Mavra v City of New York
2022 NY Slip Op 32229(U)
July 8, 2022
Supreme Court, New York County
Docket Number: Index No. 152248/2021
Judge: Leslie Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE STROTH** — *Justice* — PART 52

INDEX NO. 152248/2021

MOTION DATE 3/30/33

MOTION SEQ. NO. 002

DRAGAN MAVRA,

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISS.

Plaintiff, a building owner, is a man of Croatian descent. Plaintiff commenced this action by Summons and Complaint, dated March 4, 2021, claiming discrimination based on race and national origin as well as retaliation in violation of New York City Human Rights Law (Administrative Code § 8-101, *et seq.* [CHRL]); discrimination based on national origin in violation of the New York State Constitution (NY Constitution Article I, § 11); and violations of Local Law No. 71.

The crux of plaintiff's complaint is that, based on his race and national origin, he was improperly issued several summonses for engaging in an alleged illegal short-term rental of his property and that he was incorrectly named in a prior lawsuit in 2019 with several other defendants for his alleged involvement with illegal short-term rentals. Defendant the City of New York (the City) now moves to dismiss pursuant to CPLR 3211 (a) (7) on the grounds that plaintiff fails to state a cause of action.

I. Facts

Plaintiff is the owner of a building located at 32-50 45th Street, Astoria, New York 11103 (the subject building), which is a one family dwelling. (*See* Complaint at ¶¶ 3, 32; Certificate of Occupancy, Plaintiff's Exhibit B). According to plaintiff's complaint, on May 3, 2019 a Department of Buildings (DOB) inspector inspected the subject building and issued 5 summonses to plaintiff. (*See* Complaint at ¶¶ 3, 32; Copies of Summonses, Plaintiff's Exhibit C). The summonses alleged that plaintiff unlawfully converted the subject building to transient use. (*See* Copies of Summonses, Plaintiff's Exhibit C). At a hearing held at the City of New York Office of Administrative Trials and Hearings (OATH), plaintiff was found in violation of each of the issued summonses. (*See* copies of OATH determinations, Defendant's Exhibit D).

Subsequently, on June 19, 2019, the City, through the Mayor's Office of Special Enforcement (OSE), commenced a lawsuit against plaintiff and several other defendants (2019 lawsuit) to stop alleged illegal transient use by plaintiff and others at the subject building and at other locations. (*See* summons and complaint, *City v Elvis Tominovic et al*, index no 710662/2019 Defendant's Exhibit E [2019 complaint]). The 2019 Complaint alleged that plaintiff was an Airbnb host for the subject building, which was being advertised on the Airbnb website, and that plaintiff had received over $150,000.00 in revenue from renting the subject building. (*Id.* at ¶ 95).

On May 19, 2020, plaintiff, through counsel, entered into a stipulation of settlement with the City. (*See* Stipulation of Settlement, Defendant's Exhibit F). Plaintiff's counsel affirms that plaintiff entered into the settlement despite being uninvolved with the alleged scheme, in order to avoid further delay and expense. (*See* Memorandum of Law in Opposition at 7, NYSCEF doc. no 24). In that Stipulation of Settlement, plaintiff acknowledged that he had advertised the subject building on Airbnb for short term rental and that his short-term rental activity was limited to the

subject building. (*See* Exhibit F). As part of the settlement agreement, Plaintiff agreed, among other terms, to stop advertising and using the subject building for short term rentals, to pay ten thousand dollars to the City, and to assist the City in continuing its investigations of its claims against the other defendants named in the 2019 complaint. (*Id.*).

Plaintiff alleges in his complaint that in OSE's investigation and in the prosecution of plaintiff's purported scheme, OSE and the City improperly targeted plaintiff and named him as a defendant only because he is of Croatian national origin with a Croatian name, Dragan Marva. Specifically, plaintiff makes note of numerous non-parties with the first name "Dragan," and maintains that he was included in OSE's investigation and lawsuit due to his common Croatian first name. Plaintiff also takes issue with the veracity of the content of the 5 summonses and the 2019 complaint, including allegations regarding plaintiff's ex-wife.

Defendant the City of New York (City) now moves to dismiss pursuant to CPLR 3211 (a) (7) on the grounds that the complaint fails to state a cause of action for discriminatory harassment under the CHRL, violation of the New York State Constitution; or violations of Local Law No. 71.

II. Analysis

In determining a motion to dismiss the court's role is ordinarily limited to determining whether the complaint states a cause of action. *See Frank v DaimlerChrysler Corp.*, 292 AD2d 118 (1st Dept 2002). Upon such a motion the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. *See* CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. *See Leon v Martinez*, 84 NY2d 83, 87 (1994).

1. CHRL Claims for Unlawful Discriminatory Practices and Discriminatory Harassment[1]

Plaintiff claims that the City has, through investigating and prosecuting the alleged illegal rental scheme, discriminatorily harassed him based on his national origin. In plaintiff's opposition papers, he claims that he has properly pled CHRL harassment and discrimination claims under Administrative Code §§ 8-502 (a) and 8-603.

Chapter 1 of the CHRL prohibits four categories of unlawful discriminatory practices: (1) unlawful discriminatory practice in employment; (2) an unlawful discriminatory practice by a provider of public accommodation; (3) an unlawful discriminatory practice with respect to the sale or rental of housing accommodations; or (4) an unlawful discriminatory practice with respect to lending practices. *See* Administrative Code § 8-107, *see also Kellogg v Off. of Chief Med. Examiner of City of New York*, 6 Misc 3d 666, 678 (Sup Ct, Bronx County 2004), *revd*, 24 AD3d 376 (1st Dept 2005).

Pursuant to Administrative Code § 8-502 (a), which plaintiff claims the City violated, "...any person claiming to be a person aggrieved by an unlawful discriminatory practice *as defined in chapter 1 of this title or by an act of discriminatory harassment or violence as set forth in chapter 6* of this title shall have a cause of action..." (Emphasis added). Administrative Code § 8-603, entitled "Discriminatory harassment; civil penalties" provides:

> *No person shall by force or threat of force*, knowingly injure, intimidate or interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to such other person by the constitution or laws of this state or by the constitution or laws of the United States or local law of the city when such injury, intimidation, oppression or threat is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual and reproductive health decisions, sexual orientation, age, marital status, partnership status, disability, or immigration or citizenship status... Administrative Code § 8-603 (a) (emphasis added).

[1] In his attorney's Memorandum of Law in Opposition, plaintiff seemingly abandons his disparate impact claim. (*See* NYSCEF doc. no. 24 at 2).

The City argues that the complaint fails to state a cause of action with regard to CHRL, because none of the four categories of unlawful discriminatory practices enumerated in Administrative Code § 8-107 apply to plaintiff's claims. In his Complaint, plaintiff does not specify any factors relating to employment, lending practices, or the sale of rental property. Similarly, the City was not acting as a public accommodator (i.e. provider of goods or services) within the meaning of CHRL when it issued summonses against plaintiff or commenced the 2019 lawsuit against plaintiff.[2] The City contends that it did not deny Plaintiff enjoyment of any accommodation, advantage, facility, or privileges or benefits of a public accommodation or offered by a provider of a public accommodation.

The categories of unlawful discriminatory practice do not apply to the City's conduct in issuing five summonses to plaintiff to stop him from continuing alleged illegal conduct and commencing an action to stop him from continuing to take part in suspected illegal conduct. Nor does the complaint allege that the City engaged in "force or threat of force" while pursuing plaintiff's allegedly illegal behavior. Thus, the Complaint fails to set forth a cognizable legal theory pursuant to either Administrative Code § 8-502 (a) (civil action by persons aggrieved by unlawful discriminatory practices) or Administrative Code § 8-603 (a) (discriminatory harassment). Liberally construing the complaint and accepting all the facts as true, plaintiff fails to state a claim under CHRL. As such, plaintiff's CHRL claim pursuant to New York City Human Rights Law is dismissed.

[2] The CRHL defines a "place or provider of public accommodation" as: "include[ing] providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available."

2. Violations of New York State Constitution, Article 1, § 11

Plaintiff also claims that the City violated the New York State Constitution, Article 1, § 11, by issuing the five summonses and commencing the 2019 lawsuit. The New York Constitution mandates that,

> No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state. (NY Const art I, § 11)

The First Department, Appellate Division has held that, "...a violation of equal protection arises where *first,* a person (compared with others similarly situated) is selectively treated and *second,* such treatment is based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person. *Bower Assoc. v Town of Pleasant Val.*, 2 NY3d 617, 631 (2004).

The complaint herein contains two allegations to support plaintiff's claim of a violation of the Equal Protection clause of the New York Constitution: (1) that he is of Croatian descent; and (2) that the other individuals in the 2019 Complaint appear to have Croatian names. Even giving the allegations the benefit of every possible inference, the conclusory complaint fails to state any facts to support the claim that the City discriminated against plaintiff on the basis of national origin in violation of the New York State Constitution. In fact, the 2019 complaint cites to detailed records for how and why the City came to bring its case against all named defendants, including plaintiff (*see* Defendant's Exhibit E) and plaintiff, in fact, settled that matter with the assistance of counsel (*see* Defendant's Exhibit F).

The complaint states no facts to suggest intentional discrimination by the City, nor does it provide any factual allegations to support a claim that plaintiff was selectively treated based on his national origin. Accordingly, the complaint fails to state a cause of action for a violation of

Section 11 of the New York State Constitution, and the claim relating to that section of the law is dismissed.

3. Local Law No. 71 (2013)

Plaintiff's third claim is that the City violated Local Law No. 71 (2013), which prohibits biased-based policing in New York City. "A claim of bias-based profiling is 'established,' *inter alia*, when a claimant demonstrates that a law enforcement officer has intentionally engaged in bias-based profiling, and the officer fails to prove that the law enforcement action 'was justified by . . . factor(s) unrelated to unlawful discrimination.'" *Patrolmen's Benev. Ass'n of City of New York, Inc. v City of New York*, 142 AD3d 53, 57 (1st Dept 2016) (quoting Administrative Code § 14-151 [c] [1] [ii], as added by Local Law No. 71 [2013] of City of NY).

The City argues that the DOB inspector and OSE staff are not a law enforcement officers as contemplated by Local Law No. 71 (2013). Plaintiff counters that Local Law No. 71 (2013) applies to either a government body, like OSE, or an individual law enforcement officer. Regardless of whether or not the inspector and OSE staff are considered law enforcement officers, and as addressed above, the complaint fails to address any factual allegations that DOB, OSE or their staff members engaged in bias-based profiling. As previously noted, OATH substantiated the 5 summonses against plaintiff after hearing, and the 2019 complaint details the reasons for bringing that action against plaintiff. Plaintiff's allegations that he is Croatian and may have been confused with other Croatians are insufficient to support a claim that a DOB inspector or OSE employee *intentionally* engaged in bias-based profiling. Accepting all the facts pled as true, the complaint fails to state a cognizable claim under Local Law No. 71 (2013), and that claim, too, must be dismissed.

III. Conclusion

Accordingly, it is ORDERED that defendant the City of New York's motion to dismiss is granted in all respects, and it is further

ORDERED that the complaint is dismissed in its entirety.

The foregoing constitutes the decision and order of the Court.

7/8/2022
DATE

LESLIE STROTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE