

Dassie v Wilmer Cutler Pickering Hale & Dorr, LLP

2025 NY Slip Op 32830(U)

August 5, 2025

Supreme Court, New York County

Docket Number: Index No. 160227/2023

Judge: David B. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X

JEAN E. DASSIE,

Plaintiff,

- v -

WILMER CUTLER PICKERING HALE AND DORR, LLP,
ANH-KHOA TRAN, JOHN DOE,

Defendant.

-----X

INDEX NO. 160227/2023

MOTION DATE 11/16/2023,
12/06/2023

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33

were read on this motion to/for DISMISS.

Defendants Wilmer Cutler Pickering Hale (WilmerHale) and Dorr LLP (Dorr) (collectively, the Firms) move pursuant to CPLR 3211(a)(7) for an order dismissing counts One, Four, Seven, Eight, Nine and Ten of the complaint (seq. 001). Plaintiff opposes and cross-moves pursuant to CPLR 408 and CPLR 3211(d) and/or (2) for an order granting permission to obtain discovery and/or to amend the complaint if necessary. The Firms oppose the cross-motion.

Defendant Tran moves pursuant to CPLR 3211(a)(7) and (a)(8) for an order dismissing Counts Two, Five and Seven of the complaint (seq. 002). Plaintiff opposes and cross-moves for the same relief described above.

I. COMPLAINT (NYSCEF 1)

As pertinent here, plaintiff sues WilmerHale for race and country of origin discrimination, a hostile work environment, and unlawful retaliation, all in violation of the New York City Human Rights Law, N.Y.C. Admin. Code §§ 8-101, et seq. (NYCHRL), and for defamation, fraudulent misrepresentation, and intentional and negligent infliction of emotional distress (IIED and NIED); Dorr for IIED; and Tran for defamation, tortious interference with contract, and IIED.

Plaintiff, a 33-year-old naturalized citizen of Cameroonian origin and a licensed attorney, contends that he joined WilmerHale as a Class of 2017 Senior Associate and began working there in December 2021. Tran and Doe are allegedly attorneys employed by WilmerHale.

In Count One, plaintiff alleges that WilmerHale defamed him when it published a false statement about his work performance in his 2022 year-end evaluation (2022 evaluation) and 2023 mid-year interim evaluation (2023 evaluation), and that the statements were defamatory per se as they injured plaintiff in his profession. In Count Two, he sues Tran for allegedly making the defamatory statements in the 2022 evaluation to WilmerHale.

In Count Four, plaintiff asserts a claim for fraudulent misrepresentation against WilmerHale, alleging that in his 2022 evaluation, he was given specific directions to improve his work performance, that WilmerHale made them to induce plaintiff to rely on them even though they were false in that WilmerHale had already decided to terminate plaintiff's employment, and that plaintiff relied on them to his detriment by refraining from looking for alternative employment.

In Count Five, plaintiff sues Tran for tortious interference with contract, alleging that plaintiff had a valid employment contract with WilmerHale of which Tran knew, that Tran

intended to interfere with it by making a false report to WilmerHale about plaintiff, and that plaintiff was terminated because of Tran's conduct.

In Count Seven, plaintiff sues all defendants for IIED, and in his Eighth cause of action he sues WilmerHale for NIED.

In his Ninth cause of action, plaintiff alleges that WilmerHale discriminated against him because of his race and national origin, created a hostile work environment, and retaliated against him, all in violation of the NYCHRL.

II. THE FIRMS' MOTION TO DISMISS

Pursuant to CPLR 3211(7), a party may move for dismissal "on the ground that the pleading fails to state a cause of action." Dismissal of a complaint pursuant to CPLR 3211(a)(7) requires that the pleading be afforded a liberal construction and that the court accept the facts as alleged in the complaint as true, accord plaintiffs 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 NY2d 83, 87-88 [1994]; see *CSC Holdings, LLC v Samsung Elecs. Am., Inc.*, 192 AD3d 556 [1st Dept 2021]). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v. Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017] [citations omitted]).

A. Defamation claim (Count One)

In order to establish a prima facie claim of defamation, a plaintiff must prove (1) the making of a false statement, (2) its publication without privilege or authorization to a third party; (3) constituting fault as judged by, at a minimum, a negligence standard, and (4) causing special

harm or constituting defamation per se (*Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999]).

Defendants argue that plaintiff's claim must be dismissed as a defamation claim may not be maintained when the only harm alleged is the loss of at-will employment, that allegations pleaded without particularity and "upon information and belief" are insufficient, that the alleged defamatory statements are protected by a qualified common-interest privilege, and that the statements are opinion only. Plaintiff contends that he has established a defamation claim and that he is also entitled to limited discovery on the claim; he does not address defendants' at-will employment argument.

"New York does not recognize the tort of wrongful discharge' for at-will employees, and discharged employees cannot 'subvert the traditional at-will contract rule by recasting [their] cause of action in terms of [another] tort'" (*Winiarski v Butler*, 200 AD3d 630 [1st Dept 2021] [citations omitted]).

Here, plaintiff's allegations that the defamatory statements referred to his job performance at WilmerHale and that they caused the termination of his at-will employment are an improper attempt to subvert the at-will contract rule (*see Winiarski*, 200 AD3d at 630 [defamation claims properly dismissed as they were based on statements made concerning reasons for plaintiff's discharge]).

Even if not related to plaintiff's at-will employment, the statements are protected by the common-interest privilege. A qualified common-interest privilege applies to communications made by a person with a legitimate interest in making, or a duty to make, the communication, and the communication is sent to a person with a corresponding interest or duty (14 NY Prac, New York Law of Torts 1:51 [2023]). In particular, "a qualified privilege attaches to statements

made for a supervisory purpose in an employment context (*DiCoby v Syracuse Univ.*, 191 AD3d 425 [1st Dept 2021]).

Thus, in *DiCoby*, statements made by the plaintiff's employer during an investigation into workplace conduct were held privileged (*see also Bulow v Women in Need, Inc.*, 89 AD3d 525, 526 [1st Dept 2011] [defamation claim dismissed where plaintiff alleged she was terminated after her supervisor made statements about plaintiff's inappropriate conduct, as statements were subject to qualified privilege "protecting communications between employees on matters of common interest"]). Similarly here, defendants had a common interest in communicating about plaintiff's job performance.

There is no merit to plaintiff's argument that a defamation claim may not be dismissed pre-answer (*see DiCoby*, 191 AD3d at 425 [complaint dismissed where plaintiff failed to state any claims]; *Bulow*, 89 AD3d at 525 [dismissing defamation claim for failure to state it]).

In light of this result, there is no need to address defendants' remaining arguments. Plaintiff's cross-motion for discovery on the defamation claim is denied as the information he seeks would not change the basis for dismissal of the claim (*see Weinstein v City of New York*, 103 AD3d 517 [1st Dept 2013] [plaintiff may not use discovery to remedy defects in pleading where plaintiff failed to show valid defamation claim]).

B. Fraudulent misrepresentation (Count Four)

A fraudulent misrepresentation claim requires a plaintiff to establish: (1) a misrepresentation or material omission of fact, (2) which is either untrue or known to be untrue or recklessly made, (3) "made for the purpose of inducing the other party to rely upon it," (4) "justifiable reliance of the other party on the misrepresentation or material omission," and (5) injury. (*Golobe v Mielnicki*, __NY3d __, 2024 NY Slip Op 01670 [2025] [citations omitted]).

“New York law is clear that absent ‘a constitutionally impermissible purpose, a statutory proscription, or an express limitation in the individual contract of employment, an employer’s right at any time to terminate an employment at will remains unimpaired’ . . . Thus, either the employer or the employee generally may terminate the at-will employment for any reason, or for no reason . . . we have repeatedly refused to recognize exceptions to, or pathways around, these principles” (*see Smalley v Dreyfus Corp.*, 10 NY3d 55, 58 [2008] [citations omitted]).

“An at-will employee, who has been terminated, can not state a fraudulent inducement claim on the basis of having relied upon the employer’s promise not to terminate the contract, or upon any representations of future intentions as to the duration or security of his employment” (*Laduzinski v Alvarez & Marsal Taxand LLC*, 132 AD3d 164 [1st Dept 2015] [citations omitted]).

As plaintiff was an at-will employee, he could not have relied on any alleged promise that he would not be terminated, and as he alleges no injury other than his termination, his claim for fraudulent representation related to, in effect, an alleged promise not to terminate him, is insufficient (*see Smalley*, 10 NY3d at 55 [dismissing fraudulent inducement claim as plaintiffs only alleged fraud related to their acceptance and continued employment with defendants and eschewing of other job opportunities, and “as a party cannot be injured merely by the termination of the (at-will employment) contract—neither party can be said to have reasonably relied upon the other’s promise not to terminate” the employment]; *Meyercord v Curry*, 38 AD3d 315, 316 [1st Dept 2007] [as plaintiff was at-will employee, “and as such, could be terminated at any time . . . any reliance on representations of future intentions, such as job security or future changes, would be deemed unreasonable as a matter of law”]).

In any event, as the 2022 evaluation explicitly advised plaintiff that if his performance did not improve, he could be asked to leave his employment, he has not demonstrated that he justifiably relied on any alleged misrepresentation concerning his future employment with the firm. Moreover, given the warning, plaintiff could not have justifiably refrained from seeking other employment (*see e.g., 114 W. 4th Realty LLC v Brandman*, 147 AD3d 703 [1st Dept 2017] [plaintiff could not have reasonably relied on representations as agreement contained warning that no representations had been made]).

There is no need to consider the parties' remaining arguments on this claim.

C. IIED and NIED claims (Counts seven and eight)

IIED claims are generally not cognizable in the context of at-will employment (*see Miller v Ntl. Prop. Mgt. Assocs., Inc.*, 191 AD3d 1341 [4th Dept 2021] [“it is well established that ‘[t]ort causes of action alleging intentional infliction of emotional distress ... ‘cannot be allowed in circumvention of the unavailability of a tort claim for wrongful discharge or the contract rule against liability for discharge of an at-will employee’”] [citation omitted]; *Minovici v Belkin BV*, 109 AD3d 520 [2d Dept 2013] [“act of terminating an at-will employment relationship ‘may not form the basis of an intentional infliction of emotional distress cause of action in circumvention of the at-will employment rule in New York’”] [citation omitted]).

Therefore, as plaintiff's allegations underlying these claims are based on the same allegations involving his employment with defendants, his IIED claim is dismissed (*see e.g., Miller*, 191 AD3d at 1341 [IIED claim dismissed as plaintiff alleged that defendants committed IIED by engaging in extreme and outrageous conduct in order to procure termination]).

In any event, plaintiff did not allege any extreme and outrageous conduct (*see Richards v Sec. Resources*, 187 AD3d 452 [1st Dept 2020] [dismissing IIED claim, especially as “plaintiff should not be allowed to ... subvert the traditional at-will contract rule by casting his cause of action in terms of a tort of intentional infliction of emotional distress”]).

Absent any allegation that plaintiff suffered a physical injury (*LoPresto v Florio*, 71 AD3d 574 [1st Dept 2020]), that his physical safety was endangered or he feared for his physical safety (*Whitfield v Law Enforcement Employees Benevolent Assn.*, 237 AD3d 1139 [2d Dept 2025]), or that defendants’ conduct was negligent in any way (*id.*), plaintiff does not state a claim for NIED.

D. Discrimination claims (Count nine)

1. Race and national origin discrimination

The NYCHRL provides, in pertinent part, that:

[i]t shall be an unlawful discriminatory practice ... [f]or an employer ... because of the actual or perceived . . . race, creed, color, [or] national origin, . . . of any person, . . . to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment. (Admin Code § 8–107[a][1]).

The NYCHRL “shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed.” (Admin Code § 8–130).

A cause of action for employment discrimination under the NYCHRL is set forth, *prima facie*, on a showing that (1) the plaintiff is a member of a protected class, (2) the plaintiff was qualified to hold the position, (3) the plaintiff was terminated from employment or suffered another adverse employment action, and (4) the discharge or other adverse action occurred under

circumstances giving rise to an inference of discrimination. (*Forrest*, 3 NY3d at 295; *Harrington v City of New York*, 157 AD3d 582, 584 [1st Dept 2018]). The plaintiff's burden of proof in a discrimination case is to show, by a preponderance of the evidence, that he was treated worse than other employees because of a protected characteristic. (*Suri v Grey Global Group, Inc.*, 164 AD3d 108 [1st Dept 2018]).

It is undisputed that the first three elements are met here, and thus the only issue is whether plaintiff's termination or other adverse action(s) occurred under circumstances giving rise to an inference of discrimination. To satisfy this element, a plaintiff must plead facts sufficient to support such an inference beyond conclusory allegations of bias (*Wolfe-Santos v NYS Gaming Commission*, 188 AD3d 622 [1st Dept 2020]; *Askin v Dept. of Educ. of City of NY*, 110 AD3d 621, 622 [1st Dept 2013]). Allegations of discriminatory comments by an employer may suffice (*O'Rourke v Natl. Foreign Trade Council*, 176 AD3d 517 [1st Dept 2019]; *Whitfield-Ortiz v Dept. of Educ. of City of N.Y.*, 116 AD3d 580, 581 [1st Dept 2014]) or of disparate treatment of similarly-situated employees (*Brown v City of New York*, 188 AD3d 518, 519 [1st Dept 2020]; *Whitfield-Ortiz*, 116 AD3d at 581).

Here, the complaint contains no allegations that discriminatory comments about plaintiff's race and/or national origin were made, nor that other similarly-situated employees were treated better than him because they were not of his race or national origin. Plaintiff thus fails to plead a claim of discrimination under the NYCHRL (*see Acala v Mintz Levin et al.*, 222 AD3d 706 [2d Dept 2023] [plaintiff failed to allege acts by defendant sufficient to establish that similarly-situated persons were treated more favorably than her]; *Brown*, 188 AD3d at 518 [complaint did not allege that decisionmakers made remarks that showed discriminatory intent or facts that would establish that similarly-situated individuals were treated more favorably]).

