

Jones v Bloomberg, L.P.

2007 NY Slip Op 33390(U)

October 16, 2007

Supreme Court, New York County

Docket Number: 0112908/2004

Judge: Walter Tolub

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

DECENT.

PART _____

Index Number : 112908/2004

JONES, SHIMBA

vs

BLOOMBERG, L.P.

Sequence Number : 002

PARTIAL SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

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

Dated: 10/16/07

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J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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SHIMBA JONES

Plaintiff,

Index No. 112908/04
Mtn. Seq. 002

-against-

BLOOMBERG, L.P

Defendant.

-----X

TOLUB, J.:

By this motion Defendant seeks partial summary judgment dismissing Plaintiff's second cause of action for retaliation. Defendant's motion is denied.

Facts

The Plaintiff was hired by the Defendant Bloomberg, an international media company, in October 2000. Plaintiff was hired as a Network Security Technician focusing on intrusion detection. While still employed by the Defendant in 2004, she commenced this action alleging (1) discrimination; and (2) retaliation.

Plaintiff claims that her supervisor, Mr. Smith, sexually harassed her at work causing a hostile and abusive work environment. Plaintiff further claims that after she hired an attorney to protect her interests, she was further intimidated, harassed and discriminated against. She claims that because of the actions of Defendant's employees she suffered severe emotional and mental distress and was therefore required to go on

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medical leave.

When Plaintiff returned from medical leave, she claims she was retaliated against by being transferred to the position of Help Desk Representative. Plaintiff claims that the new position was created by the Defendant as a pretext with which to criticize her performance in her new role and further create a hostile work environment so that Plaintiff would have no choice but to resign.

Additionally, Plaintiff claims that in January 2005 she was summoned to Defendant's Human Resources Department and accused of violating Defendant's standards and policies by creating a business which directly competes with Defendant. Specifically, Defendant referred to specific websites that Plaintiff had designed. Plaintiff claims that these accusations are also retaliatory in nature and that while it is true that she created websites, she created them on her own time, as a hobby, and they do not compete in any way with Defendant's worldwide corporation.

Plaintiff was terminated on March 24, 2005.

Defendant argues that when Plaintiff was hired she entered into a Confidentiality Agreement with the Defendant. Defendant claims that Plaintiff engaged in competing business activities during Defendant's business hours. Defendant claims that Plaintiff developed at least one technology company (Secure Networks, LLC) and was involved with other businesses such as Bubble Gum Nursery, LLC, True Lingerie and Shimba's

Transportation. Defendant claims that it only found out about the potential conflicting businesses around January 2007 and that it consequently met with Plaintiff on January 5, 2007. At that time Plaintiff provided little information about the other business she was involved with. In addition, Defendant argues that Plaintiff's work performance was mediocre at best and that she had severe attendance problems. Defendant asserted counterclaims for breach of the Confidentiality Agreement and fiduciary duties by engaging in non-Bloomberg business activities during her Bloomberg employment.

By this motion, Defendant seeks partial summary judgment dismissing Plaintiff's second cause of action for retaliation arguing that Jones was lawfully terminated based on her disregard of the Company policy and directives. Defendant's motion is denied.

Discussion

As with any motion for summary judgment, success is wholly dependent on whether the proponent of either of the respective motions has made a "prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact" (Wolff v New York City Trans. Auth., 21 AD3d 956 [2d Dept 2005], quoting Winegrad v New York University Med. Ctr., 64 NY2d 851, 853 [1985] [internal

quotes omitted]. A party is entitled to summary judgment if the sum total of the undisputed facts establish the elements of a claim or a defense as a matter of law. This means that none of the material elements of the claim or defense are in dispute (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §37:180).

On defendant's motion for summary judgment, defendant may demonstrate the lack of several prima facie elements of plaintiff's case, however, to prevail, defendant only needs to demonstrate the absence of a single element (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §37:182). Once defendant presents evidence showing the absence of facts necessary to establish a prima facie case, the burden shifts to the plaintiff (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing] §37:190). Defendant's motion is predicated upon the argument that Plaintiff failed to make out a prima facie case for retaliation.

Plaintiff brought her retaliation claim pursuant to the New York City Human Rights Law. This law was enacted to protect against the danger of employment discrimination and is construed liberally. (Administrative Code of the City of New York, Title 8, §8-130; Krohn v. New York City Police Department, 2 NY2d 329 [2004]; Farrugia v. North Shore University Hospital, 13 Misc.3d

740 [Sup Ct NY Cty 2006]). New York Courts have repeatedly recognized that discrimination is rarely so obvious or so overt that its recognition is instant and conclusive, rather, it is usually accomplished by devious and subtle means. (New York City Board of Education v. Batista, 54 NY2d 379, 382 [1981]; Sogg v. American Airlines, Inc., 193 AD2d 153, 160 [1st Dept 1993]; Pace College v. Commission on Human Rights, 38 NY2d 28, 40 [1985]).

To establish a prima facie claim for retaliation, the plaintiff must show (1) that she engaged in a protected activity; (2) that her employer was aware of the protected activity; (3) that she suffered an adverse employment action; and (4) a causal connection between the two. (Forrest v. Jewish Guild for the Blind, 3 NY2d 295, 312 [2004]; DuBois v. Brookdale University Hospital, 800 NYS2d 345 [Sup. Ct. Kings Cty. 2004]). Plaintiff is not required to show that retaliation was the only reason for her termination, only that it was a motivating factor. (Desert Palace, Inc. v. Costa, 539 US 90, 101 [2003]).

Here, it is undisputed that Plaintiff complained about her supervisor's sexually harassing conduct. Taking Plaintiff's facts as true, Defendant was aware of the harassment because of the numerous complaints filed. Each of Plaintiff's complaints is a protected activity under the New York City Human Rights Law, which defines protected activity as "opposing any practice forbidden under this chapter..." (Administrative Code of the City

of New York, §8-107(7)). Plaintiff claims that after she complained about the sexual harassment she was subjected to negative performance evaluations, "final warnings" and a demotion, all of which she claims led to her termination. Plaintiff has met her burden of establishing a prima facie case for retaliation requiring a trial. It follows that Defendant's motion for summary judgment must be denied.

Accordingly it is

ORDERED that Defendant's motion for summary judgment dismissing Plaintiff's second cause of action for retaliation is denied.

Counsel for the parties are to appear for mediation as scheduled on October 31, 2007.

This constitutes the decision and judgment of this court.

Dated: 10/16/07

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WALTER B. TOLUB J.S.C.

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