

Campbell v New York City Dept. of Educ.

2020 NY Slip Op 35733(U)

February 10, 2020

Supreme Court, Bronx County

Docket Number: Index No. 32672/2018E

Judge: Mitchell J. Danziger

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART: 03

CAMPBELL, PAULINE

Index No. 0032672/2018E

-against-

Hon. MITCHELL J. DANZIGER,

NEW YORK CITY DEPARTMENT OF

Justice Supreme Court

The following papers numbered 1 to _____ Read on this motion, (Seq. No. 1) for
DISMISSAL, noticed on **July 01 2019**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion is

THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION

Motion is Respectfully Referred to Justice:

Dated:

Dated: 2/10/20

Hon. 

MITCHELL J. DANZIGER, J.S.C.

1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX



-----X
PAULINE CAMPBELL,

Index No.: 32672/2018E

DECISION/ORDER

Present:

HON. MITCHELL J. DANZIGER

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,
ANNE O'DONNELL, individually and in her official
capacity, EALE ROBINSON, individually and in her
official capacity, JOHN AND JANE DOES 1-10, and
XYZ CORP. 1-10,

-----X
Recitation as Required by CPLR §2219(a): The following papers
were read on this Motion to Dismiss the Summons and
Complaint:

Papers Numbered

Notice of Motion Affirmation in Support with Exhibit.....	<u>1</u>
Affirmation in Support of Motion.....	<u>2</u>
Affirmation in Opposition to Motion.....	<u>3</u>
Memorandum of Law in Opposition.....	<u>4</u>
Reply Memorandum.....	<u>5</u>

Upon the foregoing cited papers, the Decision/Order of this Court is as follows:

Motion by defendants seeking to dismiss the complaint pursuant to CPLR §3211(a)(7) on the grounds that plaintiff's complaint is time barred and fails to state a cause of action is granted.

The complaint purports to set forth a cause of action for employment discrimination against the New York City Department of Education ("DOE"), Anne O'Donnell ("O'Donnell"), and Eale Robinson ("Robinson") alleging race and age discrimination. Plaintiff was employed as a cook from 1997 to August 10, 2017, when she was terminated. Plaintiff alleges she was subjected to continuous and ongoing acts of discrimination and harassment by defendants starting in December of 2005 and continuing until termination in August of 2017.

Pursuant to Education Law §3813(2-b), the statute of limitations for discrimination claims against a school district, such as DOE, and school officials in their official capacity is one (1) year. (*Amorisi v. South Colonie Ind. Cent. Sch. Dist.*, 9 N.Y.3d 367 [2007]). As plaintiff was

terminated on August 10, 2017, the most recent act of alleged discrimination, the statute of limitations for her claims against the DOE and school officials in their official capacities expired on August 10, 2018. Plaintiff argues that since she filed a complaint with the Public Employment Relations Board to challenge her termination, which ultimately ended with the upholding of her termination on November 6, 2017, the statute of limitations is tolled until November 6, 2018, the date plaintiff filed her summons and complaint. The Court finds that the cases plaintiff submits in support of her argument to toll the statute of limitation do not support a finding that the statute is tolled by a filing with the New York State Public Employment Relations Board (PERB). To challenge her termination, as in all of the cases plaintiff cited, plaintiffs filed complaints with the United States Equal Employment Commission (EEOC) or the New York State Division of Human Rights (SDHR), which deal with their employment discrimination claims. Further, plaintiff gives no detail as to what her complaint with the PERB consisted of. Therefore, the applicable statute of limitations in his matter is August 10, 2018, and plaintiff's claims against DOE, O'Donnell, and Robinson in their official capacity are dismissed.

The statute of limitation for plaintiff's claims under the New York State Human Rights Law (NYSHRL) and New York City Human Rights Law (NYCHRL) against defendants O'Donnell and Robinson in their individual capacities is three (3) years. (CPRL §214(2); N.Y.C. Admin. Code §8-502(d); *Konteye v. New York City Dep't of Educ.*, 2019 U.S. LEXIS 62794 [S.D.N.Y. April 10, 2019]). As plaintiff filed her summons and complaint on November 6, 2018, all claims prior to November 6, 2015 are time barred. In opposition, plaintiff argues that the continuous violation doctrine delays commencement of the three-year statute of limitations applicable to discrimination claims. (*Salgado v. The City of New York*, 2001 U.S. Dist. LEXIS 3196 [S.D.N.Y. 2001]). "The continuing violation doctrine provides a narrow exception to the NYSHRL limitations period 'where there is proof of specific ongoing discriminatory policies or practices, or where specific and related instances of discrimination are permitted by the employer to continue unremedied for so long as to amount to a discriminatory policy or practice.'" (*Baez v. State of New York*, 2010 N.Y. Misc. LEXIS 5525 [Sup. Ct. N.Y. Co. Nov. 9, 2010] citing, *Quinn v Green Tree Credit Corp.*, 159 F.3d 759, 766 [2d Cir. 1998]). Here, the Court finds that there is no proof of ongoing discriminatory policies or practices, but rather a list of discrete acts that occur on specific dates with breaks of one year between January 2008 and January 2009, approximately five years between 2009 and 2014, and approximately two years between 2014

and November 28, 2016. (*Green v. Continuum Health Partners, Inc.*, 88 A.D.3d 487 [1st Dept. 2011]). Therefore, the continuing violation doctrine does not apply to plaintiff's claims under NYSHRL and NYCHRL as against defendants O'Donnell and Robinson in their individual capacities and claims prior to November 6, 2015 are time barred and dismissed.

As such, the following instances of alleged discrimination, harassment, and retaliation remain for consideration of the portion of plaintiff's motion seeking dismissal for failure to state a cause of action pursuant to CPLR §3211(a)(7): a) in 2016 defendants allowed Forman to work with plaintiff after plaintiff alleges that Forman physically attacked her; b) in 2016 defendants manipulated the time clock; c) in 2016 defendants did not allow plaintiff to wear her cook's uniform and ordered her to wear a School Lunch Helper uniform; d) plaintiff's complaint of continuous harassment by questioning a write up by O'Donnell because plaintiff took approved vacation days; e) plaintiff's October 11, 2016 EEO complaint based on age and race; f) plaintiff's complaints dated January 17, 2017, February 3, 2017, February 6, 2017, and February 8, 2017 regarding co-workers; g) between October 2016-February 2017, defendants instructed other employees to verbally attack plaintiff; h) plaintiff was ordered to transfer on or about February 14, 2017; i) write ups for not changing her uniform and provoking women two women in the restroom dated February 28, 2017; j) a complaint dated March 6, 2017 regarding her supervisors engaging in retaliation, harassment, and unprofessional behavior towards her; k) plaintiff's complaint of not having her own school despite having more seniority; l) plaintiff's termination on August 10, 2017.

The Court finds that there is no allegation in the complaint, nor any factual averment to support plaintiff's claim that her termination was an adverse action under SHRL or CHRL or discriminatory in practice or that she was treated differently from other employees in light of her age and race and therefore, the cause of action is insufficiently plead. (*Buffolino v. Long Island Sav. Bank FSB.*, 126 A.D.2d 508 [2d Dep't., 1987]; *Whitfield-Ortiz v. Dept. of Educ. of the City of NY*, 116 A.D.3d 580 [1st Dept. 2014]). Under the Human Rights Law, a plaintiff must plead facts suggesting, "she has been treated less well than other employees because of her protected status [,] or that discrimination was one of the motivating factors of the defendant's conduct" (*Chin v. N.Y.C. Hous. Auth.*, 106 A.D.3d 443, 445 [1st Dept. 2013]; See, *Whitfield-Ortiz*). First, plaintiff fails to identify herself as a member of a protected class. Her complaint fails to mention her age or race and she does not cure this defect in her opposition papers. Plaintiff submits in her

complaint that a Ms. Moore wrote a statement that defendant O'Donnell discriminated and harassed black people, including herself, which indicates that plaintiff is black. The Court notes that Ms. Moore's statement is dated May 10, 2009 and therefore, allegations made relying on Ms. Moore's statement is time barred. Moreover, while Ms. Moore's statement is referenced in plaintiff's complaint, plaintiff herself does not make these allegations. Plaintiff makes no comparison between herself and other employees which suggests that she was more poorly treated than anyone else as a result of her age or race. Plaintiff does not allege her termination was as a result of her age or race. As a result of the foregoing, no inference of discrimination or retaliation based on plaintiff's race and age can be made. Plaintiff's claims for discrimination, harassment and retaliation pursuant to SHRL and CHRL are dismissed for failure to state a claim for which relief can be granted. For the same reasons above, plaintiff's hostile work environment claims fail. Plaintiff has failed to adequately plead a discriminatory animus, which is fatal to her hostile work environment claim. (See, *Whitfield-Ortiz*; citing, *Askin v. Dept. of Educ. of City of NY*, 110 A.D.3d 621 [1st Dept. 2013]).

Based on the foregoing, the complaint fails to state a cause of action and the same is dismissed pursuant to CPLR §3211(a)(7).

Defendants shall serve a copy of this order with notice of entry upon plaintiff within 30 days of the entry date hereof. This constitutes the decision and judgment of the Court.

Dated: 2/10/20
Bronx, New York


HON. MITCHELL J. DANZIGER, J.S.C.