Samuels v Urban Am. Mgt., LLC

2020 NY Slip Op 31079(U)

April 29, 2020

Supreme Court, New York County

Docket Number: 152390/2019

Judge: Kathryn E. Freed

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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** ***Justice*** **PART** **IAS MOTION 2EFM**

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LEQUARTHA SAMUELS

Plaintiff,

- v -

URBAN AMERICAN MANAGEMENT, LLC,

Defendant.

---X

INDEX NO. 152390/2019

MOTION DATE 01/21/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISSAL .

In this action sounding in employment discrimination, defendant Urban American Management, LLC ("UAM") moves, pursuant to CPLR 3211(a)(5) and (7), to dismiss the verified complaint of plaintiff Lequartha Samuels ("Samuels") (Doc. 8-15). Samuels opposes the motion (Doc. 17-22). After reviewing the parties' contentions, as well as the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

For twelve years, Samuels, who self-identifies as African American and a lesbian, was employed by UAM as a porter at a residential building located at 3333 Broadway Avenue, New York, New York (Doc. 7 ¶ 12-13). UAM terminated Samuels' employment on June 19, 2017 (Doc. 7 ¶ 34). At the time of her termination, Samuels was a member of the Service Employees International Union CTW, CLC ("the union") (Docs. 7 ¶ 26; 11). In March 2018, Samuels filed a

charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging violations by UAM of federal, state and city discrimination laws (Doc. 2). However, after reviewing the information submitted by Samuels, the EEOC dismissed the charge and issued a notice of suit rights (Doc. 3). Thereafter, on March 6, 2019, Samuels commenced this action against UAM by filing a summons with notice, asserting claims of discrimination, retaliation, and wrongful termination based on Samuels' sex, race, and/or sexual orientation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000, *et seq.*; the New York State Human Rights Law [NYSHRL], New York Executive Law §§290, *et seq.*; and the New York City Human Rights Law [NYCHRL], Administrative Code of the City of New York §§8-101, *et seq*. (Doc. 1). A complaint was filed in this action in August 2019 and, in lieu of an answer, UAM filed the instant motion to dismiss (Docs. 7-15).

LEGAL CONCLUSIONS:

"A CPLR 3211(a)(7) motion may be used by a defendant to test the facial sufficiency of a pleading in two different ways" (*see Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014] [citations omitted]). "First, the motion may be used to dispose of an action in which the plaintiff has not stated a claim cognizable at law. Second, the court may dismiss a claim where the plaintiff has identified a cognizable cause of action but has nevertheless failed to plead a material allegation necessary to establish it (*see Roman v 1781 Riverside, LLC*, 2019 NY Slip Op 30414[U], 2019 NY Misc LEXIS 703, *6 [Sup Ct, NY County 2019] [Freed, J.] [internal quotation marks and citations omitted]. "As to the latter, the Court of Appeals has made clear that a defendant can submit evidence in support of the motion attacking a well-pleaded cognizable claim" (*see Basis Yield Alpha Fund (Master) v. Goldman Sachs Group,*

Inc., 115 AD3d at 134). However, "[w]hen documentary evidence is submitted by a defendant[,] the standard morphs from whether the plaintiff has stated a cause of action to whether it has one" (*id.* at 135 [internal quotations marks and citations omitted]).

UAM argues, *inter alia*, that Samuels' complaint must be dismissed pursuant to CPLR 3211(a)(7) insofar as she has failed to exhaust her grievance remedies through mandatory arbitration as required by the governing collective bargaining agreement ("CBA") (Doc. 15 at 10-13). This Court agrees. It is well-settled that "[a]n employee covered by a [CBA] which provides for a grievance procedure must exhaust administrative remedies prior to seeking judicial remedies" (*Shortt v City of New York*, 173 AD3d 925, 926 [2d Dept 2019]; *see Plummer v Klepak,* 48 NY2d 486, 489-490 [1979]; *Goila v Viera*, 162 AD3d 865, 867 [2d Dept 2018]; *Matter of Gil v Dept. of Educ. of City of NY*, 146 AD3d 688, 688 [1st Dept 2017]). The CBA provides, in pertinent part, that all discrimination claims brought pursuant to, but not limited to, Title VII of the Civil Rights Act, the NYSHRL, and the NCHRL, "shall be subject to the grievance and arbitration procedure . . . as *sole and exclusive remedy* for violations" (emphasis added) (Doc. 11). The CBA further provides that, after the union and the Realty Advisory Board ("RAB"), the union's representative, are notified of an employee's discrimination claim, the administrator of the Office of Contract Arbitrator ("OCA") shall appoint a mediator to allow the matter to proceed to mediation (Doc. 11). If the union declines to arbitrate an employee's claims, the CBA provides that the employee may initiate arbitration as a means to resolve the matter (Doc. 11).

Samuels does not dispute that her discrimination claims are governed by the CBA and that this matter failed to proceed to mediation or arbitration (Doc. 17 at 7-9). Instead, Samuels contends, *inter alia*, that UAM should be collaterally estopped from arguing that this failure warrants dismissal of the complaint because, as reflected by her proof submitted in opposition to

the instant motion, the union, the RAB, and the OCA were all notified of her claims on March 6, 2019 (Doc. 17 at 7-9). Thus, Samuels maintains that she had no choice but to commence this direct action against UAM when, despite being duly notified of her claims, the RAB and OCA failed to appoint a mediator or arbitrator as mandated by the CBA (Doc. 17 at 8). Contrary to Samuels' contention, neither the RAB nor the union were authorized under the CBA to appoint a mediator. Insofar as Samuels has failed to show that she has exhausted alternative avenues for resolving her discrimination claims before resorting to litigation, i.e., challenging the OCA's alleged failure to appoint a mediator or moving to compel arbitration, UAM's motion to dismiss the complaint is granted.

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

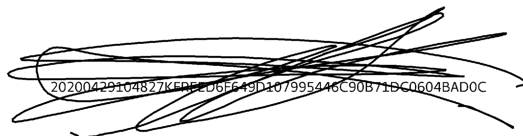
Therefore, in accordance with the foregoing, it is hereby:

ORDERED that defendant URBAN AMERICAN MANAGEMENT, LLC's motion, pursuant to CPLR 3211(a)(7), to dismiss the complaint based on its failure to state a cause of action is granted and the complaint is dismissed; and it is further

ORDERED that, within 20 days after this order is uploaded to NYSCEF, counsel for defendant shall serve a copy of this order, with notice of entry, on plaintiff, as well as on the County Clerk (60 Centre Street, Room 141 B), in accordance with the e-filing protocol, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.govisupctmanh)]; and it is further

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



4/29/2020
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION	
		GRANTED	X	DENIED	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE