

<b>Pakniat v Moor</b>
2020 NY Slip Op 31211(U)
May 4, 2020
Supreme Court, New York County
Docket Number: 160019/2019
Judge: James E. d'Auguste
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM

*Justice*

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PARINAZ PAKNIAT,

Plaintiff,

- v -

GIANNI MOOR, MAGEBA INTERNATIONAL, LLC

Defendant.

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INDEX NO. 160019/2019

MOTION DATE 03/06/2020

MOTION SEQ. NO. 001

**DECISION + ORDER  
ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is

Plaintiff, Parinaz Pakniat, brings this action for (i) sexual harassment pursuant the New York State Human Rights Law (NYSHRL), (ii) sexual harassment pursuant to the New York City Human Rights Law (NYCHRL), (iii) vicarious liability against her former employer, Mageba International, (iv) retaliatory discharge pursuant to both the NYSHRL and NYCHRL and (v) breach of contract pursuant to the Consulting Agreement (CA) entered into between plaintiff and Mageba International, LLC. *See* NYSCEF Doc. No. 1.

In December of 2017, plaintiff entered into a CA with defendant Mageba International to expand Mageba's operations in Canada. *See* NYSCEF Doc. No. 2, 13. It is uncontested that plaintiff lived and worked in Canada during her tenure with Mageba. *See* NYSCEF Doc. No. 8. Under the terms of this agreement, plaintiff was to report to the Mageba CEO, Gianni Moor, who was located in New York. *Id.* Plaintiff alleges that Victoria Moor, Gianni Moor's wife, erroneously believed that plaintiff was having an affair with her husband. Plaintiff further asserts that Ms. Moor forced her husband to change the reporting structure so that Plaintiff no longer

reported to Mr. Moor. Plaintiff alleges that the jealousy of Ms. Moor eventually caused her husband to terminate plaintiff's employment. Plaintiff was terminated on October 23, 2018. Upon her termination, plaintiff was informed that she would receive her base rate of compensation and funds for her unused vacation time. *See* NYSCEF Doc. No. 9. It is not disputed that she received these amounts.

Defendants move the Court for an order dismissing the Complaint pursuant to 3211(a)(1), (2) and (7) alleging, *inter alia*, that the Court does not have subject matter jurisdiction over the NYSHRL/NYCHRL, and that there is a failure to state a claim upon which relief can be granted for the contract action. The Court agrees in part.

Movants correctly cite to *Hoffman v Parade Publs*, 15 N.Y.3d 285 (2010). In *Hoffman*, the plaintiff, a resident of Georgia, brought claims under both NYCHRL and NYSHRL for age discrimination. *Id.* The plaintiff in that case argued that New York had jurisdiction because (i) the plaintiff attended quarterly meetings in New York City, (ii) that the parent company was managed from New York City, (iii) all corporate contracts were negotiated through the New York City office, and (iv) that defendants' decision to terminate him was made and executed in New York City. *Id.* at 298. The Court of Appeals found that jurisdiction was improper over the plaintiff's claims because the "impact" of the discrimination was not felt within the boundaries of New York. Application of the "impact" requirement to State and City Human Rights Law claims permits those who work in the state and City to invoke its protections. *Id.* at 291-92. The *Hoffman* Court explicitly stated that the statutory scheme did not extend to nonresidents who could not show that the alleged discrimination had an impact within the boundaries of New York. *Id.* As a result, the Court noted, the plaintiff's contacts within the state of New York were merely tangential and did not have an impact inside the boundaries of the city or state of New York. *Id.* In assessing the "impact" requirement under *Hoffman*, New York Courts have stated that subject matter jurisdiction

is determined primarily on the plaintiff's physical location at the time of the alleged discriminatory acts. *See, e.g., Benham v. eCommission Solutions, LLC*, 118 A.D.3d 605, 606, 989 N.Y.S.2d 20 (1st Dep't 2014) ("Whether New York courts have subject matter jurisdiction over a nonresident plaintiff's claims under the HRLs turns primarily on her [or his] physical location at the time of the alleged discriminatory acts").

The facts at bar are nearly identical to those in *Hoffman*. Here, plaintiff is non-resident of New York as she is a resident of Montreal, Canada. She is alleging that her work with the New York Office demands jurisdiction over her claim. Finally, she is alleging that jurisdiction is proper because the events and decisions leading to her termination were made and executed in New York. However, each of these arguments were explicitly rejected by the Court in *Hoffman*. Moreover, plaintiff's complaint does not allege that plaintiff was physically located in New York during the alleged discriminatory acts. *See* NYSCEF Doc. No. 1.

Plaintiff argues, primarily, that the standard in *Hoffman* is no longer binding. In support of this contention, plaintiff points to the 2019 amendments to the NYSHRL, particularly New York Executive Law § 300. This argument, however, has no bearing on the weight that the Court should afford the Court of Appeals decision in *Hoffman*. First, the amendment of the NYSHRL would have no bearing on the Court's decision regarding the NYCHRL. Further, the amendment to the NYSHRL did not impact the statutory provisions that were actually discussed in *Hoffman*. The court in *Hoffman* relied on NYSHRL sections 290 and 298(a) and concluded that "the statutory scheme plainly has not extended such protections to nonresidents like Hoffman, who are unable to demonstrate that the impact of the discriminatory act was felt inside the state." *Id.*; *see also, Wolf v. Imus*, 170 A.D.3d 563 (1st Dep't 2019) ("Supreme Court properly dismissed plaintiff's age discrimination claims brought under the City and State Human Rights Laws, because the impact

on plaintiff from the termination of his employment occurred in Florida, where he lived and worked.”).

Moreover, plaintiff has cited no case law to support their position that there is subject matter jurisdiction under the circumstances of the instant case, other than the dissent in *Hoffman* and several discriminatory failure to hire cases that are inapposite. *See e.g., Chau v. Donovan*, 357 F Supp 3d 276, 283-84 (SDNY 2019). The Court finds no justification to ignore the precedent set forth in *Hoffman*.

The Court also declines to find the choice of law clause as sufficient reason to confer jurisdiction. A party seeking to access New York Courts must first satisfy the jurisdictional requirements. *Rice v. Scudder Kemper Investments, Inc.*, No. 01 Civ. 7078(RLC), 2003 WL 21961010, at \*5 (S.D.N.Y. Aug. 14, 2003), *aff'd sub nom. Rice v. Wartsila NSD Power Dev., Inc.*, 183 F. App'x 147 (2d Cir. 2006) (stating that even if plaintiff's choice-of-law analysis are correct, it would not vitiate the NYHRL's jurisdictional prerequisites).

Accordingly, plaintiff's claims under both the NYCHRL and NYSHRL (i.e., the First, Second, Third and Fourth causes of action) are dismissed pursuant to CPLR 3211(a)(2). The Third cause of action for vicarious liability under the NYSHRL and NYCHRL is also dismissed under CPLR 3211(a)(7) as vicarious liability is not an independent cause of action.

As the Court has found a lack of subject matter jurisdiction and dismisses the action on that basis pursuant to 3211(a)(2), the Court declines to decide the request for dismissal pursuant to CPLR 3211(a)(1) or CPLR 3211(a)(7), except as expressly stated herein.

Finally, the breach of contract action is dismissed without written opposition. Plaintiff's do not oppose the motion to dismiss the breach of contract action in their papers. *See* NYSCEF Doc. No. 13.

Accordingly, the motion is granted, and the Clerk is directed to dismiss the action in its entirety.

This is the decision and order of the Court.



5/4/2020  
DATE

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JAMES EDWARD D'AUGUSTE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE