

Williams v Columbia University

2014 NY Slip Op 30069(U)

January 13, 2014

Supreme Court, New York County

Docket Number: 150638/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: RAKOWER
Justice

PART 15

Index Number : 150638/2013
WILLIAMS, LAURA M.
vs.
COLUMBIA UNIVERSITY
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001

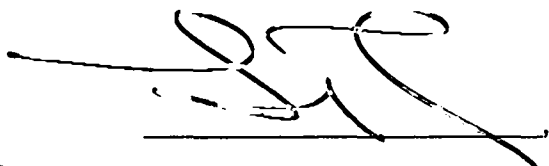
The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). 2 to 6
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is **DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 1/13/14


_____, J.S.C.

HON. EILEEN A. RAKOWER

- 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

LAURA M. WILLIAMS and SUSAN FARLEY,

Plaintiffs,

Index No.
150638/2013

- against -

DECISION

Mot. Seq. 01

COLUMBIA UNIVERSITY incorporated as
THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK, LEE C.
BOLLINGER, CLAUDE STEELE, J. PAUL
MARTIN, HENRY C. PINKHAM, DARICE E.
BIRGE, ROXIE SMITH, FRANCIS M.
SSEKANDI, and STEVEN LAYMON a/k/a
STEVE LAYMON,

Defendants.

-----X

HON. EILEEN A. RAKOWER

This is an action for retaliation based on allegations of sexual harassment, and for breach of contract based on, *inter alia*, Columbia University’s alleged failure to investigate Plaintiffs’ sexual harassment complaints. Plaintiffs Laura M. Williams (“Plaintiff Williams”) and Susan Farley (“Plaintiff Farley”) (collectively, “Plaintiffs”) are former students in the Masters Program at Columbia University’s Graduate School of Arts and Sciences (“GSAS”). Plaintiffs bring this action against Columbia University incorporated as The Trustees of Columbia University in the City of New York (“Columbia University” or “the University”), Lee C.

Bollinger, Claude Steele, J. Paul Martin, Henry C. Pinkham, Darice E. Birge, Roxie Smith, Francis M. Ssekandi, and Steven Laymon a/k/a Steven Laymon.

Plaintiff Williams alleges that she was sexually harassed by her professor, J. Paul Martin (“Professor Martin” or “Defendant Martin”) in 2005, and that she was thereafter retaliated against by Defendants for reporting this sexual harassment to University personnel.

Plaintiff Farley, in turn, alleges that she was sexually harassed by Francis M. Ssekandi, (“Professor Ssekandi” or “Defendant Ssekandi”) in 2002 and 2003, and that Professor Ssekandi and his colleague, Professor Martin, retaliated against Plaintiff Farley for refusing Professor Ssekandi’s sexual advances.

Both Plaintiffs assert causes of action for retaliation under NYSHRL and NYCHRL. Both Plaintiffs also assert breach of contract and breach of implied contract causes of action against the University and the individually named defendants, for failure to comply with the terms of the GSAS Disciplinary Code (“the Code”) in responding to complaints of violations of the Code, and for sexually harassing and supporting the sexual harassment of Plaintiffs, in violation of the Code.

Defendants Columbia University incorporated as The Trustees of Columbia University in the City of New York, Lee C. Bollinger, J. Paul Martin, Henry C. Pinkham, Darice E. Birge, Roxie Smith, Francis M. Ssekandi (collectively, “Defendants”)¹ now move for an Order, pursuant to 3211(a)(2), (5), and (7), dismissing Plaintiffs’ complaint, with prejudice, for lack of subject matter jurisdiction, as barred by the statute of limitations, and for failure to state a cause of action upon which relief may be granted. Plaintiffs oppose.

¹ Moving Defendants state that Claude Steele and Steven Laymon have not been served with the Summons and Complaint. Moving Defendants state that Steele and Laymon are not currently employed by Columbia University and neither authorized Columbia to accept service on their behalf. Moving Defendants further state that reference to Steele and Laymon in their papers do not constitute an appearance on their behalf or any suggestion that they have been properly served.

