SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 42

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CRYSTAL YOUNG

DECISION AND ORDER

Plaintiff,

Index No. 651835/2019

- v -

NEW YORK CITY TRANSIT AUTHORITY, MOT SEQ 005

Defendant.

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this employment discrimination action, the plaintiff, Crystal Young, a conductor employed by defendant New York City Transit Authority (NYCTA), claims that the agency denied her a reasonable accommodation for complications arising from her pregnancy. Young now moves pursuant to CPLR 3025(b) for leave to file a second amended complaint to include i) three additional plaintiffs, Aishah Miller, Jillian Williams, and Sharlet Pringle, asserting similar claims as Young, ii) an additional defendant, the Metropolitan Transportation Authority (MTA), iii) a revised class definition, and, iv) additional causes of action on behalf of Young and proposed plaintiffs for retaliation. NYCTA opposes the motion except to the extent it seeks to add a retaliation claim on behalf of Young. The motion is granted in part.

II. BACKGROUND

The plaintiff, Crystal Young, was employed by the defendant NYCTA since May 2001 – her current job title is conductor and her current assignment is platform controller at the South Ferry/Whitehall Street subway station. She became pregnant in 2018, with a due date of June 2019. According to her complaint, in December 2018, she began experiencing "severe discomfort, including severe morning sickness, dizziness, and weakness" and began treating with a specialist for the symptoms. A platform controller is not permitted to sit and restroom breaks are difficult to arrange, requiring advance coordination. Her doctor recommended that the plaintiff's condition be accommodated and that she be placed on desk duty. The NYCTA informed her that there was no desk position immediately available. The plaintiff used her accrued sick leave until it ran out in early March 2019 and then took an unpaid leave of absence.

On March 28, 2019 Young, on behalf of herself and employees similarly situated, brought this action alleging, *inter alia*, that NYCTA failed to provide her with a requested reasonable accommodation for adverse medical conditions arising from her pregnancy. Young alleges a violation of the New York City Human Rights Law (NYCHRL) - specifically, the provisions of the New York City Pregnant Workers Fairness Act (NYC Admin. Code § 8-

107[22][a]) - and a violation of the New York State Human Rights Law (NYSHRL) -specifically the provisions under New York Executive Law § 296.

On July 30, 2019 Young moved for leave to file an amended complaint to add a second plaintiff, Tandie Thompson, and assert the same claims on her behalf. NYCTA consented to the proposed amendment prior to the motion but sought clarification as to the class definition. In response to NYCTA's request for clarification, the class definition contained in the first amended complaint specified that the proposed class was "conductors employed by [NYCTA] who have experienced a pregnancy-related condition requiring an accommodation that [NYCTA] did not provide." The motion was granted without opposition on August 13, 2020.

On September 9, 2019 the defendant answered the first amended complaint. On October 3, 2019 the action on behalf of Tandie Thompson was discontinued. On or about November 19, 2019, the plaintiff terminated previous counsel and new counsel was substituted. On July 13, 2020 the plaintiff made the instant motion for leave to file a second amended complaint.

The proposed second amended complaint seeks to add three additional plaintiffs - Aishah Miller, Jillian Williams, and Sharlet Pringle - and claims on their behalf for discrimination

and retaliation under the NYCHRL and NYSHRL, to assert all of Young and the proposed plaintiff's claims against the MTA, and to expand the class definition to include all NYCTA employees who requested a reasonable accommodation because of adverse medical conditions arising from their pregnancy who did not receive any such accommodation from NYCTA.

The proposed complaint alleges that Miller has been a train operator and station cleaner for NYCTA for approximately ten years and that while she was working as a station cleaner in 2017 she became pregnant and developed gestational diabetes which impaired her ability to carry the pails of water, gallons of cleaning supplies, and garbage bags as required by the job. It also alleges that when she requested an accommodation providing her with assistance carrying and hoisting equipment, she was told to fill out a G-2 form, which relates to requests for reasonable accommodations, but that she never received a response. Miller continued working until December 25, 2017 when she injured her back carrying water while nine-months pregnant.

The proposed complaint alleges that Williams has been a conductor for NYCTA for approximately one year and that in early June 2020, when she was approximately six-months pregnant, she began experiencing swelling in her feet and other medical conditions that prevented her from being able to climb into the

train cars as required. It also alleges that when she requested an accommodation on June 8, 2020, she was not provided with any assistance in obtaining the accommodation until a co-worker suggested that she fill out a G-2 form on June 23, 2020. After making the request on the G-2 form, Williams was told the next day that an appointment with NYCTA's medical assessment center was necessary prior to approval and that an appointment was scheduled for June 29, 2020. However, the proposed complaint also alleges that prior to the June 29, 2020 appointment, Williams was assigned to work a yard switching job that required her to manually switch several tracks, having to exert significant force on a number of levers, and that while switching tracks she went into premature labor, was unable to be reached by medical personnel during the delivery of her child and that when she was finally transported to the hospital her child tragically died shortly thereafter.

The proposed complaint alleges that Pringle has been a bus operator for NYCTA for approximately five years, and that in June 2017, when she was approximately five months pregnant, she began suffering severe pelvic pain that prevented her from regularly performing the work required as a bus operator. It further alleges that when Pringle requested an accommodation on a G-2 form seeking to work cleaning buses or moving buses in the depot yard, she was told that NYCTA had a policy of only being

able to grant up to two weeks of such 'light duty' work, and that while she could take an unpaid leave of absence it would likely adversely affect her changes of promotion. Pringle then continued to perform her work as a bus operator. On August 14, 2017 she hit a pole along her bus route and was transported to the hospital believing that she had gone into premature labor.

NYCTA opposes the changes in the proposed amended complaint, arguing that i) the claims against the MTA are without merit as the MTA does not employ the plaintiff or the proposed plaintiffs, ii) the revised class definition is prejudicial as NYCTA conducted discovery with regard to conductors, not pregnant NYCTA employees, and iii) the joinder of the proposed plaintiffs is improper, as their claims all arise out of different transactions or occurrences.

III. DISCUSSION

Leave to amend a pleading should be freely granted absent evidence of substantial prejudice or surprise, or unless the proposed amendment is palpably insufficient or patently devoid of merit. See CPLR 3025(b); JPMorgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013). The burden is on the party opposing the motion to establish substantial

prejudice or surprise if leave to amend is granted. See Forty Cent. Park S., Inc. v Anza, 130 AD3d 491 (1st Dept. 2015).

A. The Claims Against the MTA

NYCTA is correct in arguing that the MTA should not be added as a defendant to this action, as any claims asserted against it would be subject to dismissal since the MTA did not employ either Young or the proposed plaintiffs. It is well settled that to recover under the NYCHRL or the NYSHRL a plaintiff must demonstrate that they had an employment relationship with the defendant employer. See Scott v Massachusetts Mut. Life Ins. Co., 86 NY2d 429 (1995). Here, Young and the proposed plaintiffs are all employees of NYCTA, not the MTA.

Young argues that the proposed addition of the MTA is proper because, under the single employer doctrine, liability for violations of the NYCHRL and NYSHRL may be imposed on entities that are not directly the employer of a plaintiff if they are part of a "single enterprise." Moraetis v Evans, 150 AD3d 403, 404 (1st Dept. 2017) quoting Arculeo v On-Site Sales & Mktg., LLC, 425 F3d 193, 198 (2nd Cir. 2005). However, the single employer doctrine "has been limited to situations where the plaintiff's employer is a wholly-owned subsidiary, or where the plaintiff's employment is subcontracted by one employer to

another... entity." Id. quoting Conde v Sisley Cosmetics USA, Inc., 2012 WL 1883508 (SD NY, May 23, 2012, No. 11-Civ-4010 [RJS]). Contrary to Young's contentions, NYCTA is not a wholly-owned subsidiary of the MTA. Unlike the Long Island Railroad and the Metro-North Commuter Railroad, which are wholly-owned subsidiaries of the MTA, NYCTA is a legally separate public benefit corporation that is merely affiliated with the MTA. See NY Pub. Auth. L. § 1201(1); N.Y. Urban League v State of New York, 71 F3d 1031 (2nd Cir. 1995); Hargett v Metropolitan Transit Authority, 552 F Supp 2d 393 (SD NY 2008). "Each can sue and be sued in its own right, and each makes its own organizational and management rules and regulations... [and] NYCTA's hiring and compensation schemes are its own." Hargett v Metropolitan Transit Authority, supra. Moreover, even were NYCTA a subsidiary of the MTA, it is well settled that the MTA and its subsidiaries must be sued separately and are not responsible for each other's torts. See Noonan v Long Island R.R., 158 AD2d 392 (1st Dept. 1990); N.Y. Pub. Auth. Law § 1266. As such, the claims against the MTA are without merit as it is not a proper party.

B. The Revised Class Definition

NYCTA claims that the revised class definition is prejudicial as discovery has gone forward based upon the premise that this action would only apply to NYCTA conductors who were allegedly denied a reasonable accommodation for a pregnancy-

related medical condition and that Young has delayed in moving to amend the complaint. NYCTA further argues that the proposed class definition is palpably devoid of merit as it would not survive a motion for class certification.

Prejudice occurs when the party opposing amendment "has been hindered in the preparation of his case or has been prevented from taking some measure in support of his position." Loomis v Civetta Corinno Const. Corp., 54 NY2d 18, 23 (1981). Here, Young is seeking to expand the scope of this litigation from conductors who experienced a pregnancy-related condition requiring an accommodation to all NYCTA employees who experienced a pregnancy-related condition requiring an accommodation. Discovery in this action has been ongoing since, at the latest, July 18, 2019 when the parties first appeared for a preliminary conference. Shortly thereafter, on July 30, 2019 Young sought to amend the complaint and, pursuant to discussions between Young's prior counsel and counsel for NYCTA, included in the first proposed amended complaint a clarification that the proposed class definition was limited in scope to NYCTA conductors. That proposed class definition has been operative since this court's August 13, 2019 order granting Young's motion for leave to file an amended complaint.

From that point, discovery has been conducted, *inter alia*, to determine whether any additional conductors exist who requested a reasonable accommodation on the basis of their pregnancy. Even after Young terminated prior counsel and substituted current counsel on November 20, 2019, Young continued to seek discovery with respect to conductors, and did not seek leave to serve a second amended complaint to broaden the scope of the proposed class until July 13, 2020, almost a full year after discovery had commenced. Based upon Young's delay in seeking an amendment, most if not all of the discovery in this action has been geared toward Young's own claims and any potential claims relating to other pregnant conductors who were also denied a reasonable accommodation. To allow Young to now rewrite the proposed class definition to expand the scope of this litigation would constitute both prejudice and surprise to NYCTA, particularly where, as here, it appears that the initial clarification of the scope of the proposed class definition was not done inadvertently, but rather as a tactical determination by the plaintiff's attorney. See Hallock v State, 64 NY2d 224 (1984).

Young contends that there is no surprise or prejudice as her delay in making the instant motion is not significantly long, and discovery is still ongoing. She cites and relies upon Jacobson v McNeil Consumer & Specialty Pharm., 68 AD3d 652 [1st

Dept. 2009] in support of its position that there is no prejudice when additional time, expense, or discovery is required. However, that case is readily distinguishable. In Jacobson, the second amended complaint sought to be interposed by the plaintiff did not seek to assert any new facts or occurrences, but rather set forth an additional legal theory which would be based upon readily available records already in the defendant's possession. Here, Young is seeking to expand the scope of the purported class, to add at least three separate plaintiffs with different positions with NYCTA and additional claims arising from different factual situations and, indeed, potentially any pregnant NYCTA employee who requested a reasonable accommodation, with the concomitant expansion of discovery for each. While the proposed additional plaintiffs may have meritorious independent claims, they cannot be asserted in this action as proposed by the plaintiff.

Moreover, NYCTA's argument that the proposed class definition would be unable to survive a motion for class certification is not meritless. Where alleged wrongs amongst a purported class are individual in nature and subject to individual defenses and a fact-specific inquiry into each separate wrong, a class-action proceeding is generally an improper vehicle for the adjudication of those claims, as the proceeding would unlikely be able to generate common answers

amongst the proposed class members. See CPLR 901(a)(2); Wal-Mart Stores, Inc. v Dukes, 564 US 338 (2011); see also City of New York v Maul, 14 NY3d 499 (2010) (finding federal jurisprudence persuasive in analyzing issues under CPLR Article 9). Here, were the court to allow for an amendment to the proposed class definition, any future motion for certification would likely be denied, as the class would be comprised of NYCTA employees with varying positions within different NYCTA departments, each of whom would have requested different reasonable accommodations based upon their specific job duties and the types of accommodations that would have been available to them based upon their position. Although Young is correct that NYCTA's arguments regarding class certification are premature since no such motion is before the court, the court considers the prejudice that the proposed amendment would cause to NYCTA and the likelihood that the certification motion would ultimately be fruitless.

C. Joinder of the Additional Plaintiffs

Although not denominated as such in her notice of motion or moving papers, Young's motion for leave to serve an amended complaint adding the claims of Miller, Williams, and Pringle is, in effect, a motion seeking to join the prospective plaintiffs pursuant to CPLR 1002(a). CPLR 1002(a) provides that "persons who assert any right to relief jointly, severally, or in the alternative arising out of the same transaction, occurrence, or

series of transactions or occurrences, may join in one action as plaintiffs if any common question of law or fact would arise." Here, the claims asserted by Young, Miller, Williams, and Pringle do not arise from the same transaction, occurrence, or series of transactions or occurrences, and are predominated by individual issues of fact.

While Young argues that her claims and the proposed plaintiff's claims all relate to an internal NYCTA policy that does not provide for reasonable accommodations in response to requests from pregnant employees suffering adverse effects from their pregnancy, none of the claims arise from the same transaction or occurrence or series of related transactions or occurrences such that joinder is proper. Young's claims are predicated upon NYCTA's failure to provide a reasonable accommodation upon request for desk duty by a conductor. Both Miller and Pringle's claims are unrelated to requests for reasonable accommodations by a conductor, but are instead premised upon NYCTA's failure to provide different reasonable accommodations for station cleaners and bus drivers respectively. Moreover, while William's claim is related to a failure to timely provide a reasonable accommodation to a conductor, her request was in the process of being evaluated when she suffered her injury. As all of these claims are based upon separate instances of requests for a reasonable

accommodation, and different factual scenarios regarding when each request was submitted and how NYCTA responded to each individualized request, joinder is improper. See CPLR 1002(a). That these claims may share a small factual ground with regard to NYCTA's purported policies regarding reasonable accommodations is not sufficient reason to permit joinder. See Hickson v Mt. Sinai Med. Ctr., 87 AD2d 527 (1st Dept. 1982).

D. Young's Proposed Claim for Retaliation

Young's proposed second amended complaint does sufficiently allege causes of action for retaliation under the NYCHRL and NYSHRL. To sufficiently allege a cause of action for retaliation under the NYCHRL, a plaintiff is required to allege that "(1) she participated in a protected activity known to defendant; (2) the defendant took an action that disadvantaged her; and (3) a causal connection exists between the protected activity and the adverse action." Cadet-Legros v New York Univ. Hosp. Ctr., 135 AD3d 19 (1st Dept. 2015). Similarly, to sufficiently allege retaliation under the NYSHRL, a plaintiff has the burden of showing that "(1) she has engaged in protected activity, (2) her employer was aware that she participated in such activity, (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action." Forrest v Jewish Guild for the Blind, 3 NY3d 295 (2004).

In the portion of her proposed amended complaint alleging retaliation, Young alleges that a supervisor at NYCTA who administers a webpage regarding NYCTA activity permitted postings by Young's coworkers and supervisors in her department complaining about the accommodations made and her complaint of pregnancy discrimination and that, following a complaint by Young regarding the negative comments she received, NYCTA failed to investigate the matter. This is sufficient to establish that Young (1) engaged in a protected activity by seeking a reasonable accommodation, (2) that her employer was aware of such action, (3) she suffered an adverse employment action inasmuch as her employer allowed her to be harassed by her coworkers regarding the accommodation that she received, and (4) that there was a causal connection between her protected activity and the adverse action. As such, she has established that her proposed retaliation claim is not palpably insufficient or devoid of merit. As NYCTA has not opposed this portion of Young's motion, it does not establish any prejudice or surprise. See Forty Cent. Park S., Inc. v Anza, supra.

IV. CONCLUSION

For the reasons set forth herein, the plaintiff's motion for leave to file a second amended complaint is granted to the

extent that she may serve and file an amended complaint to include her proposed claim for retaliation under the NYCHRL and NYSHRL, and her motion is otherwise denied, without prejudice.

Accordingly, it is hereby,

ORDERED that the plaintiff's motion is granted to the extent that she is permitted to serve and file an amended complaint to include her proposed claim for retaliation, within 30 days of the date of this order, and the motion is otherwise denied, without prejudice; and it is further,

ORDERED that the parties are to jointly contact chambers on or before March 31, 2021 to schedule a status conference; and it is further,

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

Dated: February 2, 2021 ENTER:

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON