

Clark v Morelli Ratner P.C.

2009 NY Slip Op 30639(U)

March 18, 2009

Supreme Court, New York County

Docket Number: 105237/08

Judge: Edward H. Lehner

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

PRESENT: EDWARD H. LEHNER
Justice

PART 19

Index Number : 105237/2008
CLARK, CELIA
vs.
MORELLI RATNER PC
SEQUENCE NUMBER : # 001
SUMMARY JUDGMENT

INDEX NO. 105237-08
MOTION DATE _____
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

were read on this motion to/for _____

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

PAPERS NUMBERED

Cross-Motion: Yes No


Upon the foregoing papers, it is ordered that this motion

_____ motion is decided in accordance
with accompanying memorandum decision

FILED
MAR 20 2009
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: MAR 18 2009


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 19

-----X
CELIA CLARK,

Plaintiff,

Index No.
105237/08

- against -

MORELLI RATNER PC., BENEDICT P. MORELLI,
DAVID L. SOBILOFF, and DAVID S. RATNER,

Defendants.

FILED
MAR 20 2009
COUNTY CLERK'S OFFICE
NEW YORK

EDWARD H. LEHNER, J.;

Before the court is a motion by Morelli Ratner PC (the "Law Firm"), Benedict Morelli ("Morelli"), David Sobiloff ("Sobiloff") and David Ratner ("Ratner") for summary judgment dismissing plaintiff's complaint.

Plaintiff's complaint has six causes of action: i) sexual discrimination under New York State Executive Law § 296; ii) retaliation under New York State Executive Law § 296; iii) sexual discrimination under New York City Administrative Code § 8-107; iv) retaliation under New York City Administrative Code § 8-107; v) racial discrimination under New York State Executive Law § 296; and vi) racial discrimination under New York City Administrative Code § 8-107.

Plaintiff alleges: that she was a paralegal working at the Law Firm for ten years (tr. pp. 2-3); that she was terminated by the Law Firm in retaliation for complaining about ongoing sexual harassment by a disgruntled client, Tracy Aveyeung (the

"Former Client") (tr. p. 3, complaint ¶ 22); that plaintiff complained to Morelli and Ratner about these harassing emails and voicemail messages, but they failed to stop this activity (plaintiff affidavit 3, 4, 9, 12); that she worked for Sobiloff for two years (Id., ¶ 17); that she was given an inordinate amount of work (Id., ¶ 18); that she believes she was fired because her salary exceeded that of Sobiloff's other paralegal, who is white (Id., ¶ 20); that Morelli fired her on September 6, 2007 (Id., ¶ 15); and that the basis for her termination was "motivated in part by (plaintiff's) race" (Id. 16).

Defendants contend that: the Former Client was a former client of the Law Firm who settled a personal injury action two to three years before the alleged harassment began (tr. pp. 10-11); that the Former Client made harassing phone calls and emails to many of the Law Firm's employees and attorneys including Morelli (Ratner affidavit, ¶ 10); that the Law Firm took action to stop the harassment (Id., ¶ 12, tr. p. 12); that plaintiff refused to report the harassment to the police and that harassment was ultimately stopped when Morelli and Diane English filed complaints with the police (Ratner affidavit, ¶ 13); that of the Law Firm's paralegals, eight out of fourteen are minorities (Id., ¶ 16); approximately two-third of the staff of 22 are minorities (Id.); that Sobiloff has an "of counsel" relationship and does not have authority to terminate any employee of the Law Firm (Id., ¶ 19, 21); that at the time of her termination plaintiff was the second highest paid paralegal at the Law Firm

(Id., ¶ 27); that during her employment, all the attorneys for whom plaintiff worked complained about her (Id., ¶ 29, Morelli affidavit ¶ 11); that plaintiff had "ongoing issues with controlling her temper, behaving appropriately, working well with her co-workers, reporting to attorneys" (Morelli affidavit, ¶ 14); that plaintiff was fired due to this "inability to get along with her supervisors and co-workers" and she was replaced with a Hispanic woman (Id., ¶¶ 12, 13); that plaintiff was fired for cause and not based upon racial animus (Id., ¶ 45); and that therefore defendants had a legitimate non-discriminatory basis for terminating plaintiff.

“The standards for recovery under section 296 of the Executive Law are in accord with Federal standards under Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.)” [Ferrante v. American Lung Association, 90 NY2d 623, 629 (1997)]. See also, McGrath v. Toys “R” Us, Inc., 3 NY3d 421, 429 (2004). Similarly “in determining employment discrimination claims under the New York City Human Rights Law, federal standards are applied” [Shah v. Wilco Systems, Inc., 27 AD3d 169, 176 (1st Dept. 2005)]. See also, Walsh v. Covenant House, 244 AD2d 214 (1st Dept. 1997).

In *Forrest v. Jewish Guild for the Blind*, 3 NY3d 295 (2004), the court summarized the rules in an employment discrimination action as follows (p. 305):

“A plaintiff alleging ... discrimination in employment has the initial burden to establish a prima facie case of discrimination. To meet this burden, plaintiff must show that (1) she is a member of a protected class; (2) she was qualified to hold the position; (3) she was terminated from

employment or suffered another adverse employment action; and (4) the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination. The burden then shifts to the employer to rebut the presumption of discrimination by clearly setting forth, through the introduction of admissible evidence, legitimate, independent, and nondiscriminatory reasons to support its employment decision. In order to nevertheless succeed on her claim, the plaintiff must prove that the legitimate reasons proffered by the defendant were merely a pretext for discrimination by demonstrating both that the stated reasons were false and that discrimination was the real reason.

“To prevail on their summary judgment motion, defendants must demonstrate either plaintiff’s failure to establish every element of intentional discrimination, or, have offered legitimate, nondiscriminatory reasons for their challenged actions, the absence of a material issue of fact as to whether their explanations were pretextual.”

However, although the “presumption shifts the burden of *production* to the defendant, ‘(t)he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff” [St. Mary’s Honor Center v. Hicks, 509 U.S. 502, 507 (1993)] (italics in original). “(P)laintiff is still entitled to prove that the legitimate reasons proffered by defendant were merely a pretext for discrimination ... (by showing) ‘*both* that the reason was false, *and* that discrimination was the real reason.’” (Ferrante v. America Lung Association, *supra* at pp. 629-630)(emphasis in original).

“(T)he duty ... that employers owe to employees who are subject to harassment by outsiders such as customers ... can be no greater than that owed with respect to co-worker harassment (that is,) an employer *is* responsible for acts of ... harassment in the workplace where the employer ... knows or should have known of the conduct,

unless it can show it took immediate and appropriate corrective action" [Quinn v. Green Tree Credit Corporation, 159 F3d 759, 766 (2nd Cir. 1998)](italics in original)+. See also, Murray v. New York University College of Dentistry, 57 F3d 243 (2nd Cir 1995).

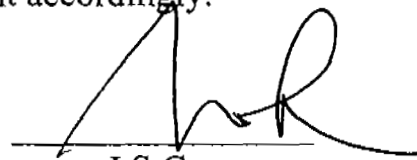
Defendants have presented evidence that they attempted to block the Former Client's phone calls and emails, blocked her access to the Law Firm's office and ultimately reported her conduct to the police (Ratner affidavit, ¶¶ 12-13). While plaintiff alleges that Morelli and Ratner never did anything, she has not raised a material issue of fact disputing the Law Firm's activity blocking the Former Client's emails and phone calls and physical access to its premises, and reporting her to the police. They have therefore shown that they took "immediate and appropriate corrective action" [Quinn v. Green Tree Credit Corporation, supra at p. 766)] [see also, Flower v. Mayfair Joint Venture, 2000 WL 272187 (S.D.N.Y.)], and are therefore not liable for the Former Client's harassing conduct.

Plaintiff has shown an adverse employment activity (her termination), that she is a member of a protected class, that she was qualified for the position and, accepting her statements as true for the purposes of deciding this matter, that she was fired under circumstances giving rise to an inference of discrimination.

However, "inability to get along with co-workers ... (constitutes) a legitimate, nondiscriminatory reason for an employment decision "[Meiri v. Dacon, 759 F2d 989, 997 (2nd Cir. 1985)]. See also, Bynog v. SL Green Realty Corp., 2007 WL 831740

(S.D.N.Y.); Soliman v. Shark, Inc., 2004 WL 1672458 (S.D.N.Y.). Defendants have presented evidence of numerous disputes with plaintiff's co-workers (Morelli affidavit ¶¶ 12, 14, 17-26), inappropriate behavior (Id. 25-27), and insubordination (Id., ¶¶ 28-33), and plaintiff has not raised a material issue of fact controverting this conduct. Defendants have therefore established that plaintiff's firing was based up legitimate non-discriminatory reasons. Hence, defendants' motion to dismiss the complaint is granted, and the Clerk is directed to enter judgment accordingly.

Dated: March 18, 2009



J.S.C.

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