

**Strickland v Catholic Charities
Neighborhood Servs., Inc.**

2023 NY Slip Op 34609(U)

December 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 523988/2022

Judge: Carolyn E. Wade

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS; HON. CAROLYN E. WADE

-----X
CHRISTIAN STRICKLAND,

Index No. 523988/2022

Plaintiff,

-against-

DECISION AND ORDER

CATHOLIC CHARITIES
NEIGHBORHOOD SERVICES, INC.,

MS#1

Defendant.
-----X

Recitation, as required by CPLR§2219(a), of the papers considered in the review of Defendant’s Motion to Dismiss:

<u>Papers</u>	<u>NYSCEF #'s</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmation Annexed.....	5,7,8
Cross-Motion and Affidavits/Affirmations.....	
Answering Affidavits/Affirmations.....	14,15
Reply Affidavits/Affirmations.....	18

Upon the foregoing cited papers, and after oral argument, Defendant Catholic Charities Neighborhood Services, Inc. (“CCNS” or “Defendant”) moves for an order pursuant to CPLR §§ 3211(a)(1) and (7) dismissing the Plaintiff, Christian Strickland’s (“Plaintiff”) complaint in its entirety.

The underlying action arises out of Plaintiff’s allegation that Defendant retaliated against him by terminating his employment the very next day following his complaint about discrimination.

Plaintiff is a Black individual, who commenced his employment with CCNS on or about November 23, 2021. The Plaintiff was hired on a probationary basis as a health home clinician for CCNS’ Kingsborough transition team. On June 7, 2022, Plaintiff and other CCNS employees attended a webinar entitled “Morning of Reflection – Pope Francis’ Fratelli Tutti.” On June 28, 2022, Ms. Koulikova, clinical director, and Plaintiff’s immediate supervisor, sent an email to Plaintiff and other staff requesting feedback about the webinar. On June 28, 2022, Plaintiff emailed Ms. Koulikova the following response:

“I felt like I was underrepresented, I failed to see any black leadership on the panel. I felt like it wasn't for me. The only thing that stood out was the facilitator mentioned the catholic community has always been silent during events that affect the black community. But failed to say how that's planned to change or will change. In addition, the letter put out by the agency in support

of *Rowe vs Wade*. Which is a decision that affects my community and many low-income communities. I wonder what resources will the agency provide to help assist individuals with child care, pregnancy, etc?"

Ms. Koulikova subsequently forwarded Plaintiff's feedback to Mr. Rood-Ojalvo, director of case coordination, and Plaintiff's indirect supervisor. The very next day, on June 29, 2022, CCNS terminated Plaintiff's employment. According to CCNS' termination letter, Plaintiff was terminated due to continued unsatisfactory work performance.

The Plaintiff's First and Second causes of action allege retaliation in violation of NYSHRL §296(7) and NYCHRL §8-107(1)(e) respectively. Defendant now moves to dismiss the complaint in its entirety.

Defendant's Motion to Dismiss Plaintiff's First and Second Causes of Action
Pursuant to CPLR § 3211(a)(7)

On a motion to dismiss the complaint pursuant to CPLR § 3211(a)(7), for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Breytman v. Olinville Realty, LLC*, 54 A.D.3d 703, 704 [2nd Dept. 2008]).

In support of its motion to dismiss Plaintiff's First and Second causes of action, Defendant argues that the Plaintiff cannot establish a prima facie case of retaliation under either the NYSHRL or the NYCHRL because he fails to allege any facts to suggest that he engaged in protected activity and/or that there was a causal connection between his alleged protected activity and his termination. To buttress its claim, the Defendant contends that Plaintiff's complaint that a webinar panel lacked diversity does not constitute a complaint about an unlawful employment practice.

In opposition, Plaintiff argues that the temporal proximity between his complaint about discrimination and his termination (the very next day), gives an inference of retaliation. Plaintiff also contends that to establish that activity is statutorily protected, he does not need to prove the merit of the underlying discrimination complaint, but only that he was acting under a reasonable belief that discrimination existed. Furthermore, Plaintiff argues that he may use statistical evidence regarding an employer's practices to rebut an employer's legitimate non-discriminatory explanation for adverse employment action.

In rebuttal, the Defendant reiterates that the substance of Plaintiff's e-mail reveals no complaint about statutorily prohibited discrimination, and that it amounts to a generalized complaint about a lack of diversity.

"A plaintiff alleging retaliation in violation of the NYSHRL must show that (1) he or she engaged in a protected activity by opposing conduct prohibited thereunder; (2) the defendant was aware of that activity; (3) he or she suffered an adverse action based upon his or her activity; and (4) there was a causal connection between the protected activity and the adverse action (*Bilitch v NY City Health & Hosps. Corp.*, 194 AD3d 999, 1001 [2d Dept 2021]).

Under the NYCHRL, which offers broader protections than the NYSHRL, a Plaintiff must show that “(1) he or she engaged in a protected activity as that term is defined under the NYCHRL, (2) his or her employer was aware that he or she participated in such activity, (3) his or her employer engaged in conduct which was reasonably likely to deter a person from engaging in that protected activity, and (4) there is a causal connection between the protected activity and the alleged retaliatory conduct” *Id.* (internal citations and quotations omitted).

“In order to assert a viable claim of retaliatory discharge, an employee must demonstrate that there was a reasonable basis to believe that his or her employer engaged in an actionable discriminatory practice and that the employer discharged the employee as a result of the employee's opposition to that practice” (*McKenzie v Meridian Capital Group, LLC*, 35 AD3d 676, 677 [2d Dept 2006]).

Temporal proximity between a protected activity and an adverse employment action may, under some circumstances, be sufficient in itself to permit the inference of a causal connection necessary for a retaliation claim (*Harrington v City of New York*, 157 A.D.3d 582, 586 [1st Dept. 2018]).

Here, Plaintiff was acting under a good faith, reasonable belief that discrimination existed, and engaged in a protected activity by sending his June 28, 2022 e-mail in response to his employer's request. It is undisputed that Plaintiff was terminated the very next day following said email. Plaintiff sufficiently alleged that based on the temporary proximity between his complaint about discrimination and his termination, his complaint gives fair notice to the Defendant about the nature of his retaliation claims.

Moreover, a complaint about the lack of diversity, coupled with the loss of a job is sufficient to maintain a claim for retaliation under the NYCHRL and NYSHRL. (*Lufuluabo v Nord Anglia Educ. Inc.*, 2017 NY Slip Op 32175[U], *4 [Sup Ct, NY County 2017]). Here, the Plaintiff's complaint of discrimination followed by the temporal proximity of his termination (the very next day) is sufficient to maintain his causes of action under the NYCHRL and NYSHRL.

Accordingly, the branch of Defendant's motion to dismiss the First and Second causes of action pursuant to CPLR § 3211(a)(7) is **DENIED**.

Defendant's Motion to Dismiss Plaintiff's First and Second Causes of Action
Pursuant to CPLR §3211(a)(1)

In support of its motion to dismiss the First and Second causes of action, Defendant argues that Plaintiff's termination was the result of progressive disciplinary actions that began nearly two months before his alleged protected activity. Defendant asks this Court to find that Plaintiff can not establish a causal connection between his June 28, 2022 complaint and his June 29, 2022 termination.

In opposition, Plaintiff argues that Defendant failed to establish as a matter of law that his work performance was the reason for his termination because the temporary proximity between

his complaint about discrimination and his termination (the very next day) suggests that there is a triable issue of fact as to whether his termination was motivated by retaliation. Plaintiff notes that in the termination notice, Defendant referenced some infractions that occurred in March, April and May 2022, but failed to explain why Defendant waited to terminate Plaintiff until the very next day after he complained about discrimination.

In rebuttal, the Defendant argues that a challenge to the correctness of an employer's decision does not give rise to the inference that termination was due to retaliation.

A motion to dismiss pursuant to CPLR § 3211 (a)(1), should be granted only where the documentary evidence that forms the basis of the defense utterly refutes the plaintiff's factual allegations, and conclusively disposes of the plaintiff's claims as a matter of law. (*Nero v Fiore*, 165 A.D.3d 823, 826 [2nd Dept. 2018]).

Here, the Defendant's evidence neither refutes Plaintiff's allegations nor conclusively establishes, as a matter of law, a defense to the asserted claims. Based on a memorandum, dated May 16, 2022 (Defendant's Exhibit "B"), it appears that although the Defendant was not satisfied with Plaintiff's performance, the Defendant extended his probation period until August 24, 2022. On June 29, 2022, however, the very next day after Plaintiff sent his June 28, 2022 complaint about discrimination (Defendant's Exhibit "D"), Defendant handed Plaintiff his termination letter (Defendant's Exhibit "E"). The temporal proximity between Plaintiff's complaint about discrimination and his termination (the very next day) suggests that there are triable issues of fact as to the motivation behind Plaintiff's termination.

In addition, while the Defendant alleges that the reason for Plaintiff's termination was his unsatisfactory work performance, Plaintiff alleges that on the day of his termination, Defendant allowed him to finish his work.

Consequently, the aforementioned documents neither resolve any factual issues nor establish a defense to the asserted claims as a matter of law. Therefore, the branch of Defendant's motion to dismiss Plaintiff's First and Second causes of action pursuant to CPLR §3211(a)(1) must be **DENIED**.

Based upon the foregoing, Defendant's motion to dismiss the Plaintiff's complaint is **DENIED** in its entirety.

This constitutes the Decision and Order of the Court.

Date: 12/14 2023

ENTER

HON. CAROLYN E. WADE, J.S.C.

2023 DEC 29 4:11:04 PM
KINGS COUNTY CLERK
FILED