

**Ross v Onegevity**

2025 NY Slip Op 30576(U)

February 13, 2025

Supreme Court, New York County

Docket Number: Index No. 655082/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 655082/2023

MARY KAY ROSS,

MOTION DATE 01/19/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

ONEGEVITY, THORNE HEALTH TECH INC., PAUL JACOBSON

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25

were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after oral argument, which took place on August 8, 2024, where Vincent Bauer, Esq. appeared for Plaintiff Mary Kay Ross ("Plaintiff"), and Harry Rimm, Esq. appeared for Defendants Onegevity, Thorne Health Tech, Inc. ("Thorne"), and Paul Jacobson ("Jacobson") (collectively "Defendants"), Defendants' motion to dismiss Plaintiff's Complaint is granted in part and denied in part.

I. Background

This action arises from alleged age discrimination, retaliation, and breach of contract (see generally NYSCEF Doc. 2). As alleged in the Complaint, Plaintiff is a leader in brain health and dementia treatment. Onegevity is the science division of Thorne, a health supplement manufacturer.1 In September 2021, Plaintiff was working full time for Thorne and Onegevity.

Plaintiff alleges that during her tenure, she was always treated differently from the other people involved in senior management. In particular, Plaintiff claims she was never provided an

1 In its motion papers, Defendants represent that Onegevity is a wholly separate legal entity from Thorne.

office and was never included in executive leadership meetings. Plaintiff alleges that in February 2022, Plaintiff was instructed to build a rapport with Dr. Amanda Frick (“Dr. Frick”), the Vice President of Medical Affairs. Allegedly, in April of 2022, after Plaintiff was tasked with developing a campaign to engage medical practitioners, Dr. Frick allegedly became upset with Plaintiff and accused Plaintiff of trying to take her job. Eventually, Plaintiff was informed the Medical Affairs team would now be headed by Dr. Frick, allegedly a younger and less qualified individual than Plaintiff.

Plaintiff then sent an e-mail to the CEO Paul Jacobson, Dr. Price, who recruited Plaintiff, and others, seeking to confirm that her duties were being reduced. Plaintiff alleges that in October of 2022, after sending the e-mail, she was “totally shut out of everything.” Plaintiff was ultimately terminated by Mr. Jacobson on July 18, 2023, without explanation. The day after terminating Plaintiff, Mr. Jacobson allegedly told Plaintiff’s husband, who was also a Thorne employee, that he preferred younger employees.

One month after Plaintiff’s termination, L Catterton acquired Thorne. Had Plaintiff been employed at that time, her restricted stock units would have vested at the closing of the transaction. Defendants also communicated that Plaintiff would be entitled to one year of severance. However, after Plaintiff communicated her intention to seek redress for age discrimination, Defendants refused to pay Plaintiff severance. Defendants now move to dismiss Plaintiff’s Complaint, arguing various grounds for dismissal.

## **II. Discussion**

### **A. Standard**

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings

and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

### **B. Discrimination Claims**

Defendants' motion to dismiss Plaintiff's New York State Human Rights Law ("NYSHRL") and New York City Human Rights Law ("NYCHRL") claims is granted in part and denied in part. To allege employment discrimination, a plaintiff must show (a) she is a member of a protected class; (b) she was qualified for the position; (c) she suffered an adverse employment action; and (d) that the adverse action occurred under circumstances giving rise to an inference of discrimination (*Hribovsek v United Cerebral Palsy of New York City*, 223 AD3d 618 [1st Dept 2024]).

A plaintiff alleging employment discrimination does not need to plead a prima facie case of discrimination but must only give fair notice of the nature of the claim and its grounds (*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140 [1st Dept 2009]). The standard for determining liability for discrimination-based claims under the NYCHRL is to ensure that discrimination plays no role in the disparate treatment of similarly situated individuals in the workplace (*Williams v New York City Housing Authority*, 61 AD3d 62, 76 [1st Dept 2009]). The NYSHRL, which was

amended in 2019, mirrors the “play no-role” standard under the NYCHRL (*Hosking v Mem’l Sloan-Kettering Cancer Ctr.*, 186 AD3d 58, 64 n.1 [1st Dept 2020]).

Accepting the allegations as true and affording Plaintiff every favorable inference, Plaintiff alleges that she is a sixty-five-year-old female, who was a national leader in brain health, who was ultimately terminated after her responsibilities were largely given to a much younger and less qualified candidate. Moreover, Plaintiff alleges that Jacobson specifically told Plaintiff’s husband, while discussing Plaintiff’s termination, that he preferred younger candidates who were easier to mold and gave less push back. This is sufficient to state a claim for age discrimination under the NYSHRL and NYCHRL for purposes of a pre-answer motion to dismiss (*Vig supra*).

The motion as to Onegevity is denied without prejudice. Although Defendants argue that Onegevity and Thorne are separate legal entities, Defendants have not moved via CPLR 3211(a)(1) and have provided no evidence outlining the distinctions between these two entities. Accepting the allegations as true, Plaintiff was employed by both Thorne and Onegevity. Plaintiff’s offer letter was on Thorne’s letter head yet was signed by an officer of Onegevity for a position with Onegevity. On this pre-answer motion to dismiss, there are too many issues of fact to find that Plaintiff did not suffer discrimination during her employment with Onegevity.

However, as stated on the record at oral argument, Plaintiff does not oppose dismissal of her aiding, abetting, and retaliation claims, and therefore Plaintiff’s third, fourth, and fifth causes of action are dismissed without opposition.

### **C. Breach of Contract**

Defendants’ motion to dismiss Plaintiff’s breach of contract claim is granted in part and denied in part. Here, Plaintiff has adequately alleged the existence of a contract via the signed offer letter. Defendants do not dispute the existence or terms of the offer letter and have even annexed

it as an exhibit to their motion (NYSCEF Doc. 8). Plaintiff alleges breach of the offer letter by failing to provide Plaintiff the severance pay to which she is allegedly entitled. For purposes of a pre-answer motion to dismiss, therefore, Plaintiff has adequately alleged breach of contract (*see generally Markov v Katt*, 176 AD3d 401 [1st Dept 2019]). Moreover, for the same reason the Court does not dismiss the discrimination claims against Onegevity, so too here the Court denies dismissal of the breach of contract claim against Onegevity.

**D. CPLR 3211(a)(4)**

This branch of Defendants' motion is denied as the prior action pending in South Carolina initiated by Defendants has been dismissed.

**E. Plaintiff's Request for Leave to Amend**

Plaintiff's request for leave to amend her complaint, which was not made via notice of motion or cross-motion, is denied, without prejudice. Because the relief Plaintiff requests is buried in one paragraph of Plaintiff's opposition, rather than via cross-motion in compliance with CPLR § 2215, this Court will not entertain Plaintiff's request (*Abizadeh v Abizadeh*, 159 AD3d 856 [2d Dept 2018]) If Plaintiff wishes to amend her complaint, she shall do so via motion.

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint is granted in part and denied in part; and it is further

ORDERED that Defendants' motion is granted to the extent that Plaintiff's third, fourth, and fifth causes of action alleging aiding and abetting in violation of the New York City Human Rights Law, retaliation in violation of the New York City Human Rights Law, and retaliation in violation of the New York State Human Rights Law are hereby dismissed; and it is further

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

ORDERED that within twenty days of entry, counsel for Defendants shall serve and file an Answer to Plaintiff's Complaint; and it is further

ORDERED that Plaintiff's request to serve an Amended Complaint is denied, without prejudice, with leave to renew upon proper motion papers; and it is further

ORDERED that the parties are directed to meet and confer and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov on or before May 5, 2025. In the event the parties are unable to agree to a proposed preliminary conference order, they shall appear for an in-person preliminary conference in 60 Centre Street, Room 442, at 9:30 a.m. on May 7, 2025; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

2/13/2025  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: