

Eisner v City of New York

2023 NY Slip Op 32005(U)

June 5, 2023

Supreme Court, New York County

Docket Number: Index No. 158484/2017

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART IAS MOTION 62

Justice

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SUSAN EISNER,

Plaintiff,

- v -

CITY OF NEW YORK, MICHAEL CARDOZO, G. FOSTER
MILLS, GEORGIA PESTANA, MURIEL GOODE-TRUFANT,
LEONARD KOERNER, FRANCIS CAPUTO, RICHARD
DEARING

Defendant.

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INDEX NO. 158484/2017
§
MOTION DATE 02/27/2020
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, the motion is decided as follows:

Plaintiff moves this Court pursuant to CPLR R. 3124 and CPLR §3126 to compel defendants to comply with her outstanding discovery demands. Defendants cross-move to compel, plaintiff to comply with their outstanding discovery demands and to produce plaintiff, Susan Eisner, for a deposition.

This action involves a disability discrimination and retaliation case brought pursuant to the New York City Human Rights Law (“NYCHRL”), NYC Administrative Code §8-107, in relation to plaintiff’s employment and termination as an Assistant Corporation Counsel at the New York City Law Department. Plaintiff initially brought an action in the United States District Court for the Southern District of New York, claiming violations of the Americans with Disabilities Act (“ADA”) and violations of NYCHRL. The District Court granted defendants summary judgment motion and plaintiff appealed to the United States Court of Appeals for the Second Circuit. On or

about April 14, 2017, The Court of Appeals ruled that, “Eisner has accordingly failed to make out a prima facie case of discrimination under the ADA. Lastly, with respect to Eisner’s NYCHRL discrimination claim, we find that the district court’s treatment of Eisner’s NYCHRL discrimination claim in tandem with her ADA discrimination claim was improper given this Court’s clear directive that ‘courts must analyze NYCHRL claims separately and independently from any federal and state law claims’” (see *Eisner v Cardozo*, 685 Fed Appx 29, 31 [2d Cir 2017]). The case was remanded to the district court, with instructions to dismiss the action with leave to refile in State Court for a determination of plaintiff’s NYCHRL claims. Subsequently, plaintiff filed a complaint with the Supreme Court of the State of New York on or about September 22, 2017 alleging violations of NYCHRL and additional causes of action based upon facts arising after the filing of the federal action. Plaintiff now seeks production of documents and responses to interrogatories.

In a stipulation dated, February 6, 2018, defendants agreed to withdraw their motion for summary judgment and the parties specifically stipulated that: “any information exchanged in discovery during the federal court litigation may be used in this action in the same manner as if it was exchanged herein, without any need to duplicate the discovery request or to re-produce the discovery material; and that the parties will work cooperatively to limit their discovery requests, as much as practicable, to new matters raised in the instant complaint or matters revealed so late in the federal court litigation that discovery could not be had on them, however, both parties reserve their right to request any discovery material relevant to this action to the maximum extent provided by the CPLR, as well as their right to object to any discovery request as improper, duplicative and/or unnecessary in light of the federal litigation.”

Plaintiff served defendants with her first request for the production of documents and first set of interrogatories on or about March 23, 2018. A review of same reveals that plaintiff has made no attempt to limit its discovery requests to those issues newly raised in the instant complaint. Defendant served plaintiff with their combined responses and objections on or about June 1, 2018.

Defendants contend that, “plaintiff is not permitted to request discovery for the second time on the same claim when plaintiff has already fully litigated the issues underlying the discovery” (defendant aff opp ¶ 5). Defendants continue, “[t]he parties fully conducted and concluded discovery on the [NYCHRL] claim while it was pending in federal court. While litigating this very claim, the City produced seven witnesses for what defendants estimate exceeded 50 hours of depositions and production of almost seven thousand pages of documents” (defendant aff opp ¶ 6). As discussed in *Simmons-Grant v Quinn Emanule Urquhart & Sullivan, LLP*, 116 AD3d 134, 140 (1st Dept 2014) “in this case, as most cases in which a [NYCHRL] claim is dismissed without prejudice on summary judgment, the factual findings and decisions of the federal court are binding on the plaintiff”

Here, plaintiff certified in the federal court action that discovery was complete on all of her claims. While discovery proceeds differently in said court and is more constrained than the discovery available in state court, plaintiff is bound by her choice. Discovery with respect to the facts alleged in her federal complaint is complete, despite the District Court’s failure to properly evaluate plaintiff’s NYCHRL claims, and plaintiff is only entitled to discovery with regard to allegations and causes of action raised for the first time in the instant action.

ORDERED that plaintiff’s motion is granted to the extent that defendants are directed to provide the demanded discovery only to the extent that it related to allegations and causes of action raised for the first time in the instant action; and it is further

ORDERED that defendant’s cross-motion is granted in its entirety; and it is further

ORDERED that plaintiff shall respond to defendants’ discovery demands, dated June 1, 2018 within 60 of service of a copy of this Order, together with notice of entry, to the extent not already provided and thereafter within 60 days shall produce Susan Eisner for deposition on a date and at a time convenient for the parties; and it is further

ORDERED that counsel are directed to appear for a compliance conference to be noticed at a later date.

6/5/2020
DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE