SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JEANINE R. JOHNSON **PART** 15

Justice

---X

SHARDESE SIMMONS,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF CORRECTION

Defendant.

---X

INDEX NO. 157761/2023

MOTION DATE 11/19/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for REARGUMENT/RECONSIDERATION.

This Court issued a Decision and Order on October 11, 2024 (NYSCEF Doc. No. 17) denying Defendant – The City of New York and The New York City Department of Corrections' motion to dismiss Plaintiff – Shardese Simmons' Summons and Complaint and dismissing Defendant – The New York City Department of Correction from the action. Defendant – The City of New York (hereinafter, "Defendant"), on November 15, 2024, filed a motion to reargue and renew pursuant to CPLR § 2221(a), (d)(2), and (e); or in the alternative, leave to appeal pursuant to CPLR § 5701(c). Upon the foregoing documents, Defendant's motion to renew and reargue is denied in its entirety. This Court affirms its decision in the prior motion to deny Defendant's motion to dismiss.

Pursuant to CPLR § 2221(a), "a motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it."

CPLR § 2221(d)(2)

"A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law." *Mangine v Keller*, 182 A.D.2d 476, 477 (1st Dept 1992); *Foley v Roche*, 68 A.D.2d 558, 567 (1st Dept 1979). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted." *William P. Pahl Equip. Corp. v Kassis,* 182 AD2d 22, 27 (1st Dept 1992).

Defendant, in its affirmation (NYSCEF Doc. No. 21 ¶ 12), contends that its motion should be granted because the Court misapprehended or overlooked that: (1) under the SHRL, Plaintiff needs to establish that she endured an adverse employment action under circumstances that give rise to an inference of discrimination; (2) under the CHRL, Plaintiff needs to establish differential treatment, or that she was treated less well because of her race and gender; and (3) under the CHRL standard for disability discrimination, the Plaintiff must demonstrate her alleged disability caused the behavior for which she was terminated.

This Court affirms the Decision and Order issued October 11, 2024, finding that Plaintiff successfully pled claims for race and gender discrimination under NYSHRL and NYCHRL. To state a discrimination claim under the NYCHRL and NYSHRL, a plaintiff must allege "(1) that he/she is a member of a protected class, (2) that he/she was qualified for the position, (3) that he/she was treated differently or worse than other employees, and (4) that the adverse or different treatment occurred under circumstances giving rise to an inference of discrimination. *Harrington v. City of New York*, 157 A.D.3d 582 (1st Dept 2018).

On a motion to dismiss pursuant to CPLR § 3211(a)(7), for failure to state a cause of action, the pleading is to be afforded a liberal construction. *Leon v. Martinez,* 84 N.Y.2d 83

(1994). This Court is required to "determine only whether the facts alleged fit within any cognizable legal theory." *Bernberg v. Health Mgmt. Sys.*, 303 A.D.2d 348, 349 (2d Dep't 2003).

This Court construed Plaintiff's pleadings liberally when analyzing a motion to dismiss under CPLR § 3211(a)(7). *See generally EBC I, Inc., v. Goldman Sachs & Co.*, 5 N.Y.3d 11 (2005) (whether the pleader will ultimately be able to establish the allegations in the pleading is irrelevant to the determination of a motion to dismiss pursuant to CPLR § 3211(a)(7)). Plaintiff sufficiently pled race and gender discrimination because she alleged that she is a Black/African American woman, qualified for the position, she was treated differently or worse than other employees, and the differential treatment that gave rise to an inference of discrimination due to her race or gender. Plaintiff specifically pled that she was forced to work excessive hours without meals and break, and in some instances, access to the restroom. Compl. p. 3, ¶ 11. This Court finds that Plaintiff successfully pled a cause of action for race and gender discrimination because the pleadings fit within a cognizable legal theory of race and gender discrimination.

This Court affirms its decision to deny Defendant's motion to dismiss as to Plaintiff's claim for disability discrimination. In addition to the *Harrington* factors, to sufficiently allege a prima facie case of disability discrimination under State HRL and City HRL, "the plaintiff must demonstrate that he or she suffered from a disability and that disability caused the behavior for which they were terminated." *Pimentel v. Citibank, N.A.*, 29 A.D.3d 141, 144 (1st Dep't 2006). Plaintiff alleged that the absences due to her disability–Graves' disease–is the reason for her termination. Affording Plaintiff, the benefit of every favorable inference, Plaintiff successfully plead disability discrimination.

CPLR § 2221(e)

Pursuant to CPLR § 2221(e)(2), a motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination or demonstrate that there has been a change in the law that would change the prior determination. *See generally Cuccia v. City of New York*, 306 A.D.2d 2 (1st Dept 2003).

Defendant seeks vacatur of Plaintiff's disability discrimination claim pursuant to CPLR § 2221(e)(2) based the doctrine of collateral estoppel. Plaintiff commenced this action on August 4, 2023 (NYSCEF Doc. No. 2) and the subsequent Article 78 Proceeding ("Article 78") was commenced on November 9, 2023. (NYSCEF Doc. No. 30, p. 6). Defendant argues that Plaintiff's disability discrimination claim must be dismissed based on the Article 78 Judge's finding that Plaintiff did not sufficiently plead her disability discrimination claim. Def. Aff. p. 9-12. Defendant asserts that "Plaintiff brings the same claim here and this claim has already been raised and decided against Simmons." *Id.*, p. 11 ¶ 43. Defendant argues that the decision and order of the Article 78 proceeding denying Plaintiff's disability discrimination claim bar Plaintiff from furthering this action.

This Court finds that collateral estoppel does not bar Plaintiff's disability discrimination claim. Collateral estoppel, or issue preclusion, 'precludes a party from relitigating an issue in a subsequent action that was clearly raised and decided in a prior action against that party,' which applies whether the tribunals or causes of action are the same." *Parker v Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343, 349 (1999). If the issue has been raised prior and decided, the issue must be precluded. "[T]he burden rests upon the proponent of collateral estoppel to demonstrate the identicality and decisiveness of the issue, while the burden rests upon the opponent to establish the absences of a full and fair opportunity to litigate the issue in a prior action or proceeding." *Ryan v N.Y. Tel. Co.*, 62 N.Y.2d 494, 501 (1984). For collateral estoppel to apply, the issue in the

second action must be identical to the one raised in the first action. *Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343 (1999). This Court is unpersuaded by Defendant's argument because in the instant case, the Article 78 proceeding is the subsequent proceeding. The issues in this case were clearly raised prior to the Article 78 proceeding and decided. Therefore, this Court denies Defendant's motion to renew.

CPLR § 5701(c)

Pursuant to CPLR § 5701(c), "an appeal may be taken to the appellate division from any order which is not appealable as of right in an action originating in the supreme court or a county court by permission of a judge who made the order granted before application to a justice of the appellate division; or by permission of a justice of the appellate division in the department to which the appeal could be taken, upon refusal by the judge who made the order or upon direct application." This Court finds no basis to grant the specified relief. Defendant offers no argument in support of its application for permission for leave to appeal. Therefore, Defendant's application is denied.

Accordingly, it is hereby

ORDERED that Defendant – The City of New York's motion to reargue pursuant to CPLR § 2221(d)(2) is denied, it is further

ORDERED that Defendant – The City of New York's motion to renew pursuant to CPLR § 2221(e) is denied; and it is further

ORDERED that Defendant – The City of New York's application for leave to appeal pursuant to CPLR § 5701(c) is denied.

This constitutes the Decision and Order of the Court.

SO ORDERED

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

06/24/2025
DATE

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE