

**Izuogu v Aramark Food Servs.**

2023 NY Slip Op 33018(U)

August 31, 2023

Supreme Court, New York County

Docket Number: Index No. 100625/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02TR

Justice

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ANTHONY IZUOGU,

Plaintiff,

- v -

ARAMARK FOOD SERVICES,

Defendant.

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INDEX NO. 100625/2022
MOTION DATE 05/31/2023
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 12, 13, 14, 15, 20, 21, 22

were read on this motion to/for DISMISSAL

Defendant Aramark Food Services1 (“Defendant”) moves pursuant to CPLR 3211(a)(7) to dismiss this action filed by Plaintiff Anthony Izuogu (“Plaintiff”), which alleges mistreatment in the workplace. Plaintiff, who is self-represented, opposes the motion.

As set forth in the Complaint (NYSCEF Doc. No. 14, “Complaint”), on December 9, 2020, Defendant hired Plaintiff as an “Event Coordinator” to provide services for its client, non-party Credit Agricole Corporate and Investment Bank (“Credit Agricole”), at Credit Agricole’s place of business (Complaint ¶ 3-4). The Complaint asserts: “Whereas the defendant purports to be the actual employer of the plaintiff, the degree and manner of direct control Credit Agricole CIB was allowed to exert over the plaintiff’s work was inconsistent with regulatory guidelines relating to the definition and treatment of an independent contractor” (id. ¶ 5). The Complaint alleges that Defendant “deliberately created the aforementioned uncertainty . . . to misclassify the plaintiff for the purposes of shortchanging and exploiting the plaintiff” (id. ¶ 6).

1 Defendant contends it is improperly named in the action but concedes Plaintiff worked for Aramark Services Inc.

The Complaint goes on to allege that over a period of several months, Plaintiff was “subjected to various forms of abuse including harassment and labor exploitation” which created a hostile work environment, and that Defendant knew about the mistreatment of Plaintiff and “failed to take timely and sufficient actions to effectively stop the offending acts” (*id.* ¶ 7-8). The Complaint does not detail the purported offending acts or plead any facts relating to treatment of other similarly situated workers.

The Complaint alleges Defendant “subjected the plaintiff to constructive dismissal by willfully and negligently creating a hostile work environment for the plaintiff; hence the plaintiff was forced to notify defendant of intention to resign” (*id.* ¶ 9). Other than his start date, Plaintiff only mentions two specific dates in his Complaint: on May 15, 2022 he asked Defendant to “take definite remedial actions to enable the plaintiff to continue to work at the location” and on May 16, 2022 Defendant “physically prevented the plaintiff from continuing to work” at Credit Agricole, claiming that there was a plan to reassign Plaintiff elsewhere (*id.* ¶ 10-11).

Finally, the Complaint alleges that Defendant retaliated against Plaintiff by withdrawing his employment benefits and misrepresenting facts to the Department of Labor after Plaintiff sought unemployment benefits (*id.* ¶ 12-13). Plaintiff alleges Defendant has caused him stress, anxiety, health problems, and financial hardship, “including frustrating plaintiff’s mortgage application” (*id.* ¶ 14). The Complaint does not explicitly state any causes of action. It demands \$700,000 with interest from May 16, 2022.

Defendant argues the Complaint must be dismissed for failure to state a claim. It notes that the Complaint fails to specifically allege any causes of action or any statutory or common law bases upon which relief can be granted. It argues that even were the Complaint to be characterized as alleging causes of action for harassment, hostile work environment,

misclassification, wrongful termination, constructive discharge, and/or retaliation, the pleading is insufficient because it consists only of conclusory claims devoid of any factual specificity. In an affirmation of counsel, Defendant concedes that Plaintiff stopped working for it on May 25, 2022 but maintains that Plaintiff voluntarily resigned. Counsel represents that because Plaintiff's resignation was voluntarily, he did not qualify for unemployment benefits.

Plaintiff's opposition includes more specific factual assertions not included in the Complaint. According to Plaintiff's opposition, he was hired by Defendant to be a Catering Coordinator or Event Coordinator working at Credit Agricole, and once there, managers employed by Credit Agricole gave him additional assignments beyond his job description, including accounting and human resources duties and "demeaning tasks such as dishwashing, brewing and serving coffee and other beverages to employees and visitors, in addition to cleaning spaces." He states that he is Black and maintains that these mistreatments were fueled by stereotypes based on race and national origin. His papers include one instance where he complained to a white supervisor about "the disrespectful and hostile attitude of one employee" who was also white and was purportedly told that he was not liked and could resign if he did not like how he was being treated.

When considering a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), "the allegations in the complaint are to be afforded liberal construction, and the facts alleged therein are to be accepted as true, according a plaintiff the benefit of every possible favorable inference and determining only whether the facts alleged fit within any cognizable legal theory" (*M&E 73-75 LLC v 57 Fusion LLC*, 189 AD3d 1, 5 [1st Dept 2020]). The motion "must be denied if the factual allegations contained within the four corners of the pleading manifest any cause of action cognizable at law" (*id.*). However, "factual allegations which fail to

state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or unequivocally contradicted by documentary evidence, are not entitled to such consideration” (*Leder v Spiegel*, 31 AD3d 266, 267 [1st Dept 2006]).

“Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense” (CPLR § 3013). Separate causes of action shall be separately stated and numbered (CPLR 3014). A court may consider affidavits submitted by a plaintiff to remedy any defects in a complaint (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

The Court finds that the Complaint fails to meet the requirements of CPLR §§ 3013 and 3014. The Complaint both fails to enumerate any causes of action or to allege specific facts that could conceivably support any cause of action. Although Plaintiff apparently alleges some form of workplace mistreatment, his Complaint is largely comprised of bare legal conclusions and vague factual allegations. The Court is unable to discern what causes of action are being pled and the legal basis for Plaintiff’s purported claims. Plaintiff’s affidavit in opposition fails to remedy this defect as it does not give the Court or Defendant any additional notice of the occurrences intended to be proved in relation to any specified cause of action.

The Complaint still fails to state any cause of action even were the Court to construe it as seeking specific relief under the broad and remedial New York City Human Rights Law. When reading the Complaint in the light most favorable to Plaintiff, affording him the benefit of every possible inference, and assuming every fact pled to be true, the Complaint alleges that Plaintiff was made to perform tasks beyond the scope of his job description by Defendant’s client, and that Defendant failed to act in response to Plaintiff’s complaints. These facts are insufficient to

sustain any claim under the City Human Rights Law (see, e.g., *Harrington v City of New York*, 157 AD3d 582 [1st Dept 2018] [setting forth elements of discrimination and retaliation claims; *Hernandez v Kaisman*, 103 AD3d 106 [1st Dept 2012] [hostile work environment]; *Crookendale v New York City Health & Hosps. Corp.*, 175 AD3d 1132 [1st Dept 2019] [constructive discharge]). Although the Complaint indicates that Plaintiff believes this behavior was motivated by discrimination based on race and national origin, neither the pleading nor Plaintiff's affidavit in opposition to the motion include specific facts which substantiate the Complaint's conclusory assertions.

Accordingly, for the reasons set forth herein it is hereby:

ORDERED that Defendant's motion is granted and the Complaint is dismissed in its entirety.

This constitutes the Decision and Order of the Court.

8/31/2023

DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE