

Korrori v City of New York
2023 NY Slip Op 35049(U)
June 26, 2023
Supreme Court, Queens County
Docket Number: Index No. 701544/2023
Judge: Tracy Catapano-Fox
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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SHAHRIAR KORRORI,

Index No. 701544/2023

Plaintiff,

Part 6

Motion Date: June 5, 2023

-against-

Calendar No. 32

THE CITY OF NEW YORK SCHOOL
CONSTRUCTION AUTHORITY, and THE CITY OF
NEW YORK CONFLICTS OF INTEREST BOARD,
and JASON P. OCHARSKY, and RICHARD
ROBBINS, in their individual and professional
capacities,

Sequence No. 1



Defendants.

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The following papers numbered 1 to 4 read on this motion by defendants to dismiss plaintiff's Complaint pursuant to CPLR §3211(a)(1), §3211(a)(5), and §3211(a)(7).

Papers
Numbered

Notice of Motion, Affirmation, Exhibits.....1-4

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendants' motion to dismiss plaintiff's Complaint pursuant to CPLR §3211(a)(1), §3211(a)(5), is granted without opposition with respect to defendants The City of New York School Construction Authority and The City of New York Conflict of Interest Board. Defendants' motion to dismiss plaintiff's Complaint against individually named defendants Jason P. Ocharsky and Richard Robbins is granted without opposition pursuant to CPLR §3211(a)(5) and §3211(a)(7).

Plaintiff commenced this action for human rights violations based upon a hostile work environment grounded in discriminatory animus towards his religion. Plaintiff filed the Summons and Complaint on January 23, 2023. Defendants did not file an Answer, but rather made the instant motion to dismiss plaintiff's Complaint.

Defendants argue that plaintiff's Complaint should be dismissed because he released defendant Conflict of Interest Board (hereinafter referred to as "COIB") from all claims relating to his termination. Specifically, defendants presented the COIB Disposition and argue that on March 16, 2021, plaintiff voluntarily signed the disposition wherein he and defendant COIB agreed to resolve charges that plaintiff violated City Charter §2604 in connection with his use of School Construction Authority (hereinafter referred to as "SCA") equipment and time to perform work for his private business. Defendants further argue that the disposition was signed voluntarily by both parties and plaintiff cannot seek to relitigate the claims plainly waived and released by the disposition against defendant COIB.

Defendants also argue that plaintiff's Complaint should be dismissed because plaintiff's claims are time-barred by the applicable Statute of Limitations. Specifically, defendants argue that plaintiff's claims against defendant SCA are time-barred because plaintiff failed to timely file a Notice of Claim upon defendant SCA. Defendants further argue that plaintiff's claims against defendant SCA and the individually named defendants should be dismissed as time-barred because plaintiff failed to timely commence the action within the one-year Statute of Limitations.

Defendants also argue that plaintiff's NYSHRL claims should be dismissed as time-barred and for failure to state a cause of action. Specifically, defendants argue that plaintiff's NYSHRL claims prior to June 10, 2019 are time-barred by three-year Statute of Limitations. Defendants further argue that plaintiff's claims accruing after June 10, 2019 should be dismissed for failure to state a cause of action for discrimination, retaliation, and aiding and abetting discrimination. Specifically with respect to the discrimination claim, defendants argue that plaintiff failed to plead that he is a member of a protected class, that he was qualified to hold his position, that he was terminated from employment or suffered an adverse employment action, and that the discharge or other adverse employment action occurred under circumstances giving rise to an inference of discrimination. Specifically with respect to the religious discrimination claim against defendant COIB, defendants argue that defendant COIB did not take an adverse employment action against plaintiff and plaintiff failed to plead an inference of discrimination. With respect to the retaliation claim, defendants argue that plaintiff failed to plead that he engaged in a protected activity, defendants were aware of that activity, he was subject to an adverse action, and a causal connection between the protected activity and the adverse action. With respect to the aiding and abetting discrimination claim, defendants argue that a party accused of discrimination cannot be held liable for aiding and abetting its own discrimination.

A motion to dismiss pursuant to CPLR §3211(a)(1) will be granted only if the "documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." (*Fontanetta v. John Doe I*, 73 A.D.3d 78, 83 [2d Dept. 2010].) To be considered documentary evidence, the evidence must be 'unambiguous, authentic and undeniable.'

(*Karpovich v. City of New York*, 162 A.D.3d 996, 997 [2d Dept. 2018].)

On a motion to dismiss pursuant to CPLR §3211(a)(5), a defendant bears the initial burden of demonstrating prima facie that the time in which to commence the action has expired. (*Lyles v. County of Nassau*, 2023 N.Y. Slip Op. 00994 [2d Dept. 2/22/2023].) The burden then shifts to the plaintiff “to raise a question of fact as to whether the statute of limitations was tolled or otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period.” (*HSBC Bank USA, N.A. v. Francis*, 2023 N.Y. Slip Op. 00992 [2d Dept. 2/22/2023].)

On a motion to dismiss pursuant to CPLR §3211(a)(7), the Court is required to afford the pleadings a liberal construction, accept the facts alleged in the complaint as true, provide plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. (*Leon v. Martinez*, 84 N.Y.2d 83 [1994] [citing CPLR §3026][internal citations omitted].) Furthermore, whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss, rather, the Court merely examines the adequacy of the pleadings. (*EBC Inc. v. Goldman Sachs & Co.*, 5 N.Y.3d 11 [2005][internal quotation marks omitted]; *see also Cortlandt Street Recovery Corp. v. Bonderman*, 31 N.Y.3d 30 [2018].)

Defendants’ motion to dismiss plaintiff’s claims against defendant COIB is granted pursuant to CPLR §3211(a)(1), as defendants presented the disposition demonstrating that all claims against defendant COIB were resolved pursuant to the disposition. As plaintiff failed to oppose the motion, plaintiff failed to demonstrate that dismissal is not warranted.

Defendants’ motion to dismiss plaintiff’s claims against defendant SCA is granted pursuant to CPLR §3211(a)(5), as plaintiff failed to demonstrate that he properly served a timely Notice of Claim. Defendants presented sufficient evidence that defendant SCA did not receive a timely Notice of Claim, a condition precedent to a tort action against defendant SCA. Plaintiff failed to meet his burden, by failing to show he e-filed a Notice of Claim or plead in his Complaint that it was timely served. (*See C.S.A. Contr. Corp. v. NY City Sch. Constr. Auth.*, 5 N.Y.3d 189, 192 [2005].) As plaintiff failed to oppose the motion, plaintiff failed to demonstrate that dismissal is not warranted.

Defendants’ motion to dismiss plaintiff’s tort claims against the individually named defendants is also granted pursuant to CPLR §3211(a)(5), as plaintiff failed to commence the instant action within the applicable one-year Statute of Limitations. (*See Public Authorities Law §1744(2)*; *see also Arnell Constr. Corp. v. New York City Sch. Constr. Auth.*, 186 A.D.3d 543 [2d Dept. 2020].) As plaintiff failed to oppose the motion, plaintiff failed to demonstrate that dismissal is not warranted.

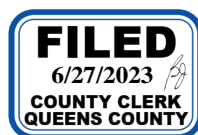
Defendants' motion to dismiss plaintiff's NYSHRL claims against the individually named defendants is also granted pursuant to CPLR §3211(a)(5), as the claims are time-barred by the applicable three-year Statute of Limitations period. Defendants' motion to dismiss plaintiff's NYSHRL claims against the individually named defendants is also granted pursuant to CPLR §3211(a)(7), as plaintiff failed to properly plead the elements of the NYSHRL violations. As plaintiff failed to oppose the instant motion, plaintiff failed to demonstrate a basis sufficient to warrant denial.

It is noted that plaintiff adopted the electronic filing system (hereinafter referred to as "NYSCEF") by electronically filing the Summons and Complaint to NYSCEF as well as multiple consent to e-filing forms. Pursuant to 22 NYCRR 202.5-b, a party may serve another party by filing the document electronically, and upon receipt of the document NYSCEF shall automatically transmit an electronic notification to all e-mail service addresses listed in the action. (*JBBNY, LLC v. Dedvukaj*, 171 A.D.3d 898, 901 [2d Dept. 2019].) Electronic transmission of the notification shall constitute service of the document on the email-service addresses identified on NYSCEF. (*Id.*) As plaintiff adopted the electronic filing system and included an email address to receive NYSCEF alerts, plaintiff was properly served with notice of the instant motion yet failed to submit opposition.

Accordingly, defendants' motion to dismiss plaintiff's Complaint pursuant to CPLR §3211(a)(1) and §3211(a)(5) is granted without opposition with respect to defendants The City of New York School Construction Authority and The City of New York Conflict of Interest Board. Defendants' motion to dismiss plaintiff's Complaint against individually named defendants Jason P. Ocharsky and Richard Robbins is granted without opposition pursuant to CPLR §3211(a)(5) and §3211(a)(7). Plaintiff's Complaint is hereby dismissed.

This constitutes the decision and Order of the Court.

Dated: June 26, 2023





Hon. Tracy Catapano-Fox, J.S.C.