

Lazansky v Robert Lee Morris, Inc.

2009 NY Slip Op 32700(U)

November 10, 2009

Supreme Court, New York County

Docket Number: 100465/07

Judge: Emily Jane Goodman

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

EMILY JANE GOODMAN

PRESENT: _____
Justice

PART 17

Lazansky, C

INDEX NO. 100 465/07

- v -

MOTION DATE _____

Robert Lee Morris

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ 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

THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION

FILED
NOV 18 2009
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/10/09

Emily Jane Goodman
J.S.C.

EMILY JANE GOODMAN

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK I.A.S. PART 17

-----X
CATALINA LAZANSKY,

Plaintiff,

Index No. 100465/07

-against-

ROBERT LEE MORRIS, INC., OLD RLM, INC.,
and RLM ACQUISITION CORP.,

Defendants.

-----X
EMILY JANE GOODMAN, J.S.C.:

FILED
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COUNTY CLERK'S OFFICE

This is a motion to dismiss brought by Robert Lee Morris, Inc., the "successor" (in the plain meaning of the word) to the original named Defendants, Old RLM, INC. and RLM Acquisition Corp., against whom there are default judgments. The motion is opposed by Plaintiff.

Plaintiff Catalina Lazansky (Lazansky), 58, had been employed for seven years by Old RLM INC., jewelry merchants, which changed its name to RLM Acquisition Corp. after the acts complained of and upon a sale of corporate assets to Robert Lee Morris, Inc. Lazansky asserts that in the last of her years with the company, when a new manager was hired, Lazansky, who is Mexican, became the victim of discrimination based on her age, ethnicity, national origin, race, color, disability and/or perceived disability. She brings this action under NYC Human Rights Law Administrative Code §8-107, et. seq.

The motion is based on the theory that Robert Lee Morris, Inc., the latest of the three entities, never employed Plaintiff and that therefore the action cannot stand against it. Movant underscores this with a contract of sale of the assets and liabilities of Old RLM and RLM Acquisition Corp., to Robert Lee Morris, Inc., setting forth that these liabilities, i.e., illegal conduct and employee claims, were explicitly retained by Old RLM, Inc. and/or RLM Acquisition Corp., and not conveyed to Robert Lee Morris, Inc. It appears that Old RLM, Inc., and RLM Acquisition Corp. are devoid of any assets, and are judgment proof, an obvious inference since they never appeared in this action and allowed default judgments to be issued against them. In other words, in a carefully crafted contract of sale, either or both original and defaulting corporations transferred their assets to Robert Lee Morris, Inc. and at the same time intended to relieve it of liability for claims made by employees such as Plaintiff, by virtue of the following clauses defining Retained Liabilities:

(l) [Claims] arising out of events, conduct or conditions existing or occurring prior to the Closing that constitute a violation of or non-compliance with any law, rule or regulation, any judgment, decree or order of any Governmental Authority, or any Permit;

(j) in respect of employees of the Sellers, including without limitation, to pay severance benefits to any employee of the Sellers whose employment is terminated (or treated as terminated) in connection with the consummation of the transactions contemplated by this Agreement, and resulting from the termination of employment of employees of the Sellers prior to the

Closing that arose under any federal or state law or under any Employee Benefit Plan...[irrelevant portions omitted].

The Court notes that New York City law is not included in the above clauses.

Plaintiff argues that Robert Lee Morris, Inc. is a successor liable for predecessor's discriminatory actions. Defendant argues that the old and new corporations cannot be linked for purposes of this litigation, because they are distinct entities; predecessor corporations were not "extinguished"; the new corporation is not a "mere continuation,"; the transaction was not entered into fraudulently to escape liabilities; there was no merger. Kretzmer v. Firesafe Products Corp., 24 AD3d 158, 158, 804 NYS2d 340,341 (First Dep't 2005); Morales v. NYC, 849 NYS2d 406, Schumaker v. Richards Shear, 59 NY2d 239 (1983). Defendant's motion to dismiss is grounded on one theory only: that Robert Lee Morris, Inc. is not a proper party, and that a corporation which merely purchases the assets of another is not liable for the seller's debts and liabilities outside of exceptional circumstances.

The questions, then, are whether the recent transferee is a successor, whether it can be sued for predecessor actions, whether the transfer was in good faith and was a bona fide transaction with respect to the claims herein, and whether the circumstances are exceptional and for that reason, inter alia, the present corporation should not be shielded from the prior acts.

This action is brought under New York City Human Rights law, and not USC Title VII although Plaintiff relies on cases involving Title VII and on federal law as well as New York law. The federal cases cited by Plaintiff, are cases brought under Title VII where a successor corporation has been held liable for violations of labor obligations, upon a showing of a “substantial continuity of identity in the business enterprise before and after the change Forde v Keelox Mfg Co., Inc., 584 F2d 6 (SDNY 1989). The Appellate Division First Department makes clear that New York City law is more expansive than state or federal in the area of discrimination and human rights. “The New York City Human Rights Law is more protective than the state and federal counterparts.” Administrative Code of the City of New York §8-107, Local Laws No. 85. Williams v. NYCHA, 872 NYS2d 27, (2009)

While it may appear that the three RLM corporation have an identity of interests, continuity, and knowledge of history and facts sufficient to require the acts alleged by Ms. Lazansky to be defended by Robert Lee Morris, Inc., Plaintiff is not in possession of the facts controlled by Defendant to fully oppose the motion and should be allowed to proceed with discovery CPLR 3211(d); 3212(f).

Accordingly, it is

ORDERED that the motion to dismiss is denied; and it is further

ORDERED that the parties contact Andrea Field. Esq. at Afield@courts.state.ny.us to arrange a conference and discovery schedule.

This constitutes the Decision and Order of the Court.

Dated: November 10 , 2009

ENTER:



J.S.C.
EMILY JANE GOODMAN

FILED
NOV 18 2009
NEW YORK
COUNTY CLERK'S OFFICE