CPLR §3211 provides, in relevant part:

- (a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
- (2) the court has not jurisdiction of the subject matter of the cause of action; or
- (5) the cause of action may not be maintained because of . . . statute of limitations . . . ; or
- (7) the pleading fails to state a cause of action.

In determining whether dismissal is warranted for failure to state a cause of action, the court must “accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory.” (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91[1st Dept. 2003]) (internal citations omitted) (*see* CPLR §3211[a][7]).

Plaintiff Williams’ Claims

In her Complaint, Williams alleges that Defendants retaliated against her after she complained of sexual harassment by Martin, a Columbia professor. Williams alleges that the University retaliated against her “by changing the requirements for the course [that Williams had taken with Martin] after its completion to justify a biased evaluation” from Dr. Martin in 2006, and continued to retaliate against her in 2006. She alleges that she was not paid wages performed for Professor Barkey as a work-study student in 2006.

Williams further alleges that Dean Birge dropped all of her courses for the Spring 2007 semester on or about December 21, 2006 “without any prior notice or explanation,” placed a hold on her account to prevent her from registering for classes and the delay caused her to register late and incur a fee, advised her that the courses she had taken in the Fall 2006 semester would not count toward her degree, and “forced” her to get a second grader for her thesis paper. Williams also alleges that Columbia “changed the rules and requirements for the M.A. degree”

program by requiring her to take additional credits and that the change in credit requirements and addition of a second reader for her thesis prevented her from graduating in May 2007. Williams further alleges that Dean Pinkham reported her as a “Drop Out Student” to the National Student Clearinghouse, which caused her loans to go into repayment status. Williams alleges that she was permitted to graduate on or about May 21, 2008, but that two months after her graduation, Columbia changed her grade in the independent study course she had taken from a “pass” back to a “fail” on her transcript, and that all records that she graduated in May 2008 have been removed from Columbia’s records.

Williams alleges that on or about December 20, 2009, she met with Provost Steele and complained about the “fail” grade, that Steele agreed to investigate the matter, but later told her he was unable to complete the investigation. Williams alleges that in or about September 2010, Williams spoke to Cassandra Simmons, an Associate Dean in Columbia’s School of International and Public Affairs, who agreed to perform an investigation, but was unable to complete the investigation. Williams alleges that she met with Provost Steele again on April 2, 2011, and told Steele about Williams’ conversations with Dean Simmons.

Defendants move, pursuant to CPLR §3211(a)(2), to dismiss Plaintiff Williams’s claims under the NYSHRL and NYCHRL for lack of subject matter jurisdiction based on Plaintiff Williams’s prior election of remedies.

Williams filed a complaint with the New York State Department of Human Rights (“NYSDHR”), on or about August 9, 2006, against the University and Paul Martin, alleging discrimination and retaliation based upon sex, race/color, and opposition to discrimination and/or retaliation. That complaint including allegations that Plaintiff Williams was sexually harassed by Paul Martin, and that Williams reported Martin’s conduct to Columbia’s Office of Affirmative Action and Discrimination but no action was taken, that Martin withheld her grade for a course she had taken with him until June 15, 2006, when she received a failing grade for the course, and that Williams did not receive payment for 28 hours of work she performed for a sociology professor as a work-study student. On or about July 24, 2007, the NYSDHR issued a Determination and Order After

Investigation finding “no probable cause to believe that respondents have engaged in or are engaging in the unlawful discriminatory practice complained of.”²

N.Y. Exec. Law § 297(9) provides, “[a]ny person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction . . . unless such a person has filed hereunder or with any local commission on human rights . . .”. The N.Y. City Admin. Code § 8-502(a) similarly provides, “any person claiming to be aggrieved by an unlawful discriminatory practice as defined in chapter one of this title or by an act of discriminatory harassment or violence as set forth in chapter six of this title shall have a cause of action in any court of competent jurisdiction . . . unless such person has filed a complaint with the city commission on human rights or with the state division of human rights with respect to such alleged unlawful discriminatory practice or act of discriminatory harassment or violence.”

To the extent that plaintiff Williams’s claims against the Defendants arise

² On November 28, 2011, Williams filed a complaint in federal court in the Southern District of New York in an action entitled, Williams v. Columbia University, bearing the index No. 11-cv-8621. In that action, Williams alleged that the University, Paul Martin, Henry C. Pinkham, Darice Birge and Roxie Smith retaliated against her in violation of Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681, N.Y. Exec. Law § 296 and N.Y.C. Admin. Code § 296 based on the factual allegations asserted in this Complaint. Williams further asserted a claim for breach of contract based upon the alleged failure to follow the disciplinary procedures by the University with respect to the issuance of a failing grade in the directed reading course. On May 18, 2012, in response to Defendants’ motion to dismiss, Williams filed a motion to amend her complaint to add a claim for breach of implied contract. On August 28, 2012, the district court dismissed Williams’s complaint, holding that all of her claims under Title IX regarding actions that occurred before November 28, 2008 were time-barred and that her retaliation claim based upon Steele and Simmons’s alleged failure to investigate in 2009, 2010 and 2011 “fails because she does not allege adverse action.” The federal court declined to exercise jurisdiction over Plaintiff’s state law claims and denied Plaintiff’s motion to amend the complaint to add a claim for breach of implied contract and other factual allegations.

from the same facts and circumstances as alleged in her August 9, 2006 Complaint to the NYSHDR, such claims are barred by her prior election of remedies.

Defendants also move, pursuant to CPLR § 3211(a)(5), to dismiss Plaintiff Williams's claims under the NYSHRL and NYCHRL as outside the three year statute of limitations.

Claims for retaliation under the NYSHRL and NYCHRL are subject to a three-year statute of limitations. CPLR § 214(2); N.Y. City Admin. Code § 8-502(d). To the extent that Plaintiffs' claims for retaliation under the NYSHRL and NYCHRL are based on actions that occurred prior to January 22, 2010, three years before the filing of the Complaint on January 22, 2013, these causes of action are time-barred.

Williams alleges two events that fall within the statute of limitations - Williams' meeting with the then Associate Dean Cassandra Simmons that occurred in September 2010 and a meeting with the then Provost Claude Steele on or about April 2, 2011. She alleges that in both of those meetings, she complained about the University's previous misconduct, including Professor Martin's alleged harassment, the failing mark on the subject course, and that she asked both individuals to investigate the matter, but both stated they were unable to do so. These allegations, however, do not constitute an adverse action under NYSHRL and NYCHRL.

Under both NYSHRL and NYCHRL, it is unlawful to retaliate against an employees for opposing discriminatory practices. (See, Executive Law § 297[7]; Administrative Code § 8-107[7]). In order to make out a claim under NYSHRL, a plaintiff must show that (1) she [he] was engaged in protected activity, (2) her [his] employer was aware that she participated in such activity, (3) she [he] suffered an adverse employment action based upon her [his] activity, and (4) there is a casual connection between the protected activity and the adverse action. (*Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 312-13 [2004]). With respect to the third element of a claim for retaliation and the definition of "adverse employment action," the plaintiff need only show that the challenged action was "harmful to the point that [it] could well dissuade a reasonable worker from making or supporting a charge of discrimination." (*Hicks v. Baines*, 593 F.3d 159, 162 [2010](citations omitted).

The elements of retaliation under the NYCHRL differ from those required under the NYSHRL only in “that the plaintiff need not prove any adverse employment action; instead, he [she] must prove that something happened that would be reasonably likely to deter a person from engaging in protected activity.” *Jimenez v. City of New York*, 605 F. Supp. 2d 485, 528 [2009](citations omitted).

Defendants also argue that Plaintiff Williams’s breach of contract claims based on Columbia University’s issuance of a failing grade, and various other University determinations regarding Williams’s course and thesis requirements are barred. Defendants argue that these claims are time barred because academic determinations regarding the fulfillment of course and degree requirements are subject only to limited judicial review in the context of a special proceeding pursuant to Article 78, and that the four month statute of limitations period for an Article 78 proceeding has long since expired.

Defendants also move, pursuant to CPLR § 3211(a)(7), to dismiss Plaintiff Williams’s breach of contract claims for failure to state a cause of action and as claims that are subject to review in an Article 78 proceeding.

In determining whether dismissal is warranted for failure to state a cause of action, the court must “accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory.” (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91[1st Dept. 2003]) (internal citations omitted) (*see* CPLR §3211[a][7]).

“The elements of a breach of contract claim are formation of a contract between the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage.” (*Flomenbaum v. New York Univ.*, 2009 NY Slip Op 8975, *9 [1st Dept. 2009]).

Williams has failed to state a claim for breach of contract or implied contract. The only contract referenced by Williams is the Student Code of Conduct and Disciplinary Procedures that Plaintiffs argue the University breached; however, Williams has failed to identify any specific contractual terms or promises breached by the University.

Furthermore, to the extent that Williams seeks review of the University's academic decision such as with respect to the issuance of a final grade and its determination of course requirements for graduation, they require highly specialized academic judgment and are subject to review in an Article 78 proceeding and to an arbitrary or capricious standard of review. Those claims, however, are now time barred as beyond the four month statute of limitations for commencing an Article 78 proceeding.

Plaintiff Farley's Claims

Farley alleges that she failed to comply with Professor Sskandi's sexual advances in 2002 and 2003, and Professor Sskandi and Professor Martin retaliated against her. She alleges that on or about October 4, 2004, Farley sent a letter to President Bollinger regarding the sexual harassment and an erroneous charge for a class with Professor Michael Stanislawski that did not take place. Farley alleges that she received an email on November 23, 2004 from the "PAT Task Force" describing who to contact if harassed or assaulted at the University, that she contacted several names, but that no one responded, that she spoke with President Bollinger's chief of staff, Jennifer Dudley Argueta, about the lack of response and was informed that the task force did not exist, that she met with Argueta to discuss the allegations, and that she requested an internal transfer to another human rights department which was denied. Farley alleges that as a result, she decided to leave Columbia before the Fall 2005 semester commenced, and that she thereafter was unable to obtain a transcript due to an outstanding charge on her student account, and that she was not offered a job by someone who knew Professor Martin and had asked her why she left Columbia.

Farley further alleges that on October 5, 2007, the University filed a collection action to recover the unpaid charge on her student account, and that such action is retaliatory and constitutes breach of contract.

As for Farley's claim of retaliation under NYCHRL and NYSHRL, Farley does not allege any adverse action taken against her by Defendants during the statutory period - three years prior to commencement of Farley's litigation; therefore, her claims under the NYSHRL and NYCHRL are dismissed as time-

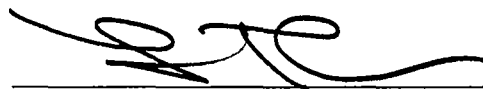
barred. As for Farley's breach of contract and implied contract claims, Farley's claims are also time barred based on the applicable six year statute of limitations and fail to state a claim. Farley alleges that Columbia instituted a collection action against her on October 5, 2007; however, this allegation is insufficient to state a claim. No alleged contractual provision or promise breached by the University is identified.

Wherefore it is hereby,

ORDERED that Defendants' motion to dismiss is granted and Plaintiffs' Complaint against defendants Columbia University incorporated as The Trustees of Columbia University in the City of New York, Lee C. Bollinger, J. Paul Martin, Henry C. Pinkham, Darice E. Birge, Roxie Smith, Francis M. Ssekandi is dismissed and the Clerk shall enter judgment accordingly.

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

DATED: JANUARY 13, 2014

A handwritten signature in black ink, appearing to read 'E. Rakower', written over a horizontal line.

EILEEN A. RAKOWER, J.S.C.