

**Batayneh v Reunited Clothing, LLC**

2025 NY Slip Op 33505(U)

September 18, 2025

Supreme Court, New York County

Docket Number: Index No. 152829/2025

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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LINDA BATAYNEH,

Plaintiff,

- v -

REUNITED CLOTHING, LLC, and DONALD KESSELMAN

Defendant.

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INDEX NO. 152829/2025

MOTION DATE 04/30/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of July 1, 2025, Defendants Reunited Clothing, LLC ("Reunited") and Donald Kesselman's ("Kesselman") (collectively "Defendants") motion to dismiss Plaintiff Linda Batayneh's ("Plaintiff") Amended Complaint pursuant to CPLR 3211(a)(7) is granted.

I. Background

Plaintiff claims Reunited hired her as a production associate in December of 2023. On February 8, 2024, Plaintiff began working remotely due to her pregnancy and, on March 17, 2024, gave birth. Plaintiff took pregnancy leave and, in September of 2024, informed Defendants that she would return to work on November 1, 2024. While Plaintiff was on leave, her sister, Hilda, who is allegedly a co-founder, part-owner, and Chief Creative Officer of Reunited, accused Kesselman, who is the Chief Executive Officer of Reunited, of committing financial improprieties and fraud. Allegedly, because of Hilda's accusations, Kesselman told Plaintiff not to return from pregnancy leave. Plaintiff now sues Defendants for retaliation in violation of Labor Law § 740 and alleges promissory estoppel. Defendants move to dismiss.

## I. Discussion

### A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must accept the factual allegations as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). However, conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

### B. Promissory Estoppel

Defendants' motion to dismiss Plaintiff's promissory estoppel claim is granted. To adequately allege promissory estoppel, a party must show (1) a promise that is sufficiently clear and unambiguous; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance (*see Condor Funding, LLC v 176 Broadway Owners Corp.*, 147 AD3d 409, 411 [1st Dept 2017]). When an at-will employee is terminated, the employee generally does not have a claim for promissory estoppel because there can be no reasonable reliance as to employment prospects for at-will employees (*see, e.g. Presler v Domestic and Foreign Missionary Society of Protestant Episcopal Church in US*, 113 AD3d 409, 409 [1st Dept 2014]; *Arias v Women in Need, Inc.*, 274 AD2d 353, 354 [1st Dept 2000]). "[A]bsent an agreement establishing a fixed duration, an employment relationship is presumed to be a hiring at will, terminable at any time by either party" (*Gootee v Global Credit Services, LLC*, 139 AD3d 551, 553 [1st Dept 2016] quoting *Sabetay v Sterling Drug, Inc.*, 69 NY2d 329, 333 [1987]).

Here, there is no alleged agreement that Plaintiff was employed for a fixed duration, nor are there any specific, non-conclusory, and factual allegations to rebut the employment at-will doctrine. Given Plaintiff's failure to allege any facts that she was not an at-will employee, she could not have reasonably relied on that her job would remain available for purposes of promissory estoppel. Plaintiff's argument that there should be discovery prior to any determination that she is an at-will employee ignores her own pleading requirements – namely that she allege her causes of action with factual specificity. In any event, Plaintiff does not need discovery as she should be in possession of sufficient information to allege facts supporting her contention that she was not an at-will employee (*see also Holahan v 488 Performance Group, Inc.*, 140 AD3d 414, 414-15 [1st Dept 2016]). Therefore, as Plaintiff's promissory estoppel claim is predicated on conclusory allegations without sufficient factual specificity, Defendants' motion to dismiss this claim is granted (*see also Marino v Vunk*, 39 AD3d 339, 340 [1st Dept 2007]).

### C. Labor Law § 740

Defendants' motion to dismiss Plaintiff's Labor Law § 740 claim is granted. Pursuant to Labor Law § 740(2), an employer may not retaliate against an employee who:

“(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonable believes is in violation of law, rule or regulation or that the employee believes poses a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice.”

Labor Law § 740(1)(a) defines an “employee” as:

“an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural

persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.”

Labor Law § 740(4)(a) provides employees who have been the subject of a retaliatory action in violation Labor Law § 740 to commence a civil action against the retaliators. Defendants raise several issues with the sufficiency of Plaintiff's pled Labor Law § 740 claim. These issues include: (1) Labor Law § 740 does not protect third-parties who are closely related to a whistleblower and are retaliated against for their relation to the whistleblower; (2) assuming, *arguendo* Labor Law § 740 does protect third-parties from retaliation by virtue of their relationship to a whistleblower, Plaintiff failed to allege Hilda engaged in protected activity under Labor Law § 740, and (3) Plaintiff failed to allege Hilda is an employee under Labor Law § 740.

The parties concede that there is no legal precedent applying Labor Law § 740 to third-party retaliation claims such as the one alleged here. In assessing third-party retaliation claims under 42 U.S.C. § 2000e-3(a), the United States Supreme Court has held that there is no categorical rule that third-party reprisals do not violate Title VII, nor is there “a fixed class of relationships for which third-party reprisals are unlawful” (*see Thompson v North American Stainless, LP*, 562 US 170, 174-75 [2011]). The United States Supreme Court held where the plaintiff is not an accidental victim of the retaliation but was injured as the employer's means of harming the employee who engaged in protected activity, the third-party victim may sue the employer for retaliation (*Thompson, supra* at 178).

In *Thompson*, after non-party Regalado filed an Equal Employment Opportunity Charge (“EEOC”) claiming discrimination against her employer, North American Stainless, LP, her employer fired Regalado's fiancé, Thompson, allegedly as retaliation. The United States Supreme Court found Thompson fell into the category of “person[s] aggrieved” under 42 U.S.C. § 2000e-

5(f) because “[h]urting [Thompson] was the unlawful act by which the employer punished [Regalado]” (*Thompson, supra* at 178).

The same logic applies to third-party retaliation claims under Labor Law § 740. The statutory language does not state only the whistleblower may sue for retaliation in violation of Labor Law § 740, rather it states “[a]n employee who has been the subject of retaliatory action in violation of this section may institute a civil action...within two years after the alleged retaliatory action was taken.” “An employee who has been the subject of retaliation” may be a closely related third-party to the whistleblower who the employer retaliates against for the purpose of hurting the whistleblower, just as Regalado’s fiancée was allegedly fired with the purpose of hurting Regalado for Regalado filing an EEOC charge against her and her fiancée’s employer. Thus, the mere fact that Plaintiff herself was not the alleged whistleblower, but claims she was retaliated against for being the sister of the alleged whistleblower, is not fatal to her Labor Law § 740.

However, the remainder of the allegations do not give rise to a viable claim under Labor Law § 740. To allege a Labor Law § 740 violation, the whistleblower must threaten to disclose a practice, act, or violation of the law which is or is reasonably believed to present “a substantial and specific danger to the public health or safety” (*Sakthivel v Industrious Staffing Company, LLC*, 212 AD3d 419, 420 [1st Dept 2023]). To invoke Labor Law § 740, there must be “a certain quantum of dangerous activity before its remedies are implicated” (*Cotrone v Consolidated Edison Co. of New York, Inc.*, 50 AD3d 354, 355 [1st Dept 2008] quoting *Peace v KRNH, Inc.*, 12 AD3d 914 [3d Dept 2004] *lv denied* 4 NY3d 705 [2005]).

Here, the alleged protected activity involved accusing Kesselman of alleged financial improprieties and fraud.<sup>1</sup> But fraudulent economic practices do not constitute a danger to public

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<sup>1</sup> This allegation in and of itself is vague, as there is no description of when or how the accusation was made, nor is there any detail or description of what Kesselman did to commit alleged financial improprieties/fraud.

health and safety within the meaning of Labor Law § 740 (see Remba v Federation Employment and Guidance Service, 76 NY2d 801, 802-03 [1990]; see also Katz v Quality Blg. Services, 24 Misc.3d 1222[A] at \*4 [Sup. Ct., NY County 2009] citing McGrane v Reader’s Digest Ass’n, Inc., 822 F Supp 1044, 1051 [SDNY 1993] [financial improprieties within a corporation do not constitute threats to public health or safety for purposes of Labor Law § 740]). Because Plaintiff failed to allege Hilda threatened to disclose an act, practice, or violation of the law which she reasonably believed constituted a danger to public health and safety, Plaintiff’s Labor Law § 740 claim is dismissed (see also Villarin v Rabbi Haskel Lookstein School, 96 AD3d 1, 5 [1st Dept 2012] [“illegal economic or financial activities that may be inimical to the public welfare are not within the statutory protection absent a showing that the illegal activity concomitantly creates ‘substantial and specific danger to the public health and safety’”]).

Accordingly, it is hereby,

ORDERED that Defendants’ motion to dismiss Plaintiff’s Amended Complaint is granted, and the Amended Complaint is hereby dismissed in its entirety; and it is further

ORDERED that within ten days of entry, counsel for Defendants 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.

9/18/2025  
DATE

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

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE