

Christian v Department of Educ. of the City of N.Y.
2022 NY Slip Op 33945(U)
November 23, 2022
Supreme Court, New York County
Docket Number: Index No. 158793/2021
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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ELIZABETH CHRISTIAN,

Plaintiff,

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Defendants.

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INDEX NO. 158793/2021

MOTION DATE 05/10/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35

were read on this motion to DISMISS

Plaintiff is an African American woman who was employed by defendant the Department of Education of the City of New York as an English as a New Language ("ENL") teacher at the Angelo Patri Middle School in the Bronx for approximately six years, ending on October 1, 2020 (NYSCEF Doc. No. 1 [Complaint at ¶¶4-5, 39]). As pertinent here, plaintiff alleges that, during her time on this job, she was improperly assigned to teach outside of her license, while less senior Caucasian teachers who lacked the proper licensing were given the teaching assignments she requested (Id. at ¶¶9-10). Plaintiff also alleges that she was not given the opportunity to conduct the speaking exam of the New York State English as a Second Language Achievement Test and Identification Test for English Language Learners until her sixth year, while these less-qualified Caucasian ENL teachers were assigned to do so (Id. at ¶¶11-13). Finally, she alleges that she was repeatedly denied tenure while these Caucasian colleagues were granted tenure (Id. at ¶19).

Plaintiff filed a complaint with the U.S. Equal Employment Opportunity Commission (“EEOC”) in August 2019, receipt of which was acknowledged on February 20, 2020 (Id. at ¶38). Plaintiff took a leave of absence for the 2019-2020 school year and returned to teach the 2020-2021 school year (Id. at ¶34). Plaintiff then taught for the 2020-2021 school year until she was fired on October 1, 2020 (Id. at ¶39).

As a result, plaintiff commenced this action on September 24, 2021, alleging that “[a]s a result of the willful activities of defendant, plaintiff has been subject to disparate treatment and was terminated due to her race” in violation of Administrative Code 8-107 (the New York City Human Rights Law, or “NYCHRL”) and Executive Law §296 (the New York State Human Rights Law or “NYSHRL”) (NYSCEF Doc. No. 1 [Compl at ¶¶45, 47]). Defendants construe the complaint as asserting claims for discrimination, hostile work environment, and retaliation—a characterization plaintiff does not dispute—and now move to dismiss these claims pursuant to CPLR §§3211(a)(1), (5), and (7). Plaintiff opposes the motion to the extent defendants seek to dismiss her claims for discrimination and retaliation but does not oppose the branch of defendants’ motion seeking the dismissal of her hostile work environment claim.

DISCUSSION

As a threshold matter, plaintiff does not dispute defendants’ contention that her claims are time-barred to the extent that they arise from events which occurred beyond the statute of limitations set out in Education Law §3813(2-b). Neither does plaintiff dispute that, as a result, her only viable claims for discrimination and retaliation arise out of her termination on October 1, 2020. Defendants now move to dismiss these claims pursuant to CPLR §3211(a)(7).

That branch of defendants’ motion seeking to dismiss plaintiff’s employment discrimination claim is denied. To establish a prima facie case of discrimination under the

NYSHRL, plaintiff must demonstrate that: (1) she is a member of a protected class; (2) she was qualified to hold the position; (3) she suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination (Ellison v Chartis Claims, Inc., 178 AD3d 665, 667 [2d Dept 2019] [internal citations omitted]). The elements of a discrimination claim under the NYCHRL largely mirror the foregoing, except that a plaintiff need not plead that she suffered an “adverse employment action” but only that she was adversely or differently treated based on her disability in a way that disadvantaged her (See e.g., Hosking v Mem. Sloan-Kettering Cancer Ctr., 186 AD3d 58, 62 [1st Dept 2020]; see also Harrington v City of New York, 157 AD3d 582 [1st Dept 2018]).

Defendants do not dispute that plaintiff, as an African American, is a member of a protected class and that her termination constitutes an adverse action under the NYSHRL and disadvantageous treatment under the NYCHRL. They instead argue that this claim must be dismissed because plaintiff has not alleged facts permitting an inference of discriminatory intent on the part of defendants. The Court disagrees. Allegations that the plaintiff was treated less favorably than similarly situated employees outside the protected group are sufficient to give rise to an inference of discrimination (See Harrington v City of New York, 157 AD3d 582, 585 [1st Dept 2018]) and plaintiff has satisfied this standard through allegations that: her requested teaching assignments were given to Caucasian teachers less-qualified for those assignments; she was repeatedly denied tenure granted to these Caucasian teachers; and she received little or no pedagogical support compared to these Caucasian teachers. To the extent that these events took place after the statute of limitations elapsed, “a plaintiff may rely on events prior [to the] ... statute of limitations [expiration] to provide background evidence of defendants’ unlawful motives and

intent” in asserting a retaliation claim (Collins v Indart-Etienne, 59 Misc 3d 1026, 1055 [Sup Ct, Kings County 2018] [internal citations omitted]).

The Court does not credit defendants’ argument that plaintiff has not alleged that her Caucasian colleagues were similarly situated to her in all material respects such that an inference of discrimination may be permitted. “Similarly situated in all material respects does not mean all respects generally, but rather sufficiently similar to support at least a minimal inference that the difference of treatment may be attributable to discrimination ... What constitutes all material respects varies from case to case, but must be judged based on whether the plaintiff and those he maintains were similarly situated were subject to the same workplace standards ... [i.e] holding the same positions of roughly the same rank, and being subject to the same performance review and disciplinary standards” (Wilberding v Ctr. Capital Group, LLC, 2013 NY Slip Op 32830[U] [Sup Ct, New York County 2013] [internal citations and quotations omitted]). Plaintiff has satisfied this standard through allegations the Caucasian teachers were teaching similar classes at the same school. Accordingly, defendants’ motion to dismiss plaintiff’s discrimination claim is denied.

Defendants’ motion to dismiss plaintiff’s retaliation claim is granted, however. To make out a claim of retaliation under the NYSHRL, plaintiff must allege that: (1) she engaged in a protected activity by opposing conduct prohibited thereunder; (2) defendants were aware of that activity; (3) she was subject to an adverse action; and (4) there was a causal connection between the protected activity and the adverse action (Fletcher v Dakota, Inc., 99 AD3d 43, 51 [1st Dept 2012] citing Forrest v Jewish Guild for the Blind, 3 NY3d 295, 312-313 [2004]). Under the NYCHRL, the complaint must allege that: (1) plaintiff participated in a protected activity known

to defendants; (2) defendants took an action that disadvantaged her; and (3) a causal connection exists between the protected activity and the adverse action (Id. citing Albunio v City of New York, 67 AD3d 407, 413 [2009]). In this context, “protected activity” refers to “actions taken to protest or oppose statutorily prohibited discrimination” (Thomas v Mintz, 60 Misc 3d 1218(A) [Sup Ct, NY County 2018] [internal citations omitted], affd as mod., 182 AD3d 490 [1st Dept 2020]).

While plaintiff’s complaint to the EEOC constitutes protected activity, her retaliation claim nevertheless fails because she has not alleged a causal connection between the EEOC complaint in August 2019 (or its receipt by EEOC on February 20, 2020) and her termination on October 1, 2020. “A causal connection may be established either indirectly, by showing that the adverse closely followed in time the protected activity, or directly, through evidence of retaliatory animus, such as verbal or written remarks” (Thomas v Mintz, 60 Misc 3d 1218(A) [Sup Ct, NY County 2018] [internal citations and quotations omitted], affd as mod., 182 AD3d 490 [1st Dept 2020]). In this case, the many months between the EEOC complaint and plaintiff’s termination is too great to establish a causal link based solely on temporal proximity (See e.g., Bantamoi v St. Barnabas Hosp., 146 AD3d 420, 420-21 [1st Dept 2017] [five month time period between plaintiff’s protected activity and defendant’s referral of plaintiff for psychiatric evaluation and her placement on a medical leave of absence not sufficient temporal proximity to establish causal connection]) and plaintiff has not alleged any other facts that could directly establish a retaliatory animus (Cf. Harrington v City of New York, 157 AD3d 582 [1st Dept 2018]). Accordingly, her retaliation claim must be dismissed.

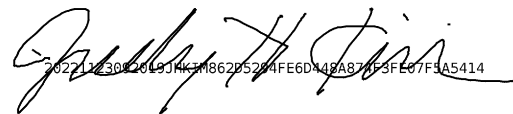
In light of the foregoing, it is

ORDERED that defendants’ motion is granted to the extent that plaintiff’s claims for hostile work environment and retaliation under New York State and City Human Rights Laws are dismissed and is otherwise denied; and it is further

ORDERED that counsel for defendants 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 “E filing” 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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11/23/2022

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