

Sinni v Forest Hills Hosp.

2014 NY Slip Op 32186(U)

July 21, 2014

Sup Ct, Queens County

Docket Number: 703249/12

Judge: Denis J. Butler

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable DENIS J. BUTLER IAS PART 12
Justice

-----x

RUTH SINNI,

Index No.:703249/12

Plaintiff,

Motion Date:
May 16, 2014

-against-

FOREST HILLS HOSPITAL, NORTH SHORE-LONG
ISLAND JEWISH HEALTH SYSTEM, GEETA
NANDALALL, as aider and abettor,

Cal. No.: 107
Seq. No.: 1

Defendants.

-----x

The following papers numbered were read on this motion by defendants for summary judgment to dismiss plaintiff's complaint, pursuant to CPLR §3212.

FILED
JUL 24 2014
COUNTY CLERK
QUEENS COUNTY

	<u>Papers Numbered</u>
Amended Notice of Motion, Affirmation, Affidavits, Memorandum of Law and Exhibits	EF401 and EF12-75
Memorandum of Law In Opposition.....	EF 402
Reply Memorandum of Law.....	EF412

Upon the foregoing papers, it is ordered that this motion is determined as follows:

In this action plaintiff alleges disability discrimination and alleges that defendants violated the New York City Human Rights Law by subjecting plaintiff to unequal terms, conditions and privileges of employment, harassment and retaliatory conduct due to her disability. Defendants moves for summary judgment dismissing the complaint.

To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Di Menna & Sons v. City of New York*, 301 N. Y. 118). This drastic remedy should not be granted where there is any doubt as to the existence of such issues (*Braun v. Carey*, 280 App. Div. 1019), or where the issue is "arguable" (*Barrett v. Jacobs*, 255 N. Y. 520, 522);

"issue-finding, rather than issue-determination, is the key to the procedure" (Esteve v. Avad, 271 App. Div. 725; Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 (N.Y. 1957)).

Defendants contend that plaintiff's complaint should be dismissed on the grounds that 1) the claims were waived pursuant to Labor Law §740(7); 2) the doctrine of collateral estoppel precludes relitigation of the issues raised in a prior action; 3) plaintiff does not have a disability and did not suffer any adverse employment action and therefore cannot establish a prima facie claim for disability discrimination under the New York City Human Rights Law ("NYCHRL"); 4) plaintiff fails to state a viable cause of action for hostile work environment claim; 5) plaintiff cannot establish the prima facie elements of retaliation; and 6) plaintiff cannot establish liability against Geeta Nandalall; Defendants also contend that plaintiff is not entitled to attorneys fees.

Plaintiff is a registered nurse who was formerly employed by defendants. At all times relevant to this action plaintiff worked in the nursery department until she was discharged. In a federal action commenced in the United States District Court, Eastern District of New York (the "Federal Action") against the defendants herein plaintiff alleged violation of the Americans with Disabilities Act ("ADA"), the New York State Human Rights Law ("NYSHRL"), the New York City Human Rights Law ("NYCHRL") and Labor Law §741. In the Federal Action the causes of action based on violation of the ADA and NYSHRL were dismissed on the merits; the causes of action alleging violation of the NYCHRL and Labor Law §741 were dismissed without prejudice. In this action, plaintiff alleges defendant violated the NYCHRL.

In the first branch of the motion defendants seek dismissal of the complaint on the grounds that plaintiff's claims have been waived in accordance with Labor Law §740(7).

Labor Law § 740 (7) contains the Whistleblower Law's "waiver" provision and provides that "Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this section shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law." (See Labor Law §740 (7); Minogue v. Good Samaritan Hosp., 100 A.D.3d 64, 73 (N.Y. App. Div. 2d Dep't 2012)).

Claims premised on Labor Law §741 expressly rely on and incorporate Labor Law §740(4) for purposes of enforcement through a civil action (*Reddington v Staten Is. Univ. Hosp.*, 11 NY3d at 88) and therefore, the institution of a cause of action pursuant to Labor Law §741 waives all other causes of action relating to the alleged retaliatory discharge. (*Kraus v. Brandstetter*, 185 A.D.2d 302 (N.Y. App. Div. 2d Dep't 1992); *Minogue v. Good Samaritan Hosp.*, 100 A.D.3d 64 (N.Y. App. Div. 2d Dep't 2012))

In the Federal action plaintiff alleged a violation of Labor Law §741 which is referred to as the Health Care Whistleblower Law and offers special protection to health care employees who perform health care services (Labor Law § 741(1)(a); see *Reddington v Staten Is. Univ. Hosp.*, 11 NY3d 80, 893 NE2d 120, 862 NYS2d 842 [2008]). Plaintiff's Labor Law §741 was based on the allegations that defendants failed to properly staff the nursery unit and retaliated against her because she objected to and disclosed an activity, policy and practice of defendants that she reasonably believed constituted or resulted in improper quality of patient care.

