Iodice v Archcare at Terence Cardinal Cooke Health Care Ctr.
2024 NY Slip Op 33125(U)
September 4, 2024
Supreme Court, New York County
Docket Number: Index No. 158713/2022
Judge: Shlomo S. Hagler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SHLOMO S. HAGLER** **PART** **04**

Justice

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VINCENT IODICE,

Plaintiff,

- v -

ARCHCARE AT TERENCE CARDINAL COOKE HEALTH CARE CENTER and JANICE ATKINS,

Defendants.

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INDEX NO. 158713/2022

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 16, 18, 19, 20, 21, 22, 29, 31, 32, 34

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 9, 10, 11, 12, 13, 14, 15, 17, 23, 24, 25, 26, 27, 28, 33, 35

were read on this motion to/for DISMISS.

Motion sequence nos. 001 and 002 are consolidated for disposition.

In this action, plaintiff Vincent Iodice alleges that defendants Archcare at Terence Cardinal Cooke Health Care Center (Archcare) and Janice Atkins (Atkins) wrongfully terminated his employment and subjected him to a hostile work environment in violation of the New York State Human Rights Law (Executive Law § 290 *et seq.*) (NYSHRL) and the New York City Human Rights Law (Administrative Code of City of NY § 8-101 *et seq.*) (NYCHRL).

In motion sequence no. 001, Archcare moves, pursuant to CPLR 3211 (a) (1) and (7), to dismiss the complaint. In motion sequence no. 002, Atkins moves, pursuant to CPLR 3211 (a) (5) and (7), to dismiss the complaint. For the reasons set forth below, the motions are granted, and the complaint is dismissed.

Factual Background

The following facts are drawn from the complaint unless noted otherwise and are assumed to be true for purposes of this pre-answer motion (*see Sassi v Mobile Life Support Servs., Inc.*, 37 NY3d 236, 239 [2021]). Archcare is a New York not-for-profit corporation (NYSCEF Doc No. 1, complaint ¶ 4). Atkins is a 1199 SEIU contract administrator and an "on leave" employee at Archcare (*id.*, ¶ 5). Plaintiff, who identifies as a Caucasian male, began working at Archcare in January 2012 as an occupational therapist interacting with disabled children (*id.*, ¶¶ 1 and 6).

On October 3, 2019, plaintiff helped design and order a "special tomato stroller" with a positioning cushion for one of his patients, a severely disabled African American child (*id.*, ¶ 9). On October 4, 2019, plaintiff observed his patient resting comfortably in the stroller and remarked out loud, "my little monkey looks so comfortable" (*id.*, ¶ 11). Melanie Drax (Drax), an African American coworker, overheard plaintiff's comment and asked, "what did you say" (*id.*, ¶ 12). Plaintiff repeated, "my little monkey looks so comfortable," to which Drax replied, "you're so racial" (*id.*, ¶ 13). Plaintiff explained that he "meant it as a term of endearment" (*id.*).

After the incident, Maxine Washington (Washington), a social worker at Archcare and a 1199 shop steward, left a voicemail for the patient's parents stating, "Vincent is a racist and we will do everything to protect your child" (*id.*, ¶ 14). The patient's parents later played the voicemail for two Archcare employees, Shirlene Jackson, CSW (Jackson), and Lucybelle Agpawa (Agpawa), plaintiff's supervisor (*id.*, ¶ 15). Plaintiff alleges that neither Archcare nor Agpawa reprimanded Washington or prevented her from falsely spreading that plaintiff was a "white racist," with the complaint citing one incident where Washington approached Jackson and said, "you know [Vincent] is a racist" (*id.*, ¶¶ 15-16 and 18). After plaintiff's coworkers learned of "Washington's

allegations that Plaintiff was a white racist, they became visibly hostile towards him at work, isolating him from events and yelling at him in front of other staff members" (*id.*, ¶ 16).

On October 7, 2019, Agpawa told plaintiff to come to her office with a union delegate (*id.*, ¶ 19). Plaintiff and a union delegate appeared in Agpawa's office where Agpawa and a nurse practitioner, "Ms. Alexander," were present; both told plaintiff that a coworker had reported to Archcare's compliance hotline that plaintiff had "made racial slurs to a staff member and a patient" (*id.*, ¶ 20). Plaintiff alleges that he believed Washington contacted the compliance hotline in an attempt to have him terminated (*id.*, ¶ 21). Plaintiff furnished Agpawa with a written explanation of the incident, but Agpawa suspended him for one week pending the completion of an investigation (*id.*, ¶ 22). Plaintiff refused to sign a Disciplinary Action Notice containing the false allegations against him (*id.*).

On October 11, 2019, Archcare completed its investigation and permitted plaintiff to return to work on October 14, 2019, on the condition that he draft letters apologizing to three individuals present when he made the allegedly offensive remark (*id.*, ¶¶ 23-24). Plaintiff reported to "Ms. Cumanda" (Cumanda), a nurse practitioner, on his return to work as Agpawa had instructed (*id.*, ¶¶ 24-25). When plaintiff relayed Agpawa's instructions, Cumanda responded, "I have nothing to say to you, just return back to your normal duties" (*id.*, ¶ 25). Plaintiff alleges, upon information and belief, that "Washington had informed … Cumanda that Plaintiff was a white racist" (*id.*).

On October 17, 2019, a nurse instructed plaintiff to report to the office of Archcare's Senior Director of Human Resources, Christene Nation-Jumpp (Nation-Jumpp), with a union delegate (*id.*, ¶ 27). Plaintiff and union delegate "Ms. Ifill" (Ifill) then met with Nation-Jumpp and Atkins (*id.*, ¶ 28). Ifill, Nation-Jumpp and Atkins are all African American women (*id.*). Nation-Jumpp began the meeting by stating that "[t]he parents of the patient have heard what you said, and they

are upset and want to sue Archcare Cardinal Cooke. I cannot have this here. You are a liability, and we came to a decision that we are going to terminate you" (*id.*). When plaintiff asked Nation-Jumpp to confirm if he had been fired, Nation-Jumpp replied, "Yes, that means you're fired" (*id.*, ¶ 30). Plaintiff alleges that he attempted to explain the incident, but Atkins interrupted by "abruptly put[ting] her hand across Mr. Iodice's face, touching his lips and shout[ing]" for Nation-Jumpp to leave (*id.*, ¶ 31). Atkins then aggressively shouted at plaintiff, asked if he had intended to use a racial slur, and stated that "[m]y little monkey are terms of endearment! You should be ashamed of yourself! You took history in high school!" and that plaintiff knew the racial slur and "monkey do not sit well with Black people!" (*id.*). Plaintiff alleges that when he tried to explain that Atkins had misunderstood him, Ifill verbally attacked him and said, "You still do not understand! All you do is think of yourself!" (*id.*, ¶ 32). On some unspecified later date, Atkins urged plaintiff to resign, even though he believed that Nation-Jumpp had already terminated him (*id.*, ¶ 34).

After the October 17, meeting, Jackson met with Atkins to express her support for plaintiff and her belief that their coworkers were acting in a hostile manner towards him because he was white and an alleged racist (*id.*, ¶ 36). Atkins allegedly told Jackson, "well sometimes people are undercover," implying that "white people [can] be[ ] undercover racists" (*id.*, ¶¶ 36-37).

On October 21, 2019, plaintiff told Atkins that he intended to grieve his case pursuant to a collective bargaining agreement (*id.*, ¶ 39). Eight days later, plaintiff received a letter from Archcare terminating his employment effective October 17, 2019 (*id.*, ¶ 40). It is alleged that on October 30, 2019, plaintiff learned from a former coworker that Drax had been collecting signatures on a petition calling for his termination "because of the allegations that he was a white racist" (*id.*, ¶ 41). An administrative law judge later rejected Archcare's opposition to plaintiff's application for unemployment benefits (*id.*, ¶ 42).

On January 14, 2019, plaintiff's union, 1199 SEIU, United Healthcare Workers East (the Union), filed a grievance alleging that plaintiff had been terminated without cause in violation of a collective bargaining agreement and filed a demand for arbitration with the American Arbitration Association (NYSCEF Doc No. 14, Wissinger affirmation, exhibit D at 1). In an opinion and award dated July 6, 2021, the arbitrator determined that Archcare had terminated plaintiff without cause and sustained the grievance (*id.* at 20 and 25). The arbitrator concluded that the appropriate remedy would be to reinstate plaintiff to his former position together with any lost wages, benefits, and other losses incurred from having been terminated without just cause (*id.* at 25-26).

Meanwhile, on January 2, 2020, before the arbitrator issued the opinion and award, plaintiff brought an action against Archcare, the Union and Atkins in the United States District Court for the Southern District of New York captioned *Iodice v Archcare at Terence Cardinal Cooke Health Care Ctr.*, SD NY, No. 20 Civ. 4217 (the Federal Action) (NYSCEF Doc No. 13, Wissinger affirmation, exhibit C at 1). In a third amended complaint, plaintiff asserted claims for race discrimination under 42 USC § 1981 and the NYSHRL and NYCHRL; conspiracy under 42 USC § 1985; aiding and abetting discrimination under the NYSHRL and NYCHRL; and breach of the duty of fair representation and a violation of a collective bargaining agreement (*id.* at 1). The Union and Atkins (together, the Union Defendants) and Archcare moved for dismissal. The court (Polk Failla, J.) granted the motions, declined to exercise supplemental jurisdiction over the NYSHRL and NYCHRL claims, and dismissed the complaint (*Iodice v Archcare at Terence Cardinal Cooke Health Care Ctr.*, 2022 WL 4124795, *14, 2022 US Dist LEXIS 162605, *41-42 [SD NY, Sept. 8, 2022, No. 20 Civ. 4217 (KPF)]).

Plaintiff commenced this action thereafter. The complaint pleads four causes of action against defendants for: (1) discrimination based on race and for creating a racially hostile work

environment in violation of the NYSHRL; (2) discrimination based on race and for creating a racially hostile work environment in violation of the NYCHRL; (3) aiding and abetting discrimination under the NYSHRL; and (4) aiding and abetting discrimination under the NYCHRL. In lieu of serving answers, defendants separately move to dismiss the complaint.

The Parties' Contentions

On its motion, Archcare contends that plaintiff cannot plead that his termination forms part of the hostile work environment claims because termination constitutes a discrete act, as opposed to repeated conduct. Next, Archcare asserts that the hostile work environment claims must be dismissed in the absence of any race-based remarks or conduct from anyone at Archcare so as to evince a discriminatory animus on Archcare's part. Regarding plaintiff's termination, Archcare submits that the complaint fails to plead a prima facie case for race discrimination because plaintiff has been reinstated to his position, with back pay. As such, plaintiff cannot have suffered an adverse employment action. Archcare additionally contends that the complaint's allegations are too conclusory to support a claim for discrimination under the NYSHRL or NYCHRL.

Atkins argues the discrimination claims should be dismissed as against her because she is not an "employer" under the NYSHRL or an "employer" or "agent" under the NYCHRL. Atkins asserts that the complaint fails to plead how Atkins, who was not an Archcare employee, could have created a hostile work environment. As for the claims for aiding and abetting discrimination, Atkins cannot be held liable because she is not an Archcare employee, she has not been sued as an agent of the Union, and she cannot have aided and abetted her own allegedly discriminatory conduct. Last, Atkins submits that plaintiff's claims arise out of Atkins' role as a Union representative in the grievance process, and therefore, plaintiff's state law claims are preempted under the Labor Management Relations Act of 1947 (LMRA) (29 USC § 141 *et seq.*). Even if the

claims are not subject to the "complete preemption doctrine" (NYSCEF Doc No. 15, Atkins mem of law at 13), Atkins maintains that plaintiff's claims are barred by the doctrine of collateral estoppel.

For his part, plaintiff contends that he has adequately pled claims for race discrimination and for a hostile work environment based on race under the fair notice pleading standard applied to NYSHRL and NYCHRL claims. Plaintiff further contends that he is not collaterally estopped from pursuing this action because the claims resolved in the Federal Action involved different legal standards. Plaintiff additionally contends that he did not have a full and fair opportunity to litigate his NYSHRL and NYCHRL claims given that the court declined to exercise supplemental jurisdiction over them. Regarding the arbitrator's decision, plaintiff submits that the opinion and award cannot preclude him from maintaining any statutory discrimination claims because that proceeding did not expressly cover such claims. As for the aiding and abetting claims against Atkins, plaintiff posits that the LMRA does not preempt those claims.

Discussion

On a motion to dismiss brought under CPLR 3211 (a) (7), "the pleading is to be afforded a liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). 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" (*id.* at 87-88). However, "bare legal conclusions and inherently incredible facts are not entitled to preferential consideration" (*M & E 73-75 LLC v 57 Fusion LLC*, 189 AD3d 1, 5 [1st Dept 2020], *lv dismissed* 36 NY3d 1086 [2021]). "Dismissal … 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" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

Under CPLR 3211 (a) (1), dismissal is appropriate where the documentary evidence utterly refutes the plaintiff's claims and conclusively establishes a defense as a matter of law (*Audthan LLC v Nick & Duke, LLC*, — NY3d —, 2024 NY Slip Op 02223, *5 [2024]).

CPLR 3211 (a) (5) provides that a cause of action may be dismissed as barred by the doctrine of collateral estoppel. "The doctrine of collateral estoppel ... precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same" (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). The party invoking the doctrine bears the burden of establishing its applicability (*Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 23 [1st Dept 2014]) by demonstrating that "'(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits'" (*Conason v Megan Holding, LLC*, 25 NY3d 1, 17 [2015], rearg denied 25 NY3d 1193 [2015] [citation omitted]).

A. Atkins' Liability under the First and Second Causes of Action

As an initial matter, plaintiff, in opposition to Atkins' motion, admits that he is pursuing only the third and fourth causes of action against Atkins (NYSCEF Doc No. 18, plaintiff's mem of law at 1 n 1). The first and second causes of action asserted against Atkins are dismissed.

B. The Race Discrimination Claims against Archcare

The first and second causes of action for race-based discrimination stem from plaintiff's termination (NYSCEF Doc No. 1, ¶¶ 47 and 50). The NYSHRL make its unlawful for an employer to discriminate against an individual in compensation or in the terms, conditions or privileges of employment because of that individual's race (Executive Law § 296 [1] [a]). The NYCHRL, similarly, prohibits an employer from discriminating against an individual in compensation or in the terms, conditions or privileges of employment because of that individual's actual or perceived race (Administrative Code § 8-107 [1] [a] [3]). Because a "lenient notice-pleading standard" applies to discrimination cases (*Eustache v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 228 AD3d 482, 483 [1st Dept 2024], citing *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009]), the complaint need only include facts sufficient to establish a prima facie case of discrimination (*Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). Therefore, to state a cause of action for invidious employment discrimination under the NYSHRL and NYCHRL, the plaintiff must allege:

> "(1) that he/she is a member of a protected class, (2) that he/she was qualified for the position, (3) that he/she was subjected to an adverse employment action (under State HRL) or he/she was treated differently or worse than other employees (under City HRL), and (4) that the adverse or different treatment occurred under circumstances giving rise to an inference of discrimination" (*Harrington v City of New York*, 157 AD3d 582, 584 [1st Dept 2018]).

Assuming that the first two elements have been satisfied, the complaint fails to plead facts sufficient to support the third and fourth elements of a prima facie case of discrimination.

The third element for a discrimination claim under the NYSHRL requires the plaintiff to have suffered an adverse employment action. "An adverse employment action requires a materially adverse change in the terms and conditions of employment" (*Messinger v Girl Scouts of U.S.A.*, 16 AD3d 314, 314-315 [1st Dept 2005]). It is not disputed that termination constitutes an adverse employment action (*Cadet-Legros v New York Univ. Hosp. Ctr.*, 135 AD3d 196, 202 n

4 [1st Dept 2015]). Here, though, an arbitrator reversed Archcare's decision to terminate plaintiff (NYSCEF Doc No. 1, ¶ 44; NYSCEF Doc No. 14 at 25-26). Thus, plaintiff cannot satisfy the third element because he did not suffer a materially adverse personnel action for purposes of a NYSHRL claim (*see DuBois v Brookdale Univ. Hosp. & Med. Ctr.*, 6 Misc 3d 1023[A], 2004 NY Slip Op 51819[U], *15 [Sup Ct, Kings County 2004], *affd* 29 AD3d 731 [2d Dept 2006] [reasoning that, since an arbitrator had reversed plaintiff's termination, "the filing of the underlying charge against plaintiff did not result in an adverse action because it was ultimately determined to be without merit"]; *see also Renondeau v Wildlife Conservation Socy.*, 2024 WL 1156643, *8, 2024 US Dist LEXIS 48483, *21-22 [SD NY, Mar. 18, 2024, No. 19-CV-2415 (VSB)]).

Even under a lenient notice pleading standard, the complaint fails to adequately plead that plaintiff was treated less well because of his race for a NYCHRL claim (*see Aykac v City of New York*, 221 AD3d 494, 495 [1st Dept 2023] [complaint failed to plead that the plaintiff treated less well or was disadvantaged because of his disability]; *Wolfe-Santos v NYS Gaming Commn.*, 188 AD3d 622, 622 [1st Dept 2020] [no facts alleged to establish that the plaintiff was treated less well because of his disability]). Contrary to plaintiff's contention, the complaint must contain some facts tending to show that other similarly situated employees outside of his protected class were treated more favorably (*see Lively v Wafra Inv. Advisory Group, Inc.*, 211 AD3d 432, 433 [1st Dept 2022] [no factual allegations that employees who did not share plaintiff's protected characteristic were treated more favorably]; *Pappas v Moody's Inv. Serv.*, 202 AD3d 630, 630 [1st Dept 2022] [complaint failed to allege that the plaintiff was treated differently or less well than his female coworkers]). Plaintiff has failed to do so here.

The complaint also fails to plead any facts sufficient to show that plaintiff's termination occurred under circumstances giving rise to an inference of discrimination (*see Herskowitz v State*

of New York, 222 AD3d 587, 590 [1st Dept 2023]; *Lewkowicz v Terence Cardinal Cook Health Ctr.*, 212 AD3d 443, 443 [1st Dept 2023], *lv denied* 39 NY3d 914 [2023]). "Discriminatory motivation may be inferred from, among other things, invidious comments about others in the employee's protected group, or the more favorable treatment of employees not in the protected group" (*Rodriguez v New York City Hous. Auth.*, 225 AD3d 458, 459 [1st Dept 2024] [internal quotation marks and citation omitted]).

In this case, the complaint does not allege that anyone at Archcare negatively commented on plaintiff's race or made a racially derogatory remark to him or to anyone else (*see Etienne v MTA N.Y. City Tr. Auth.*, 223 AD3d 612, 613 [1st Dept 2024] [no allegation that "plaintiff's colleagues or supervisors made any explicitly or implicitly invidious comments about her race, religion, or country of origin"]; *Pappas*, 202 AD3d at 630 [complaint contained "no allegations of comments or references to his gender to support an inference of discriminatory animus"]; *see also Iodice*, 2022 WL 4124795, *11, 2022 US Dist LEXIS 162605, *32 ["there is no indication that any Archcare employee ever made any comments about Plaintiff's race, or that a non-white colleague engaged in similar conduct and was treated more favorably than Plaintiff"]). The complaint alleges that Washington left the patient's parents a voicemail "stating unequivocally 'Vincent is a racist'" (NYSCEF Doc No. 1, ¶ 14). Washington expressed to Jackson that plaintiff "is a racist" (*id.*, ¶ 18). Drax is alleged to have said, "you're so racial!" (*id.*, ¶ 13). These statements make no mention of plaintiff's race and are insufficient to suggest a racial motive (*see e.g. Geras v Hempstead Union Free Sch. Dist.*, 149 F Supp 3d 300, 326 [ED NY 2015] [discriminatory motive found where the defendant had "directed racially-charged statements at [plaintiff], such as calling him a 'white boy,' a 'white racist,' and a 'no good white man'" and had told the plaintiff that "he did not 'understand African-Americans'; that she did not want him in the

District; and that she 'wanted [him] replaced with an African-American'"]). Plaintiff's belief that Washington told others he was a "white racist" (*id.*, ¶¶ 16-17, 21 and 25) is conclusory and is not supported by any specific facts describing when those statements were made or to whom. As stated above, the complaint pleads only that Washington had described plaintiff as a "racist," without identifying his race. In any event, even if the term racist "is unmistakably reflective of the presence of race or other protected class status in the mind of the speaker" (*Cadet-Legros*, 135 AD3d at 204-205), "stray derogatory remarks, 'without more … [do not] constitute evidence of discrimination'" (*Fruchtman v City of New York*, 129 AD3d 500, 501 [1st Dept 2015] [internal quotation marks and citation omitted]).

Nation-Jumpp allegedly terminated plaintiff's employment because "[t]he parents of the patient have heard what you said, and they are upset and want to sue Archcare Cardinal Cooke.... You are a liability" (NYSCEF Doc No. 1, ¶ 28). This statement also makes no reference to plaintiff's race. Critically, there are no facts pled in the complaint that Nation-Jumpp exhibited or expressed any racial bias towards plaintiff or other Caucasian employees so as to infer an impermissible racial motive in the decision (*compare Etienne*, 223 AD3d at 613 [no allegation that supervisors had commented explicitly or implicitly on the plaintiff's race] with *Kirby v Carlo's Bakery 42nd & 8th LLC*, 212 AD3d 441, 442 [1st Dept 2023] [supervisor is alleged to have said immediately before terminating the plaintiff, "Why did you call HR? Blacks … I should have never hired her"]). Without concrete factual allegations tending to show that Archcare was motivated by racial bias, the contention that plaintiff was terminated because of his race amounts to a mere legal conclusion (*see Askin*,110 AD3d at 622).

Finally, the complaint does not plead any facts showing that plaintiff was treated less well than other similarly situated employees (*see Serrano v City of New York*, 226 AD3d 575, 576 [1st

Dept 2024] [allegations of differential treatment must be "specific and factual in nature"]; *Etienne*, 223 AD3d at 612). The first and second causes of action insofar as they plead claims for race discrimination are dismissed.

B. The Hostile Work Environment Claims against Archcare

The first and second causes of action also plead claims for a racially hostile work environment (NYSCEF Doc No. 1, ¶¶ 47 and 50). Executive Law § 296 (1) (h) prohibits an employer from "subject[ing] any individual to harassment because of an individual's … race, … regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims." Hostile work environment claims brought under the NYSHRL after 2019 are no longer analyzed under the "severe and pervasive standard" (*Williams v New York City Hous. Auth.*, 2021 WL 1109842, *20, 2021 US Dist LEXIS 54831, *58-59 [SD NY, Mar. 23, 2021, No. 18-cv-5912 (JGK)(RWL)]). Rather, the NYSHRL must be "construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed" (Executive Law § 300). As such, "[t]he standard of liability under the NYSHRL will … be treated as akin to the standard under the NYCHRL" (*Espinoza v CGJC Holdings LLC*, 2024 WL 3520662, *5, 2024 US Dist LEXIS 129544, *12-13 [SD NY, July 23, 2024, No. 23cv9133 (DLC)]).

A cause of action for a hostile work environment under the NYCHRL requires the plaintiff to plead that he or she was treated less well than other similarly situated employees because of the plaintiff's protected characteristic[1] (*Williams v New York City Hous. Auth.*, 61 AD3d 62, 78 [1st Dept 2009], *lv denied* 13 NY3d 702 [2009]). The employer's actions must have taken place under

[1] Archcare submits that the hostile work environment claims must be analyzed this new standard (NYSCEF Doc No. 7, Archcare mem of law at 8 n 5).

circumstances giving rise to an inference of discrimination (*Wolfe-Santos*, 188 AD3d at 622). To that end, the complaint must plead discriminatory animus (*Pelepelin v City of New York*, 189 AD3d 450, 451-452 [1st Dept 2020]).

The complaint herein alleges that plaintiff's coworkers were visibly hostile to plaintiff, isolated him from events, and yelled at him in front of other staff (NYSCEF Doc No. 1, ¶ 16). Not only are these allegations conclusory and vague (*see Polite v Marquis Marriot Hotel*, 195 AD3d 965, 967 [2d Dept 2021]; *Mejia v T.N. 888 Eighth Ave. LLC Co.*, 169 AD3d 613, 614 [1st Dept 2019] [no details of when the offensive conduct took place]), they are insufficient to state a claim for a hostile work environment (*see Abe v Cohen*, 115 AD3d 491, 492 [1st Dept 2014], *lv denied* 24 NY3d 902 [2014] [excluding the plaintiff from communications and events not sufficient to plead a hostile work environment claim]). More importantly, given the complaint's failure to plead sufficient facts to support an inference of discriminatory animus, discussed *supra*, the hostile work environment claims under the NYSHRL and NYCHRL are dismissed (*see Etienne*, 223 AD3d at 612; *Lent v City of New York*, 209 AD3d 494, 495 [1st Dept 2022]; *Pelepelin*, 189 AD3d at 451-452; *Massaro v Department of Educ. of the City of N.Y.*, 121 AD3d 569, 570 [1st Dept 2014]).

C. The Aiding and Abetting Discrimination Claims

Both the NYSHRL and NYCHRL prohibit an individual from aiding and abetting discrimination (Executive Law § 296 [6]; Administrative Code § 8-107 [6]). Given the dismissal of the underlying race discrimination and hostile work environment claims, the aiding and abetting discrimination claims are dismissed (*see Russell v New York Univ.*, — NY3d —, 2024 NY Slip Op 02226, *4 [2024] [dismissing aiding and abetting claims against individual defendants where the discrimination claims have been dismissed]; *Weir v Montefiore Med. Ctr.*, 208 AD3d 1122, 1123 [1st Dept 2022], *lv denied* 39 NY3d 911 [2023]). Furthermore, as defendants have also

argued, an aiding and abetting claim cannot be predicated upon an individual's own discriminatory conduct (*Bistreich v City of New York*, 191 AD3d 554, 554 [1st Dept 2021]).

In view of the foregoing, the court need not address the other arguments advanced in support of or in opposition to defendants' motions.

Accordingly, it is

ORDERED that the motion brought by defendant Archcare at Terence Cardinal Cooke Health Care Center to dismiss the complaint of plaintiff Vincent Iodice (motion sequence no. 001) is granted, and the complaint is dismissed as against said defendant, with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that the motion brought by defendant Janice Atkins to dismiss the complaint of plaintiff Vincent Iodice (motion sequence no. 002) is granted, and the complaint is dismissed as against said defendant, with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

9/4/2024
DATE

SHLOMO S. HAGLER, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE