

Shafer v Morgane Le Fay Inc.

2012 NY Slip Op 32929(U)

December 1, 2012

Sup Ct, New York County

Docket Number: 102148/2011

Judge: Eileen A. Rakower

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 102148/2011
SHAHER, JOHANNA
vs.
MORGANE LE FAY
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

FILED
DEC 11 2012
COUNTY CLERK'S OFFICE
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

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

Dated: 12/10/12



HON. EILEEN A. RAKOWER, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
JOHANNA SHAFER a.k.a. SANDRA SHAFER,

Plaintiff,

- against -

MORGANE LE FAY INC. and LILIANA CASABAL,

Defendants.

Index No.
102148/2011

**DECISION
and ORDER**

Mot. Seq. 01

HON. EILEEN A. RAKOWER

FILED
DEC 11 2012
COURT CLERK'S OFFICE
NEW YORK

Presently before the Court is defendants Morgane Le Fay Inc. and Liliana Casabal's (collectively, "Defendants") motion for summary judgment. Plaintiff Johanna Shafer a.k.a. Sandra Shafer ("Plaintiff") opposes.

On March 16, 2011, Plaintiff, a former employee of Defendants, filed an Amended Complaint against Defendants. The Amended Complaint asserts claims of employment discrimination under the New York City Human Right (Administrative Code of the City of New York, 8-107) (NYCHRL), New York Human Rights Law, §290 (NYHRL), Americans with Disabilities Act (ADA), and ADA/Title VII based on Defendants' failure to promote Plaintiff, failure to provide Plaintiff with a reasonable accommodation, and termination of Plaintiff's employment. The alleged discrimination by Defendants relates to Plaintiff's Major Depressive Disorder, Thyroid disorder and Generalized Anxiety Disorder. Plaintiff claims that she has been treated for these conditions since 2005; the treatment of which continued throughout Plaintiff's employment with Defendants.¹

¹ Plaintiff also brought claims under the Fair Labor and Standards Act and the New York Labor Law for purported wage and hour violations. In her opposition to Defendants' pending motion for summary judgment, Plaintiff has agreed to dismiss these claims.

Casabal is a fashion designer, who owns and runs Morgane Le Fay, Inc., a retail business with two shops in New York and two shops in California. According to the Amended Complaint, in February 2008, Plaintiff worked in a freelance capacity with Defendant Casabal, providing services on a fashion show. On December 15, 2008, Plaintiff was hired by Defendants to manage their marketing communication efforts, which included public relations, advertising and events coordination. Plaintiff asserts that she agreed to a 90 day probationary period and that upon satisfactory completion, she would receive a permanent position for a minimum of one year and a salary increase. Plaintiff states that she completed the 90 day probationary period on March 14, 2009, at which time she was provided a minimal pay increase, and provided a full time position with the Company. She was told that after a business trip a further discussion would be had to determine her annual salary. Plaintiff claims that she received a positive performance evaluation in February 2009 and on May 2, 2009 but no salary raise. On May 5, 2009, Plaintiff states that she attempted to resign "because she was under appreciated and compensated." In response, Casabal e-mailed her and stated that Plaintiff's resignation was not in the "best interest for you (Plaintiff) or for Morgan Le Fay. . . I just want you [Plaintiff] to know that I value you and Love you very much and that I would hate to lose you." Plaintiff did not resign. On May 26, 2009, Plaintiff states that she received her first pay increase, but that her salary was not yet set to the amount she was promised.

Plaintiff alleges that, "On June 11, 2009 the Plaintiff and Defendant had a business meeting" at which "Plaintiff disclosed her disability to the Defendant" and "Defendant stated that she knew all along that there was something 'wrong' with the Plaintiff." Plaintiff alleges that she "requested that Defendant accommodate her disability by allowing her time to take her medication" and that "Defendant stated that she would not accommodate her disability but that the Defendant wanted the Plaintiff to stop taking all medication and instead turn to alternative healing methods." Plaintiff states that she was notified by Defendants on June 15, 2009 that she was being terminated and her last day would be June 24, 2009.

Defendants deny Plaintiff's allegations of discrimination based on disability. Defendants contend that, "While Plaintiff claims that she was discriminated against and owed over time compensation, the record shows that she was working on a part-time temporary basis, refused opportunities to work on a free lance basis, and was not offered a permanent full-time position due to poor performance and financial conditions." Defendants contend that after the parties' return from the California store

opening/business trip in June 2009 and due to Plaintiff's continued poor performance on the trip, Defendant Casabal "made the decision to let Plaintiff go." Defendants assert that they offered Plaintiff an opportunity to work on a freelance basis in a different capacity, which Plaintiff disputes.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-52 [1st Dept. 1989]).

Plaintiff alleges disability discrimination in violation of NYSHRL, NYCHRL and the ADA. 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 N.Y. 3d 295, 305 [2004] (citations omitted)). Once the plaintiff proves a prima facie case, "[t]he 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' (*Id.*). "In order to nevertheless succeed on [his] 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." (*Id.*).

Under both the NYSHRL and the NYCHRL, it is an unlawful discriminatory practice for an employer, because of an individual's disability, to refuse to hire or to discharge such individual, or otherwise to discriminate against such individual in the terms, conditions and privileges of employment." (*Miloscia v. B.R. Guest Holdings*

LLC, 33 Misc. 3d 466 (N.Y. Sup. Ct. 2011) (citing Executive Law 296(1)(a); Admin. Code 8-107(1)(a)).

“To establish a case of disability discrimination, a plaintiff must show that he or she suffers from a disability, and the disability caused the behavior for which he or she was terminated.” *Miloscia*, 33 Misc. 3d at 473 (citations omitted). An employer's failure to provide a reasonable accommodation to an employee's known disability is a form of discrimination under both the NYSHRL and NYCHRL. (*Miloscia*, 33 Misc. 3d at 473).

Here, Plaintiff has established a prima facie case of disability discrimination. She has shown that she suffers from a disability, requested a reasonable accommodation from Defendants, and that Defendants refused to provide the accommodation. While Defendants state that Plaintiff was terminated based on legitimate, non-discriminatory reasons, Plaintiff disputes Defendants' proffered reasons and points to her positive reviews. Accordingly, Plaintiff has raised an issue of fact regarding whether Defendants' proffered reasons for terminating her were pretextual. Defendants' motion for summary judgment as to Plaintiff's claims of disability discrimination is therefore denied.

Defendants also move for summary judgment as to Plaintiff's claims under Title VII. Defendants contend that these claims must be dismissed because Plaintiff does not set forth any allegations of discrimination within her Amended Complaint or her Charge of Discrimination with the EEOC other than those premised on a theory of disability for which Title VII does not apply. Therefore, Defendants contend that the Court should dismiss any claim asserting Title VII violations for failure to state a claim and the failure to exhaust administrative prerequisites. In addition, Defendants contend that although Plaintiff's EEOC Charge of Discrimination indicates “Retaliation” as a basis of discrimination, Plaintiff asserts no facts that show Plaintiff ever engaged in a protected activity during her tenure with the Company. Plaintiff does not oppose this portion of Defendants' motion.

Wherefore it is hereby,

ORDERED that defendants Morgane Le Fay Inc. and Liliana Casabal's motion for summary judgment is granted only to the extent that the fourth, sixth, and seventh causes of action of the Amended Complaint are dismissed without opposition; and it is further

ORDERED that the remainder of the action shall continue.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: 12/10/12


EILEEN A. RAKOWER, J.S.C.

FILED
DEC 11 2012
COUNTY CLERK'S OFFICE
NEW YORK