

Crowley v Vintage Home Entertainment, Inc.

2024 NY Slip Op 34700(U)

December 21, 2022

Sup Ct, Kings County

Docket Number: Index No. 526211/2019

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS HON. CAROLYN E. WADE, J.S.C.**

SHANNON CROWLEY

Plaintiff,

- against -

**VINTAGE HOME ENTERTAINMENT, INC.,
MINX NY ACCESSORIES INC., and RONI NIGRI,
individually,**

Defendants.

Index No.: 526211/2019

DECISION AND ORDER

MS-4

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Defendant’s Motion:

<u>Papers</u>	<u>NYSCEF #'s</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	86, 87, 88
Cross-Motion and Affidavits/Affirmations.....	
Answering Affidavits/Affirmations.....	109
Reply Affidavits/Affirmations.....	110

Upon the foregoing cited papers, and after virtual oral argument, Vintage Home Entertainment, Inc. (“Vintage Home”), Minx NY Accessories, Inc. (“Minx”) and Roni Nigri (“Nigri”), individually (collectively “Defendants”), move to dismiss, Plaintiff, Shannon Crowley’s (“Plaintiff”) (i) New York State Human Rights Law, (ii) New York Executive Law 296, *et seq.* (“NYSHRL”) and (iii) the New York Administrative Code 8-107, *et seq.* (“NYCHRL”) claims pursuant to CPLR § 3212.

As a preliminary matter, Plaintiff withdrew her claims for aider/abettor liability under the NYSHRL and NYCHRL. Accordingly, the Second and Fourth causes of action are hereby dismissed with prejudice. The First cause of action, for discrimination under NYSHRL, the

Third cause of action, under NYCHRL, and the Fifth cause of action for vicarious liability under NYCHRL remain.

The underlying action arises out of Plaintiff's allegations that Defendants discriminated against her on the basis of her sex/pregnancy which resulted in her unlawful termination. Plaintiff was employed as a sales director at, Defendant, Minx, a division of Vintage Home, which is owned by Defendant Nigri, where he also serves as their President.

Plaintiff and Defendant Nigri maintained a contentious relationship during the course of her employment. On or about December 2018, Plaintiff informed her supervisor, Adele Nigri, the wife of Defendant, Nigri, that she was pregnant and intended to use her maternity leave. Plaintiff alleges that during her pregnancy, Nigri frequently scolded her for attending pre-natal appointments. According to Plaintiff, Defendant Nigri requested that she schedule her pre-natal appointments at 9 AM, a time which was not always available. In one alleged incident, Defendant Nigri instructed Plaintiff not to come into the office, and refused to pay her for the day because she had attended a pre-natal appointment, and could not return by 1:00 P.M. As her due date approached, Plaintiff completed all of the requisite forms for maternity leave. Plaintiff's last day of work was on or about July 31, 2019.

On or about August 28, 2019, Plaintiff received her first maternity leave payment. On or about September 10, 2019, Plaintiff received a phone call from Standard Security Life Insurance Company of New York ("Standard Security"), Defendant's insurance carrier, that Robert Ahn, the Financial Controller in the Accounting Department at Minx, on behalf of Vintage Home, represented that Plaintiff had resigned from her employment on August 5, 2019. Plaintiff denies that she ever resigned, and believes Defendants falsely misrepresented that to Standard Security.

In Plaintiff's view, Defendant Nigri had a preconceived intent to terminate her employment when she went on maternity leave.

In support of their motion to dismiss Plaintiff's First, Third, and Fifth causes of action, Defendants contend that Plaintiff did not suffer an adverse employment action when they notified Standard Security of her resignation. Defendants assert that their belief that Plaintiff had resigned was a misunderstanding, which was immediately resolved when she was offered her position back.

Defendants further point that Plaintiff failed to establish any evidence of discriminatory conduct or an inference of discrimination. According to Defendants, despite the tumultuous relationship between Plaintiff and Defendant Nigri, she was treated like all of the other employees. Defendants assert that Plaintiff's allegations that she was berated for the timing of her pre-natal appointments are meritless. According to Defendants, Plaintiff admitted that she did not miss any pre-natal appointments, and any issues regarding the timing of the appointments were resolved.

In opposition, Plaintiff contends that there was no misunderstanding as to her employment status. According to Plaintiff, Defendants falsely advised Standard Security, that she was no longer an employee, thereby disrupting her paid family leave in an attempt to terminate her employment. To buttress her claims, Plaintiff submits Paid Family Leave paperwork, signed by Defendant Nigri, which provides an approximate work return date for Plaintiff at the conclusion of her maternity leave.

Plaintiff also argues that Defendants' lack of flexibility with respect to the scheduling of her pre-natal appointments are indicative of discriminatory animus against her. For example,

Plaintiff asserts that she was consistently scolded for the timing of her pre-natal appointments. Plaintiff testified that Defendant Nigri instructed her to consolidate her pre-natal care appointments, and to only schedule them at 9 AM.

“NYSHRL and NYCHRL make it unlawful for an employer to discriminate against an individual or to discharge such a person from employment on the basis of the individual's gender” (*see* Executive Law § 296[1][a]; Administrative Code § 8-107[1][a][3] (*Lefort v Kingsbrook Jewish Med. Ctr.*, 203 AD3d 708, 709 [2d Dept 2022] [internal citations and quotations omitted])).

To establish a *prima facie* case of discrimination in employment, a Plaintiff must show: “(1) she or he is a member of a protected class, (2) she or he is 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” (*Golston-Green v City of NY*, 184 AD3d 24, 30 [2d Dept 2020]).

On a summary judgment motion in an action alleging discrimination, “a defendant must demonstrate either the plaintiff's failure to establish every element of intentional discrimination, or, having offered legitimate, nondiscriminatory reasons for the challenged actions, the absence of triable issue[s] of fact as to whether the explanations were pretextual” (*Lefort v Kingsbrook Jewish Med. Ctr.*, 203 AD3d 708, 710 [2d Dept 2022] [internal citations and quotations omitted]).

Here, it is undisputed that Plaintiff was a member of a protected class as a pregnant woman, and defendant concedes that she was qualified for the position. Defendants fail to offer legitimate, nondiscriminatory reasons for advising its insurance carrier that Plaintiff had

resigned. Instead, Defendants insinuate that Plaintiff caused the misunderstanding as to her purported resignation, and that she made no effort to clarify whether she had resigned. Thus, triable issues of material fact exist as to whether the disruption of Plaintiff's paid family leave was due to a misunderstanding that she had resigned; and whether this was an attempt to terminate her employment, giving rise to an inference of discrimination. Accordingly, Defendants' motion for summary judgment is **DENIED**.

The constitutes the Decision and Order of the Court.

Dated: 12/21/2022

ENTER,



HON. CAROLYN E. WADE, J.S.C.

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