Kocher v Mount Sinai Hosp.
2025 NY Slip Op 34982(U)
December 22, 2025
Supreme Court, New York County
Docket Number: Index No. 153955/2022
Judge: Richard G. Latin

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD G. LATIN** **PART** **46M**

Justice

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WILLIAM KOCHER

Plaintiff,

- v -

THE MOUNT SINAI HOSPITAL,

Defendant.

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INDEX NO. 153955/2022

MOTION DATE 10/01/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, defendant The Mount Sinai Hospital's ("Mt. Sinai") motion (NYSCEF # 27) pursuant to CPLR 3212 for an order seeking summary judgment dismissing plaintiff's complaint and plaintiff William Kocher's ("Kocher") cross motion pursuant to CPLR 3212 for an order seeking summary judgment (NYSCEF # 51) are determined as follows:

Background

Plaintiff worked as a Senior System Software Specialist/Lead MAC Technician in the Information Technology Department ("IT") at Mount Sinai Hospital (NYSCEF # 44 ¶ 1). Plaintiff's job title included responsibilities in directing software specialists and installing software lines to off-site doctors to enable them to connect to Mount Sinai's system (*id.* at ¶ 3).

On January 22, 2020, Plaintiff fell into a coma and spent approximately six weeks in a hospital, which "he became disabled from diabetes and cirrohosis of the liver and conditions affecting his gallbladder, heart, and cognitive abilities" (NYSCEF # 1 ¶ 7). It is alleged that

Plaintiff's supervisors including Robert Lindgren and Andy Pizzimenti were repeatedly informed by one of Plaintiff's colleagues that Plaintiff was in a disabled condition (*id.* at ¶ 8). In total, Plaintiff spent approximately nine weeks in the hospital and rehabilitation center (NYSCEF # 44 ¶ 9). Approximately during the fall of 2020, Plaintiff became aware that he was terminated from employment with Mount Sinai Hospital (NYSCEF # 1 ¶ 23-27). Subsequently, approximately two years after Plaintiff's coma, Plaintiff moved to Florida and lived with his daughter (NYSCEF # 43 at 3).

On October 1, 2024, Defendant filed a motion pursuant to CPLR 3212 granting summary judgment against Plaintiff's claims of employment discrimination under New York State, New York City Human Rights Law, and retaliation (NYSCEF # 27). In response, Plaintiff opposes Defendant's motion and further cross moves for summary judgment (NYSCEF # 51).

Discussion

A party moving for summary judgment must demonstrate that "the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment" in the moving party's favor (CPLR 3212 [b]). Thus, "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]). If the moving party meets this burden, the burden then shifts to the non-moving party to "establish the existence of

material issues of fact which require a trial of the action" (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]).

Turning from the summary judgment burden to the substance of the statutes at issue, the State HRL forbids employment discrimination on the basis of an employee's disability, and the City HRL provides even greater protection against disability-based discrimination (*see Romanello*, 22 NY3d at 883-885); *see also Delta Air Lines v New York State Div. of Human Rights*, 91 NY2d 65, 71 [1997]).

State HRL

Under the State HRL, if an employee has a physical impairment that prevents the employee from performing the fundamental duties of his or her job even with a reasonable accommodation, the employee does not have a disability covered by the statute (*see Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 834 [2014]; *see also* Executive Law § 292[21]; *see also Romanello*, 22 N.Y.3d at 883–884). Consequently, the employee is free to take adverse employment action against the employee based on that impairment (*see Jacobsen*, 22 NY3d at 834).

However, if a reasonable accommodation would permit the employee to perform the essential functions of the employee's position, the employee would be deemed to have a "disability" within the meaning of the statute, and the employer cannot disadvantage the employee based on that disability (*see Romanello*, 22 NY3d at 883-884). Executive Law § 292 [21–e] provides a "reasonable accommodation" for an employee's impairment is one which

> "permit[s] an employee, prospective employee or member with a disability, or a pregnancy-related condition, to perform in a reasonable manner the activities involved in the job or occupation sought or held and include, but are not limited to, provision of an accessible worksite, acquisition or modification of equipment,

> support services for persons with impaired hearing or vision, job restructuring and modified work schedules; provided, however, that such actions do not impose an undue hardship on the business, program or enterprise of the entity from which action is requested."

Thus, a proper State HRL claim must be supported by substantiated allegations that upon the provision of reasonable accommodations, the employee could have performed the essential functions of his or her job (*see Jacobsen*, 22 NY3d at 834). In addition, the employee bears the burden of proof on this issue at trial (*see id.*; *see also Romanello*, 22 NY3d at 884).

In *Jacobsen*, the court held that the employer normally cannot obtain summary judgment on a State HRL claim unless the record demonstrates that there is no triable issue of fact as to whether the employer duly considered the requested accommodation (*see Jacobsen*, 22 NY3d at 837). In addition, "the employer cannot present such a record if the employer has not engaged in interactions with the employee revealing at least some deliberation upon the viability of the employee's request" (*id.*). Consequently, to prevail on a summary judgment motion with respect to a State HRL claim, the employer must show that it "engage[d] in a good faith interactive process that assesse[d] the needs of the disabled individual and the reasonableness of the accommodation requested" (*id.*; *see Hosking v Mem. Sloan-Kettering Cancer Ctr.*, 186 AD3d 58, 64 [1st Dept 2020]; *see also Parker v Columbia Pictures Indus.*, 204 F3d 326, 338 [2d Cir 2000][holding that an employee's proposal of a reasonable accommodation requires the employer to investigate that request and determine its feasibility; thus failure to do so can result in discrimination]). The State HRL claim must be supported by substantiated allegations that an employee could perform the essential functions of his or her job with accommodations (*see Jacobsen*, 22 NY3d at 834). The employee bears the burden of proof on this issue at trial (*see id.*).

Here, Plaintiff and Defendant cannot prevail in their summary judgment motions regarding Plaintiff's State HRL disability claim because there are issues of fact as to whether Defendant

engaged plaintiff in a good faith interactive process to ascertain the viability of an appropriate accommodation (*see Jacobsen*, 22 NY3d at 837). Although Defendant argues Plaintiff never contacted nor requested for such accommodations, Plaintiff's assertions suggest otherwise (NYSCEF # 43 at 11).

For instance, Plaintiff asserts a remote work option would still allow him to perform the essential functions as an IT specialist even with a disability (NYSCEF # 60 ¶ 8). Furthermore, Plaintiff states he would have gone back to work in 2021 had Defendant discussed such an option (*id.*). In addition, Plaintiff asserts Defendant failed to communicate to Plaintiff regarding application of Long Term Disability benefits, which resulted in Plaintiff's employment termination without Plaintiff's knowledge (id. at ¶ 9-13). Accordingly, such contradictory statements provided by both parties bears a genuine question of fact (*see Hosking*, 186 AD3d at 65).

Thus, both Plaintiff's and Defendant's motions on the State HRL claim are denied.

NYC HRL

"Unlike the State HRL, the City HRL's definition of 'disability' does not include 'reasonable accommodation' or the ability to perform a job in a reasonable manner," but rather "defines 'disability' solely in terms of impairments" (*Jacobsen*, 22 NY3d at 834, quoting *Romanello*, 22 NY3d at 885). The City HRL forbids employment discrimination against physically and mentally impaired individuals (*see id.*; Administrative Code of City of N.Y. § 8–107[15][b]). Thus, unlike the State HRL, the City HRL places the burden on the employer to show the unavailability of any safe and reasonable accommodation, and the employer must show that any proposed accommodation would place an undue hardship on its business (*see Romanello*, 22 NY3d at 885).

Although the State HRL and City HRL maintain separate burdens of proof at trial regarding the existence of a reasonable accommodation, under both statutes an employee's request for an accommodation is relevant to the determination of whether a reasonable accommodation can be made (*see Jacobsen*, 22 NY3d at 835). In that regard, the State HRL defines a "reasonable accommodation" as an accommodating action that does not unreasonably burden the employer "from which [the] action is requested" (*id.*, citing Executive Law § 292 [21–e]). By defining a "reasonable accommodation" in terms of an employee's request for accommodation and the employer's ability to conduct its operations within the limits of the employee's proposed arrangement, the statute indicates that an employee's suggestion of a specific accommodation must prompt the employer to consider whether the accommodation is reasonable to the employer's business (*see id.*). Thus, the employer's response to the employee's request and any subsequent dialogue regarding the proposed accommodation shall determine whether a reasonable accommodation exists (*see id.*).

The City HRL requires that an employer make reasonable accommodations to allow a person with a disability to satisfy the essential requisites of a job, provided that the disability is known or should have been known by the employer (*see Romanello*, 22 NY3d at 885). The State HRL's definitions of "reasonable accommodation" and "disability" require that when an employee seeks a specific accommodation for his or her disability, the employer must give individualized consideration to that request and may not arbitrarily reject the employee's proposal without further inquiry (*see Jacobsen*, 22 NY3d at 836).

Moreover, the City HRL provides employers an affirmative defense if the employee cannot, with reasonable accommodation, "satisfy the essential requisites of the job" (Administrative Code § 8–107[15][b]). Thus, the employer, not the employee, has the "pleading

obligation" to prove that the employee "could not, with reasonable accommodation, satisfy the essential requisites of the job" (*Romanello*, 22 NY3d at 885).

Here, Plaintiff, through his son Vincent Kocher and Javier Cruz, made his disability known to Defendant (NYSCEF # 55 at 23, 24, 30). At this juncture, there is a question of fact on whether Defendant met its obligation under the City HRL to plead and prove that Plaintiff could not perform his essential job functions with an accommodation. There is a question of fact that Plaintiff would not be able to do perform the essential functions as an IT specialist through an accommodation of remote/virtual work (NYSCEF # 60 ¶ 8).

Accordingly, Plaintiff's and Defendant's motion for summary judgment for the City HRL claim are both denied.

Retaliation

Under both the State and City Human Rights Laws, it is unlawful to retaliate against an employee for opposing discriminatory practices (*see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 312 [2004]). In order to make out a retaliation claim, plaintiff must show that (1) she was engaged in a protected activity; (2) her employer was aware that she participated in that activity; (3) she suffered adverse employment action based on her activity; and (4) there is a causal connection between the protected activity and the adverse action (*see Koester v New York Blood Ctr.*, 55 AD3d 447, 448-49 [1st Dept 2008]).

Defendant asserts Plaintiff failed to provide any showing that he ever complained about discrimination or whether he believed he was retaliated against and cites to Plaintiff's deposition (NYSCEF # 55 at 121). In particular, Defendant avers Plaintiff testified as follows:

> Q. I'm talking about after. Now, did you ever complain to anybody at Mount Sinai that you thought you were being discriminated against for any reason?

> A. No. You know what, I never was a complainer like that. I came and did my job every day.
>
> Q. Did you believe you were retaliated against?
>
> A. Never thought about it, so, no. Should say I never thought about it. Can I say it now? (*id.*).

Plaintiff did not complain of past discrimination or retaliation, Plaintiff failed to sufficiently establish a retaliatory claim (*see id.*). Here, Plaintiff did not engage in a protected activity (*see Forrest*, 3 NY3d at 312). Generally, protected activity involves an employee opposing or complaining about unlawful discrimination, such as a hostile work environment (*see Brook v Overseas Media, Inc.*, 69 AD3d 444, 445 [1st Dept 2010]; *see also Keceli v Yonkers Racing Corp.*, 155 AD3d 1014, 1015 [2d Dept 2017]). Rather, Plaintiff admitted in his deposition that he did not complain about discrimination, nor believed he was retaliated against (NYSCEF # 55 at 121). Thus, Plaintiff failed to sufficiently establish a retaliation claim, and Plaintiff's retaliatory claims are denied.

Conclusion

In view of the above, it is

ORDERED that Defendant's motion for summary judgment on grounds of retaliation is granted in part; and it is further

ORDERED that Plaintiff's and Defendant's motion for summary judgment on the under the State and City HLR claims are denied.

12/22/2025
DATE

RICHARD G. LATIN, 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