Watman v Physician Affiliate Group of N.Y., P.C.
2021 NY Slip Op 30651(U)
March 4, 2021
Supreme Court, Kings County
Docket Number: 527615/2019
Judge: Pamela L. Fisher
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At Part 94, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York, on this ~~23~~ 4 day of ~~February~~ March 2021

P R E S E N T:
HON. PAMELA L. FISHER, J.S.C.

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JERRY WATMAN

Plaintiff,

-and-

PHYSICIAN AFFILIATE GROUP OF NEW YORK, P.C., NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, and CONEY ISLAND HOSPITAL

Defendants.

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DECISION/ORDER

Index No. 527615/2019

Defendants Physician Affiliate Group of New York, P.C ("PAGNY") and NYC Health + Hospitals Corporation and Coney Island Hospital's (collectively "HHC") motion to dismiss the complaint in its entirety pursuant to CPLR 3211(a)(7) is denied.

On December 18, 2019, plaintiff commenced this action by the filing of a Summons and complaint alleging two causes of action for age discrimination. On January 15, 2020, the parties stipulated to extend defendant's time to answer, move or otherwise respond to the complaint. Now, defendants move to dismiss the complaint pursuant to CPLR 3211(a)(7) as plaintiff's complaint fails to state a prima facie cause of action for age discrimination under the New York State Human Right Law 296 ("SHRL") and the New York City Human Rights Law, Administrative Code of the City of New York 8-101 ("CHRL")

The complaint alleges the following salient facts: Plaintiff, Dr. Watman is a 62–year–old neonatologist who completed his residency and fellowship in neonatology at HHC. Dr. Watman joined HHC as a pediatrician in its Pediatrics Department in 1987. He received hundreds of commendation letters from patients and their families as well as awards from members of the New York City Council, March of Dimes and numerous insurance companies during his decades long career at HHC. Dr. Watman regularly received praise from the Chair of the Department and his supervisor at HHC. Dr. Watman served as Director of Neonatology at HHC from 1988 until

2013, when he assumed the role of Director of Newborn Services. Dr. Watman continued in the role of Director until he was terminated. Dr. Watman alleges that on April 19, 2019, he was summoned to a meeting with two HHC representatives and his supervisor during which he was informed his employment with HHC was being terminated, effective immediately. Dr. Watman claims he learned that his termination was allegedly because of complaints made against him regarding minor infractions that would not amount to discharge of a physician with an excellent track record. The complaint alleges that Dr. Watman's termination was part of a pattern by HHC of terminating or forcing out older doctors and staff and replacing them with substantially younger employees. Dr. Watman further alleges that he was subjected to discriminatory comments reflective of his colleagues' biases. Specifically, that he "looked older now" and recommendations that he "start thinking about retirement". The complaint states that these remarks were reflective of how senior personnel at HHC viewed Dr. Watman. The complaint further states that Dr. Watman was replaced by a younger doctor following his termination.

Defendants argue that plaintiff's complaint contains conclusory allegations about defendants' alleged pattern of age discrimination, unadorned by factual support sufficient to state a claim of age discrimination under the SHRL or CHRL. Defendants contend that the complaint plainly fails to allege facts evincing an inference of discrimination on the basis of age with regard to plaintiff's termination. Specifically, plaintiff alleges that he was replaced with a younger doctor but failed to make any factual allegations about this individual's identity or purported age.

In opposition, plaintiff argues that plaintiff's complaint alleges that his termination was part of a "pattern of terminating or otherwise forcing out older doctors and staff and replacing them with substantially younger doctors and staff members". Plaintiff contends that defendants have "systemically removed from employment (through termination or forced resignation) numerous doctors and staff over the age of 50 and replaced them with doctors and staff who are in their 20's and 30's". Plaintiff further contends that he has alleged facts establishing a prima facie case of age discrimination sufficient to defeat a pre-answer motion to dismiss.

On a motion to dismiss pursuant to CPLR 3211, a court must accept the facts as alleged in the complaint as true and accord the plaintiff the benefit of every favorable inference and strive to determine only whether the facts alleged fit within any cognizable legal theory (see, *Leon v. Martinez*, 84 N.Y.2d 83, 614 N.Y.S.2d 972; *Rovello v. Orofino Realty Co*., 40 N.Y.2d

633, 389 N.Y.S.2d 314; *Roth v. Goldman*, 254 A.D.2d 405, 406, 679 N.Y.S.2d 92). "The criterion is whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one" (*Godino v. Premier Salons, LTD*, 140 A.D.2d 1118, 35 N.Y.S.3d 197 (2nd Department 2016), Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17; *Leon v. Martinez*, supra; *Rovello v. Orofino Realty Co*., supra).

To state a cause of action alleging age discrimination under the New York Human Rights Law (Executive Law § 296), a plaintiff must demonstrate (1) that he or she was a member of a protected class, (2) that he or she was actively or constructively discharged (3) that he or she was qualified to hold the position for which he or she was terminated, and (4) that the discharge occurred under circumstances giving rise to an inference of age discrimination. Under the CHRL, a plaintiff sustains an adverse employment action if he or she endures a materially adverse change in the terms and conditions of employment, which must be more disruptive than mere inconvenience or alteration of job responsibilities (see *Ferrante v. American Lung Assn*., 90 N.Y.2d 623, 665 N.Y.S.2d 25; *Ehmann v. Good Samaritan Hosp. Med. Ctr*., 90 A.D.3d 985, 935 N.Y.S.2d 639; *Balsamo v. Savin Corp.*, 61 A.D.3d 622, 877 N.Y.S.2d 146; *Wiesen v. New York Univ*., 304 A.D.2d 459, 758 N.Y.S.2d 51; *Terranova v. Liberty Lines Tr*., 292 A.D.2d 441, 738 N.Y.S.2d 693; *Kassner v. 2nd Avenue Delicatessen Inc*., 496 F.3d 229, 238 [2d Cir.]).

In addition, employment discrimination cases are themselves generally reviewed under notice pleading standards. For example, under the Federal Rules of Civil Procedure, it has been held that a plaintiff alleging employment discrimination need not plead specific facts establishing a prima facie case of discrimination but need only give "fair notice of the nature of the claim and its grounds (*Vig v. NY Hairspray Co.*, 67 A.D.3d 140; *Artis v. Random House, Inc*., 34 Misc.3d 858, 936 N.Y.S.2d 479; *Swierkiewicz v. Sorema NA* 534 US 506, 122 S Court 992 (2002)).

Applying these liberal pleading standards, the court finds that plaintiff has stated causes of action for violations of both NYS HRL 296 and NYC HRL 8-101. Though analyzed under a similar framework as the NYS HRL, the more broadly construed NYC HRL has been interpreted as requiring "that unlawful discrimination play 'no role' in an employment decision" (*Bennett v. Health Mgt. Sys., Inc*., 92 A.D.3d 29, 936 N.Y.S.2d 112, *Williams Jr. v. New York City Transit Authority,* 171 A.D.3d 990, 97 N.Y.S.3d 692). The court notes that defendants do not dispute that the complaint satisfies three (3) of the four (4) elements necessary to state a claim for age discrimination. Here, plaintiff has stated a claim for age discrimination under NYS HRL 296 by

alleging the four elements of the claim namely that: 1) at age 62 he is a member of a protected class, 2) that he was discharged on April 19, 2019, 3) that he is qualified to hold his position as neonatologist and Director of Newborn Services having the required licenses, training and qualifications, and 4) that the discharge occurred under circumstances giving rise to an inference of age discrimination; namely that there were no legitimate grounds for discharge. Plaintiff states in his complaint that he was not subject to any malpractice or disciplinary actions. He states that his termination was part of defendant's pattern of terminating older doctors and staff and replacing them with younger doctors and staff and that older and younger employees are treated differently. Further, plaintiff states that CIH personnel have directed specific ageist comments at him. Accordingly, defendant's 3211(a)(7) motion to dismiss is denied.

ORDERED, that the defendant's motion to dismiss pursuant to CPLR 3211(a)(7) is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:

J.S.C.

HON. PAMELA L. FISHER