

Dallas v Gala Resources, LLC

2009 NY Slip Op 30079(U)

January 9, 2009

Supreme Court, New York County

Docket Number: 111363/05

Judge: Jane S. Solomon

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

PRESENT: Hon. JANE S. SOLOMON PART 55
Justice

DEBBIE DALLAS and DEX SERVICES, LLC,
Plaintiffs,

INDEX NO 111363/05

-against-

MOTION DATE

GALA RESOURCES, LLC, et al.
Defendants.

MOTION SEQ. NO. 006

MOTION CAL. NO.

The following papers, numbered 1-3 were read on this motion to/for summary judgment.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-3
Answering Affidavits — Exhibits _____	4-6
Replying Affidavits _____	0

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance

with the annexed Decision and Order.

FILED
JAN 15 2009
CLERK OF COURT'S OFFICE
NEW YORK COUNTY

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JAN 13 2009
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CP/S

J.S.C.

Dated: 1-9-09

[Signature]

J.S.C.

JANE S. SOLOMON
J.S.C.

Check one: FINAL DISPOSITION
Check if appropriate: DO NOT POST

NON-FINAL DISPOSITION
 REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE
DATED:

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

-----X
DEBBIE DALLAS and DEX SERVICES, LLC,

Plaintiffs,

INDEX NO. 111363/05

-against-

GALA RESOURCES, LLC, ALAN HABERMAN
personally, AARON ZIEGELMAN
personally, RAPHAEL COHEN personally,
CARNEGIE CAPITAL CORPORATION, LINDA
FUNDING, LLC, BENJAMIN FUNDING CORP.,
CLAUDIA FUNDING CORP., MILLPOND
FUNDING, LLC, JOHN DOES 1-20, and
ABC CORP. 1-20,

DECISION AND ORDER

Defendants.

-----X

JANE S. SOLOMON, J.:

Plaintiff Debbie Dallas ("Plaintiff" or "Dallas") worked as a telemarketer for defendant Gala Resources, LLC ("Gala"), a mortgage brokerage firm, for approximately ten months. Defendants Alan Haberman and Aaron Ziegelman managed Gala's operations during Dallas's tenure at the company. Dallas left Gala and, with a partner, formed a new mortgage brokerage company named Dex Services, LLC ("Dex"). Dallas and Dex commenced suit against defendants, alleging that defendants discouraged prospective clients from doing business with Dex.

Plaintiffs asserted four causes of action in the original complaint: injurious falsehood (first cause of action); tortious interference with prospective economic relations (second cause of action); defamation (third cause of action); and prima facie tort (fourth cause of action). Plaintiffs amended their complaint to allege an antitrust

* 3]

claim (fifth cause of action). Thereafter, Plaintiffs further amended the complaint to add a sexual harassment claim under a hostile work environment theory (sixth cause of action). In April 2008, the parties stipulated to dismiss the first, second, fourth, and fifth causes of action. In August 2008, defendants moved for summary judgment to dismiss the third and sixth causes of action. During the pendency of the motion, the parties stipulated to dismiss the third cause of action, leaving the sixth cause of action as the only remaining claim. Defendants' motion for summary judgment on the sixth cause of action is granted.

With respect to the hostile work environment claim, Dallas alleges that Haberman made certain references to the adult movie entitled "Debbie Does Dallas" when he spoke to her. In a deposition, Dallas testified that Haberman would address her by using the name of the movie title, "but that could be sometimes not for weeks." (4/1/08 Deposition of Debra Ann Dallas ("Dallas Dep."), Ex. A to 8/22/08 Affirmation Of Steven Weiner ("Weiner Aff."), at 30:19-23.)

In addition, Dallas recalled a few other sexual comments that were directed at her. First, Dallas testified that, after complementing Haberman on his tie, Haberman responded by saying, "Oh, you like my tie? That means you like my underwear." (Dallas Dep. at 34:17-23.) After Haberman made this comment, Dallas testified that he "acted like he was going to" show her his underwear, but did not do so. (Dallas Dep. at 36:11-12.) Second, Dallas recalled that Ziegelman had stated that she was not invited to lunch one day because her "boobs were too small." (Dallas Dep. at 53:13-17.) Lastly, Dallas recalled a remark made by another Gala worker that men who

were speaking to Dallas over the phone about loans were masturbating, but would never actually give her a loan. (9/26/2007 Deposition of Debra Ann Dallas, Ex. A to 8/22/08 Weiner Aff., at 105:22-25; 106:1-8.)

DISCUSSION

"An actionable hostile work environment exists when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the terms or conditions of employment." *Vitale v. Rosina Food Prods. Inc.*, 283 A.D.2d 141, 143 (4th Dept. 2001) (internal quotation marks omitted). Isolated comments are insufficient to establish a claim for a hostile work environment. *Kaptan v. Danchig*, 19 A.D.3d 456, 458 (2nd Dept. 2005). "[W]hether a work environment is hostile 'can be determined only by considering the totality of the circumstances.'" *Vitale*, 283 A.D.2d at 143 (quoting *Matter of Father Belle Cmty. Ctr. v. New York State Div. of Human Rights*, 221 A.D.2d 44, 51 (4th Dept. 1996)).

Here, while the alleged conduct was certainly boorish and inappropriate, it was not severe or pervasive enough to create liability under a hostile work environment theory. As noted, Dallas testified that Haberman's remarks were infrequent because she did not regularly communicate with him in the office. Moreover, the comments allegedly made by Ziegelman and the other Gala worker were isolated remarks that were not part of a pervasive pattern of sexually harassing behavior.

Accordingly, it hereby is

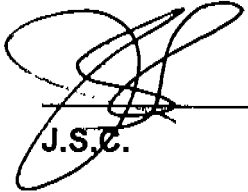
ORDERED that defendants' motion for summary judgment is granted, and the complaint is dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

Dated: January 9, 2009

ENTER:

FILED
JAN 15 2009
COUNTY CLERK'S OFFICE
NEW YORK



J.S.C.
JANE S. SOLOMON
J.S.C.