

<b>Doulis v Research Found. of the City Univ. of New York</b>
2008 NY Slip Op 32848(U)
October 14, 2008
Supreme Court, New York County
Docket Number: 105855/07
Judge: Emily Jane Goodman
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts ( <a href="http://www.nycourts.gov/ecourts">http://www.nycourts.gov/ecourts</a> ) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: **EMILY JANE GOODMAN**

PART 17

Justice

Index Number : 105855/2007

**DOULIS, ANA**

vs.

**RESEARCH FOUNDATION**

SEQUENCE NUMBER : # 003

DISMISS

INDEX NO. 105855-07

MOTION DATE

MOTION SEQ. NO. #003

MOTION CAL. NO.

\_\_\_\_\_ 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 *is decided for*

*affirmed*

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

**FILED**  
OCT 20 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 10/14/08

*[Signature]*  
**EMILY JANE GOODMAN** /SC

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 17

-----X

ANA DOULIS,

Plaintiff,

Index No. 105855/07

-against-

RESEARCH FOUNDATION OF THE CITY UNIVERSITY  
OF NEW YORK, CITY UNIVERSITY OF NEW YORK  
and LINDA ROMA,

Defendants.

**FILED**  
OCT 20 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

-----X

Emily Jane Goodman, J.S.C.:

Plaintiff Ana Doulis, a heterosexual, alleges that she was subject to sexual harassment by Defendant Linda Roma, who Doulis claims is a bi-sexual and/or lesbian, while employed by Defendant Research Foundation of the City University of New York (Foundation). In her Amended Verified Complaint, Doulis alleges that she was forced to resign from employment on January 31, 2006 and asserts one cause of action against Defendants based on hostile work environment, in violation of the New York City Human Rights Laws.

Defendant Foundation moves to dismiss the Amended Verified Complaint against it because (1) the alleged hostile conduct was not directed towards Plaintiff, was not made about Plaintiff, and was not made in Plaintiff's presence, (2) the conduct was not sufficiently severe or pervasive, (3) the absence of any facts suggesting that the conduct was motivated by discriminatory

animus towards Plaintiff because she is a heterosexual, (4) the absence of any allegation that Foundation approved or condoned the conduct.<sup>1</sup>

Plaintiff opposes the motion. In an unpersuasive attempt to address Foundation's argument that the specific instances of hostile conduct alleged in the Verified Amended Complaint were not experienced by Plaintiff, but by other employees, Plaintiff references Plaintiff's Verification of the Amended Verified Complaint and submits an attorney's affirmation. In response to Foundation's argument that the Amended Verified Complaint should be dismissed because of the absence of facts suggesting that the alleged conduct was motivated by discriminatory animus, Plaintiff merely references the conclusory statements in the Amended Verified Complaint. Plaintiff also states that Foundation's argument, that the Amended Verified Complaint does not state a claim because it is supported by bare bones legal conclusions, is incorrect because Plaintiff properly pled a claim for hostile work environment. Plaintiff also notes that discovery has not yet been conducted but fails to explain why discovery is necessary, especially given that Plaintiff knows what conduct was directed towards her.

---

<sup>1</sup>Apparently the firm making this motion does not also represent Linda Roma, who did not join in this motion.

**Discussion**

On a motion for dismissal pursuant to CPLR 3211 (a) (7), the pleading must be "afforded a liberal construction" (Arnav Indus., Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner, L.L.P., 96 NY2d 300, 303 [2001]). On such a motion the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (id. [citation omitted]; see also Goldman v Metropolitan Life Ins. Co., 5 NY3d 561 [2005]).

New York City Human Rights Law prohibits employment discrimination based on sexual orientation, among other categories. It provides that an "employer shall be liable for an unlawful discriminatory practice based on the conduct of an employee . . . where . . . the employer knew of the employee's . . . discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action" (Administrative Code § 8-107 [13] [b] [2]), or, where "the employer should have known of the employee's . . . discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct" (Administrative Code of the City of New York § 8-107 [13] [b] [3]). The standards for recovery under New York City's Human Rights Laws are in accord with federal standards under Title VII of the Civil Rights Act of 1964 (42 USC

§ 2000e et seq.) (see Ferrante v American Lung Assn., 90 NY2d 623, 629 [1997]; Umansky v Masterpiece Intl. Ltd., 276 AD2d 692, 693 [2d Dept 2000]).

The motion by Foundation to dismiss the Amended Verified Complaint against it is granted. For purposes of this motion, the factual allegations are taken as true; however the bare bones legal conclusions are not. The Amended Verified Complaint alleges that "[b]etween the years 2004 and 2005, Ana Doulis was continually berated and demeaned, ridiculed, intimidated, harassed and eventually insulted in front of other workers by Linda Roma based upon the fact that she had a different sexual orientation than Linda Roma." The only specific factual allegations supporting the alleged hostile conduct in the Amended Verified Complaint are lumped together from (a) to (j) immediately after the sentence "Linda Roma's intimidation, harassment, ridicule and insult based on plaintiff's sexual orientation would consist of statements to her **and her co-employees**, virtually on a daily basis, as follows" (emphasis added). Foundation points to deposition testimony taken in a case before Honorable Paul Feinman, where the plaintiff (Pavel Hernandez) is represented by the same counsel that Plaintiff has here. Foundation notes that the deposition testimony indicates that the alleged statements in the Amended Verified Complaint were actually made to other employees.

The court can only conclude that Plaintiff's counsel purposefully drafted the Amended Verified Complaint to lump together conduct directed towards Plaintiff (if any) and conduct directed towards other employees. It is telling that Plaintiff failed to supply a further affidavit to prevent dismissal of her case where the issue was raised by this motion to dismiss. Hostile work environment claims should be dismissed where the conduct was not directed to the plaintiff (see Murray v Versus Visiting Nurse Service of New York, 2007 U.S. Dist. LEXIS 81151, at 58-59 (SDNY Oct 31, 2007)); Wells-Williams v Kingsboro Psychiatric Ctr., 2007 U.S. Dist. LEXIS 23727, at 17-18 (EDNY Mar. 30, 2007). Accordingly, the Verified Amended Complaint is dismissed against Foundation based on Plaintiff's failure to properly pled her claim.

Moreover, a hostile work environment is one which is permeated with discriminatory intimidation, ridicule, and insult which is sufficiently severe or pervasive so as to alter the conditions of a plaintiff's employment and create an abusive work environment (see Harris v Forklift Sys., Inc., 510 US 17, 21 [1993]; McGarvey v Foley, Hickey, Gilbert & O'Reilly, 294 AD2d 226 [1st Dept 2002]). Whether an environment is hostile or abusive can be determined by looking at all the circumstances, including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or

a mere offensive utterance" (Forrest v Jewish Guild for the Blind, 3 NY3d 295, 310 [2004] [internal quotation marks and citation omitted]). The court cannot begin to determine whether the conduct alleged was sufficiently severe or pervasive where it is not even plead that the conduct, even if occurring "daily," was directed towards Plaintiff.

Further, "[a]n employer cannot be held liable for an employee's discriminatory act unless the employer became a party to it by encouraging, condoning, or approving it" (Matter of State Div. of Human Rights v St. Elizabeth's Hosp., 66 NY2d 684, 687 [1985] [internal quotations marks and citation omitted]). "Condonation, which may sufficiently implicate an employer in the discriminatory acts of its employee to constitute a basis for employer liability under the Human Rights Law, contemplates a knowing, after-the-fact forgiveness or acceptance of an offense" (id.); see also Forrest v Jewish Guild for the Blind, supra). Foundation is correct in maintaining that there is an absence of any allegation in the Amended Verified Complaint that Foundation approved or condoned the conduct. In an effort to address this issue, Plaintiff's attorney claims that Linda Roma "was the person in total charge of the RFCUNY programs" and held the "highest job title." Where the harasser is sufficiently elevated within the corporate hierarchy, the harasser's conduct is imputed to the employer, and a showing of acquiescence or condonation

need not be made (see Ellis v Child Dev. Supp. Corp, 5 AD3d 430 [2d Dept 2004]). Where the harasser is a low level supervisor, a plaintiff must establish that upper-level supervisors had knowledge of the conduct and ignored it (see Vitale v Rosina Food Prdts. Inc., 283 AD2d 141 [4th Dept 2001]). In light of the finding that the complaint should be dismissed, there is no need for the court to address whether dismissal should also be granted based on Plaintiff's failure to plead that Foundation approved or condoned the behavior.<sup>2</sup> Nor does the court need to reach Foundation's argument that the Amended Verified Complaint should also be dismissed because of the absence of any facts suggesting that the conduct was motivated by discriminatory animus towards Plaintiff because she is a heterosexual.

Accordingly, it is

ORDERED that the motion is granted and the Clerk of the Court is directed to enter judgment in favor of Defendant Research Foundation of the City University of New York, without costs and disbursements, after severing that Defendant from the action; and it is further

ORDERED, that the action shall continue as to the remaining Defendant Linda Roma.

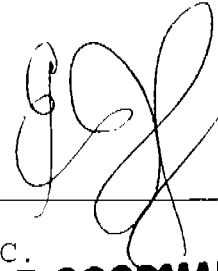
---

<sup>2</sup>The allegation that a employer condoned or approved of hostile conduct may be supported by a complaint which sufficiently alleges a pervasive atmosphere of workplace sexual harassment (see Polidori v. Societe Generale Groupe, 39 AD3d 404 [1st Dept 2007]).

This Constitutes the Decision and Order of the Court.

Dated: October 14, 2008

ENTER:



---

J.S.C.  
**EMILY JANE GOODMAN**

**FILED**  
OCT 20 2008  
COUNTY CLERK'S OFFICE  
NEW YORK