

Raji v SG Ams. Sec., LLC
2020 NY Slip Op 30042(U)
January 8, 2020
Supreme Court, New York County
Docket Number: 154174/2019
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. KATHRYN E. FREED

PART

IAS MOTION 2EFM

Justice

-----X

INDEX NO. 154174/2019

MOURAD RAJI,

MOTION SEQ. NO. 001

Plaintiff,

- v -

SG AMERICAS SECURITIES, LLC, SG AMERICAS, INC.,
and THOMAS JACQUOT,**DECISION AND ORDER**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for

DISMISS

In this action sounding in employment discrimination, defendants SG Americas Securities LLC and SG Americas, Inc. (collectively “SG”) and Thomas Jacquot (“Jacquot”) (collectively “defendants”) move, pursuant to CPLR 3211 (a) (5) and (7), to dismiss the complaint with prejudice and without leave to amend, and for such other relief as this Court deems proper (Doc. 4-20). Plaintiff Mourad Raji (“Raji”) opposes the motion (Docs. 26-28).¹ After oral argument and a review of the parties’ papers and the relevant statutes and case law, the motion is **granted**.

¹ There is no question that Raji failed to oppose the instant motion in a timely manner. However, given that the delay was short and “did not rise to the level of willful, contumacious behavior nor was the delay due to bad faith,” this Court accepts Raji’s opposition papers (*Stone v Speiser*, 267 AD2d 157, 157 [1st Dept 1999]; see *New York State Urban Development Corporation v Adirondack International Speedway, LLC*, 2009 NY Slip Op 30282 [U], 2009 NY Misc LEXIS 3846, *9-10 [Sup Ct, NY County 2009]).

FACTUAL AND PROCEDURAL HISTORY:

In February 2015, Raji commenced a federal action in the United States District Court for the Southern District of New York (“the federal court”) against SG Americas Securities LLC and Jacquot for alleged violations of the New York Executive Law and the Administrative Code of the City of New York (“the federal action”) (Doc. 7).² The underlying facts of his claims may be summarized as follows. Raji, a French national, participated in a French-American exchange program from December 2011 through May 2013, during which time he was an intern in SG’s New York office (Doc. 9). In the federal complaint, Raji claimed that, during his employment, he was subjected to discrimination and harassment by various employees, including his supervisor Jacquot, based on his sexual orientation (Doc. 9). All parties moved for summary judgment, and, by order dated February 28, 2018 (“the 2/28/18 order”), the federal court dismissed various causes of action, including the discrimination claim based on the New York State Human Rights Law (“NYSHRL”) and the retaliatory claims brought under both the NYSHRL and the New York City Human Rights Law (“NYCHRL”) (Doc. 9).

In a joint pre-trial order dated October 12, 2018, Raji challenged the federal court’s subject matter jurisdiction over the action and indicated that, should the case be dismissed on this basis, the action would be refiled in New York State court pursuant to CPLR 205 (a) (Doc. 10). The federal court dismissed the remaining claims by order of dismissal dated October 25, 2018 (“the 10/25/18 order”), stating “having been advised by the Honorable James L. Cott that all claims asserted herein have been settled in principle, it is hereby ORDERED that that above-

² Raji raised eight causes of action for alleged violations of: (1) Executive Law § 296; (2) Executive Law § 296 (7); (3) Executive Law 296 (6); (4) Administrative Code of the City of NY § 8-107 (1) (a); (5) Administrative Code of the City of NY § 8-107 (1) (e); (6) Administrative Code of the City of NY § 8-107 (6); (7) Administrative Code of the City of NY § 8-107 (19); (8) Administrative Code of the City of NY § 8-107 (13) (Doc. 8).

entitled action be and is hereby dismissed and discontinued without costs, and without prejudice to the right to reopen the action within thirty days of the date of this Order if the settlement is not consummated” (Doc. 11). In the same order, the federal court again advised the parties that “[a]ny application to reopen [had to] be filed *within thirty days*” and warned that “any application to reopen filed thereafter [could] be denied” (Doc. 11). By letter dated November 30, 2018, Raji informed the federal court that, *inter alia*, he had declined the most recent settlement offer and that he intended to refile the same action in state court (Doc. 12). The federal court responded to the correspondence by stating, *inter alia*, “[t]he case was dismissed on October 25, 2018 . . . there are no outstanding issues to resolve (Doc. 12).

On April 23, 2019, Raji initiated the instant action by filing a summons with notice against defendants and, following a demand for a complaint by SG pursuant to CPLR 3012 (b), Raji filed a complaint on May 31, 2019 (Doc. 3).³ In his complaint, Raji alleged eight causes of action against defendants based on the same facts as in the federal action (Doc. 3). Specifically,

³ Defendants claim, in the alternative, that, *inter alia*, the action must be dismissed as against Jacquot because he was improperly served. Although Raji submitted affidavits of service for all defendants, the affidavits of service for SG were subscribed and dated April 26, 2019 (Docs. 23-25). However, the affidavit of service for Jacquot was only subscribed and signed by the process server on August 15, 2019, a day before Raji’s papers in opposition were due (Doc. 28, 30-31). Defendants submit the affidavit of Daniel Hobbs (“Hobbs”), a paralegal at SG, who allegedly accepted service on behalf of all defendants (Doc. 32). Hobbs avers that the process server never mentioned Jacquot’s name or provided any indication that he intended to serve the documents on Jacquot, and he attests that the documents were only addressed “To: SG Americ[icas] Securities L” (Doc. 32). Furthermore, he maintains that members of the legal department are not authorized to accept service on behalf of individual employees (Doc. 32). It is important to note that, although the process server affirms that service on Jacquot was effectuated on April 23, 2019, proof of service was not filed within the 20 days of the effectuation of service as required by CPLR 308 (2). Although this Court acknowledges the problems with service, the argument has been rendered moot by the findings below.

he claimed that defendants violated, *inter alia*, various provisions of the NYSHRL and NYCHRL (Doc. 3).⁴

In the instant motion, defendants argue, *inter alia*, that Raji's claims are barred by the statute of limitations insofar as the instant action was commenced approximately six (6) years after his internship ended (Doc. 20 at 10-11). Moreover, they maintain that Raji cannot avail himself of the tolling provision of CPLR 205 (a) insofar as the federal action was terminated by voluntary discontinuance (Doc. 20 at 10). In opposition, Raji argues, *inter alia*, that his claims are not time-barred because the action was commenced within six months of the termination of the federal action, and he denies that the prior action terminated by voluntary discontinuance, arguing that the federal court's use of the term "without prejudice" denotes its intent not to preclude him from availing himself of the benefits of CPLR 205 (a) (Doc. 26 at 2).

LEGAL CONCLUSIONS:

CPLR 3211 (a) (5) provides that "[a] party may move for judgment dismissing one or more causes of action asserted against him [or her] on the ground that . . . the cause of action may not be maintained because of . . . [the] statute of limitations." As relevant here, "[a]ctions for discrimination under the [NYSHRL] and the [NYCHRL] must be commenced within three years after the alleged unlawful discriminatory practice or act of discriminatory harassment" (*Mejia v T.N. 888 Eighth Ave. LLC Co.*, 169 AD3d 613, 613 [1st Dept 2019]; *see* CPLR 214 [2]; Administrative Code of City of N.Y. § 8-502[d]). However, CPLR 205 (a) "allows a plaintiff six

⁴ He alleged violations of: (1) NY Labor Law § 201-g; (2) NY Executive Law § 296 (7); (3) NY Executive Law § 296 (6); (4) the Administrative Code of the City of New York § 8-107 (1) (a); (5) Administrative Code of the City of New York § 8-107 (1) (e); (6) the New York City Administrative Code § 8-107 (6); (7) the New York City Administrative Code § 8-107 (19); and (8) the New York City Administrative Code § 8-107 (13).

months to commence a new action where the previous action was timely commenced and was terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits” (*Guzy v New York City*, 129 AD3d 614, 615 [1st Dept 2015]; *see Federal Home Loan Bank of Boston v Moody’s Corp.*, 176 AD3d 518, 519 [1st Dept 2019]; *Rodriguez v River Val. Care Ctr., Inc.*, 175 AD3d 432, 433 [1st Dept 2019]).

As an initial matter, and as reflected by the so-ordered stipulation executed by the parties after oral argument on December 3, 2019, Raji discontinued the first, second and fifth causes of action against defendants (Doc. 37). This Court now finds that Raji’s additional claims are barred by the three-year statute of limitations, which began to accrue at the end of his internship in May 2013 (*see Matter of Jiggetts v New York City Human Resources Admin.*, 156 AD3d 552, 553 [1st Dept 2017], *lv dismissed* 33 NY3d 1050 [2019]; *Pinder v City of New York*, 49 AD3d 280, 281 [1st Dept 2008]; *Horan v New York Tel. Co.*, 309 AD2d 642, 642 [1st Dept 2003]).

Although CPLR 205 (a) provides a mechanism by which claims can be revived, this Court finds that the 10/25/18 order was a voluntary dismissal of the federal claims and, thus, that the statute does not apply. This reasoning finds support in the language of the 10/25/18 order, which premised the dismissal entirely on the fact that the case had been “settled in principle” (Doc. 11). The action was not dismissed on any other basis and it is important to note that, although the joint pre-trial order raised subject matter jurisdiction as a possible deficiency in the federal action, this was in no way addressed in the 10/25/18 order (Doc. 11) (*compare Peterec-Tolino v Harap*, 93 AD3d 577, 577 [1st Dept 2012]).⁵ As reiterated in the 11/30/18 order, the

⁵ Even assuming, *arguendo*, that CPLR 205 (a) applied to these facts, the claims must be nevertheless dismissed as against SG Americas, Inc. insofar as it was not a party in the federal action (*see Caplan v Winslett*, 218 AD2d 148, 153-154 [1st Dept 1996]).

action had been dismissed on 10/25/18 based on a tentative settlement, and the federal court noted that there were no outstanding issues to resolve (Doc. 12).

This Court rejects Raji's contention that the captioned action is subject to CPLR 205 (a) since the 10/25/18 order dismissed the claims "without prejudice to the right to reopen the action within thirty days of the date of" that order (Doc. 26) (*see generally Barlow v Sun Chem, Co.*, 15 Misc 3d 953, 961-963 [Sup Ct, Westchester County 2006]; *compare Dyer v Cahan*, 150 AD2d 172, 173 [1st Dept 1989]). While Raji clearly had the option to reopen the federal case within thirty days, he failed to avail himself of this opportunity after the settlement failed to materialize.

The remaining arguments are either without merit or need not be addressed given the stipulation to discontinue and the findings above.

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

ORDERED that defendants' motion to dismiss the complaint is granted, and the Clerk is directed to enter judgment accordingly, with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that defendants shall serve a copy of this order, with notice of entry, upon plaintiff within 30 days of entry; and it is further

ORDERED that this constitutes the decision of the Court.

1/8/2020
DATE

CHECK ONE:

☒
☒
☐
☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐

DENIED

☐
☐
☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

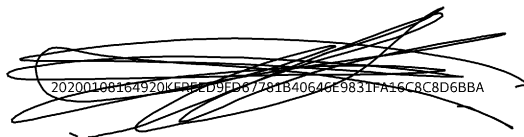
FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE


20200108164920KFBCE09ED87781B40646CE9831FA16C8C8D6BBA

KATHRYN E. FREED, J.S.C.