

Bowen-Hooks v City of New York

2015 NY Slip Op 31000(U)

May 6, 2015

Supreme Court, Queens County

Docket Number: 706014/14

Judge: Kevin J. Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

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Sylvia Bowen-Hooks,

Index
Number: 706014/14

Plaintiff,

- against -

Motion
Date: 4/17/15

The City of New York, David M. Frankel,
Lindsay Eason, Timothy Larose, Oliver
Pu-Folkes, Peter Sammarco and Joseph
Fucito,

Motion
Cal. Number: 25

Defendants.

Motion Seq. No.: 2

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The following papers numbered 1 to 8 read on this motion by defendants to dismiss.

Papers
Numbered

Notice of Motion-Memorandum of Law-Affirmation-Exhibits.	1-4
Affirmation in Opposition-Exhibits.....	5-6
Memorandum of Law in Opposition.....	7
Reply Memorandum of Law.....	8

Upon the foregoing papers it is ordered that the motion is decided as follows:

As a preliminary matter, plaintiff has withdrawn her claims under the New York City Human Rights Law (NYC Admin Code §8-101, et seq.) (CHRL) for age discrimination, failure to promote and discretionary pay. Therefore, those branches of the motion for dismissal of these claims is moot.

Motion by defendants to dismiss plaintiff's remaining causes of action under CHRL alleging race and gender discrimination upon the grounds of res judicata, pursuant to CPLR 3211(a)(5), and for failure to state a cause of action, pursuant to CPLR 3211(a)(7), is granted solely to the extent that plaintiff's claims of race and gender discrimination based upon alleged actions of defendants antedating February 7, 2007 and her claim of unequal pay are dismissed. In all other respects, the motion is denied.

Plaintiff, a lieutenant in the New York City Sheriff's Office, a Division of the New York City Department of Finance, alleges that defendants discriminated against her on the basis of race and gender by creating a hostile work environment, denying overtime pay, denying her equal opportunities for career advancement, stalking, sexual harassment and retaliation.

Plaintiff filed a complaint against defendants in the United States District Court for the Eastern District on December 22, 2010 asserting discrimination claims under Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000 et seq), 42 U.S.C. §§1981 and 1983, the New York State Human Rights Law (NY Exec. Law §290 et seq) (SHRL), the NY Constitution and CHRL. On January 7, 2010, plaintiff filed a complaint with the Equal Employment Opportunity Commission (EEOC), which issued her a right-to-sue letter on November 22, 2010. The District Court, pursuant to its memorandum and order issued on March 31, 2014, granted defendants summary judgment dismissing all of plaintiff's federal and state law claims, but declined to exercise jurisdiction over plaintiff's CHRL claims, which, accordingly, were dismissed without prejudice. Plaintiff thereafter commenced the present action on August 27, 2014.

Defendants move for dismissal of the complaint upon the grounds of statute of limitations, res judicata and failure to state a cause of action. Specifically, defendants' counsel contends in his memorandum in support of the motion that all claims based upon discriminatory actions allegedly occurring on or before February 6, 2007 are time-barred under the three-year statute of limitations applicable to actions brought under CHRL, that the decision of the District Court granting summary judgment to defendants dismissing their discrimination causes of action under Title VII and SHRL had preclusive effect over the present action alleging discrimination under CHRL and that, in any event, plaintiff's age discrimination claim must be dismissed for lack of causation, and that plaintiff's failure to promote, failure to receive discretionary pay and unequal pay claims must be dismissed because they fail to set forth any facts that would state a cause of action. As heretofore noted, plaintiff has withdrawn her claims of age discrimination, failure to promote and failure to receive discretionary pay claims. Therefore, the motion relating to these claims is moot.

The statute of limitations for a claim of discrimination under CHRL is three years from the date of the acts upon which the claim is based, which statute of limitations is tolled during the pendency of any EEOC complaint (see Admin. Code §8-502[d]). As the District Court explained in its order, since plaintiff's EEOC complaint was pending from January 7, 2010 until November 22, 2010,

all claims accruing prior to February 7, 2007 are time-barred. Indeed, plaintiff does not oppose that branch of the motion dismissing as time-barred all claims accruing prior to February 7, 2007.

As to the remaining claims accruing after February 6, 2007, however, they are not subject to dismissal upon the ground of res judicata since the District Court declined to exercise supplemental jurisdiction over plaintiff's discrimination causes of action under CHRL. Since the District Court dismissed plaintiff's claims under CHRL without prejudice, plaintiff was free to re-assert them in the present action.

This Court notes that the District Court dismissed plaintiff's causes of action under Title VII and SHRL because she failed to meet her burden on summary judgment of showing proof to establish that she suffered a materially adverse employment action under those statutes. The District Court's ruling was limited to the Title VII and SHRL claims, not CHRL, which has distinct and significantly broader standards for establishing a discrimination claim. The District Court's determination of plaintiff's discrimination claims under Title VII and SHRL but declination to exercise jurisdiction over plaintiff's claims under CHRL and dismissal of her CHRL claims without prejudice, notwithstanding that these claims are the same claims based upon the same alleged acts as those brought under Title VII and SHRL, clearly indicates that the District Court recognized that a CHRL claim is based upon different standards than are required to establish a claim under Title VII and SHRL. The District Court's dismissal of plaintiff's CHRL claims without prejudice thus, as a matter of law, disposes of defendants' argument that the District Court decision had res judicata effect over the present action.

Moreover, the District Court did not hold that plaintiff's complaint failed to state a claim upon which relief could be granted (the equivalent under NY State law being the failure to state a cause of action). As noted, the District Court action was dismissed for failure of plaintiff to proffer evidence to establish her prima facie case on summary judgment, and only with respect to her Title VII and SHRL claims. With the exception of plaintiff's claim of unequal pay, and not considering her claims alleging age discrimination, failure to promote and failure to be given discretionary pay, which claims have been withdrawn, the complaint adequately states a cause of action under CHRL.

However, the complaint is devoid of any facts to support a cause of action alleging unequal pay. She does not allege that she received lower pay as a lieutenant than other lieutenants. Indeed,

plaintiff's counsel does not oppose that branch of the motion dismissing plaintiff's unequal pay claim and does not even address the issue in opposition.

Accordingly, plaintiff's causes of action based upon a claim of unequal pay, and based upon claims accruing prior to February 7, 2007 are dismissed. In all other respects, the motion is denied.

Dated: May 6, 2015



KEVIN J. KERRIGAN, J.S.C.

FILED

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COUNTY CLERK
QUEENS COUNTY