SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
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CYNTHIA DELANEY,

Plaintiff,

-against-

NEW YORK CITY HEALTH AND HOSPITALS,

Defendant.
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Index No.: 525072/2021
Motion Date: 5-13-24
Mot. Seq. No.: 5

DECISION/ORDER

Upon the following e-filed documents, listed by NYSCEF as item numbers 43-47, 50-51, the motion is decided as follows:

In this action seeking damages due to alleged disparate treatment discrimination, hostile work environment on the basis of race and gender pursuant to the New York State Human Rights Law, N.Y. Exec. L. § 296 et seq. ("NYSHRL"), and common law breach of contract, defendant NEW YORK CITY HEALTH AND HOSPITALS CORPORATION D/B/A NYC HEALTH and HOSPITALS ("NYCHHC"), "JOHN DOE," and "RICHARD ROE" move for an order dismissing the first amended complaint pursuant to CPLR 3211(a)(7) on the basis that it fails to state a cause of action upon which relief can be granted. Plaintiff CYNTHIA DELANEY opposes dismissal.

In the amended complaint, plaintiff asserts in relevant part as follows:

> 4. On or about 2-2017, pursuant to contract, through on or about April 2019, plaintiff was employed with defendant NYCHHC as an Assistant Personnel Director of Home Care.
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> 5. On or about April 2019, and at all times relevant herein, plaintiff was and is an African-American Female, and thereby belonged to a protected class(es), and defendants took adverse action(s) against plaintiff because of her protected class(es), and at all times relevant herein, there existed a causal connection between plaintiff's belonging to protected class, and defendants, herein below described, wrongful and/or intentional and/or egregiously racially and/or gender motivated, animus towards the plaintiff, and said retaliation constitutes discrimination against plaintiff, in a term or condition of her employment with defendant NYCHHC.

> 6. During the time plaintiff was so employed by defendant NYCHHC, defendants made repeated, pervasive, motivated by discriminatory bias and/or animus, hostile, and/or harassing and/or derogatory, and/or calumnious and/or slanderous comments about the fact that plaintiff was an African-American Female, and defendants, and each of them, created and/or implemented and/or maintained, without bona fide occupational qualification and/or privilege, discrimination in a term or condition of employment, against the plaintiff, because of her gender and/or race.
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> 7. On or about October 2019, and at all times relevant herein, the acts of discrimination perpetrated by defendants, against plaintiff because of her race and/or gender, included, and were not limited to: (a) Refusing to pay her overtime benefits, at a proper rate of compensation; (b) requiring her to use up vacation time benefits, for medical reasons, whereas individuals who were not African-American nor Female, did not have to do so; (c) refusing to promote her, whereas non-African-American, non-female employees, who were less qualified than plaintiff, were so promoted; and (d) terminating her from employment.
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> 11. Defendant NYCHHC's termination of plaintiff from her employment was without good and/or just cause, and plaintiff at all times relevant herein, and up to and including April 2019 substantially performed under contract.

(NYSCEF Doc No. 46)

" 'When a party moves to dismiss a complaint pursuant to CPLR 3211(a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action. In considering such a motion, the court must accept the facts as alleged in the complaint as true, accord plaintiff []the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory' " *(Polite v. Marquis Marriot Hotel*, 195 A.D.3d 965, 966–967, 146 N.Y.S.3d 524, quoting *Sokol v. Leader*, 74 A.D.3d 1180, 1180–1181, 904 N.Y.S.2d 153; *see Leon v. Martinez*, 84 N.Y.2d 83, 87–88, 614 N.Y.S.2d 972).

Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery' " (*1 Pierce Coach Line Inc v Port Washington Union Free School District*, 213 A.D.3d 959, 185 N.Y.S.3d 187 quoting *Wedgewood Care Ctr., Inc. v Kravitz*, 198 AD3d 124, 130 [2021], quoting *Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

Breach of Contract:

In *34-06 73, LLC, et al v Seneca Insurance Co.*, 39 NY3d 44 (2022), the Court of Appeals stated, "[T]o plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists (*see e.g. Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 181–182, 919 N.Y.S.2d 465; (2) plaintiff performed in accordance with the contract (*see e.g. Pope v. Terre Haute Car & Mfg. Co.*, 107 N.Y. 61, 65–66); (3) defendant breached its contractual obligations (*see Barker v. Time Warner Cable, I*nc., 83 A.D.3d 750, 751, 923 N.Y.S.2d 118 [2d Dept. 2011]). Here, plaintiff has adequately pleaded a cause of action for breach of contract.

Disparate Treatment Discrimination:

Accepting the facts as alleged in the amended complaint as true, and according the plaintiff the benefit of every possible favorable inference (*see Nonnon v. City of New York*, 9 N.Y.3d 825, 827, 842 N.Y.S.2d 756; *Leon v. Martinez*, 84 N.Y.2d at 87–88, 614 N.Y.S.2d 972), the complaint sufficiently alleges that an adverse employment action occurred under circumstances giving rise to an inference of discrimination based on the plaintiff's gender and/or race (see also Executive Law 290 et seq.).

Hostile Work Environment:

The amended complaint fails to state a cause of action to recover damages for employment discrimination in violation of the NYSHRL based on a hostile work environment. The allegations in the complaint fall far short of alleging that the workplace was permeated with discriminatory intimidation, ridicule, and insult ... that [was] sufficiently severe or pervasive to alter the conditions of ... employment and create an abusive working environment (*Pall v. Roosevelt Union Free Sch. Dist.*, 144 A.D.3d 1004, 1005, 42 N.Y.S.3d 215 [internal quotation

marks omitted]; *see Reilly v. First Niagara Bank, N.A.*, 173 A.D.3d 1082, 1082, 100 N.Y.S.3d 910; *see also Golston–Green v. City of New York*, 184 A.D.3d at 41 n. 3, 123 N.Y.S.3d 656).

Slander:

CPLR 3016(a) provides that, "[i]n an action for libel or slander, the particular words complained of shall be set forth in the complaint." " 'Compliance with CPLR 3016(a) is strictly enforced' " (*Lemieux v. Fox*, 135 A.D.3d 713, 714, 22 N.Y.S.3d 581, quoting *Horbul v. Mercury Ins. Group*, 64 A.D.3d 682, 683, 881 N.Y.S.2d 911). The complaint "must also allege the time when, place where, and manner in which the false statement was made, and specify to whom it was made" (*Epifani v. Johnson*, 65 A.D.3d 224, 233, 882 N.Y.S.2d 234; *see Offor v. Mercy Med. Ctr.*, 171 A.D.3d 502, 503, 98 N.Y.S.3d 69). Here, the amended complaint fails to provide the words complained of or the time when, place where and manner in which the false statement(s) were made and to whom they were made. Thus, the cause of action seeking damages for slander are dismissed.

Statute of Limitations:

Plaintiff commenced this action on October 3, 2021. The statute of limitations under the New York State Human Rights Law ("NYSHRL") is three years. Thus, all causes of action alleging discrimination that occurred prior to October 3, 2018 are time-barred (*see Seemungal v New York State Department of Financial Services,* 222 AD3d 467, 468 (1st Dept 2023). Plaintiff did not oppose defendant's statute of limitations argument. Insofar as plaintiff premises her claims upon events that occurred prior to October 3, 2018, those claims must be dismissed.

As defendants did not raise the point that neither the complaint nor the amended complaint was verified by Counsel or plaintiff, the Court will not consider this factor.[1]

Accordingly,

It is hereby ORDERED, defendant's motion to dismiss the cause of action for hostile work environment is granted; it is further

ORDERED, defendant's motion is in all other respects DENIED.

[1] The amended complaint was signed "Respectfully submitted" with Counsel's signature underneath.

This constitutes the decision and order of the Court.

Dated: August 2, 2024

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020