In the complaint in this action plaintiff sets forth two causes of action. The first cause of action is for disability discrimination/retaliation pursuant to NYCHRL and the second cause of action alleges that defendant Nandall aided and abetted such discrimination in violation of NYCHRL.

The branch of defendants' motion seeking dismissal of the complaint on the grounds that plaintiff's claims have been waived pursuant to Labor Law §740(7) is granted only to the extent of dismissing plaintiff's claims for retaliation based on allegations that defendants did not properly staff the nursery department.

The branch of defendants' motion seeking dismissal of the complaint on the grounds of collateral estoppel must also be denied.

The doctrine of collateral estoppel precludes a party from relitigating "an issue which has previously been decided against him in a proceeding in which he had a fair opportunity to fully litigate the point" (*Gilberg v Barbieri*, 53 NY2d 285, 291; see, *Schwartz v Public Administrator*, 24 NY2d 65, 69). There are two requirements which must be satisfied before the doctrine is invoked. First, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest

the prior determination (*Gilberg v Barbieri*, supra, at p 291; *Schwartz v Public Administrator*, supra, at p 71; *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449, 455-456 (N.Y. 1985))

As previously stated, in the Federal Action plaintiff's causes of action alleging violation of the NYCHRL and Labor Law §741 were dismissed without prejudice and therefore, the issues raised by plaintiff in those claims were not determined. Additionally, the NYCHRL affords protections broader than the NYSHRL (*Romanello v Sanpaolo*, 22 NY 3d 881 [2013]), and therefore, decisions made with respect to plaintiff's NYSHRL claims in the Federal Action are not necessarily dispositive of plaintiff's NYCHRL claims.

Therefore, the branch of the motion to dismiss the complaint based on the doctrine of collateral estoppel is denied.

Defendant further argues that plaintiff did not suffer from a disability and did not suffer any adverse employment action and therefore plaintiff cannot establish disability discrimination.

To establish entitlement to judgment as a matter of law in a case alleging discrimination, the defendants must demonstrate either plaintiff's failure to establish every element of intentional discrimination, or, having offered legitimate, nondiscriminatory reasons for their challenged actions, the absence of a material issue of fact as to whether their explanations were pretextual. (See *Michno v New York Hosp. Med. Ctr. of Queens*, 71 AD3d 746 [2010]; *Apiado v North Shore Univ. Hosp. [At Syosset]*, 66 AD3d 929 [2009]; *DeFrancis v North Shore Plainview Hosp.*, 52 AD3d 562 [2008].)

The defendants established entitlement to judgment as a matter of law by demonstrating that plaintiff was discharged for a legitimate nondiscriminatory reason based on plaintiff's inappropriate behavior that resulted in a series of disciplinary warnings, most of which predated her alleged disability, and which continued subsequent to the accommodation provided by defendants in response to plaintiff's alleged disability. (see generally *Forrest v Jewish Guild for the Blind*, 3 NY3d at 308; *Michno v New York Hosp. Med. Ctr. of Queens*, 71 A.D.3d 746, 747 (N.Y. App. Div. 2d Dep't 2010)). The record is void of any nexus between the disciplinary actions and plaintiff's alleged disability.

The attorney affirmation submitted in opposition to the defendant's prima facie showing that the plaintiff's employment was terminated for legitimate, nondiscriminatory reasons, fails

to raise any triable issues of fact as to whether the reasons proffered by the defendant for terminating the plaintiff's employment were merely pretextual (see *Cesar v. Highland Care Ctr., Inc.*, 37 A.D.3d 393, 394 (N.Y. App. Div. 2d Dep't 2007))

In light of the finding that plaintiff has failed to demonstrate any causal connection between her alleged disability and the incidents relied on to demonstrate discrimination, harassment and retaliation by defendants, plaintiff's claims for discrimination, harassment and retaliation related to her alleged disability are dismissed.

Based on the foregoing, plaintiff's cause of action for aiding and abetting is dismissed and the branch of the motion seeking attorney's fee is also denied as defendants failed to establish frivolous and unreasonable conduct on the part of the plaintiff.

Accordingly, the branch of plaintiff's motion seeking to dismiss the complaint pursuant to Labor Law §740(7) is granted only the extent of dismissing plaintiff's causes of action for retaliation related to allegations of improper staffing. The branch of the motion seeking to dismiss the complaint on the grounds of collateral estoppel is denied. The branches of the motion seeking to dismiss plaintiff's cause of action for disability discrimination and hostile work environment/harassment and retaliation are granted, the branch of the motion seeking to dismiss plaintiff's cause of action for aiding and abetting is granted and the branch of the motion seeking attorney fees is denied.

This constitutes the Decision and Order of the court.

Dated: July 21, 2014



Denis J. Butler, J.S.C.