SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART** **58**

Justice

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MARCO CUELLAR,

Plaintiff,

- v -

CHRISTIE'S INC.,SATROHAN MAHABEO, KARRIE TINUCCI, AARON YOUNG, PATRICK CONTI, SATROHAN MAHADEO, KERRI TINUCCI, AARON YOUNG, PATRICK CONTE

Defendants.

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INDEX NO. 155077/2023

MOTION DATE 08/22/2023, 08/28/2023

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18
were read on this motion to/for AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 19, 20, 21, 22, 23, 24, 25
were read on this motion to/for DISMISS.

In this discrimination action, plaintiff moves for an order granting him leave to amend the caption to accurately reflects the names of defendants Mahadeo, Tinucci, and Conte (seq. 002). The motion is unopposed.

By notice of motion, defendants move pursuant to CPLR 3211(a)(5) and (7) to dismiss certain claims as time-barred, and to dismiss the entirety of the amended complaint for failure to state a claim (seq. 003). Plaintiff opposes.

I. AMENDED COMPLAINT (NYSCEF 21)

In his amended complaint, plaintiff identifies himself as a 66-year-old, Guatemalan-born, "brown-skinned Latino male," and contends that he was an employee of defendant Christie's Inc. until November 16, 2022. Defendant Mahadeo allegedly held a supervisory position at Christie's, and was plaintiff's supervisor; defendant Conte, a white Caucasian male, was the Vice

President and Director of Logistics and also plaintiff's supervisor; defendant Young, a white Caucasian male, was an Artwork Operations and Logistics Specialist and plaintiff's supervisor; and defendant Tinucci, a white Caucasian female, was a Gallery Operations Manager.

Plaintiff contends that he was hired by Christie's in 1998 as an Art Handler, and had an excellent work record, but that beginning in 2021, defendants began to discriminate against him based on his age, race, color, and national origin. As an example of such discrimination, plaintiff asserts that defendants deliberately assigned him to work in areas with limited customer traffic during special events so that he would be unseen by clients. As another example, he maintains that in 2010, Christie's passed him over for a promotion to direct the Art Décor Department, and instead promoted a younger, white Caucasian male who was not as productive, experienced, or qualified as plaintiff and who quit the role within three weeks.

He alleges that beginning in 2019, he began to face hostility by his coworker, Tinucci, who was verbally abusive to plaintiff and whose acts were discriminatory as she did not act similarly to younger, Caucasian employees. He filed "numerous, repeated" complaints to Christie's Human Resources department, but claims they were ignored, and that instead, the other defendants retaliated against him with the specific intent to destroy his career advancement at Christie's.

Plaintiff asserts that in 2021, defendant Mahadeo began spreading rumors at Christie's that plaintiff was "lazy," thereby employing a stereotype demeaning to Hispanics, and did so with discriminatory intent as he did not similarly describe younger, Caucasian employees. Plaintiff claims that he complained about Mahadeo to Christie's but it took no action.

Plaintiff levels similar accusations against defendants Young and Conte, and alleges that

Christie's withheld job opportunities from him based on his age, race, color and national origin, and in retaliation for his complaints.

In November 2022, plaintiff claims that Christie's falsely accused him of inappropriately touching a security guard, which plaintiff denies, and despite a video supporting plaintiff's version of events, Christie's suspended him for two weeks and then terminated his employment. After plaintiff and his union representatives met with Christie's and everyone in attendance viewed the video, Christie's nonetheless failed to reinstate plaintiff's employment.

Plaintiff thus sues all defendants for age, race, color and national origin discrimination in violation of the New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL), for retaliation in violation of the NYSHRL and NYCHRL, and for creating a hostile work environment in violation of the NYCHRL; and the individual defendants for aiding and abetting discrimination under the NYSHRL and NYCHRL and for supervisory liability under the NYCHRL.

II. MOTION TO DISMISS

Pursuant to CPLR 3211(a)(5), a claim may be dismissed if it was asserted past the applicable statute of limitations. 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. Discrimination claims under NYSHRL and NYCHRL

The New York State Human Rights Law (NYSHRL) (Exec Law § 296 *et seq*) prohibits unlawful discriminatory practices. In 2019, the NYSHRL was amended to provide that

> [t]he provisions of [Executive Law 296] shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed. Exceptions to and exemptions from the provisions of this article shall be construed narrowly in order to maximize deterrence of discriminatory conduct.

A plaintiff advancing a claim for discrimination under the NYSHRL must plead and prove that: (1) she is a member of a protected class; (2) she was qualified to hold her employment position; (3) she was terminated from employment or suffered another adverse employment action; and (4) the discharge or adverse action took place under circumstances giving rise to an inference of discrimination (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295 [2004]).

The burden then shifts to the employer "to rebut the presumption of discrimination by clearly setting forth, through the introduction of admissible evidence, legitimate, independent, and nondiscriminatory reasons to support its employment decision" (*id*. [citations omitted]). In order to nevertheless succeed on her claim, the plaintiff must prove that the legitimate reasons proffered by the defendant were merely a pretext for discrimination by demonstrating both that the stated reasons were false and that discrimination was the real reason (*see id*. at 629-630).

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 [protected characteristic] … 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, plaintiff's complaint contains no allegations of discriminatory comments related to plaintiff's protected characteristics (*cf Krebaum v Cap. One, N.A.*, 138 AD3d 528 [1st Dept 2016] [five months before termination, plaintiff's manager made repeated negative comments about plaintiff's age, and he was replaced by 25-year-old]). To the extent that plaintiff alleges that the use of the term "lazy" to describe him was racially-coded language about Latinos or non-whites, the word itself is neutral and plaintiff provides no context for finding that the word was used in a racially-derogatory way (*see e.g., See Thelwell v. City of New York*, 2015 WL 4545881, at *10 [SD NY 2015] [under state and city HRLs, few instances of defendants' purported use of the words "angry" and "abrasive" did not rise to the level of racial code words such as "boy" or "thug;" no contextual evidence that the terms "angry" or "aggressive" were racially charged, and plaintiff's subjective interpretation of critical but facially nondiscriminatory terms did not "itself" reveal discriminatory animus]; *Humphries v. City Univ. of New York*, 2013 WL 6196561, at *9 [SD NY 2013] [on motion to dismiss, use of words "aggressive, agitated, angry, belligerent, disruptive, hands on hip, hostile, threatening," which allegedly invoked stereotype of "angry black woman," did not support claim of racial discrimination as not accompanied by other "concrete factual allegations"]; *Nolley v. Swiss Reinsurance Am. Corp.*, 857 F Supp 2d 441 [SD NY 2012] [rejecting argument that description of plaintiff as "aggressive" was racially coded language in context in which it was used; word "aggressive" is racially neutral and supervisors described plaintiff as aggressive in context of recounting plaintiff's tone and behavior during

vehement conversations and when describing complaints from others whom actually used term "aggressive"]).

Nor does the complaint contain any non-conclusory allegations that a specific similarly-situated individual or individuals were treated better than plaintiff because of a protected characteristic. Most of plaintiff's allegations are conclusory and unsupported by any facts or dates.; other than describing some other employees as "younger," plaintiff provides no details from which it may be inferred that they were similarly-situated to him. Nor does he allege that they were under 40 years of age, which is the age at which the age-related anti-discrimination provisions of the NYSHRL and NYCHRL apply (*see Askin*, 110 AD3d at 622 [while plaintiff asserted that defendants' actions were motivated by age-related bias, she made no concrete factual allegations to support claim, and allegations amounted to "mere legal conclusions"]; *Pelepelin v City of New York*, 189 AD3d 450 [1st Dept 2020] [plaintiff's bare allegations that younger coworkers did not receive disadvantageous assignments did not support inference of age-related bias]).

Plaintiff thus fails to plead a claim of discrimination under the NYSHRL and NYCHRL (*see Currid v City of New York*, AD3d , 2025 WL 2405855 [2d Dept 2025] [plaintiff's conclusory allegations that defendants discriminated against him were unsupported by sufficient factual allegations to state claim under either NYSHRL or NYCHRL]; *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]; *cf Okeke v Interfaith Med. Ctr.*, 224 AD3d 763 [2d Dept 2024] [plaintiff stated

age discrimination claim as allegations that defendants' actions were motivated by age-related bias were supported by specific factual allegations that plaintiff was paid less money for doing same job as less-experienced and qualified, much younger coworkers, two of whom were identified in detail]).

B. Retaliation claim under the NYSHRL and NYCHRL

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]). The causal connection may be shown indirectly by proof that the protected activity was closely followed in time by the adverse action (*Cifra v G.E. Co*., 252 F3d 205 [2d Cir 2001]; *see also Margarita v Mountain Time Health, LLC*, AD3d , 2025 WL 1888542 [2d Dept 2025] [temporal proximity may be sufficient in itself to permit inference of causal connection]).

Here, even assuming that the complaint sufficiently alleges that plaintiff's complaints constituted protected activity, in that he specifically complained about discrimination and/or retaliation and that the people who terminated him were aware of the complaints, there are no allegations or facts showing that defendants took any adverse action against him because of his complaints about discrimination. There are no specific dates provided as to when plaintiff made his complaints and when certain adverse actions occurred, and thus no evidence of a temporal link between any protected activity and adverse action. Moreover, to the extent that it may be inferred that plaintiff began making complaints in 2019, his termination three years later also lacks sufficient temporal proximity (*see Caputo v IESI NY Corp*., 228 AD3d 480 [1st Dept 2025] [temporal proximity of five month found insufficient to show causal connection]; *Mejia v T.N.*

888 Eighth Ave. LLC Co., 169 AD3d 613 [1st Dept 2019] [plaintiff failed to specify instances, dates or times of alleged complaints, and complaint made four years before alleged discharge was too remote in time to raise issue as to retaliation]; *cf Emengo v State*, 143 AD3d 508 [1st Dept 2016] [alleged retaliatory action that occurred less than month after plaintiff's complaint was temporally close and thus supported inference of retaliation]; *Krebaum*, 138 AD3d at 528 [where plaintiff was terminated one month after making complaint, temporal proximity indirectly showed requisite causal connection]).

In any event, defendants offer a non-pretextual reason for plaintiff's termination, as, while plaintiff denies "inappropriately" touching a female security guard, he does not deny touching her at all, thereby negating any causal connection (*Mejia*, 169 AD3d at 614 [plaintiff failed to show that defendants' commencement of lawsuit against her for theft was retaliation for unspecified complaints]).

C. Hostile work environment

As plaintiff has not shown any discriminatory animus toward him, 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).

D. Individual defendants' liability

Absent a valid discrimination claim, there is no cognizable claim for aiding and abetting discrimination or supervisory liability (*Currid*, AD3d , 2025 WL 2405855; *Shapiro v State*, 217 AD3d 700 [2d Dept 2023]).

E. Time-barred allegations

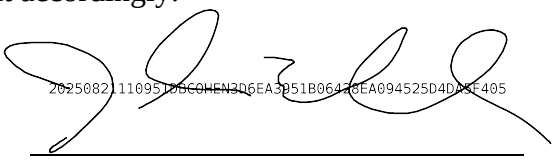
In light of the above result, the remainder of defendants' arguments need not be considered.

III. CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiff's motion for leave to amend the caption(seq. 002) is denied as academic; it is further

ORDERED that defendants' motion to dismiss is granted, and the complaint is dismissed in its entirety, and the clerk is directed to enter judgment accordingly.



8/21/2025
DATE

DAVID B. COHEN, J.S.C.

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