

Medrano v City Univ. of N.Y.

2025 NY Slip Op 31267(U)

April 3, 2025

Supreme Court, New York County

Docket Number: Index No. 162199/2023

Judge: Jeanine R. Johnson

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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. JEANINE R. JOHNSON PART 52M

Justice

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<p>MARYAM MEDRANO</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>THE CITY UNIVERSITY OF NEW YORK,</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p>INDEX NO. <u>162199/2023</u></p> <p>MOTION DATE <u>02/29/2024</u></p> <p>MOTION SEQ. NO. <u>001</u></p>
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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24

were read on this motion to/for DISMISSAL.

Upon the foregoing documents and oral argument heard on June 12, 2024, Defendant, The City University of New York (hereinafter "CUNY") motion to dismiss the complaint pursuant to CPLR § 3211(a)(7) is granted.

LEGAL STANDARD

On a motion to dismiss, pursuant to CPLR § 3211(a)(7), "the pleading is to be afforded a liberal construction." *Leon v Martinez*, 84 NY2d 83, 87 (1994). This Court is required to "determine only whether the facts alleged fit within any cognizable legal theory." *Bernberg v Health Mgmt. Sys.*, 303 AD2d 348, *3 (2d Dept 2003). However, allegations comprising bare legal conclusions are not entitled to the same consideration. *see Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137 (2017) quoting *Simkin v Blank*, 19 NY3d 46 (2012).

DISCUSSION

Failure to Accommodate

“A prima facie case of failure to accommodate requires a showing that (1) Plaintiff was disabled within the meaning of the statutes; (2) the employer had notice of the disability; (3) Plaintiff could perform the essential functions of his or her job, with a reasonable accommodation; and (4) the employer refused to make a reasonable accommodation.” *Miloscia v B.R. Guest Holdings LLC*, 33 Misc 3d 466, 474 (Sup Ct, NY County 2011). Although an employer is not required to provide an aggrieved party with their preferred accommodation, “the employer is required to engage in a good faith interactive process whereby employer and employee clarify what are the individual needs of the employee and the business and identify the appropriate reasonable accommodation.” *Phillips v City of NY*, 66 AD3d 170, 175 (1st Dept 2009). Failure to participate in an interactive process is not dispositive of the claim but “poses a formidable obstacle to the employer’s attempt to prove that no reasonable accommodation existed for the employee’s disability.” *Jacobsen v NY City Health & Hosps. Corp.*, 22 NY3d 824, 838 (2014).

Plaintiff alleges she “suffers from disability [of] multiple sclerosis”;... Defendants were aware of her disability when she informed them “on February 28, 2023, in [a] conversation with human resources”; she could continue to perform the essential functions of her job with the accommodation she requested of “work[ing] remotely during instances where her disability prevent[ed] her from reporting onsite to work”; and a reasonable accommodation was refused. Plt. Memo of Law in Opp p. 7. Specifically, Plaintiff alleges that “Defendant offering her 88.31 hours in accrued leave did not fully contemplate the scope, severity, and duration of Plaintiff’s needs and therefore was not a “plainly reasonable accommodation’ of such a disability.” Plt. Memo of Law in Opp p. 11.

Defendant argues, “in permitting Plaintiff to use paid sick leave for her sporadic outbreaks of illness or scheduled treatment, CUNY offered a plainly reasonable alternative... [and] the availability of paid sick leave to deal with... unpredictable flare-ups is a well established form of reasonable accommodation.” Def. Memo of Law in Sup. pp 10-11. Defendant argues further that Plaintiff is not “entitled to [a] particular accommodation she wanted... an accommodation need not be permanent to be reasonable... [and] had Plaintiff not resigned, she would have continued to accrue sick leave beyond the 88.31 hours she left on the table by resigning... because sick leave accrues continuously.” Def. Reply Memo of Law pp. 5-6.

The parties only dispute is whether the accommodation offered by CUNY was reasonable. This Court finds that CUNY established, it provided Plaintiff with a cooperative dialogue by showing proof that a meeting occurred with Plaintiff to discuss her accommodation on June 2, 2023. Additionally, this Court finds that the proposed accommodation to address her concern for instances where she was unable to travel to work due to her disability was effectively reasonable and not required to be a specific accommodation of her preference. *Porter v City of New York*, 128 AD3d 448 (1st Dept 2015) (The court found that “Defendants established their entitlement to judgment as a matter of law by demonstrating that they engaged in a good faith interactive process through which they provided Plaintiff with a reasonable accommodation to address her... disabilities. Defendants were not required to provide Plaintiff with the specific accommodation she preferred.”); *see also Pimentel v Citibank, N.A.*, 29 AD3d 141, 148 (1st Dept 2006) (“An employer is not obligated to provide the disabled employee with accommodation that the employee requests or prefers.”) Accordingly, Defendants motion to dismiss the cause of action for failure to accommodate is granted.

Sex/Gender & Nationality Discrimination

To prove discrimination under New York State Human Rights Law (hereinafter “NYSHRL”), Plaintiff must show that (1) she is a member of the protected class, (2) she is qualified to hold the position, (3) she was terminated from employment or suffered other adverse employment action, and (4) the discharge or adverse action took place under circumstances giving rise to an inference of discrimination. *see Forrest v Jewish Guild for the Blind*, 3 NY3d 295 (2004).

1. Sex/Gender

Plaintiff alleges she is a woman, qualified for her position, suffered an adverse employment action in that her supervisor “Miguel Pacheco (hereinafter “Pacheco”) ignore[d] [her] request for accommodation for 88 days then den[ied] such request without rational justification... [due to his] discriminatory animus towards women.” Plt. Memo of Law in Opp p. 15. To support Plaintiff’s assertion as to Pacheco and his position towards women, she points to two statements he made to her alleging Pacheco mocked her saying ‘if you had married a rich guy, you would have lived in Park Avenue and wouldn’t have to work here’... [and] “Pacheco inquiring as to whether Plaintiff planned on having a baby.” Plt. Memo of Law in Opp p. 15.

2. Nationality

Plaintiff alleges she is of Iranian nationality, qualified for her position, suffered the same adverse employment action of denial of her accommodation as mentioned above in sex/gender but instead herein it was due to “Pacheco’s discriminatory animus towards persons of Iranian nationality.” Plt. Memo of Law in Opp p. 16. To support Plaintiff’s assertion as to Pacheco and his position towards Plaintiff’s nationality, she points to a single statement he made to her about “visiting a slaughterhouse simply because Plaintiff is an immigrant from the Middle East.” Plt. Memo of Law in Opp p. 16.

Defendant argues, “Plaintiff’s discrimination...claims [are] all depend[ent] on the same adverse employment action – the alleged denial of a reasonable accommodation... [and] the discrimination... claims should fall as failure to accommodate is dismissed.” Def. Memo of Law in Sup. p. 7. Additionally, Defendant argues further that the “two stray remarks... unconnected with any alleged adverse action and which do not even show bias against women are insufficient to state a cause of action for gender discrimination.” Def. Memo of Law in Sup. p. 9. Defendant also maintains that Plaintiff’s alleged nationality remark “makes no reference to national origin [and] evinces no hostility toward either Iranians or Muslims... [as] there is nothing wrong with... being identified... as such... and Plaintiff provides no context suggesting that Pacheco held any animus toward Iranians or Muslims.” Def. Memo of Law in Sup. pp. 9-10.

This Court finds the element of adverse employment action is not met in accordance with the finding above. Additionally, the Court finds the two stand-alone comments identified by Plaintiff are insufficient to give rise to the inference of gender discrimination without more. *Lent v City of New York*, 209 AD3d 494, 495 (1st Dept 2022) (“The alleged stray remark by Defendant MacDonald that Plaintiff was ‘old enough to retire’ did not, without more, give rise to an inference of ageist bias”). Lastly, this Court finds the single comment identified by Plaintiff fails to give rise to an inference of nationality discrimination as there is no established connection. *see also Pelepelin v City of NY*, 189 AD3d 450, 451 (1st Dept 2020) (The Court found “Plaintiff’s allege[d] ‘derogatory comments’... do not evince any ageist or anti-Russian bias”). Accordingly, the Defendants applications to dismiss the causes of action of gender and nationality discrimination are dismissed.

Retaliation

“Under [NYSHRL], it is unlawful to retaliate against an employee for opposing discriminatory practices.” *Forrest v. Jewish Guild for the Blind*, 3 NY3d 295, 312 (2004). To maintain a claim for retaliation under NYSHRL, Plaintiff must show: (1) they engaged in protected activity by opposing conduct prohibited thereunder, (2) Defendant was aware of Plaintiff’s participation in the activity, (3) Plaintiff suffered an adverse employment action based upon the activity, and (4) a causal connection existed between the protected activity and the adverse action. *Id.*

Plaintiff alleges she engaged in a protected activity on February 28, 2023, when she “met with human resources to discuss... remote work days... [and when she] reported Pacheco’s discriminatory comments;” Pacheco was aware of her participation in the activity because he told her; similar to above, Plaintiff maintains, “by having her request for an accommodation denied, Plaintiff suffered an adverse employment action [and] there is a causal connection as “Pacheco saw an opportunity to retaliate against Plaintiff [and] took it.” Plt. Memo of Law in Opp pp. 17-18.

Defendant argues Plaintiff’s “sole alleged adverse action... [for her] retaliation claim is the alleged denial of a reasonable accommodation... [and as] there was no denial of a reasonable accommodation, it necessarily follows that there was no retaliatory act.” Def. Memo of Law in Sup. p. 10. This Court finds the element of adverse employment action is not met in accordance with the finding above. Accordingly, the Defendants application to dismiss the cause of action of retaliation is dismissed.

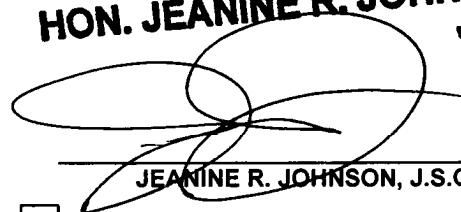
Accordingly, it is hereby,

ORDERED that Defendant, The City University of New York's motion to dismiss is granted in its entirety; and it is further

ORDERED that any relief not resolved here is denied.

This constitutes the Decision and Order of the Court.

**HON. JEANINE R. JOHNSON
J.S.C.**



4/3/2025
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE