

Anandaraja v Icahn Sch. of Medicine at Mount Sinai

2023 NY Slip Op 33924(U)

November 1, 2023

Supreme Court, New York County

Docket Number: Index No. 159045/2022

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR **PART** **34M**

Justice

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DR. NATASHA ANUSHRI ANANDARAJA, DR. HOLLY
ATKINSON, MARY CALIENDO, HUMALE KHAN,

Plaintiff,

INDEX NO. 159045/2022

MOTION DATE 08/15/2023

MOTION SEQ. NO. 003

- v -

ICAHN SCHOOL OF MEDICINE AT MOUNT SINAI, DR.
PRABHJOT SINGH, DR. DENNIS S. CHARNEY, BRUNO
SILVA, DAVID BERMAN

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 62, 63, 64

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

In October 2021, doctors Natasha Anandaraja, Holly Atkinson, Mary Caliendo, and Humale Khan commenced this employment discrimination action against defendants Icahn School of Medicine at Mount Sinai, Prabhjot Singh, Dennis Charney, Bruno Silva (hereinafter, collectively “Mount Sinai Defendants”), and David Berman. By Decision and Order dated July 6, 2023 (the “July 2023 Decision”), the Court resolved motion sequences 001 and 002, wherein the Mount Sinai Defendants and Berman, respectively, moved to dismiss the complaint against them pursuant to CPLR 3211. (NYSCEF doc. no. 41, 42, July 2023 Decision.) The Court granted the motions to dismiss Anandaraja’s, Atkinson’s, and Caliendo’s causes of action but found the Mount Sinai Defendants were not entitled to dismissal of Khan’s hostile work environment and retaliation claims.¹ In this motion sequence (003), Charney—separately from the other defendants—moves pursuant to CPLR 2221 (d) for leave to reargue the branch of the July 2023 Decision that denied dismissal of Khan’s hostile work environment claim against him.² The motion is opposed. For the following reasons, Charney’s motion for leave to reargue is granted, and upon renewal, the Court vacates the above-described branch of its Decision and dismisses Khan’s cause of action against him.

In its July 2023 Decision, the Court found that Khan’s previously dismissed federal employment discrimination causes of action did not collaterally estop him from asserting his hostile work environment claim under the New York City Human Rights Law (“NYCHRL”).³ More specifically, the Court held that, since the federal standard required Khan to show “the

¹ Khan did not allege these two causes of action against Berman.

² Khan only asserted a cause of action for retaliation against Singh and the Icahn School of Medicine as Mount Sinai.

³ Khan acknowledged that his State HRL claims were precluded pursuant to the doctrine.

workplace is permeated with discriminatory intimidation, ridicule [or insults]—a standard above the NYCHRL’s mixed motive/less well-standard “(NYSCEF doc. no. 41 at 9), the issues raised on his City HRL claim were not identical to those raised on his federal claims. The Court further found that Khan had adequately pled a hostile work environment claim based on various statements that defendant Silva made toward him. These statements included that Khan “was probably [out] interviewing” instead of praying according to his religious beliefs as a Muslim, that his office smelled “like shit” or “it smells like curry,” that he is “backwards” and “weird,” and statements criticizing Khan for not drinking alcohol. In addition, Silva would allegedly ask colleagues their opinion on Khan’s religious practices. (*Id.* at 9-10.)⁴ On this basis, the Court denied the motion to dismiss Khan’s claims against all Mount Sinai Defendants.

Reargument Pursuant to CPLR 2221 (d)

CPLR 2221 (d) provides that a party may seek leave to reargue a prior motion based upon matters of fact or law the Court overlooked or misapprehended. A motion to reargue is not intended to provide the unsuccessful party a second opportunity to reargue issues previously decided. (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 28 [1st Dept 1992].) Nor is a motion to reargue designed to afford unsuccessful parties the opportunity to present alternative positions, new theories of the case, or arguments different from those originally asserted. (*Foley v Roche*, 68 AD2d 558, 547 [1st Dept 1979], *Matter of Settlers v AI Props & Devs (USA) Corp.*, 139 Ad3d 492, 492 [1st Dept 2016].) At its sound discretion, the court that decided the prior motion retains the authority to grant or deny reargument motions, and the moving party bears the burden of demonstrating to the Court that it misapprehended or overlooked matters of fact or law. (*Loland v City of New York*, 212 AD2d 674, 674 [2d Dept 1995].)

On the instant motion, Charney contends that, despite defendants moving for dismissal of Khan’s claim against *all* defendants and arguing in a footnote⁵ for dismissal against himself specifically, the Court addressed whether Khan had adequately alleged a hostile work environment claim only in the context of Silva’s conduct, not Charney’s. He contends that, because the Court cited no conduct that could be imputed to Charney, the Court erred in its blanket denial of defendants’ motion to dismiss. Since the Court, in fact, did not address Khan’s cause of action against Charney, and since plaintiffs have not argued that leave to reargue should be denied in circumstances where the Court has not addressed portions of a prior motion, the Court grants the motion for leave to renew.

⁴ Though the parties do not raise the issue, the Court recognizes that, as part of its July 2023 Decision, it did not choose its words carefully enough with respect to defendants’ argument in support of dismissing Khan’s hostile work environment claim. *Thomas v Mintz* (182 AD3d 490), a 2020 First Department case, was not “superseded,” as the Court asserted, by *Bennet v Health Mgt. Sys. Inc.* (92 AD3d 29), a 2011 First Department case, or the passage of the City’s Restoration Act of 2005. If anything, the Court was referring to defendants’ citation of *Eustache v Board of Education* (NYSCEF index. no. 153619/2019), another employment discrimination case before this Court. In that action, the Court granted plaintiff Eustache’s motion to reargue and vacated the portions of the decision to which defendants referenced but did so only after defendants submitted their moving papers in motion sequence 001.

⁵ Footnote 6 reads as follows: “As is true of the claims asserted by Caliendo, Khan’s claims are asserted against Charney but there are no allegations whatsoever of any act or omission on Charney’s part in relation to Khan’s allegations, meaning that the claims against Charney should be dismissed.” (NYSCEF doc. no. 19 at 23, def. memo of law.)

Upon reargument, Charney contends that Khan's cause of action against him must be dismissed pursuant to CPLR 3211 (a) (7) for failure to state a cause of action because Khan does not allege "any acts or omission on Charney's part in relation to" Khan's cause of action. (NYSCEF doc. no. 51 at 5, Charney memo of law.) In opposition, plaintiffs cite five paragraphs in the complaint that allegedly implicate Charney in creating a hostile work environment. The Court summarizes the allegations below:

- (1) ¶ 302: Shortly after leaving Mount Sinai, Khan reported Singh to Charney concerning his belief that Singh was improperly using government funds in conjunction with a Mount Sinai project called ATLAS;
- (2) ¶ 356: Khan reported Silva to Singh about his abusive comments/statements;
- (3) ¶ 394: In a meeting to discuss complaints against Singh, Mount Sinai's General Counsel Marina Lowy explained to Anandaraja that she was concerned about comments "from the top," meaning those in leadership positions; Anandaraja then asked Lowy, "Have you ever been screamed at by Dennis Charney?;"
- (4) ¶ 408: Anandaraja regularly spoke with Mount Sinai's Dean of Medical Education about Singh's hostile environment and that this Dean passed on her concerns to Charney;
- (5) ¶ 438: Upon Singh's departure, Charney thanked him for his "dedicated work as Chair and Director" and praised his "devotion to [the school's] mission and success."

In the complaint's "Conclusion" section, plaintiff contends that Singh was Charney's protégé, making it difficult to get Mount Sinai to take seriously the allegations against Singh; that Charney received HR complaints (none, it appears, from Khan) concerning Singh's conduct; and that he "intervened" in an HR investigation of Singh. Further, plaintiffs suggest liability for creating a hostile work environment arises because "Khan made Dr. Singh aware of Silva's conduct, and that Dr. Charney was Dr. Singh's supervisor and that Dr. Charney ... was the ultimate boss." (NYSCEF doc. no. 63 at 6, plaintiffs' memo of law.)

NYCHRL makes it unlawful for "an employer or an employee or agent thereof" to discriminate based on the employee's race, color, and national origin. (Administrative Code of City of NY § 8-107 [1] [a].) "Where a plaintiff's employer is a business entity, the shareholders, agents, limited partners, and *employees* are not employers within the meaning of the NYCHRL (emphasis added)." (*See Doe v Bloomberg, L.P.*, 36 NY3d 450, 459 [2021].) Individual liability for employees attaches "only for their own discriminating conduct, for aiding and abetting such conduct by others, or for retaliation against protected conduct." (*Id.*)

Even affording the pleadings a liberal construction, accepting the facts as alleged in the complaint as true, and giving the plaintiff the benefit of every possible favorable inference, as the Court must on motions to dismiss pursuant to CPLR 3211 (a) (7) (*Leon v Martinez*, 84 NY2d 83,87 [1994]), Khan has not stated a cause of action against Charney since Khan has not alleged any specific acts or omissions by Charney that created or contributed to a hostile work environment. In paragraph 302, Khan alleges he sent an email to Charney reporting Singh's conduct, but the complained-of conduct related to Singh's use of government funding in a project he was overseeing at Mount Sinai. The paragraph does not allege that he tried to report Silva's or Singh's discriminatory behavior. (*See also* ¶ 299, describing emails Khan sent when he left the company concerning only how Singh was managing the project.) In paragraph 356,

Khan alleges he reported Silva's discriminatory statements to Singh, but, as with paragraph 302, there is nothing to indicate that either he or Singh then reported Silva to Charney. Paragraphs 394 and 408 both concern Anandaraja's experiences, not Khan's, and the statement "Have you ever been screamed at by Dennis Charney?," without anything more, does not imply the type of discriminatory conduct based on race, religion, or national origin that Khan alleges. Paragraph 438 describes Charney praising Singh after his departure and does not relate to an act contributing to a hostile work environment against Khan. Lastly, the allegations in the "Conclusion" section are neither assertions of fact (i.e., the reference to it being difficult to get Mount Sinai to take serious allegations against Singh) nor relate to Khan (i.e., the reference to Charney's intervention in an HR proceeding against Singh, since, according to ¶ 361 and ¶ 367, Atkinson and Anandaraja filed complaints, and Khan was not only not a source for the investigation but was not even "informed of [its] existence").

Additionally, the Court notes that, while Charney was the Dean of the Icahn School of Medicine (and thus exercised some degree of supervisory and managerial responsibilities), Charney's position and rank do not alter whether Charney may be held individually liable. Considerations of an employee's supervisory and managerial responsibilities are relevant only to assessing an employer's vicarious liability. (See Admin. Code § 8-107 [13] [b] [1] ["An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent ... only where (1) the employee or agent exercised managerial or supervisory responsibility"]; *Bloomberg*, 36 NY3d at 459-460 ["The vicarious liability provision [of the NYCHRL] ... differentiat[es] between the liable party (employer) and the party committing the offending conduct (employee or agent with managerial or supervisory responsibility)."]) Whether the Icahn School of Medicine, as an employer, may be held vicariously liable for acts of discrimination committed by Singh and Silva—the parties most directly implicated by Khan's allegations—has not, to this point, been disputed. Accordingly, since Khan has not alleged individual conduct on Charney's part that created a hostile working environment based on Khan's race, color, or national origin, and since Charney may not be held liable on a theory of vicarious liability for discriminatory conduct on the part of other employees, Khan has not alleged facts, even if true, that would impose individual liability against Charney.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that individual defendant Dennis Charney's motion for leave to reargue the branch of the Court's Decision and Order dated July 6, 2023 denying his motion to dismiss plaintiff Humale Khan's hostile work environment cause of action is granted; upon reargument, the Court vacates that branch of the Decision and Order and now grants Charney's motion to dismiss Khan's hostile work environment cause of action pursuant to CPLR 3211 (a) (7); and it is further

ORDERED that counsel for moving defendant shall serve a copy of this order, along with notice of entry, on all parties within twenty (20) days of entry.

This constitutes the Decision and Order of the Court.

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11/1/2023
DATE

DAKOTA D. RAMSEUR, 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