

Gallas v Chopard USA Ltd.

2020 NY Slip Op 32566(U)

August 3, 2020

Supreme Court, New York County

Docket Number: 158114/2019

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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DESIREE GALLAS,

Index No. 158114/2019

Plaintiff

- against -

DECISION AND ORDER

CHOPARD USA LTD.,

Defendant
-----x

LUCY BILLINGS, J.S.C.:

Plaintiff sues defendant to recover damages for discrimination and retaliation under the New York State and New York City Human Rights Laws, N.Y. Exec. Law § 296(1); N.Y.C. Admin. Code § 8-107(1)(a), and for a prima facie tort. Defendant moves to dismiss plaintiff's prima facie tort claim based on her failure to plead such a claim, C.P.L.R. § 3211(a)(7), and to impose sanctions for including such a claim in her amended complaint. 22 N.Y.C.R.R. § 130-1.1.

I. THE AMENDED COMPLAINT

Plaintiff alleges that she was employed by defendant, a luxury jewelry and watch manufacturer and seller, from June 2014 until the termination of her employment August 29, 2019. She claims she was the second highest seller of merchandise, even though she was not employed on the sales team. She alleges that her position as the Public Relations and Media Relations Director

required her to promote expensive jewelry pieces that defendant represented as containing only ethically sourced gold, which defendant defines as having been acquired from responsible sources and satisfying international environmental and social standards. Plaintiff claims that defendant nevertheless knowingly acquired and sold jewelry pieces that incorporated unethically sourced gold into defendant's final products.

As the basis of her prima facie tort claim, plaintiff alleges that, even though she explicitly communicated her concerns about potential unethical gold sources in specific jewelry pieces, defendant forced her to promote those expensive jewelry pieces because only she would suffer any public or professional backlash if such a scandal was discovered. Plaintiff further alleges that defendant forced her to inflate the prices of jewelry pieces and then purport to offer a discount to her best American customers, to ensure that defendant profited from the transaction.

II. STANDARDS APPLICABLE TO DEFENDANT'S MOTION

In evaluating defendant's motion to dismiss a claim in the amended complaint under C.P.L.R. § 3211(a)(7), the court must accept plaintiff's allegations as true, liberally construe them, and draw all reasonable inferences in her favor. JF Capital Advisors, LLC v. Lightstone Group, LLC, 25 N.Y.3d 759, 764 (2015); Miglino v. Bally Total Fitness of Greater N.Y., Inc., 20

N.Y.3d 342, 351 (2013); ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d 208, 227 (2011); Drug Policy Alliance v. New York City Tax Comm'n, 131 A.D.3d 815, 816 (1st Dep't 2015). The court will not give such consideration, however, to allegations that consist of only bare legal conclusions. Simkin v. Blank, 19 N.Y.3d 46, 52 (2012); David v. Hack, 97 A.D.3d 437, 438 (1st Dep't 2012). The court accepts as true only plaintiff's allegations of facts that set forth the elements of a legally cognizable claim and from them draws all reasonable inferences in her favor. If the amended complaint fails to allege facts that fit within her claimed legal theory, dismissal is warranted. Faison v. Lewis, 25 N.Y.3d 220, 224 (2015); ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d at 227; Lawrence v. Graubard Miller, 11 N.Y.3d 588, 595 (2008); Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007).

III. DISMISSAL of PLAINTIFF'S PRIMA FACIE TORT CLAIM

The elements of a prima facie tort are (1) intentional infliction of harm, (2) causing special damages, (3) without justification or excuse, (4) by otherwise lawful acts. Posner v. Lewis, 18 N.Y.3d 566, 570 n.1 (2012); Freihofer v. Hearst Corp., 65 N.Y.2d 135, 142-43 (1985); Curiano v. Suozzi, 63 N.Y.2d 113, 117 (1984); Burns Jackson Miller Summit & Spitzer v. Lindner, 59 N.Y.2d 314, 332 (1983). To establish special damages, plaintiff must plead that defendant caused a specific and measurable loss from defendant's alleged tortious conduct. Freihofer v. Hearst

Corp., 65 N.Y.2d at 143; Britt v. City of New York, 151 A.D.3d 606, 606 (1st Dep't 2017); Matthaus v. Hadjedj, 148 A.D.3d 425, 426 (1st Dep't 2017); Wigdor v. SoulCycle, LLC, 139 A.D.3d 613, 614 (1st Dep't 2016). To satisfy the requirement that defendant's alleged actions were without justification or excuse, plaintiff must show that malevolence was the sole motivation for defendant's actions. Posner v. Lewis, 18 N.Y.3d at 570 n.1; Curiano v. Suozzi, 63 N.Y.2d at 117; Burns Jackson Miller & Spitzer v. Lindner, 59 N.Y.2d at 333. Simply alleging that defendant inflicted harm without justification does not demonstrate that defendant's sole motivation was malevolence. Murphy v. American Home Prods. Corp., 58 N.Y.2d 293, 303-304 (1983).

Although plaintiff claims she "suffered special damages including loss of pay and medical costs" potentially resulting from the alleged prima facie tort, Aff. of Jane B. Jacobs Ex. B (Am. V. Compl.) ¶ 100, she neither itemizes the damages nor provides a final damages calculation, thus failing ultimately to identify the specific measurable loss required for a prima facie claim. Freihofer v. Hearst Corp., 65 N.Y.2d at 143; Britt v. City of New York, 151 A.D.3d at 606; Matthaus v. Hadjedj, 148 A.D.3d at 426; Wigdor v. SoulCycle, LLC, 139 A.D.3d at 614; Phillips v. New York Daily News, 111 A.D.3d 420, 421 (1st Dep't 2013). Nor does plaintiff allege facts showing that defendant's

sole motivation was disinterested malevolence. In fact, her allegations that defendant forced her to promote jewelry pieces, knowing her reservations about the original gold sources, and to inflate the prices of jewelry pieces, so as to appear that they were being sold at a discount, indicate defendant was at least partially motivated by profit or commercial success. Hakim v. Jones, 169 A.D.3d 450, 452 (1st Dep't 2019); Iken v. Bohemian Brethren Presbyt. Church, 162 A.D.3d 594, 595-96 (1st Dep't 2018); Board of Mgrs. of the 120 E. 86th St. Condominium v. Park Ave. Physicians Realty, LLC, 160 A.D.3d 487, 491 (1st Dep't 2018); Brook v. Peconic Bay Med. Ctr., 152 A.D.3d 436, 438 (1st Dep't 2017).

IV. DEFENDANT'S MOTION FOR SANCTIONS

The court may impose sanctions when plaintiff's or her attorney's conduct is completely without merit and unsupported by any reasonable argument. 22 N.Y.C.R.R. § 130-1.1(c). Although defendant's attorney advised plaintiff's attorney, in writing, that plaintiff's prima facie claim was frivolous, as defined by 22 N.Y.C.R.R. § 130-1.1(c), the correspondence merely notified plaintiff's attorney that the claim was meritless and failed to request that plaintiff discontinue or amend it. Consequently, she did not do so. Yet defendant asks that she be penalized for failing to do what defendant failed to ask her to do.


Absent such a request, plaintiff's prima facie tort claim

was not so blatantly meritless as to warrant sanctions. Plaintiff reasonably argued that it was contrary to defendant's employee policies and to its business interests for her to conduct business as defendant forced her to do. Even if conducting business as defendant demanded was to its business advantage, as plaintiff was not part of the sales team, she was inessential to that endeavor. These arguments, even though unpersuasive in sustaining her prima facie tort claim, demonstrate that she pursued her claim in good faith and did not engage in "frivolous" conduct. 22 N.Y.C.R.R. § 130-1.1(c); Ray v. Ray, 180 A.D.3d 472, 474 (1st Dep't 2020); Bradley v. Bradley, 167 A.D.3d 489, 489-90 (1st Dep't 2019); Gordon Group Inv., LLC v. Kugler, 127 A.D.3d 592, 594 (1st Dep't 2015); Emery v. Parker, 107 A.D.3d 635, 636 (1st Dep't 2013). See Curtis v. Tabak is Tribeca, 144 A.D.3d 509, 510 (1st Dep't 2016). Therefore the court denies defendant's motion for sanctions.

V. CONCLUSION

For the reasons explained above, the court grants defendant's motion to dismiss plaintiff's prima facie tort claim based on her deficient pleading, but denies defendant's motion for sanctions. C.P.L.R. § 3211(a)(7); 22 N.Y.C.R.R. § 130-1.1.

DATED: August 3, 2020



LUCY BILLINGS, J.S.C.