Williams v City of New York
2023 NY Slip Op 32816(U)
August 14, 2023
Supreme Court, New York County
Docket Number: Index No. 154563/2022
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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KESTON WILLIAMS,

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.

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INDEX NO. 154563/2022

MOTION DATE 05/02/2023

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

were read on this motion for DISMISSAL.

Upon the foregoing documents, the motion by defendant the City of New York (the "City") to dismiss this action pursuant to CPLR §3211(a)(7) is granted for the reasons set forth below.

Plaintiff commenced the instant action seeking "relief for disparate impact and intentional racial discrimination" pursuant to Executive Law §296 (the New York State Human Rights Law, or "NYSHRL"), Administrative Code §8-107 (the New York City Human Rights Law or "NYCHRL"), and Article I, section 11 of the New York State Constitution (NYSCEF Doc. No. 2 [Compl.]).

Plaintiff alleges that he is an African American male who has been employed as a Correction Officer by the New York City Department of Correction ("DOC") for approximately three years where he was, most recently, assigned to the Anna M. Kross Center ("AMKC"), working under "absolutely deplorable working conditions for staff and living conditions for inmates" (NYSCEF Doc. No. 2 [Compl. at ¶¶4, 7-8]).

Plaintiff alleges that he timely received the COVID-19 vaccination as required by the vaccine mandate imposed by the City but failed to submit proof of his vaccination within the deadline for such submission and was, as a result, terminated by DOC without prior notice or notice of his right to a hearing in front of the New York City Office of Administrative Trials and Hearings (Id. at ¶¶11-14). Plaintiff contends that this violated Civil Service Law §72 (Id. at ¶17).

Plaintiff also asserts that the circumstances of his employment and termination were part of a larger pattern of misconduct by the defendant and details, in a conclusory fashion, a "history of structural & institutional discrimination, generally, and specifically within the Department of Correction" between 2011 to 2021 (Id. at ¶¶22-30). He further alleges that, in order to reduce its workforce of uniformed DOC employees without resorting to layoffs, "the City and the Department have resorted to obscene hostile work environments, including allowing inmates to sexually harass and assault female uniform staff and forcing uniform staff to work without mandated breaks required by Section 162 of the Civil Service Law" (Id. at ¶¶31). Defendant has also, according to plaintiff, increasingly fabricated claims of misconduct against Black and Hispanic DOC employees for purposes of discipline and termination in order to reduce its workforce by means other than layoffs (Id. at ¶45).

Plaintiff concludes the complaint by detailing the demographics of DOC's uniform workforce as of 2018 (Id. at ¶¶46-54). Plaintiff's complaint then sets forth two causes of action, for punitive and compensatory damages "for emotional distress ... as a proximate cause of the Defendant's discrimination on the basis of race."

The City now moves, pursuant to CPLR § 3211(a)(7), to dismiss this action. Plaintiff opposes the City's motion and, as part of that opposition, requests that this Court consolidate the

instant action with Santiago et al., v City of New York, an action pending before this Court under Index No. 159551/2021.

DISCUSSION

The City's motion to dismiss the complaint is granted. In addressing a motion to dismiss pursuant to CPLR §3211(a)(7), the pleading is to be afforded a liberal construction and the court should accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (See Leon v Martinez, 84 NY2d 83 [1994]). However, "bare legal conclusions and inherently incredible facts are not entitled to preferential consideration" (M & E 73-75, LLC v 57 Fusion LLC, 189 AD3d 1, 5 [1st Dept 2020]).

Plaintiff's disparate impact claim falls within the latter category. To state a claim of discrimination under a disparate impact theory, a plaintiff must allege that a facially neutral practice had a disproportionate effect on a protected class (Burgis v City of New York Dept. of Sanitation, 2018 NY Slip Op 33322[U], 8 [Sup Ct, NY County 2018] citing Levin v Yeshiva Univ., 96 NY2d 484, 491 [2001]). Under the NYCHRL, in particular, "a cause of action may be maintained where a policy or practice of a covered entity or a group of policies or practices of a covered entity results in a disparate impact to the detriment of any [protected] group" and "[s]uch claims are subject to a more lenient standard" (Burgis v City of New York Dept. of Sanitation, 2018 NY Slip Op. 33322[U], 8 [Sup Ct, NY County 2018] [internal citations and quotations omitted]). Here, plaintiff fails to set forth either a facially neutral practice or a disproportionate effect on a protected class. To the extent his complaint asserts, in a conclusory fashion, that unpleasant and dangerous working conditions for Correction Officers and targeted harassment caused a disproportionate number of Black and Hispanic Correction Officers to resign or be

terminated, it fails to set forth any specific factual allegations to support this claim. Moreover, although plaintiff includes demographic information for the DOC as of October 15, 2018, he adds no information as to how these demographics have changed over time (if, indeed, they have) to establish any sort of disparate impact.

To the extent that plaintiff appears to be arguing that, given the high proportion of minority representation among the DOC workforce, any efforts to reduce that workforce are, on their face, discriminatory, this argument has no foundation in law (See e.g., Matter of New York State Off. of Mental Health, Manhattan Psychiatric Ctr. v New York State Div. of Human Rights, 223 AD2d 88, 90 [3d Dept 1996] ["A prima facie case of disparate impact is not established by a simple showing of statical disparities in an employer's workforce"]). In short, plaintiff fails to allege facts supporting his claims regarding the DOC policy of workforce reduction, let alone that such a policy caused a statistically significant disparity in Correction Officers of a particular race. His disparate impact claim is, therefore, dismissed (See e.g., Shinaul v. NY City Dept. of Corr., 2021 NY Slip Op 31806[U], *3 [Sup Ct, NY County, 2021]).

To the extent that plaintiff's complaint asserts a claim for "intentional racial discrimination," the Court views this as claim for employment discrimination based on race, purportedly brought pursuant to Article I, §11 of the New York State Constitution, the NYSHRL, and the NYCHRL. As an initial matter, no claim for employment discrimination under Article I, §11 of the New York State Constitution lies here. Rather, the proper method to assert such an equal protection claim is through the New York State Human Rights Law and New York City Human Rights Law (See Brown v State, 89 NY2d 172, 190-91 [1996]), which plaintiff has done.

Ultimately, however, the complaint fails to state an employment discrimination claim under the NYCHRL or NYSHRL. To state a claim under the NYSHRL, plaintiff must allege "that

[he] is a member of a protected class, that [he] was qualified for [his] position, that [he] suffered an adverse employment action, and that the adverse action was due to circumstances that could be deemed discriminatory" (Thomas v Mintz, 60 Misc 3d 1218(A) [Sup Ct, NY County 2018] [internal citations and quotations omitted], aff'd as mod, **6 182 AD3d 490 [1st Dept 2020]). The elements of a discrimination claim under the NYCHRL largely mirror the foregoing, except that plaintiff need not plead that he suffered an "adverse employment action" but only that he was adversely or differently treated based on his race in a way that disadvantaged him (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]).

Plaintiff's employment discrimination claim must be dismissed as he fails to set forth any factual allegations suggesting that the defendant's disputed actions occurred under circumstances giving rise to an inference of discrimination. "[He] does not allege facts that would establish that similarly situated persons who ... [were] not of African American descent were treated more favorably than plaintiff" (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]). To the extent that plaintiff contends that the City discriminated against him by terminating him without notice and hearings required by Civil Service Law §72, he is incorrect. First, his reliance on this statute is misplaced, as it is a procedural mechanism for placing disabled public employees who cannot perform the duties of their job on involuntary leave and therefore is inapplicable here. In any event, even assuming plaintiff intended to cite Civil Service Law §75, compliance with this statute was not necessary under the circumstances alleged by plaintiff, i.e., his failure to timely produce proof of COVID-19 vaccination, a condition of employment (See e.g., Matter of New York State Off. of Children and Family Services v Lanterman, 14 NY3d 275, 282 [2010]).

In light of the foregoing, the City's motion is granted and this action is dismissed. As a result, plaintiff's request, raised for the first as part of his opposition to the instant motion, to consolidate this action with Santiago et al. vs. City of New York, Index No. 159551/2021, is rejected as both procedurally improper (See CPLR §602) and mooted by the foregoing.

Accordingly, it is

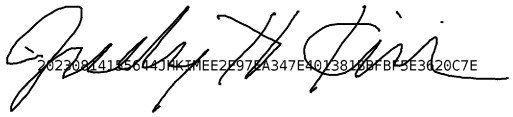
ORDERED that the City of New York's motion to dismiss this action is granted; and it is further

ORDERED that this action is dismissed; and it is further

ORDERED that within fifteen days of the date of this decision and order counsel for the City of New York shall serve a copy of this decision and order, with notice of entry, upon the 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), who are directed to enter judgment accordingly; 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.



8/14/2023
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**		☐	**NON-FINAL DISPOSITION**	
	X	**GRANTED**	☐ **DENIED**	☐	**GRANTED IN PART**	☐ **OTHER**
APPLICATION:	☐	**SETTLE ORDER**		☐	**SUBMIT ORDER**	
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**		☐	**FIDUCIARY APPOINTMENT**	☐ **REFERENCE**