

Henriquez v City of New York

2023 NY Slip Op 33409(U)

October 3, 2023

Supreme Court, New York County

Docket Number: Index No. 158536/2022

Judge: Judy H. Kim

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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. JUDY H. KIM PART 05RCP

Justice

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JUAN HENRIQUEZ,

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 158536/2022

MOTION DATE 06/06/2023

MOTION SEQ. NO. 001 002

**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, 18, 19, 20, 21, 24

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 22, 23, 25

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Plaintiff commenced this action on October 5, 2022, asserting claims for discrimination and retaliation claims under the New York City and State Human Rights Law. Specifically, he alleged that defendant discriminated against him based on his status as a Hispanic male and retaliated against him for reporting such discrimination to the FDNY’s Equal Employment Opportunity Commission and for reporting certain financial improprieties he uncovered within the FDNY, by inter alia: commencing unwarranted disciplinary claims against him, denying him opportunities to work on special projects, denying him overtime (or forcing him to work undesirable overtime for which he was not properly compensated) and, of particular importance here, commencing a lawsuit against him in the United States District Court for the Eastern District of New York on May 31, 2022, under index number 22-cv-03190-KAM-PK, The City of New York, by and through the FDNY, and the FDNY Foundation, Inc. v Juan Henriquez, asserting a

claim for trademark infringement based upon plaintiff's alleged infringement of FDNY's word mark "Medical Special Operations Conference" and the acronym "MSOC" (the "Federal Action").

In motion sequence 001 defendant the City of New York moves, pursuant to CPLR §§ to CPLR § 3211(a)(4), 3211(a)(5) and 3211(a)(7), to dismiss this action or, alternatively, pursuant to CPLR §2201, to stay this action during the pendency of the Federal Action. Plaintiff opposes the dismissal of this action but does not address defendant's arguments in support of a stay.

In motion sequence 002, plaintiff moves to amend his complaint to remove allegations concerning his reporting of financial improprieties within the FDNY, leaving his allegations that the retaliatory acts outlined above were based solely on his protected activity in filing EEOC complaints regarding discrimination against him as a Hispanic male. Notably, however, the proposed amended complaint retains the allegation that defendant retaliated against plaintiff by commencing the Federal Action.

These motions are consolidated for disposition and, for the reasons set forth below, plaintiff's motion to amend is granted while defendant's motion is granted to the limited extent this action is stayed during the pendency of the Federal Action and is otherwise denied.

DISCUSSION

Plaintiff's motion to amend is granted. Per CPLR §3025, leave to amend pleadings should be liberally granted unless the amendment plainly lacks merit or would prejudice or surprise the other parties (See e.g., MBIA Ins. Corp. v Greystone & Co., 74 AD3d 499 [1st Dept 2010] and the proposed amendment will not prejudice plaintiff and is not patently without merit. Accordingly, defendant's motion to dismiss or stay this action is viewed as addressed to Amended Complaint

Defendant's motion is granted to the extent that this action is stayed pending the resolution of the Federal Action. While there is not complete identity of parties and issues between this action

and the Federal Action such that dismissal pursuant to CPLR §3211(a)(4) is warranted, the Court concludes a stay is appropriate, as a resolution of the Federal Action in favor of the City of New York would provide a defense in this action to plaintiff's allegation that the Federal Action was commenced in retaliation for his reporting of discrimination against him. As "the determination of the prior action may dispose of or limit issues which are involved in the subsequent action" (Belopolsky v Renew Data Corp., 41 AD3d 322 [1st Dept 2007]), a stay in this action is appropriated to avoid duplication of effort, waste of judicial resources, and the possibility of inconsistent rulings (See Uptown Healthcare Mgt., Inc. v Rivkin Radler LLP, 116 AD3d 631 [1st Dept 2014] ["If the Eastern District of New York finds that the document destruction clause is void, plaintiff will obviously have no claim in the case at bar for breach of that clause"]).

Accordingly, it is

ORDERED that plaintiff's motion to amend the complaint is granted; and it is further

ORDERED that plaintiff's amended complaint, in the form annexed to his moving papers (NYSCEF Doc. No. 21) is deemed timely filed and served nunc pro tunc; and it is further

ORDERED that the City of New York's motion to dismiss this action is granted to the limited extent that this action is hereby stayed, and is otherwise denied; and it is further

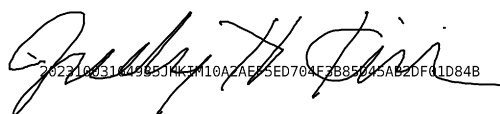
ORDERED that any party may make an application by order to show cause to vacate or modify this stay upon the final determination of the action The City of New York, by and through the FDNY, and the FDNY Foundation, Inc. v Juan Henriquez, pending in the United States District Court for the Eastern District of New York under index number 22-cv-03190-KAM-PK; 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 defendant

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); 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/suptctmanh).

This constitutes the decision and order of the Court.



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<u>10/3/2023</u>			<u>HON. JUDY H. KIM, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input checked="" type="checkbox"/> OTHER/STAYED
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE