

Mayo v Jasmine

2020 NY Slip Op 34379(U)

November 19, 2020

Supreme Court, Queens County

Docket Number: 700705/2020

Judge: Cheree A. Buggs

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This opinion is uncorrected and not selected for official publication.

FILED

11/19/2020
2:20 PM

COUNTY CLERK
QUEENS COUNTY

Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE CHEREÉ A. BUGGS
Justice

IAS PART 30

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KEISHA MAYO,

Index No. 700705/2020

Plaintiff,

Motion

Date: November 18, 2020

-against-

Motion Cal. No.:41

SUPERVISOR EDWICH JASMINE, LAMESHA
WALKER, JASMINE RICHARDSON, STEVEN
BASTIAN, VANESSA WILLIAMS, MAYRA
BURGOS, NICOLE RENE, CHAUNCEY HENRY,
CO-LASCO-COBA, CO_RING- COBA DELEGATE,
CO-BOSCO- COBA BOARD, COMMISSIONER
PAULETTE BERNARD- COBA COARD,
COMISSIONER PATRICIA FEENEY,
COMISSIONER MELODY AMILL, COMISSIONER,
MARIA GUCCIONE, DANIELLE LABRUZZO,
Defendants.

Motion Sequence No.:5

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The following efile papers numbered EF35-38, 40-42 and 50-52 submitted and considered on this motion by defendants PAULETTE BERNARD (“Bernard”), BENNY BOSCIO (“Boscio”), DERRICK LASKO (“Lasko”) and ANTHONY RING (“Ring”) (collectively referred to as “Defendants”) seeking an Order pursuant to CPLR 3211 dismissing all causes of action in the plaintiff KEISHA MAYO’s (hereinafter referred to as “Plaintiff”) Complaint as asserted against them and for such other and further relief as this Court deems just and proper.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion-Aff.- Memo of Law.....	EF 35-38
Affidavit.....	EF 40
Aff. in Opposition.....	EF 41
Aff. in Opposition.....	EF 42
Reply Aff.- Exhibit.....	EF 50-52

The motion to dismiss is **granted**, as set forth below:

Facts

Plaintiff is a retired NYC Department of Corrections Officer. Plaintiff commenced this action by filing the Summons and Complaint on January 15, 2020. In the Complaint, Plaintiff alleges ten causes of action: attorney fraud and racial bias, racial discrimination, institutional racism, negligent hiring, negligent training, negligent retention, negligent supervision, retaliatory discrimination and theft by deception and fraud.

Defendants are elected officials of the Correction Officers' Benevolent Association ("COBA"). COBA is a certified labor organization that represents employees of the New York City Department of Correction in the Correction Officer civil service title. Lasko (referred to as "Co Lasco") and Ring (referred to as "Co Ring") are delegates. Boscio (referred to as "Co Bosco") is COBA's sergeant-at-arms and Bernard is COBA'S Brooklyn Borough Trustee.

Defendants allege Plaintiff's only allegation referencing COBA is located on Page 87 of her Complaint. The allegation states:

"PLAINTIFF HASA [sic] FILED OFFICIAL REPORTS OF WORKPLACE HARASSMENT AND MADE MULTIPLE COMPLAINTS TO PLAINTIFF'S UNION, C.O.B.A. AND HAV E NOT BEEN ASSISTED, HOWEVER,

PLAINTIFF HAS PAID DUES RELIGIOUSLY SINCE DEDUCTED FROM EVERY PAY CHECK AND STILL PLAINTIFF HAS NOT RECEIVED ANY ASSISTANCE WHATSOEVER, AND FOR THIS CAUSE, PLAINTIFF IS DEMANDING THAT ALL MONIES PAID TO THE CORRECTION OFFICERS BENEVOLENT ASSOCIATION BE RETURNED TO PLAINTIFF, POST HASTE AND IMMEDIATELY, PLAINTIFF REACHED OUT TO THE BELOW LISTED UNION DELEGATE AND WAS LITERALLY TREATED AND GREETED LIKE A BLACK OR JEW,... WITH THE SMILE OF A KLANSMEN IN THE DAYTIME, HOOD OFF AND AT A SUNDAY SCHOOL MEETING"

Defendants claim that plaintiff failed to raise an inference of any violation, thereby failing to meet the pleading requirements set forth in CPLR 3013.

Law and Application

"On a motion to dismiss pursuant to CPLR 3211 (a) (7), the claim must be afforded a liberal construction, the facts therein must be accepted as true, and the plaintiff must be accorded the benefit of every favorable inference" (*Sawitsky v State*, 146 AD3d 914 [2d Dept 2017]; *see also Leon v Martinez*, 84 NY2d 83 [1994]). CPLR 3013 states "Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." "If from the four corners of the complaint factual allegations are discerned which, taken

together, manifest any cause of action cognizable at law, a motion to dismiss will fail” (*Cooper v 620 Prop. Assocs*, 242 AD2d 359 [1997]).

Defendants argue there is no basis for a claim against them for negligent hiring, training, retention or supervision because Plaintiff fails to allege that the Defendants hired, trained, retained or supervised anyone that harmed Plaintiff. The crux of Plaintiff’s claims against Defendants is that she made complaints to Defendants which they failed to act on. However, Plaintiff’s discrimination claims fail to allege facts that would support a finding that the failure to act was due to Plaintiff’s membership in a protected class. Under both New York Human Rights Law and New York City Human Rights Law, the plaintiff must allege 1. membership in a protected class; 2. qualification for the position and satisfactory performance; 3. adverse employment actions and 4. such adverse actions occurred under circumstances that give rise to an inference of discrimination. (*Emengo v State of New York* (2015 WL 5915286 *3, 4 [Sup. Ct. NY County October 9, 2015 No. 150733/2013].) Furthermore, the Complaint fails to establish that the statute of limitations has not run because the Complaint is silent as to dates. The attorney fraud claim is inapplicable here, because Plaintiff has not alleged facts to suggest an attorney client relationship exists with the Defendants. Finally, as to Plaintiff claims for “theft by deception and fraud”. Plaintiff has failed to plead the elements of fraud with particularity (*see* CPLR 3016[b]).

In opposition, Plaintiff reiterates that Defendant’s ignored her complaints and contends that she was ignored due to her membership in a protected class. The opposition states in part: “Plaintiff has not gone into specificity as it relates to the ‘C.O.B.A. 4” but can, and intended to do so during the course of this proceeding, trial by jury”. Unfortunately, neither law nor equity allows this Court to deny this motion to dismiss on the grounds that Plaintiff “plans” to state a cognizable claim. Plaintiff was required to plead facts that give rise to the causes of action alleged and Plaintiff has failed to do so. Therefore it is,

ORDERED, that the Defendants motion to dismiss is granted; and it is further,

ORDERED, that the caption shall be amended to read as follow:

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NEW YORK SUPREME COURT-QUEENS COUNTY

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KEISHA MAYO,

Index No. 700705/2020

Plaintiff,

-against-

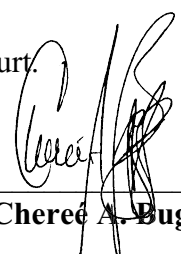
SUPERVISOR EDWICH JASMINE, LAMESHA WALKER, JASMINE RICHARDSON, STEVEN BASTIAN, NICOLE RENE, CHAUNCEY HENRY, COMMISSIONER PATRICIA FEENEY, COMISSIONER MELODY AMILL, COMISSIONER MARIA GUCCIONE, DANIELLE LABRUZZO,

Defendants.

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The foregoing constitutes the decision and Order of the Court.

Dated: November 19, 2020



Hon. Chereé A. Buggs, JSC

FILED

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**COUNTY CLERK
QUEENS COUNTY**