

Unobagha v Hilton Garden Inn Times Sq. N.
2022 NY Slip Op 33864(U)
November 15, 2022
Supreme Court, New York County
Docket Number: Index No. 652744/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

UZO UNOBAGHA, CHINYERE OKOLI

Plaintiffs,

- v -

HILTON GARDEN INN TIMES SQUARE NORTH, LARISSA
"DOE",

Defendants.

-----X

INDEX NO. 652744/2022

MOTION DATE 11/14/2022

MOTION SEQ. NO. 002

**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

were read on this motion to/for DISMISSAL.

Defendants' motion to dismiss is granted and plaintiffs' cross-motion for sanctions is denied.

Background

Plaintiffs contend that they reserved a hotel room in Manhattan for June 25, 2022 and arrived around noon. They allege they were told that check-in did not start until 3 p.m. but they could leave their bags until they came back to check in. Plaintiffs left their bags and then attended a Broadway show; they returned around 8 p.m. They insist that the employee at the check-in desk confirmed their reservation but could not initially locate plaintiffs' luggage. Plaintiffs contend that when they were told another room had to be checked, plaintiff Unobagha remarked that "Our bags had better be there" (NYSCEF Doc. No. 1, ¶ 24). The employee then

allegedly screamed at plaintiffs and escalated the confrontation although the bags were soon located and returned to plaintiffs.

Plaintiffs detail how this employee started pointing her finger at plaintiffs and eventually told plaintiffs “Don’t bother to go up to your room. I am calling the police to throw you out!” (*id.* ¶ 32). Plaintiff Unobagha then informed defendants’ employee that she was a Hilton Honors Member and the employee purportedly responded that “she had thrown Diamond Members like her out of ‘this hotel’” (*id.* ¶ 36).

According to plaintiffs, they went up to their room only to have two police officers arrive. These officers allegedly told plaintiffs that it was in their best interest to leave the hotel. When asked for a refund, the front desk employee told them that they would have to seek it from the entity where they booked the room (Expedia). Plaintiffs bring causes of action for breach of contract and for discrimination under the City’s Human Rights Law.

Defendants move to dismiss. They contend that plaintiffs failed to state a cause of action for race discrimination under the New York City Human Rights Law (“NYCHRL”) because the complaint does not raise a single inference of discrimination. Defendants argue that plaintiffs did not allege any facts to suggest that a Caucasian guest engaged in similar conduct and was not removed. In fact, defendants maintain that plaintiffs did not mention any other interaction between the front desk employee and another guest that might give rise to an inference of racial discrimination.

They point out that the closest plaintiffs get to alleging a racial discrimination claim is the front desk employee’s purported statement that she had thrown out Diamond Members like plaintiffs, which has nothing to do with a person’s race.

Defendants also insist that plaintiffs failed to state a cause of action for breach of contract because plaintiffs booked the room with Expedia, a third-party vendor, and that Expedia presumably refunded plaintiffs when their reservation was cancelled by defendants.

In opposition and in support of their cross-motion for sanctions, plaintiffs complain that defendants have mischaracterized the facts. They claim that defendants did not submit any documentary evidence to justify dismissal under CPLR 3211(a)(1). Plaintiffs allege in the complaint that they are African Americans with a distinct foreign accent and that the front desk employee did not appear to be African American. Plaintiffs argue that they would not have been thrown out of the hotel had they not been African Americans. Plaintiffs argue that the motion itself from defendants is frivolous and warrants sanctions.

In reply, defendants point out that plaintiffs did not directly address the branch of their motion to dismiss the breach of contract claim and so this cause of action must be dismissed. With respect to the racial discrimination claim, defendants argue that conclusory assertions are not enough to state a cognizable cause of action. They insist that there is no basis to infer racial discrimination based on the acts alleged by plaintiffs.

In reply to their cross-motion, plaintiffs insist that as hotel guests they were unlikely to be familiar with other hotel guests or be able to identify those who may be treated differently by defendants. They also insist that they booked and paid for a room at the subject hotel.

Discussion

“In the posture of defendants' CPLR 3211 motion to dismiss, our task is to determine whether plaintiffs' pleadings state a cause of action. The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause

of action cognizable at law. In furtherance of this task, we liberally construe the complaint and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion. We also accord plaintiffs the benefit of every possible favorable inference” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-52, 746 NYS2d 131 [2002]).

Race Discrimination Cause of Action

“Section 8–107 (5)(a)(1) of the Administrative Code of the City of New York makes it an unlawful discriminatory practice to refuse housing accommodations to any person because of that person's actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, or alienage or citizenship status” (*Levin v Yeshiva Univ.*, 96 NY2d 484, 491, 730 NYS2d 15 [2001]). A plaintiff must allege that she was treated less well due to her race or protected class in order to state a claim for discrimination under the New York City Human Rights Law (*Askin v Dept. of Educ. of City of New York*, 110 AD3d 621, 622, 973 NYS2d 629 [1st Dept 2013]).

The Court grants the branch of the motion that seeks to dismiss the race discrimination claim. The issue for this Court is that the detailed allegations contained in the complaint do not come close to asserting a cause of action for racial discrimination. Instead, they detail a heated exchange between the front desk employee at the hotel and plaintiffs when plaintiffs' bags could not be initially located. The Court makes no finding about who is to blame for how the dispute began but clearly, assuming the allegations are true as the Court must on a motion to dismiss, the argument escalated to the point where the police were called.

But the severity of the dispute does not, by itself, connote a racial animus toward plaintiffs. In fact, the only basis for the discrimination claim cited in the complaint is the front desk employee's purported statement that she had thrown out Diamond Members like plaintiffs out of the hotel. But being a Diamond Member is not related in any way to a person's race. It is ostensibly a status afforded to hotel guests who, by virtue of frequent stays at a hotel, achieve a loyalty status that entitles them to various perks. The only inference to be drawn from the comment is that the employee had no issue throwing out guests who might ordinarily be afforded more attentive or special treatment from hotel staff. Plaintiffs' allegations with respect to the racial discrimination aspect of the alleged events are too conclusory and do not state a cause of action under the NYCHRL (*see id.* ["Plaintiff's allegations in this respect amount to mere legal conclusions, and do not suffice to make out this element of her claim."])).

The Court recognizes, as plaintiffs point out, that it is often difficult to allege a racial discrimination claim. That is why inferences may be relied upon to make out a cause of action instead of pointing solely to overt acts. But nothing is alleged here (and the Court observes that nothing was included from the plaintiffs themselves in opposition) to suggest that defendants did or said anything based on plaintiffs' race. Nothing was alleged about an interaction with a guest of a different race that could lead to the inference that plaintiffs were treated "less well" than other guests due to their race. No comments from defendants are included that touch on anything to do with plaintiffs' race or lead to an inference about plaintiff's race despite plaintiffs providing a very detailed account of what the front desk employee said during the interaction.

In sum, while the escalation of the dispute alleged here is concerning, and particularly the fact that the police were called, that alone does not state a cause of action for racial discrimination.

Breach of Contract

The Court grants this branch of the motion. Plaintiffs failed to oppose this requested relief in their opposition. Neither the memo of law nor the affirmation in opposition directly address this point. To the extent that plaintiffs attempt to address this issue in reply, that is improper as a party cannot raise new arguments for the first time in reply.

In any event, defendants insisted that the booking was done with a third-party vendor and they cancelled it so plaintiffs should have been refunded, thereby negating a key element of a breach of contract cause of action (damages). Plaintiffs did not directly deny that they booked with Expedia nor do they claim that they failed to receive a refund. Moreover, plaintiffs do not explain what defendants did to support a breach of contract claim (such as not actually processing the cancellation).

Summary

On these papers, the Court is unable to find a cognizable cause of action. Plaintiffs only alleged claims are for race discrimination and breach of contract. As stated above, the argument depicted was heated but does not yield an inference that it was motivated by plaintiffs' race. And plaintiffs failed to adequately oppose the branch of the motion to dismiss the breach of contract claim. The Court also denies the cross-motion by plaintiffs for sanctions. Obviously, it was not frivolous for defendants to move to dismiss.

However, the Court denies the request by defendants to prospectively bar plaintiffs from seeking leave to amend or replead. Plaintiffs filed a single complaint and so it would be inappropriate to bar them from making a future application.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss the complaint is granted, this complaint is dismissed and the Clerk is directed to enter judgment in favor of defendants and against plaintiffs along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that plaintiffs' cross-motion for sanctions is denied.

11/15/2022

DATE



ARLENE P. BLUTH, 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