

Samuel v Institute for Community Living, Inc.

2025 NY Slip Op 31434(U)

April 22, 2025

Supreme Court, New York County

Docket Number: Index No. 150885/2024

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

-----X

SONIA SAMUEL,

Plaintiff,

- v -

INSTITUTE FOR COMMUNITY LIVING, INC., ROZELLE
ORTIZ, NYKEISHA FELDER

Defendant.

-----X

INDEX NO. 150885/2024

MOTION DATE 04/29/2024

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

were read on this motion to/for DISMISS

Upon the foregoing documents, and after oral argument, which took place on February 18, 2025, where Gabriella Zhelznyak, Esq. appeared for Plaintiff Sonia Samuel ("Plaintiff") and Gregory C. Brown, Esq. appeared for Defendants Institute for Community Living, Inc. ("Community Living, Inc."), Rozelle Ortiz ("Ortiz") and Nykeisha Felder ("Felder") (collectively "Defendants"), Defendants' motion to dismiss Plaintiff's Complaint is granted in part and denied in part.

I. Background

Plaintiff, a 61-year-old African American female, was employed as a medical specialist by Community Living, Inc. for 21 years, until she was allegedly constructively discharged due to a hostile work environment on February 8, 2021.1 Plaintiff alleges she always performed her work satisfactorily and always had a good working relationships with managers and colleagues until

1 Community Living, Inc. is a not-for-profit corporation that assists New Yorkers living with serious mental illness, substance use disorder, and developmental disabilities.

mid-2020, when Ortiz, a younger woman, became her manager. According to Plaintiff, Ortiz repeatedly made demeaning and age biased remarks to Plaintiff and showed favoritism to younger colleagues. Plaintiff alleges that Ortiz and Felder consistently called her an “Old B***h,” “fat loser” and “piece of crap” daily. Ortiz also allegedly said loudly, in front of Plaintiff “these old staff need to retire so I can bring in my team” and that she “needed to get rid of people that have been here too long.” From May 2020 until her alleged constructive discharge on February 8, 2021, Ortiz allegedly made Plaintiff move her office on the second floor to a small space downstairs on the first floor, without a desk, where Community Living Inc. residents slept, and directly next to bathrooms.

On February 8, 2021, Felder allegedly berated Plaintiff and kicked her leg. That day, Plaintiff left Community Living, and immediately thereafter Felder was promoted to Plaintiff’s prior position. Now, Plaintiff sues for age discrimination, hostile work environment, and retaliation under the New York State and City Human Rights Laws, and for negligent infliction of emotional distress. Defendants respond with a pre-answer motion to dismiss, which Plaintiff opposes.

II. Discussion

A. Statute of Limitations

Defendant’s motion to dismiss Plaintiff’s allegations prior to January 31, 2021, as time barred is denied. Where there is an issue of fact as to whether the statute of limitations has expired, a motion to dismiss pursuant to the statute of limitations should be denied (*Stringer v Kim*, 226 AD3d 607, 608 [1st Dept 2024]). Here, the allegations raise, at a minimum, an issue of fact as to whether the continuing violation doctrine tolled the statute of limitations. Although Defendants are correct that the statute of limitations for employment discrimination claims under the New York State and City Human Rights laws are three years, they fail to account for Executive Order No.

202.8, signed by then Governor Cuomo, which tolled the statute of limitations from March 20, 2020 and was continuously extended up until November 3, 2020 (*see Murphy v Harris*, 210 AD3d 410, 410 [1st Dept 2022]). They also fail to account for the application of the continuing violation doctrine, which allows for otherwise untimely claims to be asserted if the facts give rise to “a single continuing pattern of unlawful conduct extending into the limitations period immediately preceding the filing of the complaint” (*Crawford v American Broadcasting Co., Inc.*, 216 AD3d 507, 507-08 [1st Dept 2023]).

Plaintiff does not allege isolated, discrete incidents of harassment, but an ongoing campaign of harassment and toxic behavior calculated to push her and other older employees out. She was called derogatory names which referenced her age daily, had her workspace taken away, was forced to work near a bathroom without a desk, and was forced to complete office work in the same space where the residents that Community Living, Inc. serves slept. For purposes of a pre-answer motion to dismiss, these allegations sufficiently allege a continuous and ongoing campaign of unlawful discrimination with the goal of having Plaintiff and other older employees retire. Therefore, the motion to dismiss based on the statute of limitations is denied.

B. Discrimination Claims – Failure to State a Claim

Defendants’ motion to dismiss Plaintiff’s Complaint on the basis she has failed to state a claim for age discrimination, hostile work environment, retaliation, and aiding and abetting is denied. When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determine 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]).

Defendants' argument that Plaintiff can point to no age-related comments giving rise to an inference of age-related discrimination is without merit. The Complaint is replete with comments evincing age-related animus. Moreover, despite working for Community Living, Inc. for over 20 years, she had her office space taken away and was taunted by colleagues for having to work near the bathroom. She further alleges younger staff were treated with favoritism, another similarly situated employee to her was also forced to retire, and once Plaintiff was constructively discharged, her position was replaced with a younger employee.

Moreover, the retaliation claims are sufficiently stated as Plaintiff alleges, she complained to human resources on multiple occasions to no avail, and rather than offering Plaintiff lawful and helpful solutions, she was instead encouraged to retire. When she tried to receive unemployment benefits, Community Living Inc. allegedly objected, claiming Plaintiff voluntarily separated – however an Administrative Law Judge found that based on the harassment Plaintiff faced, her employment ended under “non-disqualifying conditions.” For purposes of a pre-answer motion to dismiss these allegations are sufficient to state claims for age discrimination, hostile work-environment, retaliation, and aiding and abetting under the New York State and City Human Rights laws (*see, e.g. Walker v Triborough bridge and Tunnel Auth.*, 220 AD3d 554 [1st Dept 2023]; *see also Petit v Department of Educ. Of City of N.Y.*, 177 AD3d 402, 403 citing *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009]).

C. Negligent Infliction of Emotional Distress

Defendants' motion to dismiss Plaintiff's cause of action alleging negligent infliction of emotional distress is granted. In her motion papers, Plaintiff has failed to oppose dismissal of her negligent infliction of emotional distress claim. This constitutes abandonment of the claim requiring dismissal (*Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]).

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 to dismiss is granted solely to the extent that Plaintiff's ninth cause of action alleging negligent infliction of emotional distress is dismissed, as abandoned, and without opposition; and it is further

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

ORDERED that within twenty days of entry, Defendants shall file an Answer to Plaintiff's Complaint except for Plaintiff's ninth cause of action, which has been dismissed; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov, but in no event shall the proposed order be submitted later than September 2, 2025. In the event the parties cannot agree, and have a serious discovery dispute requiring Court intervention, the parties shall appear for an in-person preliminary conference on September 3, 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.

<u>4/22/2025</u> DATE			<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE