New York State Div. of Human Rights v 229 E. 28th St. Owners Corp.

2025 NY Slip Op 33230(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 451239/2023

Judge: Judy H. Kim

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JUDY H. KIM** **PART** **04**

Justice

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NEW YORK STATE DIVISION OF HUMAN RIGHTS on the complaint of Rori Montali,

Plaintiff,

- v -

229 E. 28TH ST. OWNERS CORP., TAUNJA PULAKHANDAM, TUDOR REALTY SERVICES CORP.,

Defendants.

----------X

INDEX NO. 451239/2023

MOTION DATE 07/14/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion for DISMISSAL.

Upon the foregoing documents, defendants' motion to dismiss the complaint is granted in part, to the extent that the complaint's first and second causes of action are dismissed and is otherwise denied.

Plaintiff, the New York State Division of Human Rights ("DHR"), brings this action on behalf of complainant Rori Montali, asserting that defendants have violated various provisions of Executive Law §296 (also known as the New York State Human Rights Law or "NYSHRL") in failing to address her requests of an accommodation for her disability and retaliating against her for filing a discrimination complaint with United States Department of Housing and Urban Development.

FACTUAL BACKGROUND

The following factual recitation is adapted from plaintiff's complaint, which is taken as true for purposes of this motion, and documentary evidence submitted in connection with defendants' motion.

Since April 2005, Montali has been a shareholder of Apartment 1F (the "Apartment"), a studio apartment in 229 East 28th Street, New York, New York (the "Building"), and currently resides there (NYSCEF Doc No. 1, complaint at ¶¶17, 18). Defendant 229 E. 28 St. Owners Corp. ("Owners Corp.") owns the Building while defendant Taunja Pulakhandam served as the president of Owners Corp.'s Board of Directors (the "Board"). Tudor Realty Services Corp. ("Tudor") is the managing agent for Owners Corp. (*id.* at ¶¶7-10).

Montali has a diagnosed mental impairment which "results in severe panic attacks, depression, seizure-like events, mania, and generalized anxiety disorder" (*id.* at ¶19). It is undisputed that, as a result, Montali is a person with disabilities as defined under Executive Law 292(21) (*id.* at ¶20). Montali's disability requires that she have a friend or family member stay with her at night (*id.* at ¶21).

The Building's "House Rules" dictate that: "the [A]partment may be occupied from time to time by guests of the Lessee for a period of time not exceeding one month, unless a longer period is approved in writing by the Lessor, but no guests may occupy the apartment unless one or more of the permitted adult residents are then in occupancy or unless consented to in writing by the Lessor" (*id.* at ¶39). Montali's Proprietary Lease (the "Lease") for the Apartment similarly provides that

> [T]he Lessee shall not … permit the same or any part hereof to be occupied or used for any purpose other than as a dwelling for the lessee and the lessee spouse their children grandchildren parents grandparents brothers and sisters and domestic employees. In addition to the foregoing the apartment may be occupied from time

> to time by guests of the lessee for a period of time not exceeding one month but no guests may occupy the apartment unless one or more of the permitted adult residents are then in occupancy or unless consented to by the lessor

(NYSCEF Doc No. 9, lease at ¶14 [emphasis added]).

Plaintiff asserts that Montali's "disability requires a reasonable accommodation to Defendant's [House Rules] so that [she] may reside safely in her home while there while also retaining the ability to travel as non-disabled lessee may" (NYSCEF Doc No. 1, complaint at ¶40).

On or about May 17, 2019, Montali requested that the Board permit her to sublet her Apartment, which request was denied[1] (*id.* at ¶¶25-26). On or about May 30, 2019, Montali's counsel "notified defendants that she was receiving medical treatment in California and requested that defendants permit her to sublet the Apartment as a reasonable accommodation for her disability" (*id.* at ¶27; *see also* NYSCEF Doc No. 14, May 30, 2019 letter). Defendants denied this request on or about June 19, 2019 (*id.* at ¶28).

On January 19, 2021, Montali's counsel sent a letter to the Board stating, in pertinent part:

> As of February 1, 2021 my client needs to have a live in helper reside at the apartment. My client commutes back and forth from California to New York for medical care and treatment as well as for visits and cannot be alone in her apartment because of her medical conditions. She was awarded Social Security Disability benefits on December 21, 2011. Since then her medical condition has deteriorated to the point that she needs a live in companion whenever she is in New York. (She also has a residence in California) …
>
> To offset the expense of a live in helper my client will be charging the helper rent and the cooperative can consider this [a] request for a sublet.
>
> The Proprietary Lease, under paragraph fourteen (14), Use of Premises allows for a domestic servant, in this case we chose to use the terms Home Health Care Aide, the By Laws of the Cooperation also allows for Domestic Servants to reside on the property, which is what Ms. Montali needs, someone to care for her when she is in New York …

[1] Under the terms of the Lease, Montali must obtain Board approval to sublet her apartment (*id.* at 24; NYSCEF Doc No. 9, lease at ¶15).

(NYSCEF Doc No. 19).

Defendants denied this request by letter dated March 19, 2021 (NYSCEF Doc No. 1, complaint at ¶30). In a letter dated April 28, 2021, Montali wrote:

> I am formally requesting that the Board make a reasonable accommodation by allowing me to have a roommate/aide live full time in my apartment. I am legally disabled and it has been recommended by my treating physician that I have an individual with me in the evening and overnight hours. (Please see attached letter from Dr. Katherine lnoyama). This individual is necessary to ensure my safety in the event I have a medical episode related to my disability. Since I travel frequently between California and New York it is imperative that I can rely on having someone in place in my apartment at all times. It would be very burdensome and extremely costly to find someone on a temporary basis …

(NYSCEF Doc No. 25 [emphasis added]).

The Board responded by letter dated May 18, 2021, stating:

> Please be advised that you do not need a special accommodation to have a roommate. As long as you are occupying the apartment on a permanent basis, a roommate is permitted under New York State Law. However, as you have noted in your correspondence, and as has been evident from prior instances where you attempted to illegally sublet the apartment (as recently as last year, also claiming that the occupant was a Home Health Aide), you primarily reside and spend the majority of your time in California and not in New York. Therefore, a permanent occupant in the apartment when you are not present is an illegal sublet and not a roommate.
>
> If instead you seek permission to have a Home Health Aide reside in the apartment, that too is permitted under your Proprietary Lease, as long as the Aide is an employee. Towards that end please provide the following for Board review and approval:
>
> - Certification for the Home Health Aide with their registry number
> - Copy of the employment contract which clearly demonstrates that the Home Health Aide is being provided housing and is not paying you rent for living in the apartment
> - Name and contact information for the employee …

(NYSCEF Doc No. 26 [emphasis added]).

On or about June 21, 2021, Montali filed a complaint with the United States Department of Housing and Urban Development ("HUD") alleging that defendants had discriminated against her based on her disability (NYSCEF Doc No. 1, complaint at ¶12). Plaintiff alleges that after Montali filed the HUD complaint, defendants retaliated against her by: barring her from subletting the Apartment; placing a security camera outside her apartment to track her movements; improperly assessing legal fees or penalties; failing to make requested repairs to the Apartment; and failing to respond to a COVID-19 Hardship Declaration she filed (*id.* at ¶¶61-69). Plaintiff further alleges that, in or around November 2021, Pulakhandam told Montali that she did not want Montali in the Building and that Montali should move out (*id.* at ¶32).

HUD "forwarded the Complaint to DHR," after which plaintiff investigated and determined that probable cause existed for Montali's discrimination claim (*id.* at ¶¶12-14). Defendants "elected … to have the matter adjudicated in a civil court rather than through [DHR's] administrative hearing process" (*id.* at ¶15) and plaintiff commenced this action in May 2023.

The complaint asserts three causes of action, for: (1) violation of Executive Law §296(18) in failing to allow Montali to have a second occupant reside in the Apartment at all times including periods when she is away from the Apartment; (2) violation of Executive Law §296(5)(a)(2) in refusing to permit a second occupant to reside in her apartment to provide disability-related assistance; and (3) violation of Executive Law §296(7) in retaliating against Montali for filing a complaint with HUD.

Defendants now move to dismiss the complaint against all defendants pursuant to CPLR 3211(a)(1). In support of their motion, they submit various letters between Montali and her counsel and the Board—including the correspondence quoted above—and argue that Montali's first and second causes of action should be dismissed because these letters establish that the accommodation

Montali seeks is permission to sublet her apartment, which is necessarily unconnected to her use and enjoyment of the Apartment since the sublessor, rather than Montali, would be living in it. Defendants argue, alternatively, that if Montali seeks permission for a full time second occupant, the documentary evidence establishes that she may currently have either a Home Health Aide or, if the Apartment is her primary residence, a roommate as permitted by Real Property Law §235-f. Finally, defendants assert that the retaliation claim should be dismissed because they have rebutted the factual allegations underlying this claim through their submission of Montali's tenant ledger, checks and emails, photos purportedly taken from surveillance camera in hallway and an email documenting defendants' provision of a sublet application to Montali's counsel.

Defendants also move, pursuant to CPLR 3211(a)(7) to dismiss the complaint as against Pulakhandam and Tudor, arguing that the complaint's sole factual allegation as to Pulakhandam—that she told Montali that she was not wanted in the Building and should move out—does not support a claim for discrimination or retaliation and that the complaint also fails to include any factual allegations setting forth discriminatory or retaliatory conduct by Tudor.

In opposition, plaintiff represents that Montali is not seeking permission to sublet the Apartment but to have a roommate, guest, aide, or other individual reside with her in the Apartment full time, including when she is away, and argues that defendants' submissions are not documentary evidence and do not conclusively establish a defense to the complaint's claims as a matter of law. Plaintiff further argues that the complaint sufficiently alleges Pulakhandam and Tudor's participation in Owners Corp.'s discrimination and retaliation against Montali.

In reply, defendants emphasize that, "[t]o the extent Montali wants to … obtain permission to have someone living in the Apartment when she is not there … this is inherently inconsistent with an indispensable element of a discrimination claim for failure to provide a reasonable

accommodation, i.e. that the accommodation is or may be necessary for the Plaintiff to use and enjoy the Apartment" (NYSCEF Doc No. 39).

DISCUSSION

Defendants' Motion to Dismiss Based on Documentary Evidence

Defendants' motion to dismiss pursuant to CPLR 3211(a)(1) is granted as to the first and second causes of action. On a motion to dismiss pursuant to CPLR 3211(a)(1), a court is obliged "to accept the complaint's factual allegations as true, according to plaintiff the benefit of every possible favorable inference, and determining only whether the facts as alleged fit within any cognizable legal theory" (*Kolchins v Evolution Markets, Inc.*, 128 AD3d 47, 57-58 [1st Dept 2015] [internal citations and quotations omitted], *affd*, 31 NY3d 100 [2018]). Dismissal is "warranted only if the documentary evidence submitted "utterly refutes plaintiff's factual allegations and conclusively establishes a defense to the asserted claims as a matter of law" (*id*). To qualify as documentary evidence, a party's submissions must be unambiguous, of undisputed authenticity, and its contents "essentially undeniable" (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019] [internal citations and quotations omitted]). Contrary to plaintiff's position, the correspondence between Montali, her counsel, and the Board—the authenticity of which is not disputed—satisfies these requirements (*see WFB Telecom., Inc. v NYNEX Corp.*, 188 AD2d 257 [1st Dept 1992]).

These letters also mandate the dismissal of plaintiff's first two causes of action, as they establish that the accommodation sought is presently available to Montali (*see id.*).

Executive Law §296(5)(a)(2) provides that:

> It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof … To discriminate against any person because of … disability …

> in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(Executive Law §296[5][a][2]).

> Executive Law 296(18), in turn, provides that
>
> It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations … (2) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling"

(Executive Law §296[18][2] [emphasis added]).

Plaintiff alleges that defendants violated these statutes in refusing to permit Montali to have a second occupant reside in the Apartment to provide disability-related assistance or have a second occupant to reside there full-time regardless of whether she was present. However, the letters submitted by defendants establish that Montali was informed, correctly, that she was permitted to have a live-in Home Health Aide to provide disability-related assistance or have a roommate, pursuant to RPL §235-f[2], if the Apartment was her primary residence (a condition that Montali satisfies, according to plaintiff). Therefore, as Montali can presently obtain the accommodation she seeks, defendants were not obligated to accommodate her in the precise manner she desires (*see Roberman v Alamo Drafthouse Cinemas Holdings, LLC*, 67 Misc 3d 182 [Sup Ct, Kings County 2020] [allegations that defendant movie theater did not offer plaintiff, a hearing impaired individual, open captioning did not state a claim for failure to accommodate under New York City Human Rights Law where complaint also alleged that plaintiff watched the movie using an external closed captioning device defendant provided "and did not allege that she ever

[2] This statute, also called the Roommate Law, provides, as pertinent here, that "Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant's spouse occupies the premises as his primary residence" (RPL §235-f[3] [emphasis added]).

communicated to defendant that only open captioning would be satisfactory"]; *see also Resnick v. 392 Cent. Park W. Condo.*, No. 07–CV–1988, 2007 WL 2375750, at *2 [SDNY 2007] [tenant's claims for failure to accommodate under the Fair Housing Act and NYSHRL, based upon condominium's refusal to remove or lower speed bump at entrance to building's parking lot, dismissed where parking lot was accessible to tenant from another entrance]).

Even setting the foregoing aside, to the extent the complaint indicates that Montali's preferred accommodation is a revision to the Building's House Rules permitting her to have a guest in the Apartment when she is not there, this accommodation is not sufficiently tied to her disability as to be "necessary" to afford her an equal opportunity to use and enjoy the Apartment under the statute. "Housing discrimination claims under the NYSHRL are evaluated under the same framework as those brought under the federal [Fair Housing Act, 42 USC §3601]" (*Katz v New York City Hous. Preserv. & Dev.*, 86 Misc 3d 1256(A) [Sup Ct 2025] citing *Stalker v Stewart Tenants Corp.*, 93 AD3d 550, 552 [1st Dept 2012]) and, under the Fair Housing Act, "an accommodation is not 'necessary' to afford a disabled person access to equal housing opportunity when it does not "directly ameliorate an effect of the disability" (*Marks v BLDG Mgt. Co., Inc.*, 99 CIV. 5733 (THK), 2002 WL 764473, at *8 [SDNY Apr. 26, 2002] [internal citations omitted] *affd*, 56 Fed Appx 62 [2d Cir 2003], *amended*, 57 Fed Appx 501 [2d Cir 2003]). This principle is reflected in the NYSHRL jurisprudence of this State (*compare Fantauzzi v New York State Div. of Human Rights*, 113 AD3d 518, 519-20 [1st Dept 2014] [offer of first-floor apartment to tenant for period elevator would be out of commission was reasonable accommodation to petitioner's difficulty walking and bending knee, post-surgery] *and 2132-38 Wallace Ave. Corp. v Gibson*, 60 AD3d 575 [1st Dept 2009] [providing disabled tenant with keys to the building's rear entrance, which did not have steps and was closest entrance to available parking spaces, was reasonable

accommodation to facilitate tenant's access to apartment] *with Lindsay Park Hous. Corp. v New York State Div. of Human Rights*, 56 AD3d 477, 478-79 [2d Dept 2008] [revocation of complainant's parking space was not a denial of a reasonable accommodation where complainant did not own a car but used space to facilitate her caregivers visits]).

A modification of the House Rules to permit Montali's guest to remain in the Apartment when she is away would, by definition, not affect Montali's use and enjoyment of the Apartment, since Montali would not be there. Neither would this accommodation be related to her disability which, per the complaint, requires that someone is present when she is there (*see Marks v BLDG Mgt. Co., Inc.*, 99 CIV. 5733 (THK), 2002 WL 764473, at *8 [SDNY Apr. 26, 2002] [plaintiff's request to maintain a roommate in her apartment while she was in Florida for the winter months (which was necessitated by her AIDS diagnosis) was not an "accommodation request addressed [to] a hardship created by her disability" under the Fair Housing Act], *affd*, 56 Fed Appx 62 [2d Cir 2003], *amended*, 57 Fed Appx 501 [2d Cir 2003]). Accordingly, defendants' motion to dismiss is granted as to the first and second causes of action in the complaint.

However, defendants' motion to dismiss plaintiff's third cause of action is denied.[3] The material submitted by defendants to rebut plaintiff's factual allegations as to their retaliatory acts is not "documentary evidence" within the meaning of CPLR 3211(a)(1). The unauthenticated photograph of Montali's hallway, rent ledger, checks from an unknown source, and email purportedly from New York State Homeowner Assistance are not of indisputable authenticity and, in any event, require further interpretation and explanation (*see Chacho v Cudney*, 2024 NY Slip

[3] After the submission of this motion, defendants submitted DHR's Determination and Order After Investigation which concluded that there was no probable cause to support Montali's retaliation claims, which claim appears to be based upon at least some of the same retaliatory conduct alleged in plaintiff's complaint (NYSCEF Doc No. 43). Whether this Determination and Order After Investigation has collateral estoppel effect or otherwise bars this claim under the election of remedies doctrine is beyond the scope of the present motion.

Op 33927[U], 2-3 [Sup Ct, Kings County 2024] ["demolition plan is not documentary evidence, as the Court cannot interpret the plan without the use of an affidavit, which is not documentary evidence and cannot be considered"]).

Defendants' Motion to Dismiss for Failure to State a Claim

In light of the foregoing, the Court addresses defendants' motion to dismiss for failure to state a claim against Pulakhandam or Tudor as directed to the surviving retaliation claim. This branch of defendants' motion is denied. On a motion to dismiss under CPLR 3211(a)(7), the pleading is afforded a liberal construction and the court must accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83 [1994]).

To state a claim under Executive Law §296(7), plaintiff must allege that Montali engaged in a protected activity, that the defendants were aware of this activity, that the defendants took adverse action against Montali and that a causal connection exists between the protected activity and the adverse action (*see Matter of Delkap Mgt., Inc. v New York State Div. of Human Rights*, 144 AD3d 1148, 1151 [2d Dept 2016], *revd on other grounds*, 33 NY3d 925 [2019]; *see also Hollandale Apartments & Health Club, LLC v Bonesteel*, 173 AD3d 55, 68 [3d Dept 2019] [internal citations omitted]). There is no dispute that Montali's complaint to HUD was a protected activity or that the instant complaint's allegations of surveillance, improperly assessed charges, and blanket denial of permission to sublet are adverse acts under the statute (*see Matter of Delkap* at 1152 [retaliatory conduct "included taking away complainant's designated parking space for a nine-day period, refusing to accept her maintenance checks, filing eviction proceedings against her, falsely informing her that the SDHR had ruled in the petitioners' favor, and directing her to

immediately remove her dog from her apartment"]). Instead, defendants argue that the complaint insufficiently details specific acts by Pulakhandam and Tudor. The Court disagrees.

As to Pulakhandam, "[t]he NYSHRL's anti-retaliation section provides for individual liability with no exemption for corporate directors or officers" (*Fletcher v Dakota, Inc*., 99 AD3d 43 [1st Dept 2012] [internal citations omitted]) and Pulakhandam's statement that she did not want Montali in the Building and that Montali should move out, read in the light most favorable to plaintiff, permits an inference that she was involved in retaliatory acts alleged in her role as Board President (*cf. Sayeh v 66 Madison Ave. Apt. Corp.*, 73 AD3d 459, 460 [1st Dept 2010] ["There is no evidence that either Silberman or Bunis was involved in the determination to turn down plaintiff's application, and thus, there is no basis for a discrimination claim against them"]). Defendants' motion is also denied as to Tudor, as its involvement in the retaliatory acts alleged in its role as the managing agent of Owners Corp. is reasonably inferred from the complaint's allegations at this preliminary stage. Whether, as defendants assert, "Tudor has no independent decision-making authority … [and] only acts in a ministerial capacity," such that it played no role in the alleged retaliatory acts (NYSCEF Doc No. 31, defendants' memo of law at 4), this is an issue or discovery rather than grounds for dismissal.

Accordingly, it is

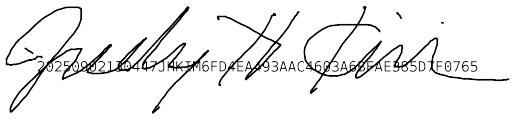
ORDERED that defendants' motion to dismiss the complaint is granted to the extent that the first and second causes of action, for violation of Executive Law §296(5)(a)(2) and (18), are dismissed, and is otherwise denied as to plaintiff's retaliation claim; and it is further

ORDERED that defendants shall, within ten days of the date of this decision and order, serve a copy of same, with notice of entry, upon plaintiff as well as the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court 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 "EFiling" page of the court's website); and it is further

ORDERED that the parties are to appear for a preliminary conference in Part 4 (80 Centre Street, room 308) on November 13, 2025, at 9:30 a.m.

This constitutes the decision and order of the Court.



9/2/2025
DATE

HON. JUDY H. KIM, J.S.C.

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