

Breiding v High Hopes Films, LLC

2025 NY Slip Op 32682(U)

July 16, 2025

Supreme Court, New York County

Docket Number: Index No. 152385/2023

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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KATHY BREIDING, INDEX NO. 152385/2023
Plaintiff, MOTION DATE 04/11/2025
MOTION SEQ. NO. 002

- v -

HIGH HOPES FILMS, LLC, and DENNIS PILIERE a/k/a
DENNIS CABRINI,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 49, 50, 51, 52, 53, 54

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER

Upon the foregoing documents, and after a final submission date of May 13, 2025, Defendants High Hopes Films, LLC and Dennis Piliere a/k/a Dennis Cabrini's ("Mr. Piliere") (collectively "Defendants") motion for summary judgment dismissing Plaintiff Kathy Breiding's ("Plaintiff") Complaint and seeking leave to amend is granted in part and denied in part.

I. Background

Mr. Piliere is the sole member of High Hopes Films, and the producer and director of independent low budget films, including High Hopes, High Hopes 2: A New Beginning ("High Hopes 2"), and High Hopes 3: The Misadventures of Danny Valentino ("High Hopes 3"). In all three films, Mr. Piliere played the main character, Danny Valentino. In 2009, Plaintiff auditioned for High Hopes and was cast as Danny Valentino's wife, Joanie Valentino. She played Joanie again in High Hopes 2. On or about September 22, 2015, on the last day of filming for High Hopes 2, Plaintiff and Mr. Piliere were performing a scene involving a kiss. Plaintiff was uncomfortable kissing Mr. Piliere because allegedly there was a sore on his mouth, and she refused to kiss him (NYSCEF Doc. 34 at 34-35).

High Hopes 3 began filming in 2019. Plaintiff was again asked to play the role of Joanie. However, after she advised she could not appear on set certain days in August of 2019, Mr. Piliere told her she was replaced. In August of 2020, Plaintiff filed a Complaint with the New York City Commission on Human Rights. However that Complaint was administratively closed on April 21, 2022. Plaintiff commenced this action on March 14, 2023, alleging defamation, breach of contract, tortious interference, intentional infliction of emotional distress, and violations of the New York State and City Human Rights Laws. Defendants seek summary judgment dismissing the Complaint and seek leave to amend their Answer if the New York State and City Human Rights Laws claims survive. Plaintiff opposes the motion, except for dismissal of her defamation and intentional infliction of emotional distress claims. Therefore, these claims are dismissed.

II. Discussion

A. Standard

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

B. Admissibility of Plaintiff’s Deposition Transcript

Plaintiff’s argument that her deposition transcript is inadmissible because it is missing a certification pursuant to CPLR 3116(b) is without merit. The transcript annexed to Defendants’

moving papers mistakenly omitted the certification, which was corrected in their reply papers (NYSCEF Doc. 53). The Court overlooks this technical defect pursuant to CPLR 2001 and resolves the motion on the merits.

C. Tortious Interference

Defendants' motion for summary judgment dismissing Plaintiff's tortious interference claim is granted. A tortious interference with a contract claim requires (1) the existence of a valid contract between the plaintiff and another; (2) defendant's knowledge of that contract; (3) defendant's intentional procurement of its breach of contract without justification, and (4) actual breach and damages (*Nostalgic Partners, LLC v New York Yankees Partnership*, 205 AD3d 426, 428 [1st Dept 2022]). The party seeking to enforce a contract bears the burden of establishing that a binding agreement was made and the terms of the contract (*Allied Sheet Metal Works, Inc. v Kerby Saunders, Inc.*, 206 AD2d 166, 169-70 [1st Dept 1994]). To show tortious interference with prospective economic relations, there must be a showing that but for the defendant's wrongful conduct, Plaintiff would have entered an economic relationship with the third-party (*Vigoda v DCA Productions Plus, Inc.*, 293 AD2d 265, 267 [1st Dept 2002]).

According to Plaintiff, she was working with Sal Rinella on a film called "Good Friday" and was cast as the wife of the lead character. According to an affirmation from Mr. Rinella, Plaintiff's role in Good Friday changed not because of Mr. Piliere's actions, but because Plaintiff was uncomfortable with sexual and flirtatious lines in the originally discussed role. Plaintiff admitted she was never contracted to play the wife of the lead role in Good Friday and that "it was under discussion" (NYSCEF Doc. 34). She also admitted she made the decision to "turn down Good Friday" (NYSCEF Doc. 34 at 76). Therefore, she cannot allege tortious interference with

respect to her role in *Good Friday (Retail Advisors, Inc. v SLG 625 Lessee LLC*, 138 AD3d 425, 425 [1st Dept 2016]).

Further Mr. Rinella's affirmation that Mr. Piliere played no role in decision not to name Plaintiff to the board of the Corona film festival is uncontroverted (NYSCEF Doc. 54). Plaintiff cannot show she would have been named a board member "but for" Mr. Piliere's conduct when Mr. Rinella states the reason was his own tumultuous relationship with Plaintiff (*Gans v Wilbee Corporation*, 199 AD3d 564, 565 [1st Dept 2021]). Nor has Plaintiff shown the existence of a specific and definite oral contract where Mr. Rinella agreed to appoint Plaintiff to Corona film festival's board (*Silber v New York Life Ins. Co.*, 92 AD3d 436, 439 [1st Dept 2012]).

D. Breach of Contract

Defendants' motion for summary judgment dismissing Plaintiff's breach of contract claim is granted. A breach of contract claim requires the existence of a contract (see *Markov v Katt*, 176 AD3d 401, 402 [1st Dept 2019]). The contract which Plaintiff alleges was breached is a text message exchange where Plaintiff stated, "I'm in" and Mr. Piliere stated "That['s] really what I wanted. How can there be an HH3 without Joanie?" (NYSCEF Doc. 44).

These text messages do not constitute an enforceable contract (see, e.g. *Maxgain LLC v Rai*, 222 AD3d 488, 488-89 [1st Dept 2023]). The text messages, which omit numerous material terms of employment, are essentially an unenforceable letter of intent (see, e.g. *Aiello v Burns Intern. Sec. Services Corp.*, 110 AD3d 234, 241 [1st Dept 2013]). There is no discussion of essential employment terms including compensation, hours, when and where filming would take place, whether a credit would be given, and whether Plaintiff could be fired at will (*166 Mamaroneck Ave. Corp. v 151 East Post Rd. Corp.*, 78 NY2d 88, 91 [1991] ["a court cannot enforce a contract unless it is able to determine what in fact the parties have agreed to"]).

Therefore, the breach of contract claim is dismissed (*Sannon-Stamm Associates, Inc. v Keefe, Bruyette & Woods, Inc.*, 96 AD3d 630, 631 [1st Dept 2012]; *Geller v Reuben Gittelman Hebrew Day School*, 34 AD3d 730, 731 [2d Dept 2006] [material terms of employment agreement include salary and services required]).

E. New York State and City Human Rights Laws Claims

i. Timeliness

Viewing the facts in the light most favorable to the non-movant, the Court finds there is an issue of fact as to whether Defendants engaged in an ongoing pattern of discriminatory acts, which would bring Plaintiff's otherwise untimely allegations within the statute of limitations pursuant to the continuing violation doctrine (*see, e.g. James v City of New York*, 144 AD3d 466, 467 [1st Dept 2016]; *see also Sier v Jacobs Persinger & Parker*, 236 AD2d 309, 309 [1st Dept 1997]).

Specifically, Plaintiff claims on September 22, 2015, she suggested she and Mr. Piliere make it look like they were kissing, rather than engaging in the scripted kiss. According to Plaintiff, when she refused to kiss him, Mr. Piliere continued to try to kiss her and verbally abused her. According to Plaintiff, Mr. Piliere continued complaining to others in the industry about Plaintiff's refusal to kiss him, and during an award acceptance speech in 2017 at a film festival, embarrassed her for refusing to kiss him. Allegedly, in 2018, Mr. Piliere told others he had a sexual relationship with Plaintiff. Plaintiff's affidavit claims Mr. Piliere's comments escalated, telling her she "owed him one and he wants to be on top." (NYSCEF Doc. 42 at ¶ 29). Mr. Piliere continued referencing the kiss in text messages from October 2018, stating:

"[Yo]u refused a tiny kiss and [yo]u were so cold and stiff and repulsed by me that the scene was difficult and also made me feel totally gross....If I knew [yo]u were going to be so cold I wouldn't have cast you. There are plenty of actresses that cood (*sic*) have made that scene more romantic with just a peck & a warm hug...Jennifer Anniston (*sic*) can call shots & yet she doesnt (*sic*) she plays slutty to matronly.

That's what actresses do...Ur (*sic*) a great actress but ME TOO aside ur (*sic*) not Aniston & U (*sic*) need to perform what the writer wants." (NYSCEF Doc. 48).

Plaintiff continued working with Mr. Piliere on High Hopes 3. She was allegedly late to a meeting in June of 2019 and Mr. Piliere threatened to replace her, stating he was "not doing this Prima donna bulls___ anymore" (NYSCEF Doc. 46). On August 10, 2019, Mr. Piliere apparently shifted filming dates around, apologizing "if [it] seem[ed] last minute." (NYSCEF Doc. 45). Plaintiff stated she was booked on the new dates. The next day Mr. Piliere replaced Plaintiff (*Id.*). One year later, in August of 2020, Plaintiff filed a complaint with the New York City Commission on Human Rights, which tolled the statute of limitations (*see Gabin v Greenwich House, Inc.*, 210 AD3d 497, 497-498 [1st Dept 2022]). The Complaint remained pending until April 21, 2022 (NYSCEF Doc. 33) at which time the statute of limitations again began accruing again. Approximately 11 months later, on March 14, 2023, Plaintiff filed a summons, initiating this action (NYSCEF Doc. 1). A jury could credit the evidence of years of ongoing comments regarding Plaintiff's refusal to kiss Mr. Piliere and find a continuous violation of the New York State and City Human Rights laws, making her claims timely (*see Walsh v Covenant House*, 244 AD2d 214 [1st Dept 1997]). Therefore, Defendants' motion for summary judgment based on the statute of limitations is denied (*see also Clark v State*, 302 AD2d 942, 944 [4th Dept 2003]).

ii. Merits

On the merits, issues of fact preclude dismissing Plaintiff's New York State and City Human Rights Laws claims. The diametrically opposed narratives require a jury to assess credibility and determine whether Plaintiff was subjected to a hostile work environment. Viewing the facts in the light most favorable to the non-movant, the moment Plaintiff objected to kissing him, Mr. Piliere allegedly called her a b___, icy, cold, stiff and continued to try to kiss her. Mr. Piliere continued commenting on Plaintiff's refusal to kiss him in the following years. Mr. Piliere

told Plaintiff “ME TOO aside [you’re] not Aniston and [you] need to perform what the writer wants” (NYSCEF Doc. 48). These actions and statements, amongst others, and their alleged severity, could allow a jury to find Plaintiff was subjected to a hostile work environment (*see e.g. Bateman v Montefiore Medical Center*, 183 AD3d 489, 490 [1st Dept 2020]; *Sims v Trustees of Columbia University*, 168 AD3d 622, 623 [1st Dept 2019]).

Although Defendants argue Plaintiff was not subject to a work environment this is in dispute given the ongoing promotion of High Hopes 2 and the planning of High Hopes 3. While Plaintiff may not have been on set with Mr. Piliere, the two were in frequent contact related to the films that formed their employment relationship. Therefore, the motion for summary judgment dismissing Plaintiff’s hostile work environment claims is denied (*see also Crookendale v New York City Health and Hospitals Corporation*, 175 AD3d 1132, 1132 [1st Dept 2019]).

Similar issues of fact preclude dismissal of Plaintiff’s sexual harassment and gender-based discrimination claims (*Williams v New York City Housing Auth.*, 61 AD3d 62, 76 [1st Dept 2009]). Just as a jury may find Plaintiff was subjected to a hostile work environment because she was a woman, so too a jury might find Plaintiff was treated less well and replaced because she was a woman who rejected Mr. Piliere’s alleged overtures (*Suri v Grey Global Group, Inc.*, 164 AD3d 108, 114-16 [1st Dept 2018]; *Hernandez v Kaisman*, 103 AD3d 106 [1st Dept 2012]).

Issues of fact exist as to whether Plaintiff was retaliated against for refusing to kiss Mr. Piliere. Given the diametrically opposing narratives of events, it is for a jury to decide whether Mr. Piliere retaliated against Plaintiff by telling a film festival audience she refused to kiss him, damaging her professional reputation by allegedly spreading a rumor that he and Plaintiff were involved sexually, and by replacing her for allegedly not attending a filming rescheduled on short notice (*see, e.g. Bond v New York City Health and Hosps. Corp.*, 215 AD3d 469, 470 [1st Dept

2023]; *La Porta v Alacra, Inc.*, 142 AD3d 851, 853 [1st Dept 2016]). Thus, Plaintiff's New York State and City Human Rights Laws claims survive (*see also Franco v Hyatt Corp.*, 189 AD3d 569, 569-572 [1st Dept 2020]). Finally, Defendants' motion for leave to amend their Answer is granted. Plaintiff has expressly stated she does not oppose leave to amend.

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment is granted to the extent that Plaintiff's defamation, intentional infliction of emotional distress, tortious interference with contractual relations, and breach of contract claims are dismissed; and it is further

ORDERED that Defendants' motion for summary judgment dismissing Plaintiff's claims for violations of the New York State and City Human Rights Laws is denied; and it is further

ORDERED that Defendants' motion seeking leave to amend their Answer is granted, and the Amended Answer in the proposed form annexed to the moving papers (NYSCEF Doc. 37) shall be deemed served upon service of a copy of this order with notice of entry thereof; 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.

7/16/2025
DATE

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

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
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<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: