

Curiel v Amazing Home Care Servs., LLC
2023 NY Slip Op 35126(U)
December 15, 2023
Supreme Court, Bronx County
Docket Number: Index No. 803397/2023E
Judge: Veronica G. Hummel
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To commence the statutory
time for appeals as of right
(CPLR 5513[a]), you are
advised to serve a copy
of this order, with notice
of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 20

PRISCILLA CURIEL,

Plaintiff,

-against-

AMAZING HOME CARE SERVICES, LLC. and ALVIN
ORTIZ,

Defendants.

Index No. 803397/2023E

HON. VERONICA G. HUMMEL, A.J.S.C.

Mot. Seq. No. 1

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in connection with the motion by defendants AMAZING HOME CARE SERVICES, LLC. and ALVIN ORTIZ, made pursuant to CPLR 3211(a)(7), seeking an order dismissing the complaint of plaintiff PRISCILLA CURIEL.

Plaintiff brings discrimination, hostile work environment, and retaliation claims pursuant to the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"). Plaintiff alleges a series of incidents occurred during her employment which allegedly demonstrate a cognizable claim that she was discriminated against, harassed and retaliated against based on her gender.

On a motion to dismiss pursuant to CPLR 3211(a)(7), a court's role is limited to determining whether the complaint states a cause of action. *Frank v. DaimlerChrysler Corp.*, 292 A.D.2d 118, 121 (1st Dep't 2002). The test on a motion to dismiss for insufficiency of the pleadings is not whether the plaintiff has artfully drafted the complaint but whether, deeming the complaint to allege whatever can be reasonably implied from its statements, a cause of action can be sustained. *Pepler v. Coyne*, 33 A.D.3d 434, 435 (1st Dep't 2006); *Stendig, Inc. v. Thom Rock Realty*

Co., 163 A.D.2d 46, 48 (1st Dep't 1990). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed. CPLR § 3026. The facts must be accepted as alleged in the complaint as true, and the court must accord a plaintiff the benefit of every possible favorable inference and determine only whether the facts as alleged fit into any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994); *see also 885 3rd Ave. Realty Owners, LLC v. Alden Global Capital LLC*, 210 A.D.3d 570, 571 (1st Dep't 2022); *M.H.B. v. E.C.F.S.*, 177 A.D.3d 479, 480 (1st Dep't 2019) (whether a plaintiff can ultimately establish allegations is not part of the calculus in determining a motion to dismiss); *Ayers v. Bloomberg, L.P.*, 203 A.D.3d 872 (2d Dep't 2022).

Applying these governing legal standards to the complaint, the motion is denied.

Discrimination and Hostile Work Environment

A plaintiff alleging discrimination in employment in violation of the NYSHRL must establish that (1) she or he is a member of a protected class, (2) she or he was qualified to hold the position, (3) she or he suffered an adverse employment action, and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination. *Acala v. Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.*, 2023 N.Y. Slip Op. 06345 (2d Dep't 2023); *Ayers v. Bloomberg, L.P.*, 203 A.D.3d 872 (2d Dep't 2022); *see Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305 (2004). Under the NYCHRL, the plaintiff must establish that she or he was subject to an unfavorable employment change or treated less well than other employees on the basis of a protected characteristic. *Acala v. Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.*, *supra*; *Ayers v. Bloomberg, L.P.*, *supra*; *see Golston-Green v. City of New York*, 184 A.D.3d 24 (2d Dep't 2020). As for the hostile work environment claim, plaintiff must allege that the wrongful actions created an abusive working environment. *Kwong v. City of New York*, 204 A.D.3d 442 (1st Dep't 2022); *see Franco v. Hyatt Corporation*, 189 A.D.3d 569 (1st Dep't 2020). The NYCHRL is "to be more broadly interpreted than similarly worded federal or State antidiscrimination provisions." *Singh v. Covenant Aviation Sec., LLC*, 131 A.D.3d 1158 (2d Dep't 2015).

The court finds that the complaint states causes of action for discrimination and hostile work environment under the New York State and New York City Law. Plaintiff alleges that she was subjected to multiple inappropriate sexually orientated questions, suggestive comments, wrongful touching, and other inappropriate acts by the manager and those discriminatory

actions sprang from her gender. As for plaintiff's allegations that the manager repeatedly inappropriately touched her mouth and shoulders, defense counsel's argument that such acts were not sexual or significant and were mere "petty slights" as a matter of law, is rejected as being completely without merit. Plaintiff also alleges facts demonstrating that she suffered an adverse employment action and that action occurred under circumstances giving rise to an inference of discrimination. Plaintiff states that she was micromanaged, harassed, wrongfully threatened with termination, and not offered return to the office and was thereby treated less well based on her gender. The complaint, assuming the truth of the allegations, therefore, satisfies the necessary criteria under NYSHRL and NYCHRL and states causes of action for discrimination and hostile work environment.

Retaliation

It is unlawful to retaliate against an employee for opposing discriminatory practices. *Johnson v. North Shore Long Island Jewish Health System, Inc.*, 137 A.D.3d 977 (2d Dep't 2016); In order to establish a *prima facie* case of retaliation plaintiff must allege: (1) that she engaged in a protected activity; (2) her employer was aware of this activity; and (3) her employer took adverse action against her as a result of the activity. *Id.*; *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295 (2004). Retaliation is unlawful when the retaliatory acts were "harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006).

Assuming, as the court must, that the allegations in the complaint are true, the complaint states a cause of action for retaliation. Plaintiff engaged in a protected activity when she complained to the CEO of Amazing Home Care about the sexual harassment she was subjected to by her manager. After she voiced her complaint, the manager began micromanaging her, threatening termination, and declining to include plaintiff on the office team, all actions that disadvantaged plaintiff. *Harrington v. City of New York*, 157 A.D.3d 582 (1st Dep't 2018). Finally, plaintiff was forced to resign from her employment, due to the harassment and retaliation. Contrary to defendant's argument, based on the allegations, a causal connection between the complaint of harassment and the resignation is created by the pleadings. *Senal v. Lynch*, 217 A.D.3d 466 (1st Dep't 2023); *Fletcher v. Dakota, Inc.*, 99 A.D.3d 43 (1st Dep't 2012). Accordingly, the complaint states a cause of action for retaliation and the motion is denied.

To the extent that any relief requested by the parties was not addressed by the Court, it is hereby denied.

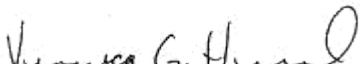
Accordingly, it is hereby:

ORDERED that the motion by defendants AMAZING HOME CARE SERVICES, LLC. and ALVIN ORTIZ, made pursuant to CPLR 3211(a)(7), seeking an order dismissing the complaint of plaintiff PRISCILLA CURIEL is denied; and it is further

ORDERED that the Clerk shall mark the motion (Seq. No. 1) decided in all court records;

This constitutes the decision and order of the Court.

Dated: December 15, 2023

Hon. 
HON. VERONICA G. HUMMEL, A.J.S.C.

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1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
2. MOTION IS..... ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER