

Page v JWalker Realty LLC
2020 NY Slip Op 32187(U)
March 11, 2020
Supreme Court, New York County
Docket Number: 161002/2019
Judge: Margaret A. Chan
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. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

-----X

NATASHA PAGE,

Plaintiff,

- v -

JWALKER REALTY LLC, JASON WALKER

Defendants.

-----X

INDEX NO. 161002/2019

MOTION DATE 12/16/2019, 02/05/2020

MOTION SEQ. NO. (MS) 001; 002

DECISION + ORDER ON MOTION

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

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

In this matter, plaintiff Natasha Page alleges three causes of action against defendants JWalker Realty LLC and Jason Walker predicated on New York State Human Rights Law (NYSHRL) § 296. Plaintiff claims that she was discriminated against on the basis of her race, gender/sex, and sexual orientation, that defendants allowed a hostile work environment to be created, wrongfully discharged plaintiff, and refused to take remedial actions to stop the discrimination and harassment of plaintiff. In MS1, defendants move pursuant to CPLR 3211 to dismiss plaintiff's initial Complaint filed on November 12, 2019. In MS2, defendants move pursuant to CPLR 3212 for summary judgment dismissing plaintiff's Amended Complaint filed on December 17, 2019. Plaintiff opposes only the motion for summary judgment on the Amended Complaint. The Decision and Order is as follows:

PROCEDURAL HISTORY

This action is a part of a trio of related lawsuits. In Walker v Page, Index No. 655652/2017, Jason Walker claims that Natasha Page misappropriated his professional contacts and failed to repay a loan. Page asserted counterclaims for breach of contract, violation of the Labor Law, failure to pay wages, wrongful termination and retaliation, defamation, and injurious falsehood. This court issued a Decision and Order in that matter dismissing all of Page's counterclaims (Walker v Page, Index No. 655652/2017, NYSCEF # Decision and Order of this court dated March 6, 2020).

Subsequent to Walker's suit, Page commenced an action against JWalker Realty and Jason Walker ("the Walker parties"), *Page v JWalker Realty LLC, et al*, Index No. 158660/2018. This case was dismissed for defective service (NYSCEF #11 – Decision and Order dated May 10, 2019).

Page therefore brought the instant action on November 12, 2019 (NYSCEF #1). Page's complaint in this case is identical to the complaint in the dismissed 2018 action (*compare* NYSCEF #1 with NYSCEF #10 – 2018 Complaint). As such, the Walker parties filed a motion to dismiss the complaint (NYSCEF #7). However, instead of responding to the motion to dismiss, Page elected to amend her complaint (NYSCEF #18 – Amended Complaint). Page's amended complaint is unverified. In turn, defendants served an answer to the amended complaint on January 6, 2020 thereby resolving the Walker parties' motion (NYSCEF #19).

The Walker parties, as defendants, also served discovery demands on Page, but Page never responded (NYSCEF #38 – Defendants' Discovery Demands). Hence, defendants move for summary judgment to dismiss Page's amended complaint in its entirety (NYSCEF #33).

FACTS

In the instant action, plaintiff Natasha Page alleges that defendant JWalker Realty hired her in October 2015 to work in real estate sales (NYSCEF #18 at ¶ 4). Plaintiff claims that defendant JWalker controlled every aspect of her employment (*id.* at ¶ 34). Plaintiff's allegation is not supported by her licensure record which does not show that she was ever employed by JWalker; rather plaintiff's licensure record shows that she was licensed to work for the real estate firm Core Group Marketing, LLC ("Core") at the relevant time – between August 2015 and November 2016 (NYSCEF #41 - NY Dept of State Real Estate Licensure Records). Indeed, this court determined in the *Walker v Page* case that Page was not an employee of JWalker Realty (*see Walker v Page*, Sup Ct, New York County, March 3, 2020, Index No. 655652/2017). Plaintiff herself claimed that she was an independent contractor in that matter (*id.*).

Plaintiff claims that she received her last communication from defendant Jason Walker on October 7, 2016, and that after that date she did not receive any further compensation from defendants and believed that she was terminated from defendant JWalker (*id.* at ¶ 32).

DISCUSSION

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp*, 68

NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*see Vega v Restani Constr. Corp*, 18 NY3d 499 [2012]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Haus. Corp*, 298 AD2d 224, 226 [1st Dept 2002]). “A motion for summary judgment, irrespective of by whom it was made, empowers a court to search the record and award judgment where appropriate” (*GHR Energy Corp. v Stinnes Interoil Inc.*, 165 AD2d 707, 708 [1st Dept 1990]).

Defendants’ motion for summary judgment is granted. NYSHRL § 296 does not protect independent contractors (*see Scott v Massachusetts Mut. Life Ins. Co.*, 86 NY2d 429, 433 [1995]). As discussed above, this court determined in *Walker v Page* that plaintiff was not an employee of JWalker Realty. As such, plaintiff is collaterally estopped from asserting as such here.

“Collateral estoppel, or issue preclusion, ‘precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party . . . whether or not the tribunals or causes of action are the same’” (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999], quoting *Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). “The party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action” (*Kaufman v Eli Lilly and Co.*, 65 NY2d 449, 456 [1985]).

There is identity of issue between the instant matter and the earlier *Walker v Page* litigation. This court determined in *Walker v Page* that Page is not an employee of JWalker Realty but is instead an independent contractor. The determination of Page’s employment status was made in the context of a motion for summary judgment regarding Page’s counterclaims alleging violations of the Labor Law and failure to pay wages and commissions. This court dismissed Page’s counterclaims on the basis that she was never employed by JWalker Realty and admitted in her verified counterclaim complaint that she was an independent contractor.

Here, Page’s workplace discrimination claims require the exact same determination: was Page employed by JWalker Realty? As this court conclusively determined in *Walker v Page*, the answer is no.

There is also no question that Page had a full and fair opportunity to litigate this issue in the *Walker v Page* matter. Indeed, Page elected to not contest this very issue in *Walker v Page*. As such, Page is collaterally estopped from asserting that she was an employee of JWalker Realty or Jason Walker personally.

As for defendants' motion to dismiss (MS1), it is moot as Page filed an amended complaint and, in any event, the grant of defendants' motion for summary judgment supersedes it.

Accordingly, it is ORDERED that defendants' motion for summary judgment is granted and Page's amended complaint is dismissed; it is further

ORDERED that defendants' motion to dismiss the initial complaint is denied as moot; it is further

ORDERED that defendants shall serve a copy of this order with notice of entry on all parties and the clerk of the court within 30 days of its entry; and it is further

ORDERED that the Clerk of the Court enter judgment in favor of defendants.

This constitutes the Decision and Order of the court.

3/11/2020
DATE


MARGARET A. CHAN, J.S.C.

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