

Saltos v Delgado

2007 NY Slip Op 31104(U)

May 1, 2007

Supreme Court, New York County

Docket Number: 0109856/2006

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON
Justice

PART 25

Saltos

INDEX NO. 109856/06

MOTION DATE 3/26/07

Delgado

- v -

MOTION SEQ. NO. 03

MOTION CAL. NO. _____

The following papers, numbered 1 to 8 were read on this motion to/for dismiss

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1-3

Answering Affidavits — Exhibits _____

4-6

Replying Affidavits _____

7-8

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision and order, which also decides motion 02 and motion 01 in the case Rodriguez v. Delgado, Index No. 116 378/06.

N.B. -- preliminary conference is scheduled for 6/4/07 at 12:00.

FILED
MAY 07 2007
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/1/07

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 55
-----X

JESSICA SALTOS, on behalf of herself
and as a representative of a class
of persons similarly situated,

Plaintiff,

DECISION AND ORDER

-against-

INDEX NO. 109856/06

HECTOR DELGADO, THE DELGADO TRAVEL
AGENCY, INC., and CASA DE CAMBIO
DELGADO, INC.,

Defendants.

-----X

IVONNE RODRIGUEZ, on behalf of herself
and as a representative of a class
of persons similarly situated,

Plaintiff,

INDEX NO. 116378/06

-against-

HECTOR DELGADO, THE DELGADO TRAVEL
AGENCY, INC., and CASA DE CAMBIO
DELGADO, INC.,

Defendants.

-----X

JANE S. SOLOMON, J.

The motions in these cases are consolidated for
purposes of disposition.

Plaintiffs in each of these cases allege discrimination
on the basis of sex, in violation of the New York State and New
York City Human Rights Laws, Executive Law § 290, et seq. and
Administrative Code of City of NY § 8-107, et seq., respectively.
In Saltos v Delgado, defendants move to dismiss the third and
fourth causes of action, both of which allege discrimination on

the basis of pregnancy. In Rodriguez v Delgado, defendants move to dismiss the third and fourth causes of action, which allege, respectively, hostile work environment and sexual harassment. In addition, in each of these cases, defendants move to strike purportedly scandalous material from the complaint. Finally, in Saltos v Delgado, plaintiff moves to consolidate the actions. Defendant Hector Delgado is the president and sole shareholder of the corporate defendants. The corporate defendants operate a travel agency.

CPLR 3024 (b) allows a party to "move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." The material that defendants move to strike from the complaints refers to the fact that, on June 5, 2000, Hector Delgado pled guilty, by way of an Alford plea, to sex abuse in the third degree, a class B misdemeanor. The complainant was an employee of Delgado. An Alford plea, in which the defendant does not admit the allegations underlying the charge to which he or she pleads (see North Carolina v Alford, 400 US 25 [1970]), may, generally, be used for the same purposes as any other conviction, including, for example, impeachment of the defendant's testimony at trial. Silmon v Travis, 95 NY2d 470 (2000). Although Delgado's plea predates Saltos's employment with defendants, and therefore, may be of only limited probative value at trial, it is relevant to Saltos's hostile environment claim. See Schwapp v Town of Avon, 118 F3d 106, 111 (2d Cir 1997). Moreover, the references to the plea are not significantly different in content

from Saltos's numerous other allegations of sexual harassment on Delgado's part. Accordingly, the motion to strike will be denied as to Saltos's complaint. See Rice v St. Luke's-Roosevelt Hosp. Ctr., 293 AD2d 258 (1st Dept 2002); Kaufman & Kaufman v Hoff, 213 AD2d 197 (1st Dept 1995). However, the references to the plea are entirely irrelevant to Rodriguez's claims of discrimination on the basis of pregnancy, which for the reasons given below are the only claims of hers that will go forward. Accordingly, the motion to strike will be granted as to Rodriguez's complaint.

Defendants' motions to dismiss one of the claims in each case will be granted. In Rodriguez v Delgado, plaintiff's claims of hostile work environment and sexual harassment rest solely on what she learned of the sexual harassment of some of defendants' women employees at other offices. She does not allege that Delgado directly harassed her in any manner, or that he harassed any other woman in her presence. A "plaintiff who herself experiences discriminatory harassment need not be the target of other instances of hostility in order for those incidents to support her claim [of hostile work environment discrimination]." Cruz v Coach Stores, Inc., 202 F3d 560, 570 (2d Cir 2000); see also Schwapp v Town of Avon, 118 F3d 106, supra. Indeed, a woman "who was never herself the object of harassment might have a ... claim if she were forced to work in an atmosphere in which such harassment was pervasive." Vinson v Taylor, 753 F2d 141, 146 (DC Cir 1985), affd sub nom Meritor Savings Bank, FSB v Vinson, 477 US 57 (1986). Here, however,

plaintiff alleges no more than that she learned that at some of defendants' offices, other than the one at which she worked, Delgado was harassing women employees. Such an allegation does not state a claim that plaintiff's own work environment was hostile. Leibovitz v New York City Tr. Auth., 252 F3d 179 (2d Cir 2001). Nor, as it should go without saying, does it state a claim of harassment.

In Salto v Delgado, plaintiff's claims of discrimination on the basis of pregnancy rest on the allegation that when she was approximately four months pregnant, Delgado transferred her from the customer service department to the analysis department, and on the allegations that, in the course of her pregnancy, he made five remarks that are at least arguably related to her pregnancy. In the absence of any allegation that plaintiff's transfer in any way changed the terms and conditions of her work for the worse, that transfer did not constitute an adverse employment action. Nor did the five comments, over a more than eight-month period, create a hostile work environment.

Finally, consolidation of these actions would not be appropriate, because the surviving claims in each differ from those in the other. However, counsel are encouraged to treat the cases together for purposes of discovery, when doing so would be economical and not prejudicial to the rights of any party.

Accordingly, it hereby is

ORDERED that in Salto v Delgado, defendants' motion to dismiss is granted, and the third and fourth causes of action in

the complaint are dismissed; and it further is

ORDERED that in said case, defendants' motion to strike is denied; and it further is

ORDERED that in said action, plaintiff's motion to consolidate is denied; and it further is

ORDERED that in Rodriguez v Delgado, defendants' motion to dismiss is granted, and the third and fourth causes of action in the complaint are dismissed; and it further is

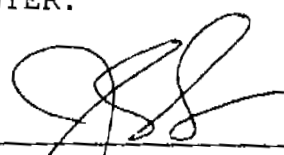
ORDERED that in said case, defendants' motion to strike is granted, and paragraphs 25 and 26 of the amended complaint are stricken; and it further is

ORDERED that in Salto v Delgado, and in Rodriguez v Delgado, the defendants are directed to serve their answer to the complaint within 10 days after service of a copy of this order with notice of entry; and it further is

ORDERED that counsel shall appear for a preliminary conference in both actions in Part 55, 60 Centre Street, Room 432, New York, NY on June 11, 2007 at noon.

Dated: May / , 2007

ENTER:



JANE S. SOLOM

FILED
MAY 07 2007
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NEW YORK