Toos v Leggiadro Intl., Inc.
2016 NY Slip Op 32653(U)
January 5, 2016
Supreme Court, New York County
Docket Number: 111390/10
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

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AMIR TOOS,

Plaintiff,

-against-

LEGGIADRO INTERNATIONAL, INC. and ANN ROSS,

Defendants.

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DECISION AND ORDER
Index No.:111390/10
Motion Seq. No. 001

KATHRYN E. FREED, J.S.C.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVIT ANNEXED......................	1-2 (Exs. A- B)
MEMORANDA OF LAW..	3-5

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Plaintiff Amir Toos claims that he was subject to sexual harassment and retaliation in violation of the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"). Defendants Leggiadro International, Inc. ("Leggiadro") and Ann Ross ("Ross") (collectively "defendants") move, pre-answer and pursuant to CPLR 3211 (5) and (7), for an order dismissing the complaint.

FILED
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COUNTY CLERK'S OFFICE
NEW YORK

[* 2]

FACTUAL AND PROCEDURAL BACKGROUND:

Prior to being terminated on September 4, 2007, plaintiff was employed by Leggiadro as a production manager. According to defendants, Leggiadro "owns and operates women's retail clothing stores throughout the United States and also designs and manufactures clothing sold in its stores." Defendants' memorandum of law at 1. Ross is the principal owner of Leggiadro.

Plaintiff's first day of employment at Leggiadro was on September 18, 2006. He contends that, from the start of his employment at Leggiadro, Ross flirted with him and engaged in provocative behavior. Among other things, plaintiff describes Ross's alleged conduct at the office between October 2006 and February 2007 as follows:[1]

- Ross would pull her chair very close to plaintiff at his desk and speak to him about personal issues and how her jeans fit. Ross would bend down so that her rear end would be exposed to plaintiff. Complaint, ¶ 10.
- Ross repeatedly referred to plaintiff as cutie pie or lover boy. *Id.*, ¶ 9.
- When plaintiff asked how he compared to the former production director, Ross replied, "I don't know, I did not check her down there." *Id.*, ¶ 12. Plaintiff states that he was embarrassed.

[1] Not all of the incidents/comments are reported in this decision, but the ones here adequately represent what allegedly transpired.

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- Co-workers would comment to plaintiff that they thought Ross wanted to be plaintiff's girlfriend.

- One day after work, Ross walked with plaintiff to the gym and told him about her desire to have a romantic relationship. Ross inquired whether plaintiff's wife would be upset that plaintiff would be missing dinner to go to the gym and stated that she "sure would want to have you at my dinner table." *Id.*, ¶ 14. Ross then offered to cook plaintiff dinner. Plaintiff states that he was uncomfortable about this conversation and about Ross's offer.

- In November 2006, plaintiff and Ross were traveling together for work. While on the flight, Ross told plaintiff that she enjoyed fixing up properties and that she would like to fix up a property with him if he can find one. She told plaintiff about her son and her son's girlfriend and referred to her as a "sex fiend." *Id.*, ¶ 19. Plaintiff claims this made him uncomfortable since he reported to Ross's son. Ross continued to tell plaintiff extensive details about her personal life.

- While on the November 2006 trip, Ross urinated in a parking lot and told plaintiff not to tell anyone. She got "fully made up" for dinner at the hotel with plaintiff and asked for wine "suitable for a special occasion." *Id.*, ¶ 24. When plaintiff did not arrive at dinner in a festive outfit Ross stated, "well, I see you got all dressed up for this special occasion." Ross then told plaintiff that her hotel room was very nice but that it was too bad she did not have a man to share it with.

- While on a trip in January 2007, Ross asked plaintiff who he found attractive. She also asked him if he wore "skivvies." During this same trip the hotel mistakenly only booked one room instead of two. Ross had made all the arrangements but could not show her confirmation. Plaintiff told Ross that he would be sleeping in the lobby for the night unless another room could be found, to which Ross replied, "I wonder what they think this relationship is about." *Id.*, ¶ 28.

Plaintiff claims that Ross's advances culminated in a trip in February 2007, and, as a result of rejecting these advances, Ross's responsibilities were diminished and he was eventually terminated.

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Plaintiff, Ross and Ross's assistant went to Paris in February 2007 for a major fabric show. Plaintiff alleges that, during this trip, Ross invited plaintiff to go shopping with her for underwear and towels. Plaintiff stated that, given the personal nature of the shopping, he did not want to accompany Ross. He told Ross that he would meet her after she was done with her personal shopping so that they could continue to shop for the business. Ross told plaintiff to have lunch by himself and did not call plaintiff.

During the same trip, while trying on clothes in a boutique, Ross walked out of the fitting room with a pair of pants and no top. When plaintiff suggested that she put on one of the tops she replied, "but wouldn't you want to see how these pants fit?" *Id.*, ¶ 33.

The next day, during a visit to a fabric mill, one of the employees commented to plaintiff, "it's nice to meet your new designer," to which Ross replied, "he is not our designer but he thinks he is." *Id.*, ¶ 34. Plaintiff states that he was upset by this insult and told Ross that he would not be having dinner with her and her assistant that evening.

The next day, plaintiff alleges that Ross scheduled a non-business excursion to Antwerp for plaintiff, Ross and her assistant. Plaintiff stated that he did not wish to go to Antwerp. Upon hearing this, Ross stated "but I have arranged this specially for you." *Id.*, ¶ 35. Plaintiff saw that Ross was upset and wrote

her a note on hotel stationary, asking her to call him that evening. However, Ross did not call plaintiff and, among other things, asked him to move to the front seat while on the taxi ride to the airport and did not speak to him for the remainder of the trip to New York.

Upon their return to New York, plaintiff allegedly told Ross "that he was sorry about perhaps overreacting, but the way she treated him was insensitive and offensive." *Id.*, ¶ 38. Ross allegedly replied, "you do not know much about me. You are to find out that I always get what I want." *Id.*

Plaintiff claims that, after he rejected Ross's advances on the February 2007 trip, she excluded him from upcoming business trips, took away some of his responsibilities, and contacted agents and suppliers directly without informing him. Plaintiff claims to have performed satisfactorily during that time period. Despite not being included in the trips to Italy, he allegedly "completed the company's entire fall collection, and styled the photo shoot for the advertising. The Fall 2007 collection was one of the most successful collections Leggiadro has ever had." *Id.*, ¶ 39.

Plaintiff further asserts that, in August 2007, after Ross returned from vacation, she printed up a picture of her gay male guest in a g-string bathing suit saying "I took this for you." *Id.*, ¶ 42. Plaintiff states that he gave the picture back to Ross and told her that he did not find it funny. He believed it was an

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"obvious suggestion" that he was gay. *Id.* Defendants terminated plaintiff on September 4, 2007.

Plaintiff thereafter commenced an action against defendants on August 26, 2012 by filing a summons with notice. Ex. A to Defendants' Motion. In his complaint (Ex. B to Defendants' Motion), plaintiff alleged that he was subject to sexual harassment in the form of a hostile work environment and quid pro quo sexual harassment. Specifically, plaintiff claimed that he was subject to unwelcome and offensive conduct which rose to the level of an actionable hostile work environment. He further maintained that the same conduct also constituted quid pro quo sexual harassment, in that Ross communicated to plaintiff, through her actions and words, that his success at the company was linked to his acceptance of her conduct and his participation in a romantic relationship with her.

Plaintiff further claimed that he was retaliated against when Ross realized that her attempts to engage plaintiff were futile. Ross diminished his role in the company and ultimately terminated him.

On or about February 22, 2011, defendants moved, under motion sequence 001, to dismiss the complaint in lieu of answering. By order entered July 18, 2011, this Court (York, J.) granted the motion to dismiss on default.

Plaintiff's counsel thereafter moved to vacate the order

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dismissing the complaint on default. When this motion was denied, plaintiff moved to renew the same, which motion was also denied by Justice York by order entered November 30, 2012. Plaintiff appealed the denial of the renewal motion to the Appellate Division, First Department. By order entered February 20, 2014, the Appellate Division reversed Justice York's order of November 30, 2012, vacated plaintiff's default, and remanded the matter for oral argument of defendants' motion to dismiss brought pursuant to motion sequence 001.

POSITIONS OF THE PARTIES:

Defendants maintain that the complaint must be dismissed on the ground that plaintiff's claims are time-barred. Plaintiff commenced this action on August 26, 2010. All of the alleged interactions, except the one where Ross showed plaintiff a picture of a homosexual man in a g-string, occurred prior to August 26, 2007. As a result, argue defendants, plaintiff's claims for sexual harassment are not actionable. Defendants maintain that, even if plaintiff can demonstrate that presenting him with the suggestive picture constituted part of a continuing violation, Ross's alleged conduct and remarks were not sufficiently severe or pervasive enough to be actionable.

Defendants further argue that plaintiff's claim for quid pro quo sexual harassment must be dismissed because he alleges that his

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responsibilities were diminished as a result of his complaining about Ross's insensitive and offensive conduct, not as a result of her unwelcome sexual advances.

In addition, defendants argue that plaintiff's retaliation claim is not actionable because the events leading up to his termination are time-barred, and that he cannot demonstrate a causal connection between his alleged complaint to Ross in February 2007 and his termination in September 2007.

In a memorandum of law in opposition to the motion, plaintiff argues that his claims are timely and adequately pleaded.

In their reply memorandum of law in further support of their motion, defendants assert that plaintiff's claims are time-barred and must be dismissed because they fail to state a claim.

LEGAL CONCLUSIONS:

I. Dismissal

On a motion to dismiss pursuant to CPLR 3211, "the facts as alleged in the complaint [are] accepted as true, the plaintiff is [given] the benefit of every possible favorable inference," and the court must determine simply "whether the facts as alleged fit within any cognizable legal theory." *Mendelovitz v Cohen,* 37 AD3d 670, 671 (2d Dept 2007); *see also P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.,* 301 AD2d 373, 375 (1st Dept 2003). Courts generally review employment discrimination claims in particular

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under notice pleading standards. *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 (1st Dept 2009). "[A] plaintiff alleging employment discrimination 'need not plead [specific facts establishing] a prima facie case of discrimination'. but need only give 'fair notice' of the nature of the claim and its grounds [internal citation omitted]." *Id.*

Under CPLR 3211 (a) (7), "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 [internal quotation marks and citations omitted]." *Leon v Martinez*, 84 NY2d 83, 88 (1994). However, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration [internal quotation marks and citation omitted]." *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013).

II. Statute of Limitations:

Actions to recover damages for alleged discrimination under the NYSHRL and the NYCHRL are subject to a three-year statute of limitations. *See* CPLR 214 (2); Administrative Code of the City of New York § 8-502 (d). Defendants assert that plaintiff's claims for sexual harassment are time-barred, as all of the alleged conduct except for the suggestive picture incident occurred over

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three years before the action was commenced.

Although plaintiff's claims are subject to a three-year statute of limitations, a "continuing violation exception" applies to hostile work environment claims. This is because a hostile work environment is not merely comprised of several discrete acts but is made up of a "series of separate acts that collectively constitute one 'unlawful employment practice' [citation omitted]." *National R.R. Passenger Corp. v Morgan*, 536 US 101, 117 (2002)("Morgan"); *see Kimmel v. State*, 49 AD3d 1210, 1210-11 (4th Dept.), *lv denied*, 11 NY3d 729 (2008). Therefore, a claim for hostile work environment will not be time-barred if all of the acts complained of are part of the same unlawful practice, and at least one discriminatory act falls within the statute of limitations. *Morgan*, at 105, 117; *see Walsh v. Covenant House*, 244 AD2d 214, 215 (1st Dept. 1997).

Defendants argue, citing to the case law below, that the suggestive picture is not actionable, as it is an isolated incident. *See e.g. Anderson v Abodeen*, 29 AD3d 431, 432 (1st Dept 2006) (nude photo of plaintiff in his other job as a model, displayed by supervisor, could not support a claim for sexual harassment). In addition, defendants allege that the incident is not sufficiently similar to the other alleged conduct to be considered part of a continuing violation. *See e.g. Sier v Jacobs Persinger & Parker*, 276 AD2d 401, 401-402 (1st Dept 2000) (Court

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determined plaintiff's claim was timely under the continuing violation doctrine when pre-limitation harassing conduct was "sufficiently similar" to conduct within the limitations period).

However, defendants arguments are without merit. Taking all of the allegedly harassing conduct as a whole, the suggestive picture incident is part of the hostile work environment claim. While displaying a suggestive picture, in and of itself, may not be actionable, this display "collectively constitute[d]" an unlawful employment practice. Ross began her alleged harassment by engaging in provocative behavior and when her advances were rejected, she displayed a suggestive male picture on plaintiff's desk. This display directly ties into Ross's other harassing conduct and is "sufficiently similar." Accepting the allegations in the complaint as true, this Court finds plaintiff's claims for a hostile work environment are not time-barred, as the statute of limitations did not begin to run until the last discriminatory act.

