

Kreishta v 1745 E. 12th St. LLC
2026 NY Slip Op 30564(U)
February 6, 2026
Supreme Court, Kings County
Docket Number: Index No. 523841-2017
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73
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ARGJEND KRCISHTA,

Index No.: 523841-2017
Motion Date: 9-15-25
Mot. Seq. No.: 12

Plaintiff,

-against-

DECISION/ORDER

1745 EAST 12TH STREET LLC, DAVID LANDAU,
MOSHE LANDAU, LANDCO MANAGEMENT, LLC,
LANDAU MANAGEMENT, LLC, et al.,

Defendants.

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The following papers, which are e-filed with NYCEF as items 184-242 , were read on this motion:

In this action alleging, *inter alia*, claims for disability discrimination under the New York State Human Rights Law and New York City Human Rights Law, as well as claims for unpaid wages under the New York Labor Law, in Motion Seq. #12, Defendants, 1745 East 12th Street LLC, Moshe Landau, and Landau Management, LLC, move for an order pursuant to CPLR 3212 granting summary judgment and dismissing all claims asserted against them in Plaintiff's Verified Amended Complaint.

BACKGROUND

The facts alleged in Plaintiff's Verified Complaint are as follows: Plaintiff was employed as the sole Superintendent for 1745 East 12th Street LLC. On January 1, 2016, he suffered a shoulder injury while performing his duties and alleges that after reporting the injury on January 3, 2016 to the Defendants, the Defendants "mocked" him, utilized a foreign language to exclude him from the conversation, and refused to provide him with the necessary documentation to file a Worker's Compensation claim. Plaintiff contends he was compelled to continue working despite his injuries, which he claims led to a second, more severe accident on January 23, 2016, involving a snowblower. He claims that as a result of his injuries he was unable to perform the physical tasks of a Superintendent without a reasonable accommodation. He was terminated from his employment in October 2016.

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The Verified Complaint alleges fifteen causes of action. The First through Fourth causes of action allege claims for discrimination based on "disability" or "perceived disability" under New York State Executive Law § 296 and New York City Administrative Code § 8-107. The Fifth and Sixth causes of action allege claims for failure to provide a reasonable accommodation for the Plaintiff's physical limitations following his injuries. The Seventh, Eighth, Tenth, and Eleventh causes of action allege violations of the New York Labor Law (NYLL), specifically claims for unpaid overtime and wages for hours worked more than 40 per week. The Fourteenth cause of action is for a declaratory judgment and injunctive relief. The Ninth, Twelfth, Thirteenth, and Fifteenth causes of action have already been dismissed. Defendants now seek summary judgment dismissing the remaining claims.

DISCUSSION

Those branches of the motion in which Defendants seek summary judgment dismissing the Plaintiff's First through Sixth claims for disability discrimination and failure to accommodate are denied. To be entitled to summary judgment dismissing a cause of action or defense must demonstrate his or her entitlement to summary judgment "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 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572). "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 & Auctioneers, Inc. v. Rabizadeh*, 22 N.Y.3d 470, 475, 982 N.Y.S.2d 813, 5 N.E.3d 976). 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 Constr. Corp.*, 18 N.Y.3d 499, 503, 942 N.Y.S.2d 13, 965 N.E.2d 240).

An employer normally cannot obtain summary judgment on an employment discrimination claim based on disability pursuant to NYSHRL "unless the record demonstrates that there is no triable issue of fact as to whether the employer duly considered whether a

requested accommodation would allow an employee to continue, and the employer cannot present such a record if the employer has not engaged in good-faith interactions with the employee revealing at least some deliberation upon the viability of the employee's request (*Jacobsen v. New York City Health & Hosps. Corp.*, 22 N.Y.3d at 837, 988 N.Y.S.2d 86, 11 N.E.3d 159; *Cohen v. State of New York*, 129 A.D.3d 897, 899, 10 N.Y.S.3d 628). Such a good-faith interactive process is also required by the more protective NYCHRL, and its absence represents a violation of New York City Administrative Code § 8-107(15)(a) (*Phillips v. City of New York*, 66 A.D.3d 170, 176-77, 884 N.Y.S.2d 369, 374). Thus, to prevail on a summary judgment motion with respect to a claim for disability discrimination pursuant to NYSHRL and the NYCHRL, the employer must demonstrate as a matter of law that it engaged in a good-faith interactive process that assessed the needs of the disabled individual, and the reasonableness of the accommodation requested (*see Jacobsen v. New York City Health & Hosps. Corp.*, 22 N.Y.3d at 837, 988 N.Y.S.2d 86, 11 N.E.3d 159). Under the NYCHRL, “[a]n employer has a duty to move forward to consider accommodation once the need for accommodation is known or requested” (9 NYCRR 466.11[j][4]).

The record reveals starkly different accounts of the communications between the parties following the Plaintiff’s injuries, creating material issues of fact that preclude summary judgment. Defendants assert that no formal request for accommodation was ever made and that their interaction with the Plaintiff on January 3, 2016—consisting of David Landau advising the Plaintiff to “relax himself” and “be careful”—fulfilled any obligation to discuss whether he could continue in his role as superintendent with reasonable accommodations. They further contend the Plaintiff’s only specific demand was for Workers’ Compensation Board (WCB) documentation.

Plaintiff’s account suggests that the Defendants were aware of the need for accommodation, regardless of whether one was explicitly requested. Plaintiff testified that following his second injury on January 23, 2016, he directly informed David Landau that he “don’t do the garbage,” a task he identified as an essential function of his role. The record indicates that Plaintiff’s wife visibly assumed these physical chores, an arrangement that Landau was not only aware of this arrangement but never questioned.

The quality and sincerity of any interactive process or cooperative dialogue is deeply in dispute. While Defendants characterize their response as supportive, the Plaintiff alleges that on January 3, 2016, the Defendants "mocked" his injuries, suggested he visit a vet instead of a medical doctor, and spoke in a foreign language to exclude him from the discussion. These allegations, if proven, would directly subvert the requirement of a good-faith deliberative process.

Notably, as stated above, under the NYCHRL, the obligation to engage in a good-faith interactive process to determine if an employee's injuries prevent him from performing his job functions is triggered