

<b>Cadiz-Jones v Zambretti</b>
2002 NY Slip Op 30135(U)
April 9, 2002
Supreme Court, New York County
Docket Number: 123772/00
Judge: Marilyn Shafer
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER PART 36  
*Justice*

Zabrina Cadiz-Jones,  
Plaintiff(s),

-against-

Jonathan P. Zambretti,  
Defendant(s).

INDEX NO. 123772/00  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits _____	<u>1, 2</u>
Answering Affidavits – Exhibits _____	<u>3, 4</u>
Replying Affidavits _____	<u>36</u>

Upon the foregoing papers, it is ordered that this motion *is decided*  
*in* accordance with the attached decision and order.

Dated: 4/9/02

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APR 22 2002  
MARILYN SHAFER  
J.S.C.  
J.S.C.

Check one: [ ] FINAL DISPOSITION [X] NON-FINAL DISPOSITION

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

=====X  
ZABRINA CADIZ-JONES,

Index No. 123772/00

Plaintiff,

- against -

DECISION and ORDER

JONATHAN P. ZAMBRETTI,

Defendant.

=====X

MARILYN SHAFER, J.:

Plaintiff Zabrina Cadiz-Jones commenced this action against her former fiancé, defendant Jonathan P. Zambetti, seeking damages sustained from, inter alia, physical abuse and violence allegedly committed by the defendant.

Background

The United States Congress passed the Violence Against Women Act ("VAWA") in 1995 and created a private cause of action for victims of gender-motivated violence against their perpetrators.<sup>1</sup> In May 15, 2000, the United States Supreme Court struck down the civil remedy provision of the VAWA, holding that the Constitution provided no basis for the provision and deferred the "suppression of violent crimes and vindication of its victims" to the police power reposed in the States (*United States v Morrison*, 529 U.S. 598; 120 S.Ct. 1740 [2000]).

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<sup>1</sup> Victims of gender-motivated crimes could sue their attackers in state or federal court for compensatory and punitive damages, injunctive relief, and attorneys' fees.

Three months after the *Morrison* decision, the New York City Council introduced the Victims of Gender Motivated Violence Protection Act (Local Law No. 73) to fill the void left by the Supreme Court's decision and provide a private right of action for victims of gender-motivated violence against their perpetrators under the Administrative Code. "This private right of action aims to resolve the difficulty that victims face in seeking court remedies by providing an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence" (Local Law No. 73 § 8-902).

Plaintiff commenced a suit in the U.S. District Court for the Southern District of New York on July 6, 1999, asserting claims pursuant to the federal VAWA. While her case was pending in federal court, the Supreme Court struck down the VAWA. As a result, on June 26, 2000, the District Court dismissed plaintiff's claims under the VAWA, and the plaintiff commenced the instant action.

Plaintiff's complaint asserts causes of action sounding in common-law intentional torts, fraud, and acts of gender-motivated violence committed in violation of the Victims of Gender Motivated Violence Protection Act (Local Law No. 73). Defendant brings this motion to dismiss the fourth, fifth and sixth causes of action in the amended complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

#### Fifth Cause of Action

Plaintiff's fifth cause of action seeks recovery pursuant to the Victims of Gender Motivated Violence Protection Act (Local Law No. 73). Defendant contends Local Law No. 73 cannot

apply retroactively to plaintiffs claims, which accrued prior to the passing of the local law, and even if deemed retroactive, Local Law No. No. 73 is preempted by state legislation that comprehensively occupies the field of statutes of limitation for intentional torts. Plaintiff alleges that the remedial nature of Local Law No. 73 and the clear legislative intent supports retroactive application. Plaintiff further alleges that there is no preemption by State law.<sup>2</sup>

It is fundamental that in interpreting a statute, the court should attempt to effectuate the intent of the Legislature (*Patrolmen's Benevolent Assn. v City of New York*, 41 NY2d 205,208 [1976]). As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to its plain meaning (*Majewski v Broadalbin-Perth Central School District*, 91 NY2d 577 [1998]). The word "shall" has been interpreted to evince an intention to construe the statute prospectively (*see, People v Kassapidis*, 145 Misc2d 989 [App. Term 2d Dept 1990]), while the words "effective immediately" have been interpreted to evince a sense of urgency<sup>3</sup> (*see, Becker v Huss*, 43 NY2d 527 [1978]).

Another fundamental canon of statutory construction is that retroactive operation is disfavored and statutes will not be given such construction unless the language expressly or by

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<sup>2</sup> Although the defendant's contention that the seven year statute of limitations contained in section 8-905(a) is preempted by the State's one year statute of limitations for intentional torts may have merit, this issue is not before this Court in the instant action, where it is undisputed that the plaintiff timely commenced within the State's one year statute of limitations. Not only did the plaintiff timely commence, but section 8-907 of the local law provides that if any section, subsection, sentence, or portion is declared unconstitutional or invalid, such portion shall be severed and shall not affect the validity of the remaining portions of the law.

<sup>3</sup> Local Law No. 73 § 2 provides "[t]his local law shall take effective immediately after its enactment into law."

necessary implication requires it (*Jacobus v Colgate*, 217 NY 235 [1916]). An equally settled maxim is that "remedial" legislation or statutes governing procedural matters should be applied retroactively (*Duell v Condon*, 84 NY2d 773,783 [1995]). Neither of these axioms should be determinative (see, *Matter of OnBank & Trust Co.*, 90 NY2d 725,730 [1997]), for while general principles of construction may serve as guides in the search for the intention of the Legislature in a particular case, it does so "only where better guides are not available," *Majewski v Broadalbin-Perth Central School District*, *supra*. To steer the court's inquiry of whether, and to what extent, a statute is to be accorded retroactive application, an examination of legislative intent "offers more fruitful and sounder analysis," *Becker v Huss*, *supra* at 541; see also, *Longines-Wittnauer v Barnes & Reinecke, Inc.*, 15 NY2d 443 (1965). Rather, "the reach of the statute ultimately becomes a matter of judgment made upon review of the legislative goal" (*Matter of OnBank & Trust Co*, *supra* at 783).

Under its "Declaration of Legislative Findings and Intent," Local Law No. 73 states: "In light of the void left by the Supreme Court's decision, this Council finds that victims of gender-motivated violence should have a private right of action against their perpetrators under the Administrative Code. This private right of action aims to resolve the difficulty that victims face in seeking court remedies by providing an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence" (Local Law No. 73 § 8-902 Declaration of Legislative Findings and Intent). The "void" that the law refers to is the lack of a private right of action for victims of gender-motivated violence that was available under the VAWA. In the wake of the *Morrison* decision, the City Council heard testimony that

"[c]urrently there are no legal remedies that provide meaningful economic relief to victims of gender-based domestic violence in New York City for the injuries they incur as a result of domestic violence" (D. Leidholdt, Director of Sanctuary for Families' Center for Battered Women's Legal Services, Testimony in Support of Actions by Victims of Gender-Motivated Violence, November 30,2000). Ms. Leidholdt further testified that "[t]his proposed legislation would fill the void that currently exists in legal remedies available to domestic violence victims in New York City ..."<sup>4</sup> The Supreme Court "held that it could 'think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims" (Local Law No. 73 -8-902). In direct and swift response to the Supreme Court's call to local governments to exercise their police power, the Speaker of the City Council, in introducing the bill, expressed the legislation's intention "to fill the gap left by the Supreme Court ..." (P. Vallone, Testimony before the Committee on General Welfare Jointly with the Committee on Women's Issues, November 30,2000). The Mayor, in his statement of support, reinforced this purpose, stating: "Following the Supreme Court's lead, this bill appropriately restores this cause of action for victims of gender-motivated violence by allowing these suits to be brought in state court"

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<sup>4</sup> While laws addressing domestic violence have strengthened over the years, remedies available in Family Court and criminal court cases are usually limited to orders of protection. Matrimonial judges are precluded by caselaw from taking domestic violence into considerations of equitable distribution unless it meets the high bar of "shocks the conscience" of the court. The civil rights remedy of the VAWA provided the only meaningful economic remedy for domestic violence injuries since traditional tort remedies are insufficient to meet the complex obstacles facing victims of domestic violence that frequently make it difficult or impossible for a victim to bring or sustain their tort claims (see, D. Leidholdt, Director of Sanctuary for Families' Center for Battered Women's Legal Services, Testimony in Support of Actions by Victims of Gender-Motivated Violence, November 30,2000)

(Mayor's Memorandum in Support of Intro 752-A). One of the prime sponsors of the bill commended the City Council's swiftness in stepping "immediately in to the breach created by that decision" (Testimony of the Public Advocate before the Committee on General Welfare Jointly with the Committee on Women's Issues, November 30,2000). Local Law No. 73 was unanimously passed by the City Council on December 5,2000, and signed by the Mayor on December 19,2000. The law amends Title 8 of the Administrative Code of the City of New York to provide a private right of action to victims of gender-motivated violence.

Based on an analysis of statutory text and history, this Court concludes that the legislative body intended Local Law No. 73 to apply retroactively.<sup>5</sup> It is evident that the City Council's intent was to fill the gap as soon as *Morrison* was decided by restoring the availability of a private remedy for domestic violence victims in New York City, and that the overriding goal and purpose of Local Law No. 73 was to provide a local remedy as soon as the federal remedy was not available.

Nowhere is this purpose more aptly served than to the plaintiff in this action. Ms. Cadiz

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<sup>5</sup> Defendant argues that the City Council's failure to specifically state that the law is retroactive and provision that the law "shall take effect immediately" is conclusive proof that the law ~~was~~ intended to have a prospective application only, citing, inter alia, *M& G Stromer v Granata*, 124 Misc.2d 934 (App.Term 1<sup>st</sup> Dept 1984). In *M& G Stromer v Granata*, a provision of the Omnibus Housing Act ("OHA") was found not ~~to~~ apply retroactively. While some of the phrases used in the OHA provision is similar to those contained in this law, the legislative and political context that surrounded the enactment of the OHA provision is completely absent in Local Law No. 73. The First Department found that the OHA provision was not an isolated piece of legislation but part of a comprehensive statutory package addressing a wide array of housings problems, in which context "undoubtedly, there were trade-offs and concessions by the competing interests representing landlord and tenants ... As part of the compromise, the Legislature chose to simply reinstate a landlord's right to secure evictions for personal use, but not to reinstate that right retroactively," 124 Misc.2d at 935. The history of Local Law No. 73 is devoid of any hint that the word "retroactive" was intentionally omitted from the statute ~~as~~ part of legislative compromise. Instead, the legislative history of Local Law No. 73 clearly evinces its primary purpose to fill the gap left by the *Morrison* ruling.

Jones filed her original action in federal court asserting claims afforded by the VAWA. Prior to an adjudication of her domestic violence claims in federal court, the VAWA was stricken, and her case dismissed. Local Law No. 73 enables the plaintiff to maintain the claims she possessed under the VAWA, filling the gap for victims like her whose cases alleging violation of the VAWA were pending at the time it was stricken. As there are different degrees of retroactivity, the extent to which the law should be applied to claims that were not pending when the VAWA was struck down is another matter.

To bar this plaintiff's claims under Local Law No. 73 would be contrary to the intent of the legislative body, negate the purpose of the law, and leave the plaintiff in the exact void created by the *Morrison* ruling that the law was clearly enacted to fill. Accordingly, this Court finds that Local Law No.73 permits retroactive application to plaintiffs claims, and defendant's motion to dismiss the fifth cause of action is denied.

#### Fourth Cause of Action

Plaintiff asserts that the intimacy, psychological dependency and patterns of abuse that existed throughout her relationship with the defendant were of such a degree to warrant a claim for **domestic violence**. While "**domestic violence torts**" refer to **torts** committed as part of domestic violence, such as assault, battery, and intentional infliction of emotional distress, there is no distinct "tort of domestic violence" that is a recognized cause of action in New York. Since the complaint also fails to satisfy the elements of a claim for prima facie tort, the fourth cause of action should be dismissed.

Sixth Cause of Action

Plaintiff's sixth cause of action, alleging that she was fraudulently induced to undergo an abortion in return for a promise of marriage, is also dismissed. The fraudulent promise to marry claim is a disguised contract claim for breach of a promise to marry, which is prohibited under New York law. Since the plaintiff's allegations also fail to satisfy the necessary elements of fraud, the sixth cause of action is dismissed.

Conclusion

For all the foregoing reasons, it is ordered that defendant's motion to dismiss is granted only to the extent that the fourth and fifth causes of action are dismissed. The action continues on the remaining causes of action. This reflects the decision and order of this Court.

Date: 4/9/02

**MARILYN SHAFER**  
**J.S.C.**  
\_\_\_\_\_  
J.S.C.