III. Sexual Harassment Claims:

Pursuant to NYSHRL and the NYCHRL, it is an unlawful discriminatory practice for an employer to refuse to hire or employ, or to fire or to discriminate against an individual in the terms, conditions or privileges of employment because the sex of any individual. Executive Law § 296 (1) (a); Administrative Code § 8-107 (1) (a). A plaintiff seeking to recover for sexual

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[* 12]

harassment must proceed by claiming that he or she was subject to sexual harassment by reason of a hostile work environment or that he or she was subject to quid pro quo sexual harassment. *Mauro v Orville*, 259 AD2d 89, 91 (3d Dept 1999).

NYSHRL Hostile Work Environment:

Under Title VII of the Civil Rights Act of 1964, 42 USC § 2000 *et seq.* (Title VII), sexual harassment that results in a "hostile or abusive work environment" is prohibited as a form of employment discrimination. *Meritor Sav. Bank, FSB v Vinson*, 477 US 57, 66 (1986). The standard of proof for discrimination and retaliation claims brought pursuant to NYSHRL is the same for claims brought under Title VII. *Maher v Alliance Mtge. Banking Corp.*, 650 F Supp 2d 249, 259 (EDNY 2009).

A hostile work environment is present when "the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment [interior quotation marks and citation omitted]." *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 310 (2004).

"Whether a workplace may be viewed as hostile or abusive -- from both a reasonable person's standpoint as well as from the victim's subjective perspective -- can be determined only by considering the totality of the circumstances." *Matter of Father*

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Belle Community Ctr. v New York State Div. of Human Rights, 221 AD2d 44, 51 (4th Dept 1996). These circumstances include "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance [interior quotation marks and citation omitted]." *Forrest v Jewish Guild for the Blind*, 3 NY3d at 310-311. Under NYSHRL, "[g]enerally, isolated remarks or occasional episodes of harassment will not support a finding of a hostile or abusive work environment; in order to be actionable, the offensive conduct must be pervasive." *Matter of Father Belle Community Ctr. v New York State Div. of Human Rights*, 221 AD2d at 51.

Although plaintiff does not specifically advance arguments in his memorandum of law that he was subject to a hostile work environment in violation of the NYSHRL or NYCHRL, it is clear from plaintiff's complaint that he claims to have been subjected to Ross's inappropriate comments and behavior at the workplace. However, as stated in *O'Dell v Trans World Entertainment Corp.* (153 F Supp 2d 378, 386 [SD NY 2001], *affd* 40 Fed Appx 628 [2d Cir 2002]), "courts must distinguish between 'merely offensive or boorish conduct' and conduct that is sufficiently severe or pervasive as to alter the conditions of employment [interior citation omitted]."

Accordingly, this Court finds that plaintiff and Ross's

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interactions over the three business trips taken together did not create an environment "permeated with discriminatory intimidation, ridicule, and insult," even when coupled with her other alleged actions. Similarly, in light of existing case law, the complained-of conduct being alleged is not of sufficient severity to have altered plaintiff's working conditions. *See e.g. Quinn v Green Tree Credit Corp.*, 159 F3d 759, 768 (2d Cir 1998) (finding no triable issue of hostile work environment where supervisor told plaintiff she had been voted the "sleekest ass" in the office and he deliberately touched her breasts with papers he was holding); *Grossman v The Gap, Inc.*, 1998 WL 142143, 1998 US Dist LEXIS 3626 (SD NY 1998) (employer granted summary judgment on plaintiff's hostile work environment claim where supervisor called plaintiff at home, followed her around store, asked her out on dates, asked her to model a bathing suit, made one sexually suggestive comment). Plaintiff does not assert that he missed work due to his boss' conduct and does not assert that his salary was impacted. *See Hernandez v. Kaisman*, 103 AD3d 106, 110 (1st Dept 2012) (court noted these factors in affirming dismissal of plaintiff's State hostile work environment claim).

In addition, although Ross allegedly harassed plaintiff consistently for a five-month period, there was a gap of about six months where plaintiff stated that the interaction between the two of them decreased. "[I]n order to be actionable, the incidents of

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harassment must occur in concert or with a regularity that can reasonably be termed pervasive [internal quotation marks and citation omitted]." *Hamilton v Bally of Switzerland*, 2005 WL 1162450 *8, 2005 US Dist LEXIS 9319, *27 (SDNY 2005). As such, considering the time period in which they occurred and the totality of the circumstances, plaintiff is unable to set forth a claim under the NYSHRL for a hostile work environment.

NYCHRL Hostile Work Environment:

Plaintiff stated at oral argument that he was not pursuing his claim for hostile work environment. In any event, the claim is without merit. The NYCHRL is construed more liberally than its state or federal counterparts. *Barnum v New York City Tr. Auth.*, 62 AD3d 736, 738 (2d Dept 2009). It is "explicitly designed to be broader and more remedial than the Supreme Court's [severe or pervasive test] 'middle ground,' a test that had sanctioned a significant spectrum of conduct demeaning to women." *Williams v. New York City Hous. Auth.*, 61 AD3d 62, 76 (1st Dept 2009). Under the City law, the test for dismissing a NYCHRL hostile work environment claim is whether the "alleged discriminatory conduct in question does not represent a 'borderline' situation but one that could only be reasonably interpreted by a trier of fact as representing no more than petty slights or trivial inconveniences." *Id.* at 80.

Based on the above, conduct that is insufficient to state a claim under the State law nonetheless may be viable under the City law standards. *See Davis v. Phoenix Ancient Art, S.A.*, 2013 WL 1729384 (NY Sup 2013)(allegations that, among other things, defendant asked plaintiff to sleep with him during a business trip, forcibly kissed her, and participated in discussion of and questions about plaintiff's sex life, was actionable under NYCHRL but not NYSHRL). Therefore, courts must analyze the claims separately. *Hernandez v. Kaisman*, 103 AD3d 106, 114 (1st Dept 2012). For a court to find liability under the NYCHRL, "the primary issue for a trier of fact in harassment cases, as in other terms and conditions cases, is whether the plaintiff has proven by a preponderance of the evidence that she has been treated less well than other employees because of her gender." *Williams*, 61 AD3d at 78. Despite the broader application of the NYCHRL, courts must keep in mind that the law does not "operate as a general civility code [internal quotation marks and citation omitted]." *Id.* at 79.

In the present case, plaintiff must plead facts alleging that he was treated less well due to his gender. He has done so. In addition, the alleged conduct could be reasonably interpreted as being "more than petty slights or trivial inconveniences." Accordingly, defendants are denied dismissal with respect to a hostile work environment claim under the NYCHRL.

Quid Pro Quo:

"Quid pro quo harassment occurs when unwelcome sexual conduct - - whether sexual advances . . . or other verbal or physical conduct of a sexual nature - - is used, either explicitly or implicitly, as the basis for employment decisions affecting compensation, terms, conditions, or privileges of the complainant's employment." *Matter of Father Belle Community Ctr. v New York State Div. of Human Rights*, 221 AD2d at 50. The "focus is on the prohibited conduct - - the unwelcome sexual overtures - - and not on the victim's reaction to it . . . ." *Id.* The pertinent inquiry is whether "tangible job benefits" were expressly or implicitly linked "to the acceptance or rejection of the sexual advances." *Id.*

Termination, which was within the statute of limitations, clearly constitutes a tangible employment action. Therefore, plaintiff's action is timely. *See e.g. Engelmann v National Broadcasting Co., Inc.*, 1996 WL 76107, *14, 1996 US Dist LEXIS 1865, *39 (SDNY 1996) (allowing quid pro claim to proceed when only termination, but not sexual advances, occurred prior to the statute of limitations, holding "statutes of limitation generally do not begin to run until all the elements of a claim are present"); *see also Gregg v New York State Dept. of Taxation & Fin.* (1999 WL 225534, 1999 US Dist LEXIS 5415 at *27)(allowing quid pro quo claim to proceed under the continuing violation theory when the change in

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plaintiff's employment, but not the unwelcome sexual conduct, occurred prior to the statute of limitations).

Plaintiff claims that Ross made multiple sexual comments and overtures directly to plaintiff from October 2006 through February 2007. Plaintiff found these comments unwelcome and believed that Ross was attempting to start a sexual relationship with him. He did not respond to her personal questions or condone her behavior and, for instance, would not accompany her on a shopping trip for intimate apparel. Then, when plaintiff declined to go on a non-business trip with Ross that Ross scheduled "specially" for plaintiff, Ross told plaintiff that he will find out that she always gets what she wants. After this conversation, according to plaintiff, his responsibilities diminished, he was not invited to go on business trips, and he was ultimately terminated.

Accordingly, the complaint alleges facts that, if true, would state a claim for quid pro quo sexual harassment under the NYSHRL and the NYCHRL. Plaintiff's ultimate ability to prove those allegations is not relevant at this time. *See e.g. Hae Sheng Wang v Pao-Mei Wang*, 96 AD3d 1005, 1008 (2d Dept 2012).

IV. Plaintiff's Claims for Retaliation:

Plaintiff stated at oral argument that he was not pursuing his claim for retaliation. In any event, the claim has no merit. Under both the NYSHRL and the NYCHRL, it is unlawful to retaliate or

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discriminate against someone because he or she opposed discriminatory practices. Executive Law § 296 (7); Administrative Code § 8-107 (7). Under the broader interpretation of the NYCHRL, "[t]he retaliation . . . need not result in an ultimate action . . . or in a materially adverse change . . . [but] must be reasonably likely to deter a person from engaging in protected activity." Administrative Code § 8-107 (7).

For a plaintiff to successfully plead a claim for retaliation under the NYSHRL or NYCHRL, he must demonstrate that: "(1) [he] has engaged in protected activity, (2) [his] employer was aware that [he] participated in such activity, (3) [he] suffered an adverse employment action based upon [his] activity, and (4) there is a causal connection between the protected activity and the adverse action." *Forrest v Jewish Guild for the Blind*, 3 NY3d at 313; *see also Fletcher v Dakota, Inc.*, 99 AD3d 43, 51-52 (1st Dept 2012).

"Protected activity" refers to "actions taken to protest or oppose statutorily prohibited discrimination." *Aspilaire v Wyeth Pharms., Inc.*, 612 F Supp 2d 289, 308 (SD NY 2009); *see also Brook v Overseas Media, Inc.*, 69 AD3d 444, 445 (1st Dept 2010) (referring to protected activity under the NYCHRL as "'opposing or complaining about unlawful discrimination' [internal citation omitted]").

In the present case, there is no indication that plaintiff's conversation with Ross about her conduct or his protest about the suggestive picture constituted protected activity. Plaintiff

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alleges that he apologized to Ross for perhaps overreacting and also complained that the way she treated him was insensitive and offensive. A general complaint about inappropriate behavior is not a protected activity. *See Poolt v. Brooks*, 38 Misc3d 1216(A)(Sup NY County 2013)(avail 2013 WL 323253 at p12). In addition, replying to Ross that he did not find a suggestive picture funny, does not constitute protected activity.

Even assuming, arguendo, that plaintiff's complaint to Ross in February 2007 could be considered protected activity, plaintiff fails to show a causal connection between this activity and his termination, which occurred approximately six months later. *See e.g. Clark County School Dist. v Breeden*, 532 US 268, 273 (2001) ("The cases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the temporal proximity must be 'very close' . . . . [internal quotation marks and citations omitted]").

There is no "bright line" for the time line that defines a causal relationship. *Ragin v East Ramapo Cent. Sch. Dist.*, 2010 WL 1326779, *27, 2010 US Dist LEXIS 32576, *82 (SD NY 2009), *affd* 417 Fed Appx 81 (2d Cir 2011). However, this Court finds that six months is too attenuated to establish a causal relationship between plaintiff's complaint and his termination. *See e.g. Yarde v Good*

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Samaritan Hosp., 360 F Supp 2d 552, 562 (SDNY 2005) ("Three months is on the outer edge of what courts in this circuit recognize as sufficiently proximate to admit of an inference of causation . . . [s]ix months between protected activity and discharge is well beyond the time frame for inferring retaliatory causation [internal citation omitted"). Accordingly, plaintiff cannot set forth a viable claim for retaliation under the NYSHRL or NYCHRL.

Therefore, in light of the foregoing, it is hereby:

ORDERED that defendants' motion to dismiss the complaint is granted with respect to plaintiff's hostile work environment claim under the NYSHRL and plaintiff's claims for retaliation under the NYSHRL and the NYCHRL, and the motion is otherwise denied; and it is further,

ORDERED that the remaining claims shall continue; and it is further,

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ORDERED that defendants are directed to serve their answers to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further,

ORDERED that, within 20 days after issue has been joined, the parties are directed to contact the Court to schedule a preliminary conference; and it is hereby,

ORDERED that this constitutes the decision and order of the court.

Dated: January 5, 2016

FILED
JAN 07 2016
COUNTY CLERK'S OFFICE
NEW YORK

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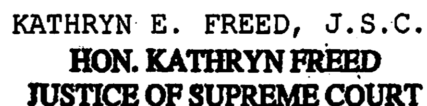

KATHRYN E. FREED, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

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