

Slowik v Plumbers Local Union 200
2011 NY Slip Op 32201(U)
July 29, 2011
Supreme Court, Nassau County
Docket Number: 8810/08
Judge: Thomas P. Phelan
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SCAN

SHORT FORM ORDER**SUPREME COURT - STATE OF NEW YORK****Present:****HON. THOMAS P. PHELAN,****Justice.**

KAREN SLOWIK and JENNIFER NELSON,

Plaintiffs,

-against-

PLUMBERS LOCAL UNION 200 and FRANK
PELLEGRINO, as aider and abettor,Defendants.

TRIAL/IAS, PART 2
NASSAU COUNTY

ORIGINAL RETURN DATE: 05/25/11

SUBMISSION DATE: 06/22/11

Index No. 8810/08

MOTION SEQUENCE #4

The following papers read on this motion:

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Motion by defendants for an order pursuant to CPLR 3212(e) granting them partial summary judgment on the second, fourth, sixth and eighth causes of action alleging retaliation by Plumbers Local Union 200 (the "Union") and Frank Pellegrino ("Pellegrino") is denied.

The Union is a labor organization with its principal place of business located at 2123 5th Avenue, Ronkonkoma, New York. Prior to September 2004, the Union's office was located in Mineola, New York.

Pellegrino has been associated with the Union since 1976. He was a working plumber for approximately 19 years before he was elected to various officer positions with the Union. In March 2003, Pellegrino was appointed Business Manager by the Union's Executive Board when the Business Manager, Ed Bell, retired. Thereafter, Pellegrino was re-elected for three-year terms in June 2004 and June 2007. As Business Manager, Pellegrino was responsible for overseeing the operations of the Union, managing the Union's office, supervising three field representatives and negotiating and enforcing the Union's collective bargaining agreement.

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Plaintiff, Karen Slowik ("Slowik") was employed full-time by the Union for approximately 20 years beginning on January 26, 1986. Initially, Slowik was a secretary in the Union office. In 1996, her responsibilities increased, and by June 1997, she was the Office Manager. As Office Manager, Slowik was privy to the Union's confidential business information, including financial information, strategy discussions and other private and confidential information concerning the Union and its members. On December 29, 2005, Karen Slowik was terminated when the Union learned that she was dating a Union contractor named John Bias ("Bias"). The Union had been investigating Bias since October 2005. Mr. Bias was eventually arrested for grand larceny and as part of a plea agreement, Bias agreed to make restitution to the Union in the amount of \$273,000 in unpaid work assessments and fringe benefits (Pellegrino Aff. ¶ 25). The Union has an unwritten policy against employees of the Union dating contractors because of the potential conflict of interest.

Plaintiff, Jennifer Nelson ("Nelson") began working full-time for the Union as a secretary in June 1997. When she returned from maternity leave after the birth of her first child in July 2000, she started working part-time three days a week. In July 2002, Nelson left the Union for the birth of her second child. Ed Bell had told Nelson that he was making some changes to the office and that he did not need her to return to work. In February 2003, Pellegrino asked Nelson to work part-time two days a week, which Nelson did in July 2003. Nelson, Slowik and Susan English ("English"), another secretarial employee, were all laid-off in November 2005 when the office closed for approximately six weeks for renovations. In December 2005, Slowik and English returned to work but Nelson did not as her part-time position was allegedly eliminated by the Union. The Union has not employed any part-time employees since that time.

Plaintiffs allege that they were sexually harassed and retaliated against by defendants and ultimately discharged in violation of the law. Plaintiffs further allege that Pellegrino was the highest ranking member level officer at the Union and they were forced to go to an attorney in order to seek relief and put an end to the years of harassment (¶ 72 of Complaint).

On or about October 18, 2005, plaintiffs' attorney sent a letter to Local 200 discussing their claims of sexual harassment, listing various incidents. After receiving the letter, Local 200 produced a "Code of Conduct." The sexual harassment policy at Plumbers Local Union 200 states that any complaints of harassment should be reported to the Business Manager who will investigate the allegations.

On October 24, 2005, the heat was shut off in the office. The heat was turned on two days later when plaintiff Slowik informed defendant Pellegrino that she would call their attorney if forced to work without heat any longer.

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On November 3, 2005, defendant Pellegrino closed the office for renovations. He initially informed plaintiffs Slowik and Nelson that the office would be closed for two to three weeks. The office, however, was closed for five weeks. After the renovations, everyone else but Nelson returned to work.

During this time, Slowik also received the "Employee Handbook," along with a letter stating that the acknowledgment form had to be signed by December 9, 2005.

Following the complaints of sexual harassment, defendant Pellegrino greatly reduced Slowik's responsibilities. He informed her that she would no longer handle payroll, payment of the bills or the bank transfers.

Slowik's schedule was changed from Monday to Thursday, 8:00 a.m. to 4:30 p.m., with a one-hour lunch, to 9:00 a.m. to 4:30 p.m., Monday to Friday, with one-half hour for lunch. Her personal days were withdrawn, her holiday pay restricted and for the first time in nineteen years, she did not receive a Christmas bonus.

On or about December 27, 2005, Pellegrino fired plaintiff Slowik on the grounds that she was dating John Bias, a contractor of Plumbers Local Union 200.

Initially, we note that defendants are not moving for summary judgment with respect to plaintiffs' sexual harassment claims as the material facts relating to those claims are in dispute. Defendants are moving for partial summary judgment on the retaliation causes of action.

Furthermore, defendants are not disputing, for the purposes of this motion, that plaintiffs have established the first two prongs of their *prima facie* case, *i.e.*, defendants are aware that plaintiffs engaged in protected activity on October 18, 2005. In support of their motion, defendants assert that plaintiffs have not established that they suffered any adverse employment actions based on their protected activity or that there is a causal connection between the protected activity and the adverse action. Further, even if the court determines that plaintiffs have established a *prima facie* case of retaliation, defendants argue that they have offered legitimate, non-discriminatory reasons for their actions.

As for Nelson's termination, defendants claim that she was terminated because part-time positions in the office were eliminated and never replaced. English had begun working full-time again around the same time as plaintiffs engaged in their protected activity, or shortly thereafter.

In response, plaintiffs contend, *inter alia*, that defendants' reason for Nelson's termination is a "post-hoc explanation in order to fabricate a legitimate reason" for the timing of her termination. Slowik asserts that defendants' legitimate business reason for terminating Slowik, *i.e.*, she was dating a contractor in violation of the Union's unwritten policy, is not a legitimate business reason since there is no prohibition against dating a contractor in the employee handbook. In response,

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Pellegrino testified that defendants were relying on the "Standard of Conduct" provision of the handbook when they terminated Slowik.

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 (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295 [2004]; see *Ferrante v American Lung Assn.*, 90 NY2d 623, 629 [1997]; *Balsamo v Savin Corporation*, 61 AD3d 622 [2nd Dept. 2009]). 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" (*Forrest v Jewish Guild for the Blind*, *supra*, quoting *Ferrante v American Lung Assn.*, *supra*, (citations omitted)). To succeed on her claim, 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 (*see Id.*).

A defendant seeking summary judgment dismissing a cause of action alleging discrimination must demonstrate "either that, as a matter of law, the plaintiff cannot establish the elements of intentional discrimination, or that the plaintiff cannot raise a triable issue of fact as to whether the facially legitimate, nondiscriminatory reasons proffered by the defendants for their challenged actions were pretextual" (*Considine v Southampton Hospital*, 83 AD3d 883 [2d Dept. 2011]; *Balsamo v Savin Corp.*, *supra*; see *Forest v Jewish Guild for the Blind*, *supra*; *Michno v New York Hosp. Med. Ctr. of Queens*, 71 AD3d 746, 747 [2d Dept. 2010]; *Tardif v Town of Southold*, 56 AD3d 755 [2d Dept. 2008]).

Based upon the record submitted, we find that plaintiffs have not sufficiently demonstrated that defendants engaged in discriminatory tactics when they turned off the heat in the office for a couple of days and closed the office for five weeks instead of the two or three weeks.

As to Nelson, we find that defendants have not established a *prima facie* case for partial summary judgment with respect to Nelson's retaliation claim. An issue of fact exists as to whether defendants offered a legitimate, non-retaliatory reason for Nelson's termination.

Turning to Slowik, Slowik alleges that she "was forced to endure" several "materially adverse conditions" when she returned to work after the lay-off. These included: (1) a change in her work schedule; (2) "diminished" work responsibilities; and (3) elimination of her Christmas bonus.

As noted above, plaintiffs assert that defendants' legitimate business reason for terminating Slowik, *i.e.*, she was dating a contractor who happened to be under investigation for defrauding

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the Union, is not a legitimate business reason because there is no prohibition against dating a contractor in the employee handbook.

It is undisputed that Slowik was terminated two and one-half months after her protected activity and about three months after defendants began investigating Bias for defrauding the Union. Plaintiffs have demonstrated a causal connection between Slowik's termination for dating Bias and her protected activity and have raised a triable issue of fact as to whether their proffered reasons for her termination were merely pretextual.

In view of the foregoing, defendants' motion for partial summary judgment dismissing the second, fourth, sixth and eighth causes of action alleging retaliation is denied.

This decision constitutes the order of the court.

Dated: 7-29-11

HON THOMAS P. PHELAN

THOMAS P. PHELAN
THOMAS P. PHELAN, J.S.C.

Attorneys of Record:

Law Offices of Gregory S. Lisi, P.C.
Attention: Gregory S. Lisi, Esq.
Attorneys for Plaintiffs
55 Front Street, Suite 7
Rockville Centre, NY 11570

The Law Office of Clare M. Sproule
Attention: Clare M. Sproule, Esq.
Attorneys for Defendants
3056 Riverside Drive
Wantagh, New York 11793-4640

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