

Gorokhovsky v New York City Hous. Auth.
2015 NY Slip Op 31477(U)
August 6, 2015
Supreme Court, New York County
Docket Number: 156994/2014
Judge: Cynthia S. Kern
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
LYUDVIG GOROKHOVSKY,

Plaintiff,

-against-

Index No. 156994/2014

DECISION/ORDER

NEW YORK CITY HOUSING AUTHORITY,
EFRAIM DIAZ, JEFFREY OTERO, DAWN
PINNOCK, PAUL VITALE, GISELA PAULINO and
WILLIAM RODRIGUEZ,

Defendants.

-----X
HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff commenced the instant action asserting, among others, claims under the New York City Human Rights Law ("NYCHRL"). Defendants now move for an order pursuant to CPLR § 3211 dismissing plaintiff's complaint in its entirety. Plaintiff cross-moves for an order pursuant to CPLR § 3025 granting him leave to file an amended complaint. For the reasons set forth below, plaintiff's cross-motion is granted and defendants' motion is denied.

The relevant facts and procedural history are as follows. Plaintiff was born in Ukraine on November 1, 1940. He identifies himself as a "white male" of "Russian descent." He has been employed by New York City ("NYC") since 1988 and by defendant the New York City Housing Authority ("NYCHA") since 1992.

In 2002, plaintiff filed his first complaint and lawsuit alleging hostile work environment and failure to promote against NYCHA. In March 2006, summary judgment was granted to defendants and the action was dismissed. Thereafter, in 2010, plaintiff commenced an action in federal court against the same defendants herein alleging that defendants violated the First and Fourteenth Amendments of the United States Constitution, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (“ADEA”), New York State Executive Law § 296 (“NYSHRL”), NYCHL, and Article 1, § 2 of the New York State Constitution and the Lily Ledbetter Fair Pay Act. Plaintiff alleged that based on his national origin and age and in retaliation for his free speech and whistleblowing, he was denied promotions, paid less than others and subjected to a hostile work environment. By order dated May 18, 2011, the district court granted defendants’ motion to dismiss as to all claims, with the exception of plaintiff’s discriminatory pay claim under the ADEA, NYSHRL and NYCHRL. Plaintiff ultimately dismissed the remaining discriminatory pay claims with prejudice and appealed the May 18, 2011 Order dismissing the remainder of his claims. By decision dated January 29, 2014, the Second Circuit affirmed the district court’s order except as to the portion of the decision dismissing plaintiff’s NYCHRL claims. See *Gorokhovskiy v. New York City Housing Auth.*, 552 Fed.Appx. 100 (2d Cir. 2014). Specifically, the court held as follows: “At the pleadings stage and under such a liberal construction, we conclude that Goronkhovsky has stated plausible claims under the NYCHRL for discrimination on the basis of national origin and age; a hostile work environment; and retaliation.” *Id.* at 102. However, the court declined to exercise supplemental jurisdiction and dismissed plaintiff’s NYCHRL claims without prejudice to his pursuing them in state court. *Id.*

Accordingly, plaintiff commenced this state court action to pursue his NYCHRL claims against defendants. Additionally, plaintiff's complaint asserts claims under the New York City Administrative Code § 12-113 and the New York State Labor Law § 215. Defendants now move to dismiss plaintiff's complaint in its entirety. Specifically, defendants move to dismiss plaintiff's claims under the New York Administrative Code and New York State Labor Law on the ground that, *inter alia*, they are barred under the doctrine of *res judicata* as plaintiff failed to assert these claims in the prior federal action. Additionally, defendants contend that plaintiff's complaint fails to sufficiently state a claim under the NYCHRL. In response to the motion to dismiss, plaintiff has cross-moved for leave to file an amended complaint. In his annexed amended complaint, plaintiff has removed his claims under both the New York Administrative Code and New York State Labor Law. Further, plaintiff has added additional allegations pertaining to his NYCHRL claims.

As an initial matter, plaintiff's cross-motion pursuant to CPLR § 3025 for leave to amend his complaint is granted. Pursuant to CPLR § 3025(b), "[m]otions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit." *MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 499-500 (1st Dept 2010) (internal citations omitted). Moreover, on a motion for leave to amend, the movant is not required to establish the merit of the proposed new allegations "but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit." *Id.*

In the present case, plaintiff's motion for leave to amend is granted as there is no prejudice to defendants and the proposed amendments are not palpably insufficient or clearly

devoid of merit. In his amended complaint, plaintiff seeks only to remove claims, which defendants, by their motion to dismiss, conceded should be removed and to insert additional allegations relating to his already plead claims under the NYCHRL. Thus, there clearly can be no prejudice to defendants in allowing the amendments. Further, the proposed additional allegations are not devoid of merit as they simply relate to plaintiff's claims under the NYCHRL for discrimination on the basis of national origin and age; a hostile work environment; and retaliation, which the Second Circuit has already determined were sufficiently plead.

Additionally, based on the foregoing, defendants' motion to dismiss is now moot. However, even if it were not moot, defendants' motion to dismiss plaintiff's remaining claims under the NYCHRL would be denied based on *res judicata* as the Second Circuit has already determined that plaintiff has sufficiently stated claims under the NYCHRL. Indeed, defendants fail to present any argument to the contrary in their reply papers.

Accordingly, plaintiff's cross-motion is granted and defendant's motion is denied. It is hereby

ORDERED that the amended complaint in the form annexed to plaintiff's moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that defendants shall answer the amended complaint or otherwise respond thereto within 20 days from the date of said service. This constitutes the decision and order of the court.

Dated:

8/6/15

Enter: _____


J.S.C.
CYNTHIA S. KERN
J.S.C.