

Shinn v Women in Need, Inc.
2024 NY Slip Op 35534(U)
September 16, 2024
Supreme Court, Bronx County
Docket Number: Index No. 800443/2022E
Judge: Elizabeth A. Taylor
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA2-----X
Monte Shinn,

Plaintiff,

DECISION and ORDER
Index No. 800443/2022E

- against -

Women in Need Inc.,

Defendants.

Elizabeth A. Taylor, J.

Upon the foregoing papers, the motion of defendant for dismissal pursuant to CPLR 3211 is decided as follows.

In this action for unlawful discriminatory practices under the New York City Human Rights Law, plaintiff alleges that defendant failed to provide a reasonable accommodation for his disabilities ("essential hypertension" and "chronic diastolic heart failure"), which constitutes an unlawful discriminatory practice under Section 8-107(15) of the New York City Human Rights Law (NYCHRL). Plaintiff alleges that he was employed by defendant, a large social services agency in New York with more than 800 employees, \$100 million a year in revenue, and \$15 million in assets, which, among other things, operates a homeless shelter at 25 Junius St. in Brooklyn. Plaintiff alleges that he was hired by defendant to work as a building engineer at the Junius St. facility for a 90-day probationary period in 2020, during the pandemic. Although plaintiff's nominal employer was Tempositions, plaintiff alleges that defendant had full authority to supervise, discipline, and terminate him "if things did not work out during the 90-day period; as well as full authority to make him a full employee at the end of the period if things did work out."

Plaintiff alleges that he was advised by his medical provider that given his serious health conditions, it was vital that persons in plaintiff's workplace follow government mandated health guidelines relating to the use of so-called "PPE," i.e. face coverings. The reason for this was that because of his disability (1) plaintiff was at significantly increased risk of serious injury or death if he were to contract the Coronavirus; and (2) as acknowledged by public health authorities and the defendant itself, enforcing the safety rules, in particular requiring face coverings significantly

reduced the risk of the disease spreading in the workplace. The amended complaint alleges that the defendant failed to enforce the requirement for face coverings in the Junius St. facility, resulting in serious risk to plaintiff. Plaintiff complained to his supervisors on numerous occasions, explaining his disability and need for “accommodation” (i.e., that Covid-19 restrictions and the wearing of masks be enforced). Plaintiff alleges two causes of action—direct liability (First Cause of Action), and aider and abettor liability (Second Cause of Action).

Defendant moves to dismiss the amended complaint for failure to state a cause of action pursuant to CPLR 3211(a)(7).¹ Defendant argues that plaintiff failed to plead any cognizable claim under the NYCHRL because he is attempting to bring a workplace safety claim (for which there is no private right of action) under the guise of a disability claim under the NYCHRL. Defendant contends that plaintiff fails to plead a failure to accommodate claim in violation of the NYCHRL because plaintiff fatally admits that he can perform the essential functions of his job; plaintiff fails to allege a reasonable accommodation that defendant denied; plaintiff has not connected his alleged disability to his proposed accommodation; and plaintiff has not alleged that defendant treated him “less well” than non-disabled individuals by failing to enforce COVID-19 safety guidelines.

In opposition, plaintiff maintains that (1) he suffers from a disability; (2) due to his disability, he was especially vulnerable to the Covid-19 virus; (3) he requested an accommodation in that the employer enforce a mask policy; and (4) the defendant failed to offer an accommodation or engage in a good faith dialogue with the plaintiff. Plaintiff argues that the amended complaint therefore states a cause of action.

In considering the sufficiency of a pleading subject to a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), the court’s role is to determine whether, accepting as true the factual averments of the complaint, plaintiff can succeed upon any reasonable view of the facts stated. (*Campaign for Fiscal Equity v. State of New York*, 86 N.Y.2d 307, 318 [1995]). On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) all allegations in the complaint are deemed to be true; all reasonable inferences which can be drawn from the complaint and the allegations therein must be resolved in favor of the plaintiff. (*Sokoloff v. Harriman Estates Dev.*

¹ This section is not identified on the motion, but the argument clearly indicates that the motion is predicated on the failure to state a cause of action.

Corp., 96 N.Y.2d 409, 414 [2001]). When analyzing the complaint in the context of a motion to dismiss, the court must discern whether the facts as alleged fit within any cognizable legal theory. (Sokoloff v. Harriman Estates Development Corp., supra at 414; Leon v. Martinez, 84 N.Y.2d 83, 88 – 89 [1994].)

To state a cause of action to recover damages for employment discrimination on the basis of disability in violation of the NYCHRL, a complaint must allege that the plaintiff was disabled and was discriminated against based on their disability. (Brouillard v. Sunrun, Inc., 219 A.D.3d 560, 194 N.Y.S.3d 526 [1st Dept. 2023].) The complaint and supporting documentation must set forth factual allegations sufficient to show that, upon the provision of reasonable accommodations, the employee could perform the essential functions of his or her job. (Id.) Under the NYCHRL, the term “reasonable accommodation” is defined as “such accommodation that can be made that does not cause undue hardship in the conduct of the covered entity's business.” (NYC Administrative Code 8-102).

The NYCHRL makes it an “unlawful discriminatory practice for an employer...to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation” (see AC § 8-107[28][a]). The same standards used to evaluate claims under the ADA also apply to cases involving the New York State Human Rights Law (“NYSHRL”) and NYCHRL. However, under the NYCHRL, a broader definition of disability places the burden on the employer to prove that the employee “could not, with reasonable accommodation, satisfy the essential requisites of the job” (Phillips v. City of N.Y., 66 AD3d 170, 183 [1st Dept 2009]).

Assuming that the defendant was plaintiff’s employer, and that plaintiff was disabled, the only accommodation plaintiff requested or needed was that individuals at the workplace comply with Covid-19 regulations by wearing face masks. Plaintiff was not requesting any accommodation relating to his own disabilities but was requesting that general workplace safety protocols in place during the pandemic be adhered to.

As stated in one case involving alleged employment discrimination, albeit arising out of a different context (refusal to take a Covid-19 vaccination), one court observed, “If an employee's alleged disability does not prevent an employee from satisfying the requirements and conditions of his employment, he does not require an accommodation.” (Goolsby v. City of New York, 2024

NYLJ LEXIS 746, *22 [Sup. Ct., NY Co., Kingo, J.].) Plaintiff was fully able to perform his job duties without any accommodation. Rather, he was concerned lest he contract the virus, to which, taking all the allegations of the amended complaint in the light most favorable to the plaintiff, he was more susceptible due to his disabilities. But as argued by the defendant, plaintiff was not seeking an accommodation for his disabilities but was instead attempting to enforce Covid-19 protocols. The present complaint therefore represents an improper attempt to enforce Covid regulations and protocols under the guise of accommodation of a disability.

Accordingly, it is hereby,

ORDERED that the motion is granted, and the complaint is dismissed, and it is further

ORDERED that the Clerk is directed to enter judgment dismissing the complaint.

This is the Decision and Order of the Court.

Dated: SEP 16 2024



Hon. Elizabeth A. Taylor, J.S.C.