is dismissed.

Memorandum: Plaintiff commenced this employment discrimination
action alleging that defendant did not select her for a position at
defendant because of her sex and religious beliefs. Defendant appeals
from an order denying its motion for summary judgment dismissing the
amended complaint. We reverse.

Defendant submitted evidence that a committee consisting of 10
members interviewed plaintiff and another candidate, and assessed the
2 candidates based on a series of questions. The other candidate
scored objectively higher than plaintiff, received more positive
comments, and had more relevant experience. Defendant, therefore,
rebutted plaintiff's prima facie case of discrimination by
establishing that it had " 'legitimate, independent, and
nondiscriminatory reasons to support its employment decision' "
(*Ferrante v American Lung Assn.*, 90 NY2d 623, 629 [1997]; see *Spinello
v Depository Trust & Clearing Corp.*, 147 AD3d 572, 572 [1st Dept
2017]; *Layaou v Xerox Corp.*, 298 AD2d 921, 922 [4th Dept 2002]), thus
shifting the burden to plaintiff to raise an issue of fact whether
"the legitimate reasons proffered by defendant were merely a pretext
for discrimination" (*Ferrante*, 90 NY2d at 629-630). We further
conclude that plaintiff failed to raise a triable issue of fact
"concerning either the falsity of defendant's proffered basis for the
[employment decision] or that discrimination was more likely the real
reason" (*id.* at 631; see *Morse v Wyoming County Community Hosp. &*

Nursing Facility [appeal No. 2], 305 AD2d 1028, 1030 [4th Dept 2003];
cf. Chiara v Town of New Castle, 126 AD3d 111, 124 [2d Dept 2015], *lv*
dismissed 26 NY3d 945 [2015]).