

Lewkowicz v Terence Cardinal Cook Health Care Ctr.
2021 NY Slip Op 31263(U)
April 14, 2021
Supreme Court, New York County
Docket Number: 153100/2020
Judge: David Benjamin Cohen
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

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INDEX NO. 153100/2020

RICHARD LEWKOWICZ, M.D.,

Plaintiff,

MOTION SEQ. NO. 001

- v -

TERENCE CARDINAL COOK HEALTH CARE CENTER,
ARCHCARE COMMUNITY SERVICES INC., and MELISSA
L. MARTIN, M.D.,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for

DISMISSAL

In this employment discrimination action commenced by plaintiff Richard Lewkowicz, M.D., defendants Terence Cardinal Cook Health Care Center (“TCC”), Archcare Community Services, Inc. (“Archcare”), and Melissa L. Martin, M.D. (“Dr. Martin”) Individually move, pursuant to CPLR 3211(a)(7), for an order dismissing the complaint for failure to state a cause of action. Plaintiff opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises from alleged age discrimination against the 82 year old plaintiff in violation of the New York State Human Rights Law (“NYSHRL”) (Executive Law section 296) and the New York City Human Rights Law (“NYCHRL”) (New York City Administrative Code sections 8-107[1][a]). Plaintiff claims that, at the time of the alleged discrimination, he was a

physician employed by Archcare, the parent company of TCC, and that he was terminated by Dr. Martin, the Medical Director of TCC. Doc. 2. As of the time he was terminated, he had worked at TCC for 34 years. Id.

In his complaint, plaintiff alleged that, on April 30, 2017, he came to work and presented his current identification card. He showed his ID to “one of the newer security guards”, who noticed that, on the reverse side of the card, plaintiff had put a picture of a monkey’s face over where his photo had been on his expired ID card. Doc. 2. Plaintiff insisted that he often showed people his expired ID card and jokingly told them that it was a picture of him when he was younger, better looking, and had had more hair. Id. Although defendants maintain that the security guard was African-American, plaintiff does not specifically allege this, although he claims that he “never dreamed that the joke ID card could be in any way construed as racially sensitive [sic].” Doc. 2 at par. 67. On May 5, 2017, just days after the security guard saw the monkey photo on plaintiff’s expired ID, plaintiff received a letter from Archcare advising him that he was being terminated “due to a recent incident in which [he] engaged in disruptive behavior in violation of TCC’s policies and procedures.” Doc. 2 at par. 72.

Plaintiff commenced the captioned action by filing a summons and complaint on May 25, 2020. In his complaint, plaintiff claimed, inter alia, that he was terminated by defendants at the age of 79 and sustained damages “by discrimination on the basis of age in a place of employment.” Doc. 2 at pars. 1, 71. He further asserted that he “suffered age discrimination” as a result of the actions of the defendants. Id. at pars. 79, 83. He demanded compensatory damages, punitive damages exceeding \$250,000, plus costs and attorneys’ fees. Doc. 2. His two causes of action were for age discrimination pursuant to the NYSHRL and NYCHRL, respectively. Id.

In lieu of answering, defendants filed the instant motion seeking to dismiss the complaint pursuant to CPLR 3211(a)(7) on the ground that the complaint fails to state a cause of action. Docs. 6-8. In their motion, defendants assert that the complaint must be dismissed given the conclusory allegations of age discrimination therein. Docs. 7-8.

Plaintiff opposes the motion, arguing, inter alia, that “Dr. Martin hijacked [his] naïve and innocent joke as an excuse to fire [him].” He further asserts that “[t]he real reason[s] [for his termination were] age discrimination” and racism. Doc. 12. He insists that, as a Holocaust survivor, nobody has suffered more racism than he has, that “[m]ost of [his] best friends are minorities”, and that “[t]he mother of [his] 2 daughters is a dark skin [sic] Filipino.” Id.

LEGAL CONCLUSIONS

It is well settled that, when deciding a motion to dismiss pursuant to CPLR 3211, the court should give the pleading a “liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference” (*Landon v Kroll Laboratory Specialists, Inc.*, 22 NY3d 1, 5-6 [2013]; *Faison v Lewis*, 25 NY3d 220 [2015]). However, if a complaint fails within its four corners to allege the necessary elements of a cause of action, the claim must be dismissed (*Andre Strishak & Associates, P.C. v Hewlett Packard & Co.*, 300 AD2d 608 [2d Dept 2002]).

Even construing the complaint in the light most favorable to plaintiff, this Court finds it clearly fails to state a complaint of age discrimination pursuant to the NYSHRL or the NYCHRL (*See McCabe v Consulate General of Canada*, 170 AD3d 449, 449-450 [1st Dept 2019]). Although plaintiff alleges that he was terminated due to his age, this claim is totally conclusory insofar as he pleads absolutely no facts upon which it can be based. Indeed, plaintiff

even admits that he was terminated within days after showing the monkey photo on his expired ID card to a security guard.

To the extent plaintiff asserts that he was terminated as a result of racism, this claim, too, would be subject to dismissal. First, as noted above, plaintiff's causes of action are specifically labeled as claims for age discrimination. Further, plaintiff fails to plead that he was a member of a particular religious group or that such group was subjected to discrimination at his workplace.

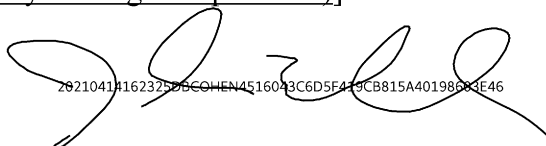
The parties' remaining contentions are either without merit or need not be addressed given the findings above.

Accordingly, it is hereby:

ORDERED that the motion by defendants Terence Cardinal Cook Health Care Center, Archcare Community Services, Inc., and Melissa L. Martin, M.D. is granted, and the complaint is dismissed, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).


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DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

APPLICATION:

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SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

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REFERENCE

CHECK IF APPROPRIATE: