

Valentina v Beckerman
2020 NY Slip Op 34433(U)
December 21, 2020
Supreme Court, Queens County
Docket Number: 719184/2019
Judge: Donna-Marie Golia
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FILED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS12/21/2020
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PRESENT: Donna-Marie E. Golia, JSC

Part 21

COUNTY CLERK
QUEENS COUNTY

SOPHIA VALENTINA,

Plaintiff,

v

Index No. 719184/2019
Motion Date: 11/23/2020
Motion Seq. No.: 001RICHARD BECKERMAN, DONALD MASTRODOMENICO, and
THE LAW OFFICE OF DONALD MASTRODOMENICO, P.C.,

Defendants.

The following electronically filed papers numbered EF6 to EF14, EF17 to EF18, and EF20 to EF28 read on this motion by defendants to dismiss this action pursuant to New York Civil Practice Law and Rules ("CPLR") § 3211(a)(1), (7) and (8).

	<u>Papers Numbered</u>
Notice of Motion, Affirmation, Exhibits, Memorandum of Law.....	EF6 – EF14
Notice of Cross-Motion, Memorandum of Law in Opposition.....	EF17 – EF 18
Memorandum of Law in Opposition to Cross-Motion and in Further Support of Motion, Affirmation, Exhibits, Affidavit of Service.....	EF20 – EF28
Plaintiff's Affirmation in Reply to Defendant's Reply Memorandum of Law, Plaintiff's Reply to Defendants' Memorandum of Law ¹	EF31 – EF32
Affirmation in Response to Sur-Reply ²	EF34

Defendants Richard Beckerman, Esq., Donald Mastrodomenico, Esq. and The Law Office of Donald Mastrodomenico, P.C. (collectively "defendants") move, pursuant to CPLR §§ 3211(a)(1), (7) and (8), to dismiss the verified complaint on the grounds that it is barred by documentary evidence, it fails to state causes of action and the court lacks jurisdiction due to insufficient service of process. Plaintiff opposes defendants' motion and cross-moves for an order of default against defendants.³ Upon the papers submitted, defendants' motion is granted and plaintiff's cross-motion is denied as moot, as discussed more fully below.

¹ The Court will not consider "Plaintiff's Affirmation in Reply to Defendant's Reply Memorandum of Law" or "Plaintiff's Reply to Defendants' Memorandum of Law" as plaintiff was not granted leave to file a sur-reply.

² The Court will not consider defendants' "Affirmation in Response to Plaintiff's Sur-Reply" as defendants were not granted leave to file a sur-sur reply.

³ Pursuant to a stipulation dated October 28, 2020, defendants withdrew the branch of their motion that sought dismissal of the complaint based on the lack of personal jurisdiction and plaintiff withdrew her cross-motion for an order of default. Therefore, the Court will not address that branch of defendants' motion or plaintiff's cross-motion in the decision herein.

This action arises out of defendants' representation of plaintiff in a matrimonial action entitled Valentina v Valentina, Index No. 8128/2013 (the "underlying action"). Mr. Beckerman, an attorney who was formerly affiliated with The Law Office of Donald Mastrodomenico, P.C., provided legal services to plaintiff in connection with the underlying action. On November 14, 2016, the parties settled the underlying action by a so-ordered stipulation ("the stipulation"), which was filed and placed on the record before the court.

Thereafter, plaintiff, having become dissatisfied with the terms of the stipulation of settlement, commenced the instant lawsuit against defendants alleging claims for, *inter alia*, legal malpractice, fraud, breach of contract, breach of fiduciary duty, intentional and negligent infliction of emotional distress and sexual discrimination. In connection with her cause of action for legal malpractice, plaintiff alleges that defendants refused to request temporary spousal support/maintenance, temporary legal fees and temporary child support.

In this pre-answer motion to dismiss, defendants argue that the complaint must be dismissed because it is barred by plaintiff's allocation of the settlement of the underlying action. Specifically, defendants aver that plaintiff signed the stipulation of settlement and acknowledged that the settlement was the result of negotiations with her former husband. Defendants also highlight that plaintiff stated under oath and in open court that she understood and agreed to the terms of the settlement, she had no questions about the settlement and that she was satisfied with the settlement and the representation provided by her attorneys. Defendants further note that plaintiff was represented by counsel of her own selection, she was fully informed of her rights and that she freely and voluntarily entered into the settlement agreement.

Additionally, defendants argue that plaintiff's claims for fraud, breach of contract, breach of fiduciary duty and infliction of emotional distress must be dismissed because they are impermissibly duplicative of plaintiff's claim for legal malpractice. Defendants also maintain that the complaint does not explain or amplify plaintiff's claim for "sexual discrimination." According to defendants, there is no factual or legal basis for plaintiff's claim for sexual discrimination since this action does not arise out of an employer/employee relationship or conduct in the workplace.

In opposition, plaintiff argues that defendants "coerced" her to settle the underlying action, sign the stipulation of settlement and be "agreeable" during her allocation before the court. Additionally, plaintiff argues that she has set forth detailed allegations in her complaint that must be accepted as true. Plaintiff further asserts that she has a valid claim for sex discrimination, which is a separate cause of action from her legal malpractice claim. According to plaintiff, defendants have a pattern of "intimidating and coercing" their female clients and that this conduct has caused her physical, financial and emotional harm.

In reply, defendants argue that plaintiff failed to address the branch of their motion that sought dismissal of plaintiff's claims for fraud, breach of contract, breach of fiduciary

duty and infliction of emotional distress. Defendants also submit that because plaintiff's complaint and opposition papers set forth conclusory allegations with respect to her claim for sexual discrimination, the Court should dismiss the same.

DISCUSSION

Pursuant to CPLR § 3211(a)(1), a party may move to dismiss an action where "a defense is founded upon documentary evidence." A court will grant a motion to dismiss pursuant to CPLR § 3211(a)(1) only where the documentary evidence "utterly refute[s] the plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (Magee-Boyle v Reliastar Life Ins. Co. of New York, 173 AD3d 1157, 1159 [2d Dept 2019] citing Gould v Decolator, 121 AD3d 845, 847 [2d Dept 2014]). Therefore, to qualify as documentary within the meaning of CPLR § 3211(a)(1), the evidence submitted "must be unambiguous, authentic, and undeniable" (*id.*). For example, "[j]udicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable, would qualify as documentary evidence in the proper case" (*id.* citing Fontanetta v Doe, 73 AD3d 78, 84–85 [2d Dept 2010]).

Here, defendants' submission of the so-ordered stipulation of settlement and the transcript of the November 14, 2016 inquest proceeding in the underlying action "utterly refutes" plaintiff's claim for legal malpractice (*see*, CPLR § 3211(a)(1), Magee-Boyle, 173 AD3d at 1159, *supra*). Indeed, during plaintiff's allocution on the record before the court, plaintiff testified that she "waived [her] right to a trial" and that was "satisfied with the representation given" by her attorney (*see*, Def. Exh. 10 p. 15-16). Plaintiff also stated that she was not under any "stress or duress" that may have caused her to "sign the agreement" or "not understand the agreement . . . or the proceedings" (*see*, *id.* at 16). Significantly, contrary to plaintiff's allegations, plaintiff testified that she was not "forced" to settle the underlying matter, sign the settlement agreement, or waive her right to maintenance or a trial (*see*, *id.* at 16-17). Accordingly, because the documentary evidence here conclusively establishes that plaintiff was not coerced to settle the underlying action, plaintiff's claim for legal malpractice against defendants is dismissed (*see*, CPLR § 3211(a)(1), Magee-Boyle, 173 AD3d at 1159, *supra*; Glenwayne Dev. Corp. v James J. Corbett, P.C., 175 AD3d 473, 474, [2d Dept 2019]; Karakash v Trakas, 163 AD3d 788, 790 [2d Dept 2018]; Schiller v Bender, Burrows & Rosenthal, LLP, 116 AD3d 756, 757 [2d Dept 2014]).

Moreover, the duplicative nature of plaintiff's claims for fraud, breach of contract, breach of fiduciary duty and infliction of emotional distress warrants dismissal of said claims. Indeed, these claims "arise from the same facts" as plaintiff's claim for legal malpractice and "do not allege distinct damages" (*see*, Mackey Reed Elec., Inc. v Morrone & Assocs., P.C., 125 AD3d 822, 823 [2d Dept 2015]; Kvetnaya v Tylo, 49 AD3d 608, 609 [2d Dept 2008]). To be sure, these causes of action are "predicated upon plaintiff's allegations" that "[d]efendants owed a fiduciary duty of care . . . to represent [her] zealously, and to show [her] 'courtesy and consideration at all times'" (*see*, Pl. Exh. A p. 20-21). Plaintiff further alleges in her complaint that "[d]efendants failed to represent [her]

properly . . . [and] preserve and protect [her] interests, rights and opportunities" (*id.* at 21). Accordingly, because plaintiff's causes of action for fraud, breach of contract, breach of fiduciary duty and infliction of emotional distress are premised upon the same facts and seek the same damages as her claim for legal malpractice, such claims are hereby dismissed (*see*, Mackey Reed Elec., Inc., 125 AD3d at 823, *supra*; Schiller, 116 AD3d at 758, *supra*; Turner v Irving Finkelstein & Meirowitz, LLP, 61 AD3d 849, 850 [2d Dept 2009]; Kvetnaya, 49 AD3d at 609, *supra*).

Furthermore, plaintiff has failed to state a cause of action for sex discrimination. Indeed, as defendants correctly highlight, there was no employer-employee relationship between the parties and plaintiff failed to show that a valid cause of action for sex discrimination exists on the basis of an attorney-client relationship (*see*, Mittl v New York State Div. of Human Rights, 100 NY2d 326, 330 [2003]; Lambert v Macy's E., Inc., 84 AD3d 744, 745 [2d Dept 2011]). Accordingly, plaintiff's claim for sex discrimination is dismissed.

Even assuming *arguendo* that plaintiff established a claim for sex discrimination based on her attorney-client relationship, the vague and conclusory nature of plaintiff's claim for sex discrimination warrants dismissal of the same. Pursuant to a CPLR § 3211(a)(7) motion to dismiss, "the court is required to accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Cruciata v O'Donnell & McLaughlin, Esqs., 149 AD3d 1034, 1034–35 [2d Dept 2017]). Moreover, "[a]lthough the facts pleaded are presumed to be true and are to be accorded every favorable inference, 'bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration'" (*id.* at 1035). Here, plaintiff's complaint alleges in a conclusory manner that "[d]efendants would not have treated a man" in the way that plaintiff was allegedly treated and that defendants have a "pattern," which is speculative at best, of mistreating their "female clientele" based on an alleged conversation plaintiff had with an unnamed former female client of defendants. Accordingly, because these allegations are insufficient to state a cognizable claim for sex discrimination, such claim is hereby dismissed (*see*, CPLR § 3211(a)(7); *see*, *e.g.*, DuBois v Brookdale Univ. Hosp. & Med. Ctr., 29 AD3d 731, 732 [2d Dept 2006]; Vanscoy v Namic USA Corp., 234 AD2d 680, 682 [3d Dept 1996]).

In sum, defendants' motion to dismiss pursuant to CPLR §§ 3211(a)(1) and (7) is granted and the Clerk of the Court is directed to enter judgment dismissing the complaint in its entirety. The Court further denies plaintiff's cross-motion as moot. ✓

This is the Decision and Order of the Court.

Dated: December 21, 2020


Donna-Marie E. Golia, JSC

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