

**Batilo v Mary Manning Walsh Nursing Home Co.,
Inc.**

2015 NY Slip Op 32281(U)

December 1, 2015

Supreme Court, New York County

Docket Number: 152461/2015

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

NELDA M. BATILO,

Plaintiff,

Index No.: 152461/2015

Motion Date: _____

- v -

Motion Seq. No.: 02

MARY MANNING WALSH NURSING HOME CO., INC.,
CONTINUING CARE COMMUNITY OF THE ROMAN
CATHOLIC DIOCESE OF NEW YORK d/b/a
ARCHCARE, ROMAN CATHOLIC DIOCESE OF NEW
YORK,

Motion Cal. No.: _____

Defendants.

The following papers, numbered 1 to 6 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED	
1, 2, 3	_____
4, 5	_____
6	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion to dismiss the complaint against defendant Roman Catholic Diocese of New York pursuant to CPLR 3211 shall be denied.

In this action, plaintiff alleges that defendants, collectively as her employer, unlawfully discriminated against her based on national origin in violation of the New York State Human Rights Law § 296 (NYSHRL) and New York City Human Rights Law § 8-101 (NYCHRL).

Defendant Roman Catholic Diocese of New York (Diocese) moves to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7) on the grounds of a defense based on

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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING

documentary evidence and a failure to state a cause of action.

In her complaint, plaintiff asserts that she is a Filipino, who was employed as a licensed practical nurse by defendants Mary Manning Walsh Nursing Home Co., Inc. (Mary Manning) and Continuing Care Community of the Roman Catholic Diocese of New York d/b/a Archcare” (Archcare), which employers unlawfully terminated her based upon her national origin.

As to defendant Roman Catholic Diocese of New York (Diocese), the complaint alleges that the Diocese “owns and controls Manning Nursing Home and Archcare”, “is an ‘employer’ within the context of NYSHRL and NYCHRL, as it has more than (4) persons in its employ”, and “has control and supervision over the employees assigned to work at the Mary Manning Walsh Nursing Home facility”.

As stated by the Court,

On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (see, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. . . In assessing a motion under CPLR 3211 (a) (7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one.

Leon v Martinez, 84 NY2d 83, 87-88 (1994) (internal citations and quotations omitted).

Defendant Diocese argues that plaintiff has failed to adequately plead that the Diocese had centralized control of labor relations such that it could be held in the aggregate with defendant Mary Manning to be the singular employer of plaintiff for the purpose of the NYSHRL and NYCHRL.

Contrary to defendant Diocese's contention, this court finds that the complaint alleges more than ownership and control of defendant Mary Manning, by adequately alleging that the defendant Diocese possessed "control and supervision over the employees assigned to work at the Mary Manning Walsh Nursing Home.

To the extent that in the alternative, defendant Diocese seeks an order granting it summary judgment pursuant to CPLR 3211 (c), the court declines to so treat this pre-joinder motion. In any event, plaintiff raises an issue of fact whether the defendant Mary Manning and/or defendant Archcare's operations were "sufficiently interrelated" with the Diocese's operations, in terms of "centralized control of labor relations", "common management" and "common management and financial control" so as to constitute a single employer of plaintiff under the NYSHRL and NYCHRL (see In the Matter of Arglyle Realty Associates v New York State Division of Human Rights, 65 AD3d 273, 279 [2d Dept 2009]). Plaintiff does so in its opposition papers that include the certificate of incorporation of Catholic Health Care Network a/k/a Catholic Health Care Systems. That certificate states that the purpose of the Network is "in connection with the [Diocese]" to provide support services and coordination of "Human Resources, including but not limited to the coordination of employee benefits administration, employee relations and personnel policies and procedures". Nor, as argued by plaintiff, does defendant Diocese come forward with any explanation as to the relationship of Catholic Health Care System, which is the sole and exclusive appointing member of Mary Manning, as shown in the certificate of incorporation, appended to its supporting papers, and the Diocese. Nor does such certificate of incorporation answer the "critical question in single entity analysis" of "what

entity made the final decision regarding employment matters related to the person claiming discrimination" (Velez v Novartis Pharm. Corp., 244 FRD 243, 250 [SDNY 2007]).

Accordingly, it is


ORDERED that the motion of defendant Roman Catholic Archdiocese of New York to dismiss the complaint pursuant to CPLR 3211 is denied and it is further

ORDERED that the parties are directed to attend a preliminary conference at IAS Part 59, Room 103, 71 Thomas Street, New York, NY 10013 on January 21, 2016, 10:00 AM.

This is the decision and order of the court.

Dated: December 1, 2015

ENTER:


J.S.C.

DEBRA A. JAMES