

Wilson v Exigence of Team Health

2016 NY Slip Op 32818(U)

March 18, 2016

Supreme Court, Erie County

Docket Number: 812020/2015

Judge: Tracey A. Bannister

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DeMaris Wilson,

Plaintiff

Memorandum Decision
Index No. 812020/2015

vs.

Exigence of Team Health,

Defendant.

Appearances

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Bannister, J.

Defendant, Exigence of Team Health, moved this Court for an order pursuant to CPLR 3211 (a)(5) to dismiss the complaint of plaintiff, DeMaris Wilson, on the grounds that the claim for retaliatory firing was barred by the expiration of the two-year statute of limitations. Plaintiff opposed the motion.

Plaintiff's complaint alleged a single cause of action pursuant to Labor Law § 741 asserting that she was fired for making a complaint about another worker's conduct. Specifically, the complaint alleged that she was working with a

physician's assistant in the Intensive Care Unit of the Erie County Medical Center on April 28, 2012 when she saw the PA "practice outside his scope of practice" as a PA and subsequently failed to answer his rapid response pager. The patient ultimately died. As a result of that occurrence, an incident report was filed by two nurses, not plaintiff. Plaintiff claims she was disciplined a few days later for violating the smoking policy, but that this complaint was a pretext for the April 28, 2012 incident. Plaintiff avers that on October 10, 2013, she met with her supervisor who asked her to sign a separation agreement. Her complaint alleged that as of that date she was "taken off the schedule" and her subsequent phone calls went unanswered.

This matter was started with the filing of the complaint on October 13, 2015, two years and three days after her meeting with her supervisor and the presentation to her of the Separation Agreement. It was also two years and three days after plaintiff's last day of work at ECMC.

The motion to dismiss incorporated a memorandum of law which alleged that the acts complained of, prima facie, fell outside the statute of limitations.

In response, plaintiff asserted that the retaliatory personnel action occurred subsequent to October 10, 2013 by "removal [of plaintiff] from the work schedule" in any department, and failure to respond to plaintiff's phone calls checking on the status of her employment with defendant. Plaintiff contends that on October 10, 2013, she was told she could not return to work in the Intensive Care Unit, but she believed that she, an employee with a temporary staffing agency, would get

an assignment elsewhere through defendant. Plaintiff alleged that on October 10, 2013, she was not fired and did not interpret the events of October 10, 2013 as the termination of her employment with defendant.

The Separation Agreement, which plaintiff declined to sign, clearly spelled out on the first page:

“WHEREAS, Mrs. Wilson has been employed by Team Health since October 18, 2008; and WHEREAS, Mrs. Wilson’s association with Team Health will end effective October 10, 2013” ***

The document went on to set forth separation pay, called for confidentiality from each party and released defendant from all kinds of legal claims.

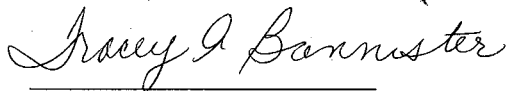
“On a motion to dismiss a complaint pursuant to CPLR 3211 (a) (5) on statute of limitations grounds, the moving defendant must establish, prima facie, that the time in which to commence the action has expired” (*Coleman v Wells Fargo & Co.* 125 AD3d 716; citing *Beizer v Hirsch*, 116 AD3d 725 and *Baptiste v Harding-Marin*, 88 AD3d 752, 753). The burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations is tolled or is otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period (*Coleman*, supra at 716 citing *Zaborowski v Local 74, Serv. Emps. Intl. Union, AFL-CIO*, 91 AD3d 768 and *Baptiste* supra at 753).

Here, the complaint clearly states that plaintiff was presented the Separation Agreement on October 10, 2013. That document leaves no doubt

about the intention of defendant to terminate plaintiff's employment as of that date. There can be no reasonable, rational thought process by which plaintiff could have thought that she continued to be an employee of defendant. Her termination was not dependent on her signing the document and declining to sign the document merely preserved her right to sue defendant. Also, declining to sign the document deprived plaintiff of the severance pay defendant was offering. However, the intent of the document presented October 10, 2013 was clear—plaintiff was terminated. It is not disputed that the statute of limitations on this claim pursuant to Labor Law § 741 was two years and that the complaint was filed more than two years later. Based on the complaint itself and especially when read in conjunction with the Separation Agreement presented to plaintiff, the accrual of her cause of action was October 10, 2013.

Plaintiff's claim that she was not under the impression that she was terminated on October 10, 2013 belies the unequivocal documentary evidence to the contrary.

Thus, plaintiff's complaint is dismissed as the time to commence the action expired prior thereto. Please submit order accordingly.



Hon. Tracey A. Bannister
Supreme Court Justice

Dated: March 18, 2016
Buffalo, New York

GRANTED

MAR 21 2016
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