

Mira v Argus Media
2022 NY Slip Op 31785(U)
May 31, 2022
Supreme Court, New York County
Docket Number: Index No. 654258/2020
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 41

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 LESLIE MOORE MIRA,

Index No. 654258/2020

Plaintiff

- against -

DECISION AND ORDER

ARGUS MEDIA, JOHN DEMOPOULOS, MICHELLE
 GESSER, JIM KENNETT, LUCY SLADOJEVIC,
 IAN MICHAEL STEWART, and MILES WEIGEL,

Defendants
 -----x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

On December 22, 2016, plaintiff commenced an action against Argus Media, John Demopoulos, Ian Michael Stewart, and Miles Weigel for violations of 42 U.S.C. § 2000e-2(a), the New York State Human Rights Law (NYSHRL), and the New York City Human Rights Law (NYCHRL) in the United States District Court for the Southern District of New York. That court dismissed the federal claim and refused supplemental jurisdiction over the NYSHRL and NYCHRL claims, but allowed plaintiff to seek leave to amend her complaint. Plaintiff's proposed amended complaint reiterated her prior claims and added claims under 42 U.S.C. §§ 1981 and 1985(3) against the same defendants. In a decision dated May 16, 2017, the federal court denied plaintiff leave to amend her complaint. The United States Court of Appeals for the Second Circuit

dismissed her appeal as frivolous on September 25, 2018, 28 U.S.C. § 1915(e)(2)(B); Neitzke v. Williams, 490 U.S. 319, 324-25, 327 (1989), and denied her motion for reconsideration on January 18, 2019.

On June 7, 2020, plaintiff commenced this action against the same defendants Argus Media, John Demopoulos, Ian Michael Stewart, and Miles Weigel and also Michelle Gesser, Jim Kennett, and Lucy Sladojevic. Plaintiff's claims include retaliation, gender-based harassment, and racial discrimination under the NYSHRL and NYCHRL, intentional and negligent infliction of emotional distress, and tortious interference with business relations and prospective economic advantage. Through a series of ex parte orders, plaintiff received extensions to January 26, 2022, to complete service on defendants. Plaintiff repeatedly attempted to serve all defendants through Argus Media's attorneys, but they informed her they were authorized to accept service only for Argus Media. On October 5, 2022, however, Argus Media's attorneys received authority to act on the individual defendants' behalf. Afterward, the parties agreed to plaintiff's service of an amended complaint, which defendants now move to dismiss. C.P.L.R. § 3211(a)(5).

II. PLAINTIFF FAILED TO COMPLY WITH C.P.L.R. § 205(a).

Defendants claim the applicable statutes of limitations bar this action because plaintiff failed to serve the amended

complaint within six months after termination of her federal action pursuant to C.P.L.R. § 205(a). Plaintiff responds simply that she could not complete service until November 5, 2021, because defendants' attorneys refused to accept service for the individual defendants, but maintains that she timely served defendants Kennett and Weigel, and C.P.L.R. § 306-b extended the service deadline for defendants Argus Media, Demopolous, Gesser, Sladojecvic, and Stewart.

Under C.P.L.R. § 306-b, plaintiff was required to serve the summons and complaint within 120 days after commencing this action or within whatever extension of time for service the court granted. C.P.L.R. § 205(a) separately permitted her, in the first instance, to commence this action based on the "same transaction or occurrence" as her previously dismissed federal action, even though otherwise barred by the statute of limitations. These statutes operate independently, the latter providing her a second opportunity to pursue her claims, so long as the new complaint was filed and served within six months after termination of the prior action, which occurred once she exhausted all non-discretionary appeals. Malay v. City of Syracuse, 25 N.Y.3d 323, 325 (2015); Lehman Bros. v. Hughes Hubbard & Reed, L.L.P., 92 N.Y.2d 1014, 1016-17 (1998). See Merino v. Wells Fargo Bank, N.A., 195 A.D.3d 489, 489 (1st Dep't 2021); Deutsche Bank Natl. Trust Co. v. Gouin, 194 A.D.3d 479,

480 (1st Dep't 2021).

Upon plaintiff's final appeal by right to the Second Circuit, it dismissed her appeal from the dismissal of her federal action against Argus Media, Demopoulos, Stewart, and Weigel on September 25, 2018, and then denied reconsideration on January 18, 2019. Thus her deadline to file and serve her new summons and complaint on these defendants was, at the latest, July 18, 2019, C.P.L.R. § 205(a); Lehman Bros. v. Hughes Hubbard & Reed, L.L.P., 92 N.Y.2d at 1016-17, but plaintiff did not even file her complaint until June 7, 2020, almost a year after the statutory window had closed.

Plaintiff asks that defendants' motion be denied in the interests of justice pursuant to C.P.L.R § 306-b. This consideration, which allows the court to extend plaintiff's time for service, however, does "not negate or nullify" the filing and service requirements of C.P.L.R. § 205(a). Pyne v. 20 E. 35 Owners Corp., 267 A.D.2d 168, 169 (1st Dep't 1999).

The continuing violations doctrine, moreover, "is inapplicable to plaintiff's claims, as she failed to show proof that the time-barred allegations constituted a pattern or practice of ongoing discriminatory or retaliatory conduct or a continuing hostile work environment." Mira v. Harder (Evans), 177 A.D.3d 426, 427 (1st Dep't 2019). Although the amended complaint alleges that, "In the years since leaving Argus Media,

Ms. Moore Mira continues to encounter organized methods to harrass," Aff. of Jeanne C. Barenholtz Ex. 1 ¶ 31, these allegations are against "persons unknown to her," not the named defendants. Id. ¶ 32. In fact, the amended complaint includes no allegations that defendants continued to harass or surveil plaintiff after her employment at Argus Media terminated. Nor do the affidavits by plaintiff's witnesses recall any incident involving defendants. The only alleged connection between defendants and plaintiff's unknown assailants is the amended complaint's conclusory allegation that: "These events are extremely unlikely but for broader fact patterns of a sinister harassment scheme in which Argus Defendants conspired and vicariously participated." Id. To the extent that the amended complaint alleges continued harassment directly by defendants, plaintiff conceded at oral argument that the harassment and surveillance continued for only several months after her employment terminated in May 2014. Even if the court assumed the harassment carried on for another year after her employment terminated, accrual of her claims in May 2015 still would not render them timely. Therefore the court dismisses the amended complaint against these defendants as barred by the applicable statutes of limitations.

III. PLAINTIFF'S CLAIMS AGAINST GESSER, KENNETT, AND SLADOJECVIC EXCEED THE STATUTE OF LIMITATIONS.

Plaintiff's remaining claims against Gesser, Kennett, and Sladojevic are subject to the standard statutes of limitations, since these defendants were not named in the federal complaint to trigger the extension provided by C.P.L.R. § 205(a). The NYCHRL and NYSHRL allowed plaintiff three years to commence an action for retaliation, gender-based harassment, and racial discrimination. N.Y. Exec. Law § 296(1)(a); N.Y.C Admin. Code § 8-502(d). Plaintiff had one year to sue for intentional infliction of emotional distress and three years for negligent infliction of emotional distress and for tortious interference with business relations and prospective economic advantage. C.P.L.R. §§ 214(4), 214(5), 215(3). According to the amended complaint, plaintiff's last interactions with Gesser, Kennett, and Sladojevic occurred, respectively, in or about March 2014, November 2013, and April 2013. Aff. of Jeanne C. Barenholtz Ex. 1, at 6, 7, 8. Consequently, each of plaintiff's claims against these defendants falls outside the statute of limitations.

IV. CONCLUSION

For the reasons explained above, the court grants defendants' motion to dismiss the amended complaint against all defendants. C.P.L.R. § 3211(a)(5).

DATED: May 31, 2022



 LUCY BILLINGS, J.S.C.