Basillote v Holsa, Inc.
2005 NY Slip Op 30336(U)
May 23, 2005
Supreme Court, New York County
Docket Number: 114569-03
Judge: Rosalyn H. Richter
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SCANNED ON 5/26/2005

[* 1]

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

PRESENT: HON. ROSALYN RICHTER PART 74

0114569/2003

BASILLOTE, DOREEN
VS
HOLSA

SEQ 1

— SUMMARY JUDGMENT

DEX NO. ______

OTION DATE ______

OTION SEQ. NO. ______

ITION CAL. NO. ______

Th ______ were read on this motion to/for ______

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

FILED
MAY 26 2005
NEW YORK
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE ______ FOR THE FOLLOWING REASON(S):

Dated: 5/23/05

HON. ROSALYN RICHTER
J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 24

---x

DOREEN BASILLOTE and DALE BASILLOTE, |

Plaintiffs, |

-against- |

HOLSA, INC. and HUSEYIN UNVER, |

Defendants. |

---x

Index No. 114569-03
Motion Sequence No.1

Richter, J.:

In this employment discrimination action, plaintiff Doris Basillote alleges that she was wrongfully terminated from her employment with defendant Holsa, Inc. ("Holsa") in violation of the New York State Executive Law and the New York City Administrative Code. In mid-October 2002, Basillote, whose national origin is Filipino, began her employment at Holsa as a Finance and Administration Officer in the Accounting Department. Six months later, on April 18, 2003, Holsa's President, co-defendant Huseyin Unver, terminated Basillote from her position. Basillote alleges that she was dismissed from Holsa because of her Filipino national origin and because she was pregnant. In this motion, Holsa seeks summary judgment dismissing Basillote's complaint.

The elements of an employment discrimination claim are virtually identical under the New York State Executive Law, the New York City Administrative Code and Title VII. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295 (2004). A plaintiff alleging discrimination in employment has the initial burden to establish a *prima facie* case of discrimination. "To meet this burden, the plaintiff must show 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

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discrimination." *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d at 295. The fourth element of the *prima facie* case can be satisfied by a showing that the plaintiff was replaced by someone outside her protected class. *Dais v. Lane Bryant, Inc.*, 168 F.Supp.2d 62 (S.D.N.Y. 2001).

Once a *prima facie* case is established, "the burden then shifts to the employer 'to rebut the presumption of discrimination by clearly setting forth, through the introduction of admissible evidence, legitimate, independent, and nondiscriminatory reasons to support its employment decision'. In order to nevertheless succeed on her claim, the plaintiff must prove that the legitimate reasons proffered by the defendant were merely a pretext for discrimination by demonstrating both that the stated reasons were false and that discrimination was the real reason." *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d at 295.

Applying these principles, the Court concludes that Holsa's motion for summary judgment must be granted because Basillote cannot meet her *prima facie* burden of establishing employment discrimination. In particular, Basillote cannot point to any evidence in the record to support her claim that she was replaced by someone outside her protected class, or that her discharge occurred under circumstances giving rise to an inference of discrimination. Alternatively, even if Basillote were to have met her *prima facie* burden, she is unable to establish that the reasons proffered by Holsa for her termination were merely a pretext for discrimination.

Basillote argues that she has met her burden of establishing national origin discrimination because she was purportedly replaced in her position by Guzine Uysal ("Guzine"), a Turkish woman who was hired by Holsa shortly before Basillote was terminated. However, Basillote fails to present any evidence to support this claim; instead Basillote states that she merely "sensed that [Guzine] had been hired to replace [her]". Basillote Affidavit, ¶ 17. It is clear from the record, however, that

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Guzine did not replace Basillote. First, Guzine was hired while Basillote was still employed and there is no evidence that Basillote ceased to perform her own duties once Guzine arrived. Moreover, Basillote's contention that Guzine's job responsibilities were "nearly identical" to hers is belied by the record. The undisputed evidence presented shows that, in addition to performing some of the financial tasks performed by Basillote after she left, Guzine was also responsible for many other duties. These included preparing and reviewing regulatory reports, approving employee requests for vacation, reviewing equipment service contracts, approving purchase of supplies, and coordinating business events and fashion shows. Critically, Basillote does not point to any evidence showing that she was responsible for any of these additional tasks while she was employed at Holsa.

In addition, the evidence shows that Guzine assumed many of the tasks formerly performed by Steven Levine, Holsa's outside accountant. The unchallenged testimony shows that Guzine was hired to transfer Levine's work in-house, and to perform additional tasks in light of Holsa's plans to expand its product lines. Moreover, it is undisputed that Guzine possesses far more experience than Basillote in financial matters, and was paid a higher salary that Basillote.[1] Because the record is bare of any evidence showing that Guzine replaced Basillote, such cannot be used to support any inference of national origin discrimination. *See Taylor v. Local 32E SEIU*, 286 F.Supp.2d 246 (S.D.N.Y. 2003)(plaintiff is not replaced when "another employee is hired or assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work"); *Foster v. Livingston-Wyoming Arc*, 2004 U.S. Dist. LEXIS 17256 (W.D.N.Y. August 23, 2004)(finding no inference of discrimination where

[1] The fact that the bulk of Guzine's financial experience was obtained in Turkey is of no consequence. Nor is it of any significance that Guzine was not entirely comfortable with her command of English, or that Guzine's salary was just $3,000 more than Basillote's.

alleged "replacement" was hired to perform more job duties than the plaintiff).

Nor does plaintiff point to any other evidence in the record from which one can infer that she was discriminated against based on her Filipino national origin. Significantly, Basillote does not contend that any comments or statements related to her national origin were directed towards her. Basillote's claim that Unver treated her differently due to "some sort of [unspecified] bias" is nothing more than a conclusory allegation insufficient to defeat a motion for summary judgment. *See Gonzalez v. 98 Mag Leasing Corp.*, 95 N.Y.2d 124 (2000). Finally, Basillote's national origin discrimination claims are undermined by the undisputed fact that Holsa has employed - and continues to employ - other Filipino employees. At the time of Basillote's termination, Holsa employed a Filipino woman in an executive sales position. And following Basillote's termination, Holsa hired another Filipino woman to work as a sales associate. Thus, Basillote has failed to meet her burden of showing that her termination occurred under circumstances giving rise to an inference of national origin discrimination.

Plaintiff has likewise failed to point to any evidence in the record which supports her claim that her discharge was based on the fact that she was pregnant. Indeed, when asked at her deposition the basis of her belief that she was fired due to her pregnancy, plaintiff merely replied that she worked hard and couldn't find any reason why Holsa would terminate her. Such conclusory allegations fall far short of the level of proof needed to withstand Holsa's motion for summary judgment. In addition, Basillote cannot show that Unver was even aware of her pregnancy at the time he discharged her. Basillote concedes that she never told Unver that she was pregnant. Furthermore, Unver testified at his deposition that he only learned of Basillote's pregnancy after she was terminated. In light of this, Basillote's pregnancy discrimination claim must be dismissed. *See*

Smith v. Paris International Corp., 267 A.D.2d 223 (2d Dept. 1999)(dismissing pregnancy discrimination claim where the plaintiff could not show that the employer's president and sole decisionmaker was aware she was pregnant at the time of termination); *Thomas A. Galante & Son, Inc. v. State Div. Of Human Rights*, 76 A.D.2d 1023 (3d Dept. 1980)(dismissing pregnancy discrimination claim where decisionmakers were not aware the plaintiff was pregnant at time of termination).

Although Basillote maintains that she told a number of other Holsa employees of her condition, there is no evidence that any of them informed Unver prior to Basillote's discharge. Basillote's conclusory allegations that Unver must have become aware of her pregnancy is insufficient to create an issue of material fact. *See Thomas A. Galante & Son, Inc. v. State Div. Of Human Rights*, 76 A.D.2d at 1023 (dismissing pregnancy discrimination claim where only evidence of complainant's condition was unfounded, unsupported naked conclusion that "everybody knew"); *Long v. AT & T Information Systems, Inc.*, 733 F. Supp. 188 (S.D.N.Y. 1990)(mere "familiarity with office gossip" is insufficient to create an issue of fact as to a party's knowledge).[2]

Nor does the fact that these other employees were aware of her pregnancy create an inference of discrimination because there is no evidence that any of these employees was involved in Holsa's decision to terminate Basillote's employment. *See Eatman v. United Parcel Service*, 194 F.Supp.2d 256 (S.D.N.Y. 2002)("the bias of a non-decisionmaker is insufficient to prove an illegal motivation for an employer's discharge"). Basillote's suggestion that Mahmut Sinoplu, Holsa's former President and Board Member at the time of Basillote's termination, was a decisionmaker in her

[2] Basillote's affidavit stating that a Holsa employee named Neslihan informed Basillote that Neslihan learned of Basillote's pregnancy from Unver does not require a contrary result because there is no indication that Unver told Neslihan this information prior to Basillote's termination.

termination is unsupported by any evidence that Sinoplu retained any authority over personnel matters after he stepped down as President. Moreover, such claim is belied by Unver's deposition testimony and Sinoplu's affidavit. The fact that Sinoplu was working at the Holsa office on the date of Basillote's termination, and that he learned of her pregnancy days before, is insufficient to support an inference that he had a say in the decision to terminate her. Accordingly, Basillote cannot show that her termination occurred under circumstances giving rise to an inference of pregnancy discrimination.

Moreover, Holsa has set forth evidence fully demonstrating legitimate, non-discriminatory reasons for its decision to discharge Basillote, namely her unsatisfactory job performance. The record reflects that Basillote routinely miscalculated Holsa's financial statements and failed to accurately process other accounting records throughout her employment with Holsa. In her deposition, Basillote concedes that both Unver and Levine informed her of her accounting errors. Indeed, Basillote admits that she made the very mistakes which led directly to her termination on April 18, 2003, and that she apologized for those errors. Thus, it is clear that Holsa has demonstrated substantial legitimate non-discriminatory reasons for terminating Basillote's employment. *See Pramdip v. Building Service 32B-J Health Fund*, 308 A.D.2d 523 (2d Dept. 2003)(dismissing race and national origin discrimination claims because the plaintiff's poor job performance is a legitimate non-discriminatory reason for termination); *Schwaller v. Squires Sanders & Dempsey*, 249 A.D.2d 195 (1st Dept. 1998)(gender discrimination claim dismissed where the plaintiff was terminated for poor performance). Finally, for the reasons stated above, the Court rejects Basillote's claims that Holsa's stated reasons for terminating here were pretextual, and that the true reason for her termination was discrimination. Accordingly, it is

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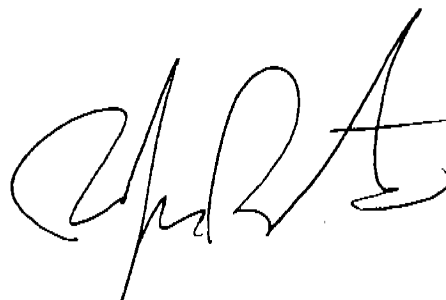
ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

May 23, 2005



Justice Rosalyn Richter

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