

**New York State Div. of Human Rights v
Parsons 88 Realty LLC**

2020 NY Slip Op 35767(U)

December 9, 2020

Supreme Court, Bronx County

Docket Number: Index No. 32375/2019

Judge: Alison Y. Tuitt

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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

INDEX NUMBER: 32375/2019

Plaintiff,

-against-

Present:
HON. ALISON Y. TUITT
Justice

PARSONS 88 REALTY LLC, ZARA REALTY HOLDING CORP., JAIRAJ SOBHRAJ, KENNETH SUBRAJ, RAJESH SUBRAJ, RUDOLPH PERUMAL and TULSIERAM SINGH,

Defendants.

The following papers numbered 1 to 3,

Read on this Defendants' Motion to Dismiss

On Calendar of 7/27/2020

Notice of Motion-Exhibits, Affirmation, Memorandum of Law 1

Affirmation and Memorandum of Law in Opposition 2

Reply Affirmation 3

Upon the foregoing papers, defendants' motion to dismiss the complaint is denied for the reasons set forth herein.

This is a housing discrimination action under the New York State Human Rights Law ("Human Rights Law), New York Executive Law, Article 15 §296 et seq., brought by the New York State Division of Human Rights ("Division") against defendants to redress alleged unlawful housing discrimination and retaliation on the basis of national origin in the State of New York. The Division acts to address the unlawful discriminatory actions allegedly committed by defendants against tenants of an apartment building located at 88-

06 Parsons Boulevard, Jamaica, New York (“the Building”) who are not from the United States, but are from countries that include Guatemala, El Salvador and Bangladesh (“the Tenants”) who have faced discrimination in housing and retaliation on the basis of their national origin by the actions and practices of defendants who are the owners and/or managers of the Building, their agents and employees.

The complaint alleges that defendants violated N.Y. Exec. Law §§ 296.5(a)(2), 296.5(a)(3), and 296.7, and charges three causes of action against defendants. The first cause of action charges that defendants unlawfully discriminated against the Tenants in the terms, conditions or privileges of the rental or leasing of housing accommodations, in violation of N.Y. Exec. Law § 296.5(a)(2), by: (1) threatening to report tenants with national origins outside of the United States to United States Immigrations and Customs Enforcement (“ICE”) if they cooperated with the Division’s housing discrimination investigation; (2) displaying a sign in the lobby of the Building that directed the reporting of tenants to ICE via an ICE tip line based solely on national origin by classifying “immigration” as “suspicious criminal activity”; and (3) engaging in harassing, intimidating, and threatening conduct directed at tenants and Division investigators in order to scare the tenants because of their national origin and to impede the Division’s housing discrimination investigation.

The second cause of action charges defendants with unlawfully printing and circulating a publication expressing discrimination as to national origin, in violation of N.Y. Exec. Law §296.5(a)(3), by displaying a sign in the lobby of the Building that directed the reporting of tenants to ICE via an ICE tip line by intentionally and wrongfully classifying “immigration” as a type of conduct that should be reported to ICE as “suspicious criminal activity.” The third cause of action charges defendants with unlawfully retaliating against tenants of the Building, in violation of N.Y. Exec. Law §296.7, by repeatedly harassing, intimidating, and threatening to report tenants with national origins outside of the United States to ICE if they opposed defendants’ discriminatory conduct or cooperated with the Division’s housing discrimination investigation.

Plaintiff seeks declaratory relief, injunctive relief, compensatory and punitive damages, and civil fines and penalties under the Human Rights Law. See N.Y. Exec. Law § 297. This case originates out of a Division Initiated Action that the Division, acting as the complainant, commenced against defendants by filing a verified complaint with the Division, designated as Division Case No. 10194270 (“Division Complaint”), on April 26, 2018, as amended on June 18, 2018, September 11, 2018, and December 18, 2018. Pursuant to N.Y. Exec. Law §297, the Division conducted an investigation into the Division Complaint, and on or about February

14, 2019, issued a Determination After Investigation finding that the Division had jurisdiction over the Division Complaint and that there was probable cause to support the allegations that defendants violated the Human Rights Law by engaging in unlawful housing discrimination and retaliation on the basis of national origin.

The Building is a residential apartment building located in Queens County that is occupied predominately by tenants who are not from the United States. Defendant Parsons 88 Realty LLC (“Parsons 88”) is the owner and operator of the Building, and defendant Zara Realty Holding Corp. (“Zara”) is the Building’s managing agent. Defendants Jairaj Sobhraj (“Sobhraj”), Kenneth Subraj, and Rajesh Subraj are individuals who have ownership interests in the Building, defendant Parsons 88 Realty LLC (“Parsons 88”), and/or defendant Zara Realty Holding Corp. (“Zara”). Defendant Rudolph Perumal (“Perumal”) is the live-in superintendent for the Building and is an agent for Parsons 88 and Zara. Defendant Tulsieram Singh (“Singh”) is a maintenance supervisor for the Building and is an agent for Parsons 88 and Zara.

In June 2017, a sign titled “HOMELAND SECURITY INVESTIGATIONS TIP LINE” (“HSI Sign”) was being displayed in the lobby of the Building. The HSI Sign was printed, installed and maintained at the Building by Zara. The HSI Sign contained statements that directed the reporting of persons engaged in conduct described as “suspicious criminal activity” to Immigration and Customs Enforcement (“ICE”), 24 hours a day, 7 days a week, by calling an ICE tip line, to wit: the Homeland Security Investigations Tip Line (“HSI Tip Line”). The HSI Sign explicitly enumerated the following types of conduct that should be reported to ICE as “suspicious criminal activity” via the HSI Tip Line: Terrorism, Weapons, Gangs Etc., Drug Smuggling, Narcotics Etc., Immigration, Human Trafficking, Money Laundering, Child Abuse/Exploitation, and Benefit, Welfare, DSS Fraud. The word “Immigration” was intentionally and explicitly added to the HSI Sign as a type of conduct that should be reported to ICE via the HSI Tip Line. The HSI Sign did not state or clarify whether the word “Immigration” referred to “illegal” immigration.

In June 2017, the New York Daily News newspaper published an article that reported, inter alia, that HSI Tip Line signs were being displayed in properties managed by Zara for the purpose of harassing and intimidating undocumented residents of rent-regulated apartments with threats of reporting them to ICE. The Division subsequently commenced a housing discrimination investigation into properties owned and/or managed by Zara. Three Hispanic tenants from the Building, referred to herein as Witness #1, Witness #2, and Witness #3, agreed to assist the Division with its investigation by participating in interviews with Division

investigators. Witness #1 and Witness #2 are originally from Guatemala and are members of a “protected class” based upon their national origin under the Human Rights Law.

The Division sent investigators to the Building to conduct a site visit on July 26, 2017. While the investigators were in the Building, Perumal and Singh allegedly interfered with the Division’s investigation by intimidating witnesses with threats about reporting them to ICE. Perumal and Singh’s threatening conduct included, but was not limited to, approaching Witness #1 while she was in the laundry room and threatening to report her and other tenants to ICE. The interaction frightened Witness #1 and she refused to fully cooperate with the investigation until two months later. Witness #2 informed the Division’s investigators that harassment of the Tenants was common, and that she felt that Zara was singling out Guatemalan tenants for discriminatory treatment and harassment because of their national origin. Witness #2 also told the Division’s investigators that she was charged late fees that were not owed, and she believed the fees were charged because of her Guatemalan national origin.

During a second site visit on August 9, 2017, Perumal and Singh again attempted to obstruct the Division's investigation by preventing the investigators from conducting scheduled tenant interviews. While in the Building on August 9, 2017, the Division’s investigators were allegedly confronted by Perumal and Singh in the hallway and were ordered to leave the Building and to disclose the names of the Tenants who were going to be interviewed. Perumal and Singh also engaged in a loud verbal confrontation with a Division investigator in the hallway that could be overheard by tenants. The Division argues that Perumal and Singh’s conduct in confronting the investigators in the presence of tenants were attempts to disrupt the Division’s investigation and to intimidate and discourage tenants from cooperating with the investigation. Witness #1 later told a Division investigator at a follow-up interview that Perumal and Singh, who were Zara employees, were there to harass and intimidate tenants to the point where they would not cooperate with the Division’s investigation.

Defendants argue in their motion that this Court should dismiss the complaint on the following grounds: (1) Plaintiff failed to make a probable cause finding within the 100-day time limit set forth in N.Y. Exec. Law § Law 297(2)(b); (2) Plaintiff failed to comply with the probable cause review procedures set forth in 9 NYCRR §465.8; (3) Plaintiff’s multiple roles as complainant, investigator, prosecutor, and adjudicator denied defendants due process of law; (4) the complaint exceeds the boundaries of the probable cause finding; (5) the complaint fails to state a claim against defendants Perumal and Singh; and (6) the complaint fails to state a

claim against defendants Sobhraj, Kenneth Subraj, and Rajesh Subraj.

Defendants argue that the complaint must be dismissed because the claims are time-barred. Plaintiff did not file its complaint for over nine months after the allegedly offending sign was removed and the alleged interference by defendants Perumal and Singh. Thereafter, in violation of the statutory 100-day requirement for a finding of probable cause after the filing of an administrative complaint, plaintiff failed to do so until April 30, 2019, over nine months subsequent to that deadline. Plaintiff filed a complaint with itself on or about April 25, 2018. Executive Law §297 requires that within 100 days after a complaint is filed the Division "shall determine whether it has jurisdiction and, if so, whether there was probable cause to believe that the person named in the complaint ... has engaged or is engaging in an unlawful discriminatory practice." On April 30, 2019, over one year after the filing of its complaint, plaintiff issued its finding of probable cause. Defendants contend that based upon the fact that the determination of probable cause was issued over nine months beyond the limitation imposed by Executive Law §297, plaintiff's complaint must be dismissed.

Defendants further argue that plaintiff also failed to comply with NYCRR 465.8, entitled "Probably Cause Review" which provides:

- (a) The regional director must review all recommendations as to determinations after investigation made by an investigator, for accuracy of facts and legal sufficiency. The regional director shall keep a register of all determinations after investigation made by him or her after such review, with notation of the date of determination after review, and a comment if necessary.
- (b) A special unit, called the review unit, will review probable cause determinations as necessary. If such unit determines that the record of investigation does not support a finding of probable cause, it may order such matter reopened and dismissed, or in the appropriate case, reopened and remanded to the regional office with instructions as to further proceedings."

Defendants argue that there is no indication that the regional director reviewed the recommendations as to determinations after the investigation to ensure accuracy of facts and legal sufficiency or any compliance with § 465.8(a). Nor is there any indication in the file that subpart "b" was complied with. While the language of subpart "b" pertains to review by the "review unit" to review probable cause determinations "as necessary" the question that arises is why any such review would not be necessary in this instance. There was obviously no urgency involved in this matter, especially considering that the main focus of the complaint was the sign that had been removed prior to Plaintiff's investigator's appearance at the subject premises. Defendants additionally contend that the Division's multiple roles as complainant, investigator,

prosecutor and adjudicator deprived defendants of due process. Plaintiff's multiple roles are conflicting and incompatible with defendants' rights to procedural due process.

When a defendant moves to dismiss the complaint based on legal insufficiency, plaintiff has no obligation to show evidentiary facts to support the allegations of the complaint. Generally, on a motion to dismiss made pursuant to CPLR §3211, the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit into any cognizable legal theory". Leon v. Martinez, 84 N.Y.2d 83 (1994); Weil, Gotshal & Manges, LLP v. Fashion Boutique of Shirt Hills, Inc., 780 N.Y.S.2d 593 (1st Dept. 2004). "CPLR 3013's liberal pleading provision notwithstanding, a pleading must still be particular enough to provide the court and parties with notice of the transaction or occurrences to be proved." Travelers Insurance Co. v. Ferco, Inc., 511 N.Y.S.2d 594 (1st Dept. 1986). See also, Sibersky v. New York City, 706 N.Y.S.2d 323 (1st Dept. 2000) (Pleadings that are not particular enough to provide the court and the parties with notice of the transaction or occurrences to be proved must be dismissed). Pursuant to CPLR §3211(a)(1), a party may move for dismissal on the ground that a defense is founded upon documentary evidence, or (7) the pleading fails to state a cause of action, or (5) on statute of limitations grounds. A three-year statute of limitations applies to actions brought under the Human Rights Law. See, CPLR 214(2); Murphy v. American Home Products Corp., 58 N.Y.2d 293 (1983).

Dismissal pursuant to CPLR 3211(a)(1) is warranted only if the documentary evidence submitted "utterly refutes plaintiff's factual allegations", Goshen v. Mutual Life Insurance Co. of N.Y., 98 N.Y.2d 314 (2002); Greenapple v. Capital One, N.A., 939 N.Y.S.2d 351 (1st Dept. 2012), and conclusively establishes a defense to the asserted claims as a matter of law". Weil, Gotshal, Manges, LLP, 780 N.Y.S.2d at 593; Mill Fin., LLC v. Gillett, 992 N.Y.S.2d 20 (1st Dept. 2014). If the documentary proof disproves an essential allegation of the complaint, dismissal pursuant to CPLR §3211(a)(1) is warranted even if the allegations, standing alone, could withstand a motion to dismiss for failure to state a cause of action. See, McGuire v. Sterling Doubleday Enters., L.P., 799 N.Y.S.2d 65 (1st Dept. 2005). On a motion to dismiss pursuant to CPLR §3211(a)(7), the complaint survives when it gives notice of what is intended to be proved and the material elements of each cause of action. Rovello v. Orofino Realty Co., Inc. 40 N.Y.2d 633 (1976); Underpinning & Foundation Construction v. Chase Manhattan Bank, 46 N.Y.2d 459 (1979). In deciding a motion to dismiss pursuant to CPLR 3211(a)(7), the Court is to determine "whether the pleading states a cause of action, and if from its four

corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail.” Guggenheimer v. Ginzburg, 43 N.Y.2d 268 (1977). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus.” EBC I, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11 (2005).

N.Y. Exec. Law §296.5(a)(2) provides, in pertinent part:

(a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof... (2) To discriminate against any person because of... national origin... in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

N.Y. Exec. Law §296.5(a)(3) provides, in pertinent part:

(a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof... (3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication,... which expresses, directly or indirectly, any limitation, specification or discrimination as to... national origin... or any intent to make any such limitation, specification or discrimination.

N.Y. Exec. Law §296.7 provides:

It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

N.Y. Exec. Law §297(2)(b), which sets forth certain time limits for Division actions, provides, in pertinent part:

Within one hundred days after a complaint is filed, the division shall determine whether it has jurisdiction and, if so, whether there is probable cause to believe that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice. If it finds with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the commissioner shall issue and cause to be served on the complainant an order dismissing such allegations of the said complaint as to such respondent.

Defendants argue that dismissal of the complaint is required because the Division failed to comply with the 100-day time limit of section §297(2)(b), since the Division Complaint was filed on or about April 26, 2018, and the Division’s probable cause finding was issued over nine months later on April 30, 2019.

Defendants' argument, however, is erroneous as Courts have repeatedly ruled that the time limits set forth in Executive Law §297 are directory, not mandatory. See, Callaghan v. State Division of Human Rights, 421 N.Y.S.2d 214 (1st Dept. 1979); Volk v. State Division of Human Rights, 422 N.Y.S.2d 94 (1st Dept. 1979). Even an unexplained delay of 11 years does not deprive the Division of jurisdiction, "considering that the statutory time limits are directory rather than mandatory. Presbyterian Hospital of the City of New York v. State Division of Human Rights, 659 N.Y.S.2d 283 (1st Dept. 1997). See also, Matter of Corning Glass Works v. Ovsanik, 84 N.Y.2d 619 (1994)(Dismissal was unwarranted for 8½-year delay in the Division's processing of discrimination complaint because although the delay was inordinate, petitioner had not shown that it was actually prejudiced). Moreover, the Court of Appeals has expressly held that noncompliance with the time limits of Executive Law §297 is "insufficient to terminate the [Division's] jurisdiction absent a showing of substantial prejudice." Matter of Louis Harris & Associates, Inc. v. DeLeon, 84 N.Y.2d 698 (1994).

In the instant matter, defendants argue that the delay in the present case "may" constitute prejudice as a matter of law, however, defendants have failed to show any actual prejudice. Indeed, defendants acknowledge that the issue of actual prejudice is currently unripe, stating: "[d]efendants acknowledge this is a preanswer motion to dismiss and, accordingly, the issue of actual prejudice is not ripe for a determination at this juncture." Defendants also acknowledge that caselaw holds that a 100-day time constraint is directory rather than mandatory. Accordingly, the branch of the motion that seeks dismissal on the grounds of statute of limitations is denied.

Regarding defendants' argument that there was an alleged failure by the Division to comply with the probable cause review procedures set forth in 9 NYCRR §465.8 in that the probable cause recommendations were not reviewed by the "regional director" or a "review unit" is also without merit. 9 NYCRR §465.8(a) and (b), provide:

- (a) The regional director must review all recommendations as to determinations after investigation made by an investigator, for accuracy of facts and legal sufficiency. The regional director shall keep a register of all determinations after investigation made by him or her after such review, with notation of the date of determination after review, and a comment if necessary.
- (b) A special unit, called the review unit, will review probable cause determinations as necessary. If such unit determines that the record of investigation does not support a finding of probable cause, it may order such matter reopened and dismissed, or in the appropriate case, reopened and remanded to the regional office with instructions as to further proceedings.

Defendants do not provide any supporting caselaw in support of their argument and their reliance upon 9 NYCRR §465.8(a) and (b) as the basis for dismissal is unavailing. Moreover, defendants' argument is contradicted by the administrative record. The Division's Final Investigation Report and Basis for Determination ("FIRABOD"), dated April 30, 2019, contains the signature of the Human Rights Specialist II who investigated the case, as well as the signature of a Division Acting Director who found probable cause to support the allegations of the complaint. Additionally, defendants' argument that the Court should dismiss on the basis that the Division's multiple roles as complainant, investigator, prosecutor and adjudicator is also without merit pursuant to N.Y. Exec. Law §295.6(b). The Division's authority to initiate actions as the complainant has been upheld by the First Department. Upon its own motion, the Division may investigate and file a complaint alleging discriminatory practices. See, New York State Div. of Human Rights v. H&R Block Tax Services, Inc., 897 N.Y.S.2d 75 (1st Dept. 2010); MTA Bus Co. v. New York State Division of Human Rights, 55 N.Y.S.3d 171 (1st Dept. 2007); New York State Division of Human Rights v. Nationwide Mutual Insurance Co., 426 N.Y.S.2d 497 (1st Dept. 1980); Hillside Housing Corp. v. State Division of Human Rights, 353 N.Y.S.2d 460 (1st Dept. 1979).

Defendants' contention that plaintiff's complaint exceeds the parameters of its finding of probable cause is also without merit. The complaint is legally sufficient as it provide sufficient notice of the claims against defendants for housing discrimination and retaliation. All of the essential elements of the claims are pleaded. The complaint provides sufficient notice that defendants are charged with discriminating against the Tenants based on national origin by subjecting them to a hostile housing environment and retaliation by threatening to report the Tenants to ICE if they cooperated with the Division's investigation; subjecting the Tenants to a threatening HSI Sign in the Building; charging late fees that were not owed; and, subjecting the Tenants to harassment and intimidation by the Building staff. See, Petit v. Department of Education of the City of New York, 113 N.Y.S.3d 30 (1st Dept. 2019)(Fair notice of the nature of plaintiff's claims and their grounds is all that is required to survive at the pleading stage); Vig v. New York Hairspray Co., L.P., 145, 885 N.Y.S.2d 74 (1st Dept. 2009).

With respect to the claims against defendants Jairaj Sobhraj, Kenneth Subraj and Rajesh Subraj, the complaint states a cause of action. N.Y. Exec. Law § 296.5(a) states that it applies to unlawful discriminatory conduct of the "owner... or managing agent of, or other person having the right to sell, rent or

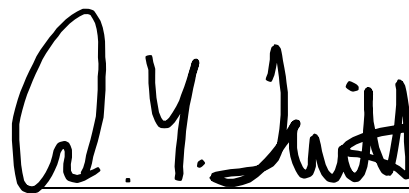
lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof.” See, Matter of State Division of Human Rights v. Muia, 575 N.Y.S.2d 957 (3d Dept. 1991)(Executive Law §296(5)(a) makes discrimination by two classes of people unlawful. The first class includes an “owner”, “managing agent” or “other person having the right to rent or lease a housing accommodation”. The second class consists of “any agent” of a member of the first class). Thus, defendants’ argument that these defendants are shielded from liability by Limited Liability Company Law §609(a) is without merit. These defendants may be deemed to have encouraged, condoned, or approved of the discriminatory conduct by virtue of their roles in having the threatening HSI Sign “printed, installed and maintained at the Building by Zara,” as is alleged in the complaint. See, Pepler v. Coyne, 822 N.Y.S.2d 516 (1st Dept. 2006)(Former employee claim that she was discharged because of impaired speech stated a claim against a managing member of her former employer, a limited liability company, for violation of the Human Rights Law; the complaint portrayed the member as a co-founder and managing member, who had the power to hire and fire the employee, thus bringing him within the ambit of an “employer” for liability purpose). Thus, plaintiff’s causes of action against the LLC Defendants are sufficient to state cognizable violations of the Human Rights Law.

Accordingly, the motion to dismiss the action is denied.

This constitutes the decision and Order of this Court.

Dated:

12/9/20



Hon. Alison Y. Tuitt