

Walker v Triborough Bridge & Tunnel Auth.

2025 NY Slip Op 34989(U)

December 23, 2025

Supreme Court, New York County

Docket Number: Index No. 160839/2021

Judge: Mary V. Rosado

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

INDEX NO. 160839/2021
MOTION DATE 11/19/2024
MOTION SEQ. NO. 004

KELLIE WALKER,
Plaintiff,

- v -

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, D/B/A
METROPOLITAN TRANSPORTATION AUTHORITY
BRIDGES AND TUNNELS, VICTOR MUALLEM, SHARON
GALLO-KOTCHER

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 125, 127, 128, 133

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, and after a final submission date of November 12, 2025, Defendants Triborough Bridge and Tunnel Authority d/b/a Metropolitan Transportation Authority Bridges and Tunnels ("MTA"), Victor Muallem ("Muallem") and Sharon Gallo-Kotcher's ("Gallo-Kotcher") (collectively "Defendants") motion for summary judgment dismissing Plaintiff Kellie Walker's ("Plaintiff") Complaint is denied.

I. Background

Plaintiff is an African American woman employed by MTA as a labor and employment attorney since September 13, 2018 (NYSCEF Doc. 72 at 19). Muallem was Plaintiff's supervisor (id. at 22). Gallo-Kotcher was Muallem's supervisor (id. at 23). Plaintiff's co-workers included Eduardo Miyashiro ("Miyashiro") and Alexandria Jean-Pierre¹ ("Jean-Pierre") (id. at 21). Plaintiff claims that around April of 2019, Muallem began engaging in episodes where, without

¹ Ms. Jean-Pierre is also an African American woman.

provocation, he was short tempered and volatile towards her and Jean-Pierre (*id.* at 28). Plaintiff claims she complained about Muallem's behavior to Gallo-Kotcher in the Summer and Fall of 2019, after which Muallem's behavior towards Plaintiff worsened (*id.* at 31-33). Jean-Pierre, Plaintiff's coworker, testified she had similar experiences with Muallem. Neither Jean-Pierre nor Plaintiff ever witnessed Muallem treat Miyashiro, an Asian male, in a similar way (NYSCEF Doc. 77 at 56-61; 66). Jean-Pierre testified she witnessed Muallem over-scrutinize Plaintiff's work and become angry over trivial issues, and that Jean-Pierre herself was subject to Muallem's belittling behavior (*id.* at 83-85). Jean-Pierre testified based on her observations, she advised Plaintiff to begin keeping a diary of incidents involving Muallem (*id.* at 80-83).

On January 8, 2020, Plaintiff was giving an opening statement at an arbitration when Muallem allegedly began yelling at her in front of the arbitrator and opposing counsel. Allegedly, this prompted the arbitrator to halt the hearing, advise Muallem that Plaintiff was doing a fine job, and direct Muallem to stop interrupting her (*id.* at 92-101). On February 3, 2020, at another arbitration, Muallem allegedly hit Plaintiff as she cross-examined a witness because Muallem did not like the question Plaintiff asked (*id.* at 115-119). Plaintiff reported the incident to Gallo-Kotcher and submitted a workplace violence report form.

Plaintiff claims after reporting the incident, Gallo-Kotcher retaliated by asking Plaintiff for a status report on all of her cases on one hour's notice, which Plaintiff claims was impossible to prepare within such a short time frame, and which had never been asked before (*id.* at 176-78). She also claims she was retaliated against because she was subjected to increased scrutiny and micro-management, and during the Covid-19 lockdown, she was required to go into the office to handle a virtual conference on a case that had reached a settlement in principle (*id.* at 220-22). She further alleges she was retaliated against because after the incident, her colleague of equivalent

title, Miyashiro, was directed to assign Plaintiff work (*id.* at 234-235). Defendants also allegedly threatened to move Plaintiff's office very close to Muallem's office.

