

Minor v Home Depot U.S.A., Inc.

2022 NY Slip Op 33277(U)

September 29, 2022

Supreme Court, New York County

Docket Number: Index No. 152483/2022

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

-----X

INDEX NO. 152483/2022

JOHN MINOR,

MOTION SEQ. NO. 001 and 002

Plaintiff,

- v -

HOME DEPOT U.S.A., INC., JAHN JOYCE, and PATRICK
IAQUINTA,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 10, 11, 12, 13, 14

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS.

In this employment discrimination and intentional tort action, defendants Home Depot U.S.A., Inc. (“Home Depot”), Jahn Joyce, and Patrick Iaquinta (collectively “defendants”) move separately,¹ pursuant to CPLR 3211(a)(5) and (7), for an order dismissing plaintiff John Minor’s fifth, sixth, and seventh causes of action as against them. Plaintiff opposes the motions. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motions are decided as follows.

¹ Motion sequence #001 is a motion to dismiss the complaint filed by defendant Home Depot U.S.A., Inc. (Doc Nos. 3-4). Motion sequence #002 is a motion to dismiss the complaint filed by defendants Jahn Joyce and Patrick Iaquinta (Doc Nos. 15-16). Although the motions were filed separately, they are almost identical in sum and substance, as evidenced by Joyce and Iaquinta’s verbatim recitation of Home Depot’s legal analysis in their own moving papers (Doc No. 4 at 8-12; Doc No. 16 at 8-12).

Factual and Procedural Background

Plaintiff is a former District Human Resources Manager for Home Depot (Doc No. 1 at 5-6). For several years, he served in that position and oversaw a district with stores in Bronx County and Westchester County (Doc No. 1 at 5-6). After plaintiff's application for a promotion was denied, he was transferred to an identical role in a different district, where he was supervised by Joyce and Iaquinta and oversaw stores in Nassau County and Suffolk County (Doc No. 1 at 6-7).

After plaintiff was terminated by Home Depot in February 2022, he commenced the captioned action alleging, among other things, that defendants violated the New York City Human Rights Law ("NYCHRL") by creating a hostile work environment and discriminating against him on account of his sexual orientation and gender (Doc No. 1 at 7, 11-13). He further alleged that, during his time overseeing the stores in Nassau County and Suffolk County, he was "continuously and repeatedly subjected to harassment, beratement, and belittling" by Joyce and Iaquinta (Doc No. 1 at 7-8). Additionally, he claimed that, from 2011 through 2022, he was eligible for 16 different District Human Resources Manager positions within the 9 districts Home Depot maintained in the New York City area, all of which were filled by women who were less qualified and younger than him (Doc No. 1 at 7).

Defendants now move, pursuant to CPLR 3211(a)(5) and (a)(7), to dismiss plaintiff's fifth, sixth, and seventh causes of action, which claim violations of the NYCHRL, asserting that plaintiff failed to state a claim under the statute because the allegedly discriminatory acts occurred outside of New York City (Doc No. 4 at 8-10; Doc No. 16 at 8-10). In the alternative, defendants argue that plaintiff's NYCHRL claims are time-barred because they were brought after the 3-year statute of limitations expired (Doc No. 4 at 10-12; Doc No. 16 at 11-12).

Plaintiff opposes the motions on the grounds that his NYCHRL causes of action are not time-barred, and that he has demonstrated sufficient impact in New York City through his connection to other Home Depot stores in that area (Doc No. 10 at 4-14).

Legal Conclusions

Defendants' primary contention is that plaintiff's fifth, sixth, and seventh causes of action, alleging violations of the NYCHRL, must be dismissed pursuant to CPLR 3211(a)(7) because they fail to state a claim (Doc No. 4 at 8-10; Doc No. 16 at 8-10). However, "paragraph 7 may overlap . . . [with] other paragraphs of CPLR 3211(a), in which case the objection can be based on both the other paragraph and paragraph 7 together" (John R. Higgitt, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:27).

The arguments set forth by defendants in their moving papers imply that CPLR 3211(a)(2) is also applicable, because they argue that this Court has no subject matter jurisdiction over plaintiff's NYCHRL claims (Doc No. 4 at 8-10; Doc No. 16 at 8-10). Although they do not explicitly reference subject matter jurisdiction, defendants' assert that plaintiff's NYCHRL claims must be dismissed because the NYCHRL "only applies to acts that occur within the boundaries of New York City," and the allegedly discriminatory acts occurred in Nassau and Suffolk County (Doc No. 4 at 8-10; Doc No. 16 at 8-10). That assertion is consistent with the well-established rule that this Court's subject matter jurisdiction over NYCHRL claims is limited to discriminatory acts committed within the boundaries of New York City or such acts that cause an impact to be felt within New York City (*see* Administrative Code of the City of New York § 2-201; *Wahlstrom v Metro-North Commuter R.R. Co.*, 89 F Supp 2d 506, 527 [SD NY 2000]; *Hoffman v Parade Pubs.*, 15 NY3d 285, 291 [2010]; *Hardwick v Auriemma*, 116 AD3d 465, 466-467 [1st Dept 2014], *lv denied* 23 NY3d 908 [2014]; *Shah v Wilco Sys., Inc.*, 27

AD3d 169, 175 [1st Dept 2005], *lv dismissed in part, denied in part* 7 NY3d 859 [2006]). Thus, defendant's contention can be viewed as one based on CPLR 3211(a)(2) and (a)(7) together (*see* John R. Higgitt, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:27).

In any event, “[i]f . . . [a] court concludes that it does not have subject matter jurisdiction over a case, it can dismiss the action on its own initiative” (John R. Higgitt, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:11; *see Financial Indus. Regulatory Auth., Inc. v Fiero*, 10 NY3d 12, 17 [2008]; *Robinson v Oceanic Steam Nav. Co.*, 112 NY 315, 324 [1889]).

“Whether New York courts have subject matter jurisdiction over a nonresident plaintiff's claims under the [Human Rights Laws] turns primarily on [his or] her physical location at the time of the alleged discriminatory acts” (*Benham v eCommission Solutions, LLC*, 118 AD3d 605, 606 [1st Dept 2014]; *see Wolf v Imus*, 170 AD3d 563, 564 [1st Dept 2019], *lv denied* 34 NY3d 907 [2019]). A nonresident of New York City must demonstrate that the allegedly discriminatory acts occurred within the boundaries of the city or that such acts had an impact there (*see Hoffman*, 15 NY3d at 289-291; *Hardwick*, 116 AD3d at 466-467). He or she must demonstrate such impact by specifically alleging how the purportedly discriminatory acts negatively affected “the terms, conditions or extent of [his or] her employment” within the city (*Hardwick*, 116 AD3d at 467-468; *see Jarusauskaite v Almod Diamonds, Ltd.*, 198 AD3d 458, 459 [1st Dept 2021], *lv denied* 38 NY3d 904 [2022]). Alleging “mere employment” in New York City is insufficient (*Hardwick*, 116 AD3d at 467-468).

Even accepting the factual allegations in the complaint and in plaintiff's affidavit in opposition to the motion as true and affording him all favorable inferences (*see Schmitt v*

Artforum Intl. Mag., Inc., 178 AD3d 578, 583 [1st Dept 2019]; *Peterson v City of New York*, 120 AD3d 1328, 1329 [2d Dept 2014]), plaintiff fails to demonstrate that any allegedly discriminatory acts by defendants either occurred in New York City or impacted his employment there.² In his complaint, plaintiff stated that he was “continuously and repeatedly subjected to harassment, beratement, and belittling” by Joyce and Iaquinta “during his tenure as a District Human Resources Manager” in the district with stores in Nassau County and Suffolk County, and that Joyce and Iaquinta created a hostile work environment (Doc No. 1 at 7). Further, in his affidavit, he only discusses how he temporarily covered for out-of-office District Human Resources Managers who oversaw stores within New York City, led training classes for new employees at such stores, and participated in company programs involving stores within that area (Doc No. 12).

Neither the complaint nor plaintiff’s affidavit indicates that the allegedly discriminatory acts occurred within New York City, nor do they describe how such acts impacted his employment there. At most, plaintiff has demonstrated that the allegedly discriminatory acts occurred in Nassau County and Suffolk County, and that his position had tangential connections to New York City which caused him to occasionally venture into the city on a temporary basis. This is insufficient to allow this Court to exercise subject matter jurisdiction over plaintiff’s NYCHRL claims against defendants, and, therefore, such claims must be dismissed (*see Jarusauskaite*, 198 AD3d at 459; *Hardwick*, 116 AD3d at 466-467).

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

² Here, plaintiff must be considered a nonresident of New York City for purposes of the analysis. Since he only alleges that he is “a resident of the State of New York” (Doc No. 1 at 3), even affording him a favorable inference, it cannot be said that he is also a resident of the city.

Accordingly, it is hereby

ORDERED that the motion by defendant Home Depot U.S.A., Inc. (motion sequence 001) seeking dismissal of plaintiff's claims of violations of the New York City Human Rights Law is granted; and it is further

ORDERED that the motion by defendants Jahn Joyce and Patrick Iaquinta (motion sequence 002) seeking dismissal of plaintiff's claims of violations of the New York City Human Rights Law is granted; and it is further

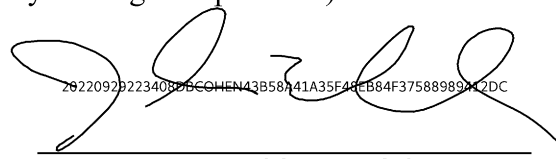
ORDERED that plaintiff's fifth, sixth, and seventh causes of action are dismissed; and it is further

ORDERED that plaintiff's fifth, sixth, and seventh causes of action against defendants for violations of the New York City Human Rights Law are severed, and the remainder of the action shall continue against defendants; and it is further

ORDERED that defendants are directed to serve an answer to the remaining causes of action in the complaint within 20 days after plaintiff's service of a copy of this order with notice of entry upon defendants; 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 Case* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).



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9/29/2022

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE