

Santamaria v City of New York
2013 NY Slip Op 31300(U)
June 12, 2013
Sup Ct, NY County
Docket Number: 155059/2012
Judge: Margaret A. Chan
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN
Justice

PART 52

Index Number : 155059/2012
SANTAMARIA, LINA P
vs
KELLY, RAYMOND W
Sequence Number : 002
DISMISS

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

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

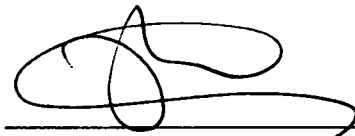
Notice of Motion/Order to Show Cause — Affidavits — Exhibits + memo | No(s). 1-2
Answering Affidavits — Exhibits + memo | No(s). 3, 4, 5
Replying Affidavits _____ | No(s). 6

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

*decided in accordance with the attached
memorandum decision.*

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

Dated: 6/12/13


_____, J.S.C.
HON. MARGARET A. CHAN

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 NEW YORK COUNTY, PART 52**

LINA P. SANTAMARIA,

Plaintiff,

-against-

**CITY OF NEW YORK, RAYMOND W. KELLY as
Police Commissioner of The New York City Police
Department, and LIEUTENANT SELINA RENTAS,**

Defendants.

Index Number:155059/2012

DECISION/ORDER

HON. MARGARET CHAN

Justice, Supreme Court

Plaintiff, a New York City detective, claims that she suffered discriminatory retaliation from a complaint she filed to the Office of Equal Employment Opportunity (OEEEO) of the New York City Police Department on November 6, 2008 against her former supervisor, Lieutenant Selina Rentas. As a result of plaintiff's complaints, Rentas was replaced by Sergeant Bozeman. On August 18, 2009, plaintiff received an unfavorable annual evaluation from Sergeant Dawson. Plaintiff claimed that as Dawson was on maternity leave for most of the evaluation period - from August 2008 to January 2009 - she was not qualified to objectively evaluate her work, thus, her negative findings had to have been influenced by her personal relationship with Rentas. Plaintiff, again, complained to OEEEO regarding Dawson's negative report as being unduly influenced by Rentas. Her allegations were substantiated by the OEEEO on August 26, 2009. She commenced the instant action on July 31, 2012.

A cause of action invoking protections under both the New York State and City Human Rights Laws, Executive Law § 296 *et seq.*, and Administrative Code of the City of New York § 8-107 *et seq.*, respectively, requires plaintiff to assert that she is a member of a protected class, that she was qualified for her position, that she suffered an adverse employment action, and that the adverse action was due to circumstances that could be deemed discriminatory (*see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]). Plaintiff claims that she was discriminated against by Rentas because Rentas was a lesbian, and plaintiff was not. The actions complained of here were Rentas' refusal to grant her time to attend a colleague's funeral in January 2009; unjustifiably sending the Absentee Control to see her when she was out sick from February 2 to February 6, 2009, and issuing an unfavorable Command Discipline report on February 9; and loudly yelling at her.

Defendants as movant for summary judgment have the burden to make a *prima facie* showing of entitlement as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). In order to defeat the motion, plaintiff must establish the existence of a factual issue requiring a trial through the production of admissible evidence (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, *supra* at

560). The Court is required to view the evidence in the light most favorable to the nonmoving party and to give the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). Nonetheless, conclusory and unsubstantiated allegations unsupported by competent evidence are insufficient to defeat a motion for summary judgment (*see Zuckerman v City of New York, supra*). Therefore, the party opposing summary judgment must assemble and lay bare her affirmative proof to demonstrate that genuine triable issues of fact exist (*see Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772 [1st Dept 1983], *affd*, 62 NY2d 686 [1984]).

Defendants argue that plaintiff's claim fails as she has not alleged a cause of action under New York City Human Rights Law (NYCHRL) (NYC Admin Code § 8-107 *et seq.*), and it is also time-barred as the allegations regarding the discriminatory acts by Rentas ended before August 2009 (*see* NYC Admin Code § 8-502(d)). Further, the second unfavorable report, which was issued on August 18, 2009, was made by Dawson, not Rentas. There is no claim of any discriminatory act by Dawson.

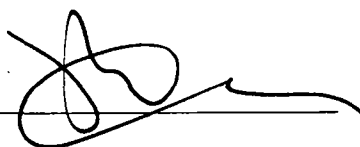
As a threshold issue, it must be determined if plaintiff has a claim under the NYCHRL. An employer is prohibited from retaliating against an employee for opposing discriminatory practices (*see* Executive Law § 296(7); *see Forrest v Jewish Guild for the Blind*, 3 NY3d 295). To sustain such a claim, a plaintiff must show that: (1) she has engaged in a protected activity; (2) the employer was aware that she participated in this activity; (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action (*id.*; *Torge v New York Society for the Deaf*, 270 AD2d 153 [1st Dept 2000]).

Plaintiff argued that her claim has merit because the OEEO substantiated her allegations. However, she did not allege any discriminatory acts based on sexual orientation, nor did she oppose the same, as she does now (*see* Pltf's Aff). She claims that the three transcripts of telephone conversations she had with the OEEO reveals otherwise - that Rentas harassed her because plaintiff refused her sexual advances, or it was because she went to Atlantic City with Rentas' girlfriend, Lisa Scalza (*see* Pltf's Exh C, Transcript of Feb 9, 2009, p18-19). However, a review of the transcripts show that Rentas' acts were, in plaintiff's own words, a result of a "personal vendetta" rather than "gender driven" (Pltf's Exh B, Transcript of Nov. 6, 2008, p13). They, Dawson, Rentas and herself, were all friends at one point in time (*see* Pltf's Exh C, Transcript Feb. 9, 2009, p9). In fact, they were "all so close" that "it did not make sense why [Rentas] would treat [her] this way (Pltf's Exh C, Transcript of Feb. 9, 2009, p17). Plaintiff expressed to OEEO that Rentas acted so because she was angry. Thus, while Rentas' acts can be viewed as harassing, it was not discriminatory based on prohibited biases. As such, plaintiff failed to allege a cause of action under Executive Law § 296.

Accordingly, defendants' motion to dismiss the amended complaint against them is granted and the action is hereby dismissed.

This constitutes the decision and order of the court.

Dated: June 12, 2013

A handwritten signature in black ink, appearing to be 'Margaret A. Chan', written over a horizontal line.

MARGARET A. CHAN

J.S.C.