Defendants thus demonstrate that plaintiff failed to plead a cause of action for race and/or national origin discrimination in violation of the NYCHRL.

2. Hostile work environment

A hostile work environment violates the NYCHRL where an employee “has been treated less well than other employees because of [his/her] protected status.” (*Chin v New York City Hous. Auth.*, 106 AD3d 443, 445 [1st Dept 2013]; *see also Golston-Green v City of New York*, 184 AD3d 24, 40-41[2d Dept 2020] [“Another way in which a plaintiff may establish discrimination in the terms, conditions, and privileges or employment is by showing that she or he was subject to a hostile work environment”] [internal quotation marks and citation omitted]).

Despite the broader application of the NYCHRL, conduct that consists of “petty slights or trivial inconveniences . . . do[es] not suffice to support a hostile work environment claim” (*Buchwald v Silverman Shin & Byrne PLLC*, 149 AD3d 560, 560 [1st Dept 2017] [citation omitted]). Nonetheless, “[c]ourts must be mindful that the NYCHRL is not a general civility code and that the plaintiff still bears the burden of showing that the conduct is caused by a discriminatory motive” (*Id.* at 110 [internal quotation marks and citation omitted]).

As plaintiff has not shown any animus toward him based on his race or national origin, his hostile work environment claim may not be maintained (*Lent v City of New York*, 9 AD3d 494 [1st Dept 2022]; *Askin*, 110 AD3d at 621).

3. Retaliation

A retaliation claim under the NYCHRL is established by proof that: (1) the plaintiff engaged in protected activity, (2) the employer was aware of the activity, (3) the defendant took an action that disadvantaged the plaintiff, and (4) there is a causal connection between the

protected activity and defendant's action (*Mahkaradze v Ognibene*, 239 AD3d 844 [2d Dept 2025]).

As plaintiff's complaint does not contain allegations showing that he engaged in a protected activity, i.e., that he complained about discriminatory treatment or a hostile work environment, it does not state a claim of retaliation under the NYCHRL (*see Hribovsek v Utd. Cerebral Palsy of New York City*, 223 AD3d 618 [1st Dept 2024] [plaintiff failed to demonstrate that she engaged in protected activity because she never complained that she was discriminated against due to her race, national origin, or disability]; *see also J.B. v City of New York*, 231 AD3d 696 [2d Dept 2024] [complaint failed to allege that defendant retaliated against plaintiffs because they engaged in protected activity]).

III. TRAN'S MOTION TO DISMISS

For the same reasons set forth above (*supra*, II.A.), plaintiff's defamation claim against Tran fails, as does his IIED claim (*supra*, II.C).

Also unavailing is plaintiff's tortious interference with contract claim against Tran (*see Ackerman v Restani Constr. Corp.*, 233 AD3d 831 [2d Dept 2024] [at-will employment agreement cannot be basis for tortious interference claim]; *Wolberg v IAI N. Am., Inc.*, 161 AD3d 468 [1st Dept 2018] [same]).

IV. CROSS-MOTION TO AMEND

Plaintiff's affidavit submitted in support of his cross-motion is insufficient to show that leave to amend is warranted, as the allegations contained therein do not cure the defects in his complaint. Moreover, he failed to submit a copy of his proposed amended pleading. The motion for leave to amend is thus denied.

V. CONCLUSION

For all of these reasons, the Firms and Tran are entitled to the dismissal of the complaint against them, as the claims at issue on their motions are all of the claims asserted by plaintiff against them.

Moreover, there is no proof that plaintiff ever served Doe with his pleadings, and in any event, for the same reasons discussed above, all of plaintiff’s claims are insufficiently pleaded against Doe, and thus dismissal of the complaint against Doe is also warranted.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendants Wilmer Cutler Pickering Hale and Dorr LLP (seq. 001) is granted, and plaintiff’s claims against them are dismissed; it is further

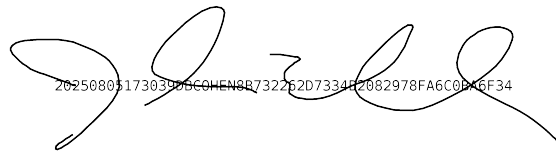
ORDERED that plaintiff’s cross-motion for leave to obtain discovery and/or amend the complaint is denied; it is further

ORDERED that defendant Tran’s motion to dismiss is granted (seq. 002), and plaintiff’s claims against him are dismissed, and plaintiff’s cross-motion is denied; it is further

ORDERED that plaintiff’s claims against Doe are dismissed; and it is further

ORDERED that as a result, the complaint is dismissed in its entirety, and the clerk is directed to enter judgment accordingly.

8/5/2025
DATE


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DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE