

**Abraham v New York City**

2025 NY Slip Op 32451(U)

July 10, 2025

Supreme Court, New York County

Docket Number: Index No. 154577/2024

Judge: Carol Sharpe

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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. CAROL SHARPE** PART **52M**

*Justice*

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INDEX NO. 154577/2024  
LAURIENNE ABRAHAM, MOTION DATE 10/07/2024  
Plaintiff, MOTION SEQ. NO. 001

- v -

NEW YORK CITY, NEW YORK CITY DEPARTMENT OF  
EDUCATION, URBAN ASSEMBLY CHARTER SCHOOL,  
COMP SCI HIGH, JOHN AND JANE DOES 1-10,  
individually and in Defendants' place of their official capacity,  
XYZ CORP. 1-10

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25

were read on this motion to/for DISMISSAL

Upon the foregoing documents, the motion is decided as follows:

Defendants, New York City and New York City Department of Education ("Municipal Defendants"), filed the instant pre-answer motion seeking dismissal of plaintiff's complaint, pursuant to CPLR 3211(a)(7) for failure to state a cause of action, and denial of co-defendant's cross-claims against them, on the grounds that they are not proper parties to this action; the complaint fails to describe any actions specifically taken by Municipal Defendants that violated plaintiff's rights; and that plaintiff failed to plead timely compliance with the notice of claim requirements under N.Y. Eudc. Law §3813. Plaintiff filed written opposition. Urban Assembly Charter School ("Urban Assembly") did not file opposition, and Municipal Defendants filed a reply. Municipal Defendants' motion to dismiss is granted.

Plaintiff Laurienne Abraham commenced this action on May 16, 2024, by filing a summons and complaint alleging that she was unlawfully discriminated against on the bases of her religion,

national origin, creed, sexual orientation, sex, and belief; that a hostile work environment was promoted and maintained by the defendants; that she was retaliated against; and that there was a breach of her employment contract when she was terminated from her employment as a math teacher at Urban Assembly on May 19, 2023. She alleges that she was terminated for referring to her non-binary co-teacher by the pronoun “she” instead of “they,” which goes against plaintiff’s religious and cultural beliefs. Issue was joined in this action by the filing of Urban Assembly’s answer with crossclaims against Municipal Defendants on July 22, 2024.

In support of its motion, Municipal Defendants submitted an affirmation of Erin Cochran, Senior Executive Director in the Department of Education’s (“DOE”) Charter Schools Office who stated that Urban Assembly is authorized by SUNY, it is an independent education corporation, it is not managed or operated by DOE, and it is not a DOE authorized charter school. Erin Cochran further stated that DOE does not hire, train, or supervise the teachers at Urban Assembly and does not have access to plaintiff’s personnel file. (NYSCEF Doc. #11). Municipal Defendants point out that Urban Assembly and Comp Sci High are named in this action as two separate entities, however they are in fact one in the same.

Municipal Defendants contend that in addition to not being proper parties to this action, plaintiff did not timely comply with the applicable notice of claim requirements to maintain the DOE as a party and the complaint fails to describe any actions specifically taken by Municipal Defendants that purportedly violated plaintiff’s rights under New York State Human Rights Law (“NYSHRL”) and New York City Human Rights Law (“NYCHRL”).

In opposition to the motion, plaintiff submitted, Municipal Defendants’ Receipt of Notice of Claim letter dated May 21, 2024, a City Employment Claim Form, a Verified Notice of Claim, and an eCLAIM receipt of her successful filing dated May 16, 2024 (NYSCEF Doc. #18); her employment offer letter from Urban Assembly (NYSCEF Doc. #19); a portion of her W-2 form

(NYSCEF Doc. #20); and computer printouts from insideschools.org's web page on Urban Assembly "commonly known as Comp Sci High", Urbanassembly.org's who we are page, and an LISC.org's news article on Comp Sci High finding a new home (NYSCEF Doc. #21).

Plaintiff's claims against Municipal Defendants are based on the grounds that Urban Assembly is housed within a DOE building and that Municipal Defendants thereby exercised control over Urban Assembly, making them liable for violating her rights and breaching her employment contract.

CPLR 3211(a)(7) provides that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that ...(7) the pleading fails to state a cause of action." Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to accept the facts as alleged in the complaint to be true, accord plaintiff "the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Leon v. Martinez*, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972, 638 N.E.2d 511 (1994). "While on a motion to dismiss, the facts pleaded are presumed to be true and given every favorable inference, bare legal conclusions and factual claims that are either inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration." *Yovich v. Montefiore Nyack Hosp.*, 212 A.D.3d 425, 426, 181 N.Y.S.3d 241, 242 (1st Dept. 2023). "When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate." *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 185, 372 N.E.2d 17, 20-21 (1977). *See also, Rovello v. Orofino Realty Co.*, 40 NY2d 633, 636, 389 N.Y.S.2d 314, 316, 357 N.E.2d 970, 972 (1976).

Documentary evidence provided by the plaintiff in the form of her job offer letter signed by David Noah, as Founding Principal of Comp Sci High (NYSCEF Doc. #19), and an excerpt from her W-2 form (NYSCEF Doc. #20), established that Municipal Defendants were not her joint employers and demonstrates that defendant Urban Assembly was the defendant which hired her and paid her salary.

In determining whether an ostensible non employer is actually a “joint employer” for purposes of employment discrimination claims under the State and City Human Rights Laws (HRLs), numerous Federal District Courts have applied the “immediate control” test [internal citation omitted]. “Under the “immediate control” formulation, a “joint employer relationship may be found to exist where there is sufficient evidence that the defendant had immediate control over the other company’s employees,” and particularly the defendant’s control “over the employee in setting the terms and conditions of the employee’s work.” “Relevant factors” in this exercise “include commonality of hiring, firing, discipline, pay, insurance, records, and supervision.” Of these factors, “the extent of the employer’s right to control the means and manner of the worker’s performance is the most important factor.”” *Brankov v. Hazzard*, 142 A.D.3d 445-446, 36 N.Y.S.3d 133, 134 (1<sup>st</sup> Dept. 2016).

As alleged in plaintiff’s complaint Urban Assembly onboarded, trained, and supervised plaintiff. Urban Assembly controlled where plaintiff was assigned to work, with whom she was to work with, and facilitated disciplinary and subsequent termination proceedings. Municipal Defendants had no role in the hiring, firing, discipline, pay, insurance, records, and supervision of plaintiff’s employment with Urban Assembly. The record plainly indicates that Urban Assembly, not Municipal Defendants, ultimately controlled plaintiff’s employment and that they were not plaintiff’s joint employer. Viewed in the light most favorable to plaintiff, the record fails to demonstrate that Municipal Defendants had the requisite immediate control over the terms and conditions of plaintiff’s

employment to be subject to liability under NYSHRL, NYCHRL, and breach of her employment contract as a joint employer.

Furthermore, plaintiff failed to file a timely file a notice of claim as to defendant DOE, pursuant to N.Y. Eudc. Law §3813(1) which provides in pertinent part that “No action or special proceeding, for any cause whatever...shall be prosecuted or maintained against any school district, board of education...unless it shall appear by and as an allegation in the complaint or necessary moving papers that a written verified claim upon which such action or special proceeding is founded was presented to the governing body of said district or school within three months after the accrual of such claim,...” See, *Clarke-St. John v. City of N.Y.*, 2164 A.D.3d 743, 83 N.Y.S.3d 549 (2<sup>nd</sup> Dept. 2018)

Accordingly, it is hereby:

**ORDERED**, that the motion for dismissal is granted; it is further

**ORDERED**, that the complaint and any cross-claim asserted against Municipal Defendants New York City and New York City Department of Education are dismissed with prejudice; it is further

**ORDERED**, that as New York City and New York City Department of Education are no longer parties to the action and no party is represented by corporation counsel, this action, including any pending motion, is remitted to the General Clerk’s Office for reassignment to the General IAS Part; it is further

**ORDERED**, that the action is severed and continued against the remaining Defendants; it is further

**ORDERED**, that the caption in this matter is amended to reflect the dismissal of Municipal Defendants New York City and New York City Department of Education, and that all future papers filed with the court shall bear the below amended caption:

-----X  
LAURIENNE ABRAHAM,

Plaintiff,

-v-

URBAN ASSEMBLY CHARTER SCHOOL,  
COMP SCI HIGH, JOHN AND JANE DOES 1-10,  
individually and in Defendants' place of their official  
capacity, and XYZ CORP. 1-10,

Defendants.  
-----X

; it is further

**ORDERED**, that the movant shall serve all parties within ten (10) days of the date of this Order and shall file proof of service; it is further

**ORDERED**, that the movant, within twenty (20) days of the date of this Order, shall serve this Order with Notice of Entry, and shall file proof of such service within ten (10) days after such service, upon the Clerk of the Court, who is directed to update the Court's records to reflect the amended caption herein; and it is further


**ORDERED**, that service of this Order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or if it is an e-file case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-filing" page on the court's website).

This constitutes the Decision and Order of the Court.

ENTER:

July 10, 2025

DATE



HON. CAROL SHARPE, J.S.C.

**HON. CAROL SHARPE**  
**J.S.C.**

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE