

Moscato v City of New York

2024 NY Slip Op 33361(U)

September 24, 2024

Supreme Court, New York County

Docket Number: Index No. 157923/2023

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO **PART** **05M**

Justice

-----X

GERARD MOSCATO,

Plaintiff,

- v -

CITY OF NEW YORK, JOHN SANTUCCI

Defendant.

-----X

INDEX NO. 157923/2023

MOTION DATE 02/29/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26

were read on this motion to DISMISS.

Plaintiff Gerard Moscato (“Plaintiff”) seeks relief against Defendants the City of New York and John Santucci (collectively “Defendants”), asserting claims under the New York City Human Rights Law (“NYCHRL”) for disability discrimination, hostile work environment, failure to accommodate, and failure to engage in a cooperative dialogue. Defendants seek to dismiss Plaintiff’s claims. Plaintiff opposes Defendants’ motion to dismiss under CPLR §§3211(a)(1) and (7) and cross-moves for leave to amend the complaint.

Defendants argue that Plaintiff’s claims should be dismissed on the grounds that Plaintiff cannot perform the essential functions of a police officer, Plaintiff has not adequately pled claims under the NYCHRL, and the proposed amendments are futile. Plaintiff counters that his claims are sufficiently pled under the liberal pleading standard of the NYCHRL, and that his proposed amendments further clarify the facts of the case, making dismissal inappropriate.

BACKGROUND

Plaintiff, an NYPD officer since 2003, contracted COVID-19 in November 2019 while transporting a prisoner. Although Plaintiff returned to full duty after recovering from COVID-19, his health subsequently deteriorated, resulting in a transient ischemic attack (mini-stroke) and heart complications in early 2021. His treating cardiologist attributed these issues to long COVID-19. Following surgery to insert a heart monitor, Plaintiff remained on restricted duty.

Despite Plaintiff’s medical condition, the NYPD refused to classify his health issues as a line-of-duty injury, labeling him “chronic sick.” This classification deprived Plaintiff of overtime opportunities, led to negative performance evaluations, and subjected him to the threat of termination for excessive absences. Plaintiff alleges that the NYPD failed to accommodate his condition and ignored medical documentation from his treating physicians. Dr. John Santucci, the

NYPD physician responsible for managing chronic sick employees, allegedly disregarded Plaintiff's medical records and returned him to full duty without engaging in a cooperative dialogue.

Plaintiff further asserts that the NYPD's refusal to accommodate his medical condition and the hostile work environment created by negative evaluations and potential termination ultimately forced him to retire in 2022. Plaintiff now seeks redress for violations of the NYCHRL, including disability discrimination, failure to accommodate, and hostile work environment.

ARGUMENTS

Defendants move to dismiss the complaint under CPLR §§ 3211(a)(1) and (7), arguing that Plaintiff's claims are legally insufficient. They contend that: (1) Plaintiff cannot perform the essential functions of a police officer with or without reasonable accommodation; (2) Plaintiff's claims of hostile work environment, failure to accommodate, and discrimination are conclusory and unsupported by facts; (3) The NYPD engaged in a cooperative dialogue and provided reasonable accommodations; and (4) Plaintiff's proposed amendment is futile, as it does not remedy the deficiencies of the original complaint.

Plaintiff opposes the motion to dismiss and cross-moves to amend the complaint, asserting that the proposed amendments provide greater factual specificity regarding the alleged disability discrimination and hostile work environment. Plaintiff emphasizes that under the NYCHRL's notice pleading standard, he is not required to prove his claims at this stage but only to allege facts sufficient to raise an inference of discrimination. Plaintiff contends that his proposed amendment clarifies the claims, making dismissal inappropriate.

DISCUSSION

On a motion to dismiss for failure to state a cause of action under CPLR §3211 (a)(7), courts afford the pleadings a liberal construction, accept the facts as alleged in the complaint as true, and give the plaintiff the benefit of every possible favorable inference. (*Leon v Martinez*, 84 NY2d 83, 87 [1994]; *JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015].) Ordinarily, the court's inquiry is limited to assessing the legal sufficiency of the plaintiff's pleadings; accordingly, the court's only function is to determine whether the facts as alleged fit within a cognizable legal theory (*JF Capital Advisors*, 25 NY3d at 764, *supra*). In employment discrimination cases, courts apply a liberal standard, particularly under the NYCHRL, which mandates that courts construe its provisions broadly to maximize protections for plaintiffs.

On a motion to dismiss under CPLR §3211 (a)(1), courts may grant such relief only where the "documentary evidence" is of such nature and quality – "unambiguous, authentic, and undeniable" – that it utterly refutes plaintiff's factual allegation, thereby conclusively establishing a defense as a matter of law (*see Phillips v Taco Bell Corp.*, 152 AD3d 806, 806-807 [2d Dept 2017]; *VXI Lux Holdco S.A.R.L v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019] ["A paper will qualify as 'documentary evidence' if ... (1) it is 'unambiguous,' (2) it is of 'undisputed authenticity,' and (3) its contents are 'essentially undeniable'"].) The Appellate Division, First Department, has explained that the documentary evidence must "definitely dispose of the plaintiff's

claim” (*Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014]) Generally, records reflecting out-of-court transactions such as mortgages, deeds, and contracts are properly considered documentary evidence because the contents are essentially undeniable (*Prott v Lewin & Baglio, LLP*, 150 AD3d 908 [2017]), while letters, emails, and affidavits do not meet this essential criterion and are therefore, not considered documentary evidence (*Phillips*, 152 AD3d at 807, *supra*)

A motion to amend under CPLR §3025(b) should be freely granted unless there is prejudice or surprise to the opposing party. A proposed amendment need not be meritorious but must not be palpably insufficient or devoid of merit.

A. Disability Discrimination and Failure to Accommodate

The NYCHRL requires that an employer provide reasonable accommodations to an employee with a known disability unless doing so would impose an undue hardship. Unlike the State Human Rights Law (“NYSHRL”), the NYCHRL imposes a more demanding burden on employers to show that no accommodation is possible without undue hardship. Under the NYCHRL, “there is no accommodation that is categorically excluded” from the realm of reasonable accommodations (*Estate of Benitez v. City of New York*, 193 AD3d 42 [1st Dept 2021]).

Here, Plaintiff sufficiently alleges that he was disabled due to the lingering effects of long COVID-19 and that the NYPD failed to accommodate him. The NYPD’s assertion that the essential duties of a police officer cannot be fulfilled with restricted duty is challenged by Plaintiff’s citation to *Estate of Benitez*, which explicitly rejects a rigid interpretation of “essential duties” and emphasizes the necessity of a fact-based inquiry. Plaintiff provided medical documentation from his treating cardiologist, which stated that he could not perform full-duty assignments safely, and proposed several alternative positions that would not have imposed an undue burden on the NYPD, such as restricted duty in administrative roles.

Defendants argue that Plaintiff’s accommodation request was unreasonable because police officers are generally required to perform patrol functions. However, as *Benitez* and related case law demonstrate, the mere fact that patrol duties are typically expected of officers does not negate the NYPD’s obligation to engage in a cooperative dialogue and explore potential accommodations. Plaintiff alleges that the NYPD failed to engage in this dialogue, making no effort to find a suitable accommodation despite his medical condition. This failure arguably constitutes a violation of the NYCHRL. Accordingly, Defendants application to dismiss Plaintiff’s disability discrimination and failure to accommodate claims is denied.

B. Hostile Work Environment

To state a claim for hostile work environment under the NYCHRL, a plaintiff need only allege that they were treated “less well” than other employees because of their disability. The standard under the NYCHRL is broader than under federal or state law, where the conduct must be severe or pervasive. In this case, Plaintiff alleges that the NYPD’s refusal to accommodate his disability created a hostile work environment by subjecting him to overexertion, negative evaluations, threats of termination, and anxiety about his health.

Plaintiff asserts that these actions were directly related to his disability and that abled-bodied officers were not subjected to the same treatment. The evidence provided, including allegations that Dr. Santucci ignored Plaintiff's medical documentation and failed to engage in a cooperative dialogue, supports Plaintiff's claim that his work environment was hostile. Under *Serrano v. City of New York* (226 AD3d 575 [1st Dept 2024]), differential treatment of similarly situated employees can support a claim for hostile work environment. Here, Plaintiff alleges that his abled-bodied colleagues were treated more favorably and were not subjected to the same scrutiny or risk of termination, thereby creating an inference of hostility.

The court finds that Plaintiff has sufficiently pled a hostile work environment claim. Defendants' contention that the alleged actions were mere "petty slights and trivial inconveniences" is unpersuasive, given the repeated threats of termination and the disregard for Plaintiff's health concerns.

C. Cooperative Dialogue

The NYCHRL imposes an affirmative duty on employers to engage in a cooperative dialogue with an employee who requests an accommodation. Failure to do so constitutes a separate violation under the NYCHRL, regardless of whether a reasonable accommodation was ultimately possible. Plaintiff alleges that despite providing medical documentation to the NYPD, including letters from his treating cardiologist, Defendants failed to engage in a cooperative dialogue, instead unilaterally returning him to full duty without considering alternative accommodations.

Defendants argue that they fulfilled their obligation to engage in dialogue, but Plaintiff's allegations, when accepted as true, suggest otherwise. The court finds that Plaintiff has adequately stated a claim that the NYPD failed to engage in a cooperative dialogue, as required under the NYCHRL.

D. Plaintiff's Cross-Motion to Amend

The court grants Plaintiff's cross-motion to amend the complaint. The proposed amendments provide additional factual detail that supports Plaintiff's claims of discrimination, hostile work environment, and failure to accommodate. Defendants' argument that the amendment is futile is without merit, as Plaintiff has pled sufficient facts to survive a motion to dismiss. Moreover, the liberal standard for amending pleadings under CPLR §3025(b) favors granting leave to amend, particularly in employment discrimination cases where additional discovery may reveal further evidence to support the claims.

Accordingly, it is hereby

ORDERED that Defendants' motion to dismiss is denied; and it is further

ORDERED that Plaintiff's cross-motion for leave to amend the complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that Defendants' shall serve an answer to the amended complaint within twenty (20) days of service of the same.

This constitutes the decision and order of the court.

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HASA A. KINGO, J.S.C.

9/24/2024

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE