

<b>Bhatnagar v Coach, Inc.</b>
2008 NY Slip Op 30450(U)
February 14, 2008
Supreme Court, New York County
Docket Number: 0107998/2006
Judge: Marylin G. Diamond
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARYLIN G. DIAMOND

PART 48

Justice

DHARIYA BHATNAGAR,

Plaintiff,

-against-

COACH, INC.,

Defendant.

INDEX NO. 107998/06

MOTION DATE

MOTION SEQ. NO. 003

MOTION CAL. NO.

**FILED**

FEB 19 2008

NEW YORK COUNTY CLERK

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that: This is an action based upon allegations of age discrimination. The plaintiff Dhariya Bhatnagar was employed as a systems analyst for the defendant Coach, Inc. between November, 2000 and May, 2006, when he was terminated at the age of sixty-six.

The complaint asserts four causes of action. The first cause of action is brought under section 296 of the New York State Executive Law ("State Human Rights Law") and alleges that the defendant unlawfully terminated the plaintiff in retaliation for his complaints of age discrimination. The second cause of action is brought under section 8-107(7) of the New York City Administrative Code ("City Human Rights Law"), which provides that it shall be unlawful for an employer to retaliate against an employee because the employee has opposed a discriminatory practice. The third cause of action is brought under the State Human Rights Law and alleges that the plaintiff was discriminated against and ultimately terminated because of his age. The fourth cause of action is brought under sections 8-101 *et. seq.* of the City Human Rights Law and alleges that the plaintiff was discriminated against in the terms, conditions and privileges of his employment, and was ultimately terminated because of his age. The defendant has now moved for summary judgment dismissing the complaint in its entirety.

**Background**

Coach operates various retail stores which sell handbags, briefcases and other leather goods and accessories. Its headquarters are in Manhattan. In November, 2000, Coach hired plaintiff, then 58 years of age, as a temporary employee in its Information Systems Department. In February, 2001, plaintiff was offered full-time employment as a systems analyst.

Both sides agree that the plaintiff was originally hired to write computer programs for mainframe computers. However, at some point during the plaintiff's employment, Coach began to eliminate the use of mainframes in favor of less expensive personal computer systems. These systems required knowledge of different programming languages than the language the plaintiff had been using to program the mainframe computers. The defendant claims that the plaintiff was ill-equipped to transfer to the PC systems because he lacked knowledge of the required programming languages and that, sometime after June, 2004, he was no longer qualified to perform his duties as a systems analyst. They point to the plaintiff's deposition testimony where he stated that he "was good at football, but the company now played hockey." Nevertheless, Coach claims that it allowed the plaintiff to attend various programming classes at its expense and that it gave him extra time to complete programming assignments. According to Coach, it was only when plaintiff was unable to properly complete his assignments that it had no choice but to terminate his employment. After plaintiff was terminated in May, 2006, he was replaced by a younger employee.

## Discussion

The standard for analyzing claims of age discrimination under both the city and the state Human Rights Laws are the same as under the equivalent federal statute, the Age Discrimination in Employment Act, 29 USC §621 *et seq.* See *Abdu-Brisson v. Delta Airlines Inc.*, 239 F3d 456, 466 (2<sup>nd</sup> Cir. 2001). To establish a prima facie case of age discrimination under these laws, a plaintiff must demonstrate that he (1) is a member of the class protected by the statute, (2) was actively or constructively discharged, (3) was qualified to hold the position from which he was terminated and (4) the discharge occurred under circumstances giving rise to an inference of discrimination. See *Hardy v. General Electric Company*, 270 AD2d 700, 701 (3<sup>rd</sup> Dept. 2000).

Once plaintiff has established a prima facie case of discrimination, the defendant must set forth, through rebuttal evidence, "legitimate, independent, and nondiscriminatory reasons to support its employment decision." *Matter of Miller Brewing Co. v. State Div. of Human Rights*, 66 NY2d 937, 938 (1985). See also *Ferrante v. American Lung Association*, 90 NY2d 623, 629 (1997). Upon the submission of such evidence, the plaintiff must then prove, by a preponderance of the evidence, that defendant's stated reasons for its actions are only a pretext. See *Ferrante v. American Lung Association*, 90 NY2d at 630. To survive summary judgment at that juncture, the plaintiff must establish the existence of a material issue of fact as to whether 1) the employer's asserted reason(s) for the challenged action is false or unworthy of belief and (2) more likely than not the employee's age or disability was the real reason for the employment decision. *Id.* at 930.

Here, the defendant argues that the plaintiff cannot establish a prima facie case of age discrimination because he cannot satisfy the requirement under the discrimination test that he was qualified to hold the position from which he was terminated. The defendant contends that the plaintiff himself has admitted that when Coach changed to a new system, he no longer had the necessary programming skills to perform his job. Although, as Coach argues, an employer has no duty under workplace discrimination laws to spend extra time and resources training an older employee to perform a job that younger employees can perform without training, see *Siano v. Ihaber*, 40 FSupp2d 516, 524 (SDNY 1999) and *Herbst v. Children's Day Treatment Center and School, Inc.*, 1998 WL 142352 \* 3 (SDNY 1998), an employer is required to treat its employees neutrally with respect to their age. Thus, plaintiff alleges that he was denied opportunities to receive training that were given to younger employees and his employment was then terminated because he lacked the very training that his employer had denied him because of his age. He points, for example, to the fact that Coach denied his request to receive training in the programming language ASP while other younger analysts were allowed to attend classes in that language. The plaintiff also testified at his deposition that he was denied access to a training course that was later given to a younger co-worker, Virginia Dumpit, and that when he requested that he be allowed to attend the session with Ms. Dumpit, the defendant refused. Since the burden of establishing a prima facie case is de minimis, see *Abdu-Brisson v. Delta Airlines Inc.*, 239 F3d at 467, these allegations are sufficient for the plaintiff to meet his burden of demonstrating that he was terminated under circumstances giving rise to an inference of discrimination, thereby shifting the burden to Coach to establish legitimate, nondiscriminatory reasons for the plaintiff's termination.

In this respect, defendant has satisfied its burden of articulating legitimate, nondiscriminatory reasons both as to why the plaintiff was terminated and whether he received adequate training in the PC programming languages which he claimed was necessary for him to perform his duties. According to Coach, the plaintiff was unable to perform his duties competently and quickly as demonstrated by a series of poor performance evaluations and warnings. The company also maintains that it voluntarily provided him with training, reimbursed him for various books, encouraged him to learn from co-workers, gave him less difficult assignments and extended his deadlines, all in an attempt to help him gain the required

competency in the new languages. The defendant also claims that plaintiff's allegations that he was denied training that was given to younger employees are unavailing since the training referred to took place in 2001 when the plaintiff was still utilizing the mainframe systems and therefore did not need training in additional programming languages. The defendant insists that once the plaintiff began working with PC-based languages, he received ample training but was unable to acquire the necessary skills.

Since defendant has articulated nondiscriminatory reasons for plaintiff's termination, the presumption of discrimination has vanished and the burden shifts back to plaintiff to come forward with evidence that the defendant's explanations are merely pretextual and that the actual motivations more likely than not were discriminatory. See *Abdu-Brisson v. Delta Airlines Inc.*, 239 F3rd at 469. It is well settled that at this stage of the analysis, a court must examine the entire record to determine whether the plaintiff could satisfy its ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against him. *Id.* at 469-70. See also *Schnabel v. Abramson*, 232 F3d 83, 90 (2<sup>nd</sup> Cir. 2000). To raise a genuine issue of fact at this stage requires that plaintiff present sufficient evidence to show that the employer's asserted justification for terminating his employment is false, since such evidence "may permit the trier of fact to conclude that the employer unlawfully discriminated." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 US 133, 142 (2000). Summary judgment is appropriate where the plaintiff presents "no evidence upon which a reasonable trier of fact could base the conclusion that [age] was a determinative factor" in the termination. See *Schnabel v. Abramson*, 232 F3d at 90.

After reviewing the record, the court cannot find sufficient evidence showing that the defendant's stated nondiscriminatory reasons for the plaintiff's termination are false. Indeed, plaintiff's opposition to the motion to dismiss largely consists of his blanket assertions that the defendant failed to properly train him in the PC programming languages and then unfairly terminated him for failing to learn the language skills on his own. Yet, the plaintiff does not dispute that Coach, like other companies, had legitimate business reasons for changing from mainframe to PC-based programming languages and he also concedes that he did not have sufficient knowledge of PC languages to effectively do his job. As already noted, Coach had no duty to train the plaintiff at all and could have ended his employment when it changed to PC-based systems. Although plaintiff does not deny that he received extensive training in the programming languages that he was expected to use, he nevertheless argues that he was denied the specific training given to younger employees. The record, however, does not contain any evidence which supports this contention. For example, although he claims that his co-worker, Ms. Dumpit, received training that he did not receive, plaintiff has not offered any evidence that Ms. Dumpit had similar job duties and responsibilities or that the training Ms. Dumpit allegedly received would have benefitted him in the performance of his duties. In any event, the plaintiff has not rebutted the defendant's contention that it only decided to fire him after it took him two weeks to complete a programming project that had a deadline of three to five days in an area for which he had already received instruction. Plaintiff's failure to even address the one incident which was clearly a major factor in the defendant's termination of his employment is fatal to his age discrimination claim.

The plaintiff points to various remarks made by other employees of the defendant which, he contends, would allow a reasonable trier of fact to conclude that age was the determinative factor in the termination decision. He relies primarily on a disparaging remark about the plaintiff's age allegedly made in 2003 by Marianne Lawler, the manager who hired the plaintiff less than two years earlier. Since Lawler stopped supervising the plaintiff in 2001 and had nothing to do with the decision to terminate him, which was made more than three years later, her comment is irrelevant even if the plaintiff could prove that she made it. Similarly unavailing are other negative remarks made about the plaintiff in 2003 which, he claims, were overhead by another Coach employee, Dharmendar Singh. These alleged remarks were not made by any of the plaintiff's supervisors or anyone else in a position to determine his employment status. See *Mete v. New York State Off. Of Mental Retardation & Dev. Disabilities*, 21 AD3d 288, 294 (1<sup>st</sup> Dept 2005).

Plaintiff also attempts to create issues of fact by asserting that the defendant's criticisms of his performance were inaccurate, that the defendant lacked an understanding of the degree to which the plaintiff needed training or instruction in order to perform his new tasks and that the assignments given to him were unfair because he had not been given an opportunity to acquire the knowledge needed to successfully complete them. However, plaintiff does not dispute the fact that the defendant provided him with easier assignments to help him adapt and that he received extra time to complete the assignments but was unable to do so. Moreover, even if plaintiff were able to raise an issue of fact as to whether his performance was deficient, he has nevertheless failed to produce evidence which even suggests that the defendant was not, in fact, genuinely unhappy with his performance and his inability to learn and/or utilize the new programming languages. *See Cameron v. Community Aid for Retarded Children Inc.*, 335 F3d 60, 65 (2<sup>nd</sup> Cir. 2003). The court is therefore persuaded that there is no merit to the plaintiff's age discrimination claims and that the third and fourth causes of action must therefore be dismissed.

As to the first and second causes of action, to establish a prima facie case for retaliation, a plaintiff must demonstrate that (1) he was engaged in protected activity, (2) the employer was aware of that activity, (3) he suffered an adverse employment action such as termination and (4) there was a causal connection between the protected activity and the adverse employment action. *See Torge v. New York Society for the Deaf*, 270 AD2d 153 (1<sup>st</sup> Dept 2000); *Distasio v. Perkin Elmer Corporation*, 157 F3d 55, 66 (2<sup>nd</sup> Cir 1998). If the plaintiff establishes a prima facie case of retaliation, the defendant must then provide, through rebuttal evidence, a "legitimate, independent, nondiscriminatory reason" for its actions. *Sogg v American Airlines, Inc.*, 193 AD2d 153, 156 (1<sup>st</sup> Dept 1993). *See also Tomka v. Seiler Corp.*, 66 F3d 1295, 1308 (2<sup>nd</sup> Cir 1995); *Salerno v. City Univ. of New York*, 2003 WL 22170609, \* 9 (SDNY). Upon the submission of such evidence, the burden shifts to the plaintiff, who must then prove, by a preponderance of the evidence, that defendant's stated reasons for its actions are only a pretext. *See Tomka v. Seiler Corp.*, 66 F3d at 1308. *See also Ferrante v American Lung Assn.*, 90 NY2d at 630. Here, the plaintiff has failed to submit any evidence which suggests that he was terminated in retaliation for his complaints of discrimination. Indeed, the defendant's well documented dissatisfaction with the plaintiff's job performance began well before the plaintiff first complained, in March, 2004, of age discrimination. Moreover, it is undisputed that the plaintiff was not fired until May 9, 2006, after he had failed to complete a particular project on time. Since, as already discussed, the plaintiff has not offered any evidence which suggests that the defendant's stated reasons for discharging him were untruthful or pretextual, the first and second causes of action must also be dismissed.

Accordingly, the defendant's motion for summary judgment is granted and the complaint is hereby dismissed in its entirety.

The Clerk Shall Enter Judgment Herein

**FILED**

FEB 19 2008

*MGD*

Dated: 2-14-08

NEW YORK COUNTY CLERK'S OFFICE MARYLIN G. DIAMOND, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

*MGD*

**MARYLIN G. DIAMOND**