

Scott v New York City Dept. of Corr.
2022 NY Slip Op 33768(U)
November 4, 2022
Supreme Court, New York County
Docket Number: Index No. 158279/2019
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM **PART** **05RCP**

Justice

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SHANEEN SCOTT,

Plaintiff,

- v -

NEW YORK CITY DEPARTMENT OF CORRECTION, CITY OF NEW YORK, CYNTHIA BRANN, ANGEL VILLALONA, KEITH POWERS, ALICKA AMPRY-SAMUEL, DONOVAN J. RICHARDS JR., CARLINA RIVERA

Defendants.

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INDEX NO. 158279/2019

MOTION DATE 08/02/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 88, 89, 90, 91, 92, 93, 94, 95, 96, 100, 101, 102, 103

were read on this motion for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, plaintiff’s motion to renew and reargue is denied.

On August 23, 2019, plaintiff filed the summons and complaint with the Court alleging that defendants improperly terminated her employment as a correction officer and asserting claims pursuant to: Civil Service Law §80; Article I, Section 11 of the New York State Constitution; Executive Law §296 (the New York State Human Rights Law or “NYSHRL”); and New York City Administrative Code §8-107 (the New York City Human Rights Law or “NYCHRL”). The parties subsequently stipulated to extend the City’s time to answer to January 3, 2020 (NYSCEF Doc. No. 14).

The City did not answer by that date. Plaintiff filed a motion for default judgment on December 31, 2020. Defendants opposed the motion and cross-moved to dismiss the complaint. In a decision and order dated March 23, 2022 (the “Prior Decision”), this Court denied plaintiff’s

motion for default judgment, holding that plaintiff failed to establish proof of service of the summons and complaint required by CPLR §3215(f), as the only proof of service submitted was a blurry, image of the summons with a stamp purportedly documenting receipt by defendant the City of New York (the “City”) (See NYSCEF Doc. No. 13). The Court further held that, even if plaintiff had submitted proper proof of service, her motion would have still been denied because defendants’ opposition demonstrated a reasonable excuse for their default—difficulties resulting from the COVID-19 pandemic—and a potentially meritorious defense. The Court then granted defendants’ cross-motion pursuant to CPLR §3211(a)(7) and dismissed the complaint in its entirety.

Plaintiff now moves to reargue the Prior Decision, arguing that the Court overlooked controlling law and facts in: (1) dismissing her claims pursuant to the NYSHRL and NYCHRL; and (2) entertaining defendants’ motion to dismiss despite their failure to timely Answer. Plaintiff also moves to renew the Prior Decision based on her submission of a clearer picture of the stamped summons. Neither branch of plaintiff’s motion succeeds.

DISCUSSION

A motion to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion ...” (CPLR §2221[d][2]). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided ... or to present arguments different from those originally asserted” (Setters v AI Properties and Developments (USA) Corp., 139 AD3d 492, 492 [1st Dept 2016] [internal citations and quotations omitted]). The fact “[t]hat defendants disagree with this court’s conclusions does not, standing alone, establish that this court overlooked or misapprehended a matter of fact or law for reargument purposes” (Arch Ins. Co. v Constructamax, Inc., 72 Misc 3d

1222(A) [Sup Ct, NY County 2021]; see also Remora Capital S.A. v Dukan, 73 Misc 3d 1233(A) [Sup Ct, NY County 2021]).

Plaintiff has failed to establish that the Court overlooked or misapprehended any matters of fact or law in dismissing plaintiff's NYSHRL and NYCHRL claims. Plaintiff's contention that her complaint alleged facts showing circumstantial evidence of discrimination is belied by a review of the complaint. Accordingly, the Court finds no cause to question its conclusion that the complaint "merely asserts the legal conclusion that defendants' adverse employment actions and plaintiff's termination were due to race" (Thomas v Mintz, 182 AD3d 490, 490-91 [1st Dept 2020]; see also Askin v Dept. of Educ. of City of New York, 110 AD3d 621, 622 [1st Dept 2013]).

Neither has plaintiff established that the Court overlooked or misapprehended controlling law or facts in addressing defendants' motion to dismiss on its merits. To the extent the record is devoid of proof that plaintiff filed an affidavit of service with the Court within twenty days of service on the defendants—thereby failing to complete service—it appears that defendants' time to answer the complaint had not yet run when the default judgment motion was filed (See First Fed. Sav. & Loan Assn. of Charleston v Tezzi, 164 AD3d 758, 759-60 [2d Dept 2018]). Even leaving this aside, the Court's denial of plaintiff's default judgment motion based on defendants' reasonable excuse and meritorious defense amounted to a vacatur of any default by defendants in failing to answer, and therefore the Court's subsequent consideration of the fully-briefed CPLR §3211 motion was not barred by the principal that a CPLR §3211 motion may not be made after time to appear or answer had expired (See Stewart Tit. Ins. Co. v Bank of New York Mellon, 154 AD3d 656, 662 [2d Dept 2017]; Matter of Ogunbayo v Admin. for Children's Services, 106 AD3d 827 [2d Dept 2013]).

That branch of Plaintiff's motion seeking renewal is also denied. Such a motion must be "based upon new facts not offered on the prior motion that could change the prior determination" and also include a "reasonable justification for the failure to present such facts in the prior motion" (CPLR §2221[e][2],[3]). Plaintiff has not satisfied either requirement. In support of this branch of her motion she submits a slightly clearer photo of the stamped summons previously submitted in connection with the underlying default judgment motion (NYSCEF Doc. No. 95). However, a stamped summons is not, regardless of its clarity, sufficient to establish proof of service under CPLR §3215. Moreover, even had plaintiff submitted proper proof of service in her initial motion for default judgment, it would not have altered the conclusion reached in the Prior Decision. In that circumstance, as the Court noted in the Prior Decision, default judgment would still have been denied because the defendants established a reasonable excuse for any default and a potentially meritorious defense.

In light of the foregoing, it is

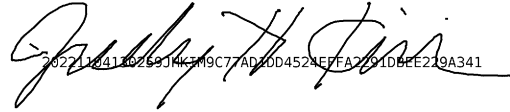
ORDERED that plaintiff's motion to renew and reargue the Court's Prior Decision is denied in its entirety; and it is further

ORDERED that counsel for defendant the City of New York shall serve a copy of this decision and order, with notice of entry, upon plaintiff as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119) within ten days of the date of this decision and order; 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

“Efiling” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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11/4/2022

DATE

HON. JUDY H. KIM, 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