

O'Halloran v Metropolitan Transp. Auth.
2016 NY Slip Op 31567(U)
August 17, 2016
Supreme Court, New York County
Docket Number: 160953/2013
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ PART 13
Justice

MARGARET O'HALLORAN
 Plaintiff,

Index No. 160953/2013
 MOTION DATE 07-13-2016
 MOTION SEQ. NO. 001
 MOTION CAL. NO. _____

-against-

METROPOLITAN TRANSPORTATION AUTHORITY,
 NEW YORK CITY TRANSIT AUTHORITY,
 MTA BUS COMPANY, GEORGE MENDUINA, in his
 individual capacity and in his official capacity
 as an agent of MTA Bus Company and
 New York City Transit,
 Defendants.

The following papers, numbered 1 to 8 were read on this motion for leave to amend the pleadings.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	
1-4	_____
5-7	_____
8	_____

Cross-Motion: ☐ Yes ☒ No

Upon a reading of the foregoing cited papers, it is ordered that this motion for leave to amend the Complaint to clarify the allegations, is granted.

Plaintiff commenced this action on November 25, 2013, alleging that the defendants violated the statutory provisions in New York State Human Rights Law and the New York City Human Rights Law prohibiting discrimination based upon gender, disability, and prohibiting retaliation. Issue was joined and the parties have since engaged in discovery.

Plaintiff now moves pursuant to CPLR §3025(b) for an Order allowing her to file and serve an amended complaint to add an additional claim of sexual orientation discrimination predicated on the same statutes and the same allegations as the initial complaint. Plaintiff contends that the relation back doctrine permits the addition of this claim since discovery is not near completion, and allowing an amendment of the complaint would not result in prejudice or surprise to the defendants.

Defendants oppose the motion arguing that the sexual orientation discrimination claim is time barred, and that the relation back doctrine does not apply because the original pleading did not provide defendants with notice of the facts underlying this cause of action. Defendants argue that plaintiff initially filed a complaint in the United States District Court for the Southern District of New York, however no allegations of discrimination based on sexual orientation were asserted. (Aff. In Opp. Exh. E) Further,

after this federal action was withdrawn and recommenced in New York County Supreme Court, the complaint did not allege that the plaintiff was a lesbian or that the defendants' adverse employment actions were motivated by this fact. Defendants further contend that nothing has been uncovered during the discovery process that may have alerted plaintiff to this new cause of action. Particularly, plaintiff never made mention of the fact that she was a lesbian, or that she was discriminated against based on this fact when she was deposed over the course of a day and a half back in March of 2015.

Defendants attach the complaint plaintiff filed with the Transit Authority's Office of Equal Employment Opportunity in August of 2012, alleging that she was discriminated against based on "sex/gender." (Aff. In Opp. Exh. A). Defendants argue that plaintiff had the option on this pre-printed complaint intake form to check the box that indicates "sexual orientation" as a form of discrimination, however this box was not checked. (Id.) Defendants also attach another complaint plaintiff filed with the Transit Authority's Office of Equal Opportunity in January of 2013 in which she alleged retaliation and a failure to accommodate her disability. Once again, there was no indication that plaintiff was alleging sexual orientation discrimination. (Aff. In Opp. Exh. C).

Plaintiff argues that defendants' opposition is misplaced because the amended complaint would only clarify the allegations, and ensure the accuracy of the legal claims reflecting the alleged facts. Plaintiff contends that the facts and circumstances underlying the amendments are unchanged and the amended complaint does not seek to add a new cause of action. Amending the complaint to include a sexual orientation discrimination claim is not based on additional or separate incidents. Further, the close relatedness between sexual orientation and sex/gender satisfies the required notice, and the addition of this sexual orientation claim would result in very little additional discovery, if any.

Leave to amend pleadings pursuant to CPLR 3025(b) should be freely given "absent prejudice or surprise resulting directly from the delay" (Anoun v. City of New York, 85 A.D.3d 694, 926 N.Y.S.2d 98, 99 [1st Dept., 2011] citing to, Fahey v. County of Ontario, 44 N.Y.2d 934, 935, 408 N.Y.S.2d 314, 380 N.E.2d 146 [1978]), "or if the proposed amendment is palpably improper or insufficient as a matter of law" (McGhee v. Odell, 96 A.D.3d 449, 450, 946 N.Y.S.2d 134, 135, [1st Dept., 2012] citing to, Shepherd v. New York City Tr. Auth., 129 A.D.2d 574, 574, 514 N.Y.S.2d 72 [2nd Dept., 1987]). "Prejudice arises when a party incurs a change in position or is hindered in the preparation of its case or has been prevented from taking some measure in support of its position, and these problems might have been avoided had the original pleading contained the proposed amendment" (Valdes v. Marbrose Realty, Inc., 289 A.D.2d 28, 29, 734 N.Y.S.2d 24 [1st Dept., 2001]). A motion to amend pursuant to CPLR 3025(b) is palpably insufficient to add claims that are time barred. (Calamari v. Panos, 131 A.D.3d 1088, 16 N.Y.S.3d 824 [2nd Dept. 2015]).

CPLR 203(f), provides that claims asserted in an amended complaint are “deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.” “Thus, when the nature of a newly asserted cause of action is distinct from the causes of action asserted in the original complaint, and requires different factual allegations as to the underlying conduct than were contained in the original complaint, the new claims will not ‘relate back’ in time to the interposition of the causes of action in the original complaint.” (See Calamari, *Supra*). Where an amended complaint does not “allege any new facts or occurrences, but merely set[s] forth an additional legal theory, the initial pleading provide[s] sufficient notice of the series of occurrences from which the...claims arise.” (Jacobson v. McNeil Consumer & Specialty Pharmaceuticals, 68 A.D.3d 652, 891 N.Y.S.2d 387 [1st Dept. 2009], (a defendant fails to establish prejudice where discovery, including depositions, remain outstanding.) “Moreover, the need for additional discovery does not constitute prejudice sufficient to justify denial of an amendment. (Jacobson, *Supra*, citing Rutz v. Kellum, 144 A.D.2d 1017, 534 N.Y.S.2d 293 [4th Dept. 1988]).

“A party opposing leave to amend must overcome a heavy presumption of validity in favor of [permitting amendment]” (McGhee v. Odell, 96 A.D.3d 449, 450, 946 N.Y.S.2d 134, 135, [1st Dept., 2012] citing to, Otis El. Co. v. 1166 Ave. of Ams. Condominium, 166 A.D.2d 307, 307, 564 N.Y.S.2d 119 [1st Dept. 1990]). Defendants will not suffer any prejudice when an amended complaint adds a claim premised upon the very same subject matter alleged by the original complaint (Brown v. Blennerhasset Corp., 113 A.D.3d 454, 979 N.Y.S.2d 27 [1st Dept., 2014]).

Defendants fail to overcome the heavy presumption of validity in favor of permitting the amendment of the complaint. Defendants will not be prejudiced or surprised from the delay of including the sexual orientation discrimination claim because the facts within the complaint remain the same. There is no change in position or hindrance in the preparation of the defendants’ case based on this inclusion. The amended claims are premised upon the same subject matter alleged in the original complaint.

Accordingly, it is ORDERED that the motion to amend the pleadings is granted, and it is further,

ORDERED, that the pleadings are amended as reflected in the proposed Amended Complaint annexed to plaintiff’s moving papers as Exhibit A, and it is further,

ORDERED, that the pleadings as amended in the proposed Amended Complaint annexed to the plaintiffs’ moving papers as Exhibit A shall be deemed served upon the defendants upon service on their attorneys of a copy of this order with Notice of Entry thereof, and it is further,

ORDERED, that defendants shall serve an answer to the Amended Complaint within 30 days of service, and it is further,

ORDERED that the parties are to appear for a Status Conference at IAS Part 13, located at 71 Thomas Street, Room 210 N.Y., N.Y. on September 28, 2016, at 9:30 AM.

ENTER:

Dated: August 17, 2016



MANUEL J. MENDEZ
MANUEL J. MENDEZ J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE