

Williams v New York City Housing Authority

2007 NY Slip Op 34401(U)

August 7, 2007

Supreme Court, New York County

Docket Number: 115453/2001

Judge: Michael D. Stallman

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

PRESENT: **HON. MICHAEL D. STALLMAN**
Justice

PART 7

Index Number : 115453/2001
WILLIAMS, GINA
vs
HOUSING AUTHORITY
Sequence Number : 006
DISMISS

INDEX NO. _____
MOTION DATE 6/13/07
MOTION SEQ. NO. _____
MOTION CAL. NO. 98

his motion to/for SJ

PAPERS NUMBERED

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

1-7
8
9

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion **"is determined in accordance with the annexed memorandum decision and order."**

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

FILED
AUG 14 2007
NEW YORK
COUNTY CLERK'S OFFICE

HON. MICHAEL D. STALLMAN

Dated: 8/7/07

[Signature]
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 7

-----X
GINA WILLIAMS,

Plaintiff,

Index No. 115453/2001

- against -

NEW YORK CITY HOUSING AUTHORITY, EDDIE
ELLIS, and MICHAEL LOPEZ,

Defendants.

Decision and Order

FILED

AUG 14 2007

NEW YORK
COUNTY CLERK'S OFFICE

-----X
HON. MICHAEL D. STALLMAN, J.:

Defendants New York City Housing Authority (NYCHA), Eddie Ellis, and Michael Lopez jointly move, pursuant to CPLR 3212 (a), for summary judgment dismissing the amended complaint. The amended complaint alleges that plaintiff was harassed and otherwise discriminated against on the basis of her sex, and retaliated against for having complained of the discriminatory treatment, in violation of both the New York State Human Rights Law (NYSHRL), Executive Law § 290, et seq., and the New York City Human Rights Law (NYCHRL), Administrative Code of the City of New York § 8-101, et seq.

At all relevant times, plaintiff, who appears pro se, was employed by the HA as a heating plant technician (HPT) assigned to the HA's South Jamaica Houses. Throughout her time there, she was the only female HPT. She was supervised, from her arrival as a probationary employee in November 1995 until December 1999, by Ellis, and by Lopez thereafter, although Ellis filled in when Lopez was on vacation.

Plaintiff alleges that when she first arrived at South Jamaica Houses, she was denied tools, other than a channel lock, a flashlight, and a screwdriver, although the male HPTs had been issued tools; during her one-year probationary period, Ellis denied her work shifts that would have entitled her to more pay; she was denied training at the HA's St. Nicholas Houses on June 25, 1996; in January 1997, Ellis responded to plaintiff's question as to shower facilities for female staff by

suggesting that she could shower at his house; in October 1998, while speaking to plaintiff, Ellis referred to his wife as a bitch and made derogatory remarks, which plaintiff specified at her deposition as consisting of a compliment to another HPT, and a statement to plaintiff that she should do a good job, and that she should turn on the boiler room fans; Ellis continued to supervise plaintiff after the HA had disciplined him for his 1997 and 1998 remarks, and, in August 1999, allegedly in retaliation for her complaints about him, he assigned her to strip the boiler room floor and to wax it, a task allegedly outside her job description. The complaint further alleges that, on three successive days, Ellis assigned her to specific tenant-related tasks while she was working a higher paid shift, and that, in January 2002, Lopez denied her excused time to attend to a parking ticket that she had been issued for parking her personal car on NYCHA premises. Finally, the complaint alleges that plaintiff was denied permission to take two additional training courses, one of which, she acknowledged at her deposition, never took place.

Several of the matters of which plaintiff complains occurred outside the applicable statute of limitations. Plaintiff filed her initial complaint in this action on August 14, 2001. Claims under both the NYSHRL and the NYCHRL are governed by a three-year limitations period. Executive Law § 297 (9); Administrative Code § 8-502 (d). Accordingly, plaintiff's allegations about Ellis's remark about showering at his house, his alleged refusal to assign plaintiff to higher paying shifts during her probationary year, his initial failure to provide her with tools, and his refusal to allow her to attend the June 25, 1996 training session are time-barred.

Notwithstanding the bar of the statute of limitations, acts that occurred outside the limitations period may be used as evidence in support of a timely claim. National R.R. Passenger Corp. v Morgan, 536 US 101 (2002). However, acts outside the limitations period may give rise to a claim only if such acts constitute unlawful harassment, and the harassment has continued into the limitations period (id.; Belle v Zelmanowicz, 305 AD2d 272 [1st Dept 2003]), or if they form a part of a continuing violation. See Quinn v Green Tree Credit Corp., 159 F3d 759 (2d Cir 1998); Walsh v Covenant House, 244 AD2d 214 (1st Dept 1997).

Here, the only acts alleged that might constitute sexual harassment are the two statements by Ellis, one in 1997, and the other in 1998. Those isolated statements do not suffice to constitute a continuous, ongoing condition and do not set forth a prima facie case of hostile work environment discrimination. See Forrest v Jewish Guild for the Blind, 3 NY3d 295 (2004) (three racial slurs do not establish hostile work environment). A plaintiff making such a claim must show that the harassment to which she was subjected "was so severe or pervasive as to alter the conditions of [her] employment and create an abusive working environment." Brennan v Metropolitan Opera Assn., 284 AD2d 66, 72 (1st Dept 2001), quoting Meritor Sav. Bank v Vinson, 477 US 57, 67 (1986), quoting Henson v City of Dundee, 682 F2d 897, 904 (11th Cir 1982). Plaintiff claims that she was offended by Ellis's alleged comments, but she cannot plausibly contend that, because of them, her workplace was "permeated with discriminatory intimidation, ridicule, and insult." Forrest v Jewish Guild for the Blind, 3 NY3d, at 310, quoting Harris v Forklift Sys., Inc., 510 US 17, 21 (1993).

Neither has plaintiff alleged a continuing violation, which may be found only "where there is proof of specific ongoing discriminatory policies or practices, or where specific and related instances of discrimination are permitted by the employer to continue unremedied for so long as to amount to a discriminatory policy or practice." Quinn v Green Tree Credit Corp., 159 F3d 759, *supra*, quoting Cornwell v Robinson, 23 F3d 694, 704 (2d Cir 1994). Here, there is no allegation of a specific ongoing policy or practice, and it is undisputed that the HA disciplined Ellis after plaintiff had complained about his remarks, and that, after plaintiff complained to Ellis's supervisor about her lack of tools, tool sets were provided to her, as well as to all the other HPTs, who had had tools issued to them but who had subsequently lost them.

In her opposition, plaintiff indicates that Justice Gans previously denied in part defendant's motion to dismiss, converted to summary judgment, and apparently argues that NYCHA's motion should be denied "based on the res judicata [sic] effect." By decision dated October 10, 2002, Justice Gans ruled, "Finally, plaintiff makes a sufficient showing, by affidavits, notarized letters and official work documents, of a hostile work environment [citation omitted] to withstand summary

judgment.” To the extent that plaintiff intended to argue, as NYCHA realized, that Justice Gans’s decision is law of the case, the doctrine of law of the case does not apply here. “Defendant[’s] second summary judgment motion, based upon new evidence gained by discovery during the five years subsequent to the first motion, was not precluded by the law of the case doctrine.” Smith v Metropolitan Transp. Auth., 226 AD2d 168, 168 (1st Dept 1996); Schripteck Marketing v Columbus McKinnon Corp., 187 AD2d 800, 801-802 (3d Dept 1992); see also Boston Concessions Group v Criterion Center Corp., 250 AD2d 435 (1st Dept 1998). In addition, as NYCHA indicates, the relevant decretal paragraph of Justice Gans’s decision states that summary judgment is “otherwise denied without prejudice.”

Plaintiff’s retaliation claim rests primarily on her complaint that, on one occasion, Ellis required her to strip the boiler room floor and to wax it. However, plaintiff testified at her deposition that, while her union shop steward believed that such work was not a part of plaintiff’s job, another union representative, to whom she had written, believed that it was. Moreover, both Ellis and Lopez have submitted affidavits in which each states that, when he was an HPT, he had to strip the floor and wax it. A one-time assignment to perform a task that is, at least arguably, a part of one’s duties does not constitute retaliation. For the rest, while plaintiff alleges that she was denied excused time to deal with her personal parking ticket, she does not allege that any other HPT was granted excused time for a like purpose; while she alleges that Ellis assigned her to tenant-related tasks, she alleges neither that she was not paid the pay appropriate to her shift at those times, nor that she was not assigned such tasks by persons other than Ellis, at times when she was on the higher-paid work shift. Accordingly, plaintiff’s claim of retaliation must fail.

Finally, plaintiff’s claim of disparate treatment fails because a necessary element of such a claim is that plaintiff have suffered an adverse employment action. See e.g. Forrest v Jewish Guild for the Blind, 3 NY3d 295, supra; Bailey v New York Westchester Sq. Med. Ctr., 38 AD3d 119 (1st Dept 2007). “An adverse employment action requires a materially adverse change in the terms and conditions of employment[, that is, ...] a change [that is] more disruptive than a mere inconvenience

or an alteration of job responsibilities." Forrest v Jewish Guild for the Blind, 3 NY3d at 306, quoting Galabya v New York City Bd. of Educ., 202 F3d 636, 640 (2d Cir 2000). Plaintiff fails to allege any such action, other than the time-barred claim that she was denied a higher paying work shift during her probationary year.

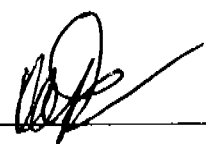
Although plaintiff was not given permission to take every training class that she applied for, it is undisputed that, throughout her tenure as an HPT, she attended no fewer than nine one- or two-day training courses, and she does not allege that she suffered any injury as a result of not having attended more. Notably, plaintiff was offered two promotions in May 2004. She declined one of them, accepted the other, and she does not claim that she would have been offered a promotion sooner had she taken more classes.

Accordingly, it is hereby

ORDERED that the motion for summary judgment is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: *August 7, 2007*
New York, New York

ENTER:


J.S.C.

HON. MICHAEL D. STALLMAN

FILED
AUG 14 2007
NEW YORK
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