

Vecciarelli-French v King Pharm., Inc.

2008 NY Slip Op 32970(U)

October 30, 2008

Supreme Court, New York County

Docket Number: 100879/08

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 55

Index Number : 100879/2008

INDEX NO. _____

VECCIARELLI, LORETTA

MOTION DATE 6/16/08

vs

KING PHARMACEUTICALS INC

MOTION SEQ. NO. _____

Sequence Number : 001

MOTION CAL. NO. _____

SEVER ACTION

is motion to/for _____

PAPERS NUMBERED

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

1-3

Answering Affidavits -- Exhibits _____

4-9

Replying Affidavits _____

Cross-Motion: Yes No

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

N.B. -- T's are directed to prepare separate complaints for each T in accordance with the second to last decretal paragraph.

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

Dated: 10/20/08

FILED
NOV 03 2008
COUNTY CLERK'S OFFICE
NEW YORK
JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

-----X

LORETTA VECCIARELLI-FRENCH,
MERRILL GREEN, JUDITH BAILEY,
JEFFREY STROSBURG and
DWAYNE ROBERTS,

Plaintiff,

-against-

KING PHARMACEUTICALS, INC.,
ANN VARANAKIS and PAUL
SZCZESNIAK,

Defendants.

-----X

JANE S. SOLOMON, J.

INDEX NO. 100879/08

DECISION AND ORDER

FILED
NOV 03 2008
COUNTY CLERK'S OFFICE
NEW YORK

In an employment discrimination action, Defendants King Pharmaceuticals, Inc. ("King"), Ann Varanakis ("Varanakis") and Paul Szczesniak ("Szczesniak") move to sever the claims of Plaintiffs Loretta Vecciarelli ("Vocciarelli"), Merrill Green ("Green"), Judith Bailey ("Bailey"), Jeffrey Strosberg ("Strosberg") and Dwayne Roberts ("Roberts") into five separate lawsuits pursuant to CPLR §§ 603 and 1002. The motion is granted for the reasons below.

Facts

Plaintiff Vecciarelli is a forty-eight year old woman who resides in New York. Vecciarelli has been employed by Defendant King since about November 1998 and worked as a sales representative for Rockland and Westchester Counties. She alleges that over the course of her employment with King she has been repeatedly subject to sexual harassment by King's employees,

including an incident on May 1, 2007, at White Plains Hospital, where defendant Varanakis allegedly groped Vecciarelli. She alleges that defendant Szczesniak maintained a "lengthy, systematic and abusive course of discriminatory conduct" against her; and that after complaining to upper management of this conduct she was retaliated against and passed over for promotions. She claims that due to the humiliating conduct of King's employees, she was compelled to go on disability leave, which resulted in her termination in October 2007. Vecciarelli complains that she is the victim of gender, age and disability discrimination; that she sustained an assault and battery by Varanakis; and that she suffered the intentional infliction of emotional distress by all defendants.

Plaintiff Green is a fifty-four year old woman who resides in New York. Green has been employed by King since about October 2004 and worked as a sales representative for Dutchess, Orange, Putnam, Ulster, and Westchester Counties. Green alleges that she has been repeatedly subject to verbal abuse by King's management, including an incident in March 2005 where Varanakis called Green a liar and belittled her, and an incident in September 2006, when Szczesniak accused Green of falsifying documents and of violating company policy. She says that due to the humiliating conduct of King's employees, she suffered a disability and was terminated after going on disability leave. Green alleges that she is the victim of age and disability

discrimination, and of intentional infliction of emotional distress.

Plaintiff Bailey is a forty-eight year old African-Jamaican woman who resides in New York. Bailey has been employed by King since November 1998 and worked as a sales representative for Suffolk County. Bailey alleges she has been subject to racial discrimination by King's employees, was denied a promotion which was then granted to a less qualified Caucasian co-worker, and that she was denied a new position in her territory, which was then given to a less experienced male Caucasian co-worker. She claims that due to the humiliating conduct of King's employees against her, she was compelled to go on disability leave, which resulted in her termination. She alleges that she is the victim of racial, gender, age and disability discrimination, and suffered intentional infliction of emotional distress.

Plaintiff Strosberg is a fifty-five year old Jewish male who resides in New York. Strosberg has been employed by King since about February 2004, worked as a sales representative for Albany, Delaware, Montgomery, Osage, Saratoga, Schenectady and Schoharie Counties. Strosberg alleges that he has been repeatedly subject to religious discrimination by King's employees; that Szczesniak would not allow him to take time off for the Jewish High Holidays; that he was told that he must request leave for religious holidays one year in advance; and

that other accommodations for his religious practices were denied or coupled with improper pre-conditions. Strosberg also claims that he was denied a promotion that went to a younger, less experienced candidate, and that he was fired and replaced by a younger employee. He alleges that he is the victim of age, disability and religious discrimination, and of intentional infliction of emotional distress.

Plaintiff Roberts is an African-American man who resides in New York. Roberts has been employed by King since about 2003 and worked as a sales representative for Fairfield County, Connecticut and Westchester County. Roberts alleges that as a result of stress from personal problems, he went on disability leave, as a result of which he was fired in about September 2007. He alleges that he is the victim of age, racial and disability discrimination, and of intentional infliction of emotional distress.

Discussion

Under CPLR § 603, the court may sever claims in furtherance of convenience or to avoid prejudice. It is at the discretion of the court to grant or deny a motion to sever. Rosenbaum v. Dane & Murphy, Inc., 87 A.D.2d 527 (2d Dept. 1993). The court may order severance if a trial of all claims before the same jury will prejudice a defendant. See Soule v. Norton, 299 A.D.2d 827, 828 (4th Dept. 2002).

When evaluating a motion to sever in an employment discrimination action in which multiple plaintiff-employees join together, courts have examined (1) the nature of the discrimination against plaintiffs, (2) whether plaintiffs worked in the same department, (3) whether plaintiffs have the same supervisors, (4) the dates that plaintiffs were terminated, and (5) the resultant damage alleged by each plaintiff. Hickson v. Mt. Sinai Medical Center, 87 A.D.2d 527 (1st Dept. 1982). Here, Plaintiffs assert a variety of types of discrimination, including discrimination based on race, gender, age, disability, and religion, as well as claims for infliction of emotional distress. In addition, Vecciarelli has a claim for assault and battery against Varanakis. The claims against King arise from different conduct, arising at different times with different individuals allegedly acting on behalf of King. Plaintiffs were all sales representatives, but for different counties and under different district managers. There also are claims against Varanakis and Szczesniak in their individual capacities that are particular to some plaintiffs but not others.

The diverse circumstances surrounding Plaintiffs' individual allegations of discrimination "could only confuse the issues and delay the trial and disposition of plaintiffs' causes of action." Hickson v. Mt. Sinai Medical Center, supra. Accordingly, it hereby is

ORDERED that defendants' motion is granted; and it further is

ORDERED that plaintiffs' counsel shall bring a complaint for each plaintiff to the compliance conference scheduled for November 17, 2008, and provide a copy to defendants' counsel for receipt at least one business day in advance; and it further is

ORDERED that implementation of the severance shall abide further order.

Dated: October 30, 2008

ENTER:



JANE S. SOLOMON
U.S.C.

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