Muallem and Gallo-Kotcher claim Miyashiro was more experienced and more competent than Plaintiff. According to Muallem and Gallo-Kotcher, Plaintiff's work was deficient, and she did not stay on top of her cases. Muallem admitted to having a friendlier relationship with Miyashiro, and the two would get drinks after work (NYSCEF Doc. 69 at 17). Muallem denies he ever hit Plaintiff but conceded an arbitrator told him to stop interrupting Plaintiff (*id.* at 10; 28).

The MTA's investigation into the incident involved multiple witness statements, with some witnesses corroborating Plaintiff's version of events while other witnesses stated they did not see Muallem hit Plaintiff, and recounted that Plaintiff seemed inexperienced and unprepared for the arbitration (NYSCEF Doc. 79). There is e-mail evidence that during MTA's investigation into whether Muallem hit Plaintiff, Gallo-Kotcher believed Plaintiff was conspiring with others to "align their stories" to make Plaintiff's allegations seem credible (NYSCEF Doc. 70 at 54-55). At least one witness to the alleged altercation, Lieutenant Christina Lampropoulos, the president of the Superior Officers Benevolent Association Board, stated Muallem frequently interrupted and yelled at Plaintiff during proceedings, and, on February 3, 2020, physically hit Plaintiff. The MTA did not find cause to initiate a disciplinary proceeding against Muallem.

Muallem and Gallo-Kotcher retired from the MTA, and Miyashiro was promoted. Ms. Gallo-Kotcher admitted she had been the subject of a prior race-based discrimination investigation in 2015 or 2016 after she was accused of making an inappropriate comment to a Black intern (NYSCEF Doc. 70 at 7-10). Ms. Gallo-Kotcher admitted she was reprimanded by the MTA's agency head and general counsel and was warned it was unacceptable to make race-based comments (*id.* at 10). Defendants move for summary judgment dismissing Plaintiff's Complaint.

II. Discussion

A. Standard

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “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.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

To allege employment discrimination, a plaintiff must show (a) she is a member of a protected class; (b) she was qualified for the position; (c) she suffered an adverse employment action; and (d) that the adverse action occurred under circumstances giving rise to an inference of discrimination (*Hribovsek v United Cerebral Palsy of New York City*, 223 AD3d 618 [1st Dept 2024]). While legitimate, non-discriminatory reasons may be proffered by a defendant to rebut a Plaintiff’s *prima facie* showing, if there “is some evidence that at least one of the reasons proffered by defendant is false, misleading, or incomplete...‘trial courts [should] be especially chary in handing out summary judgment...because in such cases the employer’s intent is ordinarily at issue’” (*Bennett v Health Management Systems, Inc.*, 92 AD3d 29, 43-44 [1st Dept 2011] [internal citations omitted]).

The standard for determining liability for discrimination-based claims under the New York City Human Rights Law is to ensure that discrimination plays no role in the disparate treatment of similarly situated individuals in the workplace (*Williams v New York City Housing Authority*, 61

AD3d 62, 76 [1st Dept 2009]). The New York State Human Rights Law mirrors the “play no-role” standard under the New York City Human Rights Law (*Hosking v Mem'l Sloan-Kettering Cancer Ctr.*, 186 AD3d 68, 64 n.1 [1st Dept 2020]).

B. Race and Gender Discrimination

Defendants’ motion for summary judgment dismissing Plaintiff’s race and gender discrimination claims is denied. The Court rejects Defendants’ argument that there is no evidence of discrimination. Gallo-Kotcher was the subject of a prior race discrimination complaint based on a comment made to a Black intern leading to her being reprimanded by the MTA’s agency head and general counsel. There is evidence of gender-based animus from Muallem based on the sworn testimony of Plaintiff and Jean-Pierre. Finally, there is an issue of fact as to whether Muallem physically struck Plaintiff and, if he did, whether it was based on racial and/or gender animus.

Moreover, there is no requirement that there be direct evidence of racial and gender-based animus to sustain a discrimination claim so long as there is evidence which gives rise to an inference of discrimination (*see, e.g. Hribovsek v United Cerebral Palsy of N.Y. City*, 223 AD3d 618, 619-20 [1st Dept 2024]). The circumstantial evidence, corroborated by multiple witnesses, creates issues of fact as to whether Defendants’ actions give rise to an inference of discrimination.

Defendants’ reliance on the same actor inference is not dispositive. While Muallem and Gallo-Kotcher were involved in hiring Plaintiff, based on the lapse in time between Plaintiff’s hiring and the allegedly discriminatory acts, a jury could reasonably conclude there was a change in circumstances or attitudes from the time Plaintiff was hired to when Plaintiff began to suffer the allegedly discriminatory actions (*see Tirschwell v TCW Group Inc.*, 194 AD3d 665, 666 [1st Dept 2021]). Defendants’ argument that Plaintiff failed to show a proper comparator because Miyashiro was not similarly situated is likewise a fact issue for the jury. Miyashiro and Plaintiff held the same

job title and shared similar duties and responsibilities. Further, the New York City Human Rights law does not require the comparator to be identical in job title and duties to Plaintiff, all that is required is a showing that because of Plaintiff's protected characteristics, she was treated less well than other employees who do not share those protected characteristics (*see Suri v Grey Global Group, Inc.* 164 AD3d 108, 117 [1st Dept 2018] citing *Williams v New York City Hous. Auth.*, 61 AD3d 62, 78 [1st Dept 2017]).

Issues of fact preclude summary judgment dismissing Plaintiff's hostile work environment claims (*see, e.g. Bateman v Montefiore Medical Center*, 183 AD3d 489, 490 [1st Dept 2020] citing *Hernandez v Kaisman*, 103 AD3d 106, 114 [1st Dept 2012]). Viewing the facts in the light most favorable to Plaintiff, and given the witnesses' diametrically opposed versions of events, it is for a jury to determine whether the scrutiny, scolding, alleged humiliation at proceedings, dismissive remarks, and alleged physical violence was so severe and pervasive to give rise to a hostile work environment (*see Ramos v Metro-North Commuter Railroad*, 194 AD3d 433, 434 [1st Dept 2021]; *Cole v Sears, Roebuck & Co.*, 120 AD3d 1159, 1159-60 [1st Dept 2014]).

C. Retaliation & Aiding and Abetting

Defendants' motion for summary judgment dismissing Plaintiff's retaliation claim is denied (*see, e.g. Harrington v City of New York*, 157 AD3d 582, 585-86 [1st Dept 2018]). Plaintiff testified prior to the alleged episode of physical violence, Plaintiff complained about Muallem's conduct to Gallo-Kotcher, after which nothing was done and Muallem's conduct towards Plaintiff became even more hostile. Other examples of retaliation, if Plaintiff and Jean-Pierre's testimony is credited, include Plaintiff being subjected to more severe scrutiny after she filed a workplace complaint, and the alleged threat to move Plaintiff's office much closer to Muallem's office. Whether the motivation for this conduct was retaliation is an issue of fact for the jury (*see Doe v*

New York City Police Dept., 190 AD3d 411, 413 [1st Dept 2021] citing *O'Rourke v National Foreign Trade Council, Inc.*, 176 AD3d 517, 518 [1st Dept 2019]).

Issues of fact also precludes dismissal of the aiding and abetting claims against Gallo-Kotcher. There is corroborated testimonial evidence that despite Plaintiff's complaints to and requests for help from Gallo-Kotcher, Muallem was allowed to continue his conduct towards Plaintiff unabated.

D. Victims of Gender Motivated Violence Protection Law ("VGM")

Defendants' motion for summary judgment dismissing Plaintiff's VGM claim is denied. There is evidence from multiple witnesses that Muallem treated the women who worked for him worse than the men who worked for him, and there is also conflicting evidence as to whether Muallem hit Plaintiff. Viewing the record holistically and in the light most favorable to Plaintiff, whether Muallem hit Plaintiff because she was a woman is an issue for the jury.

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment dismissing Plaintiff's Complaint is denied in its entirety; and it is further

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

12/23/2025
DATE

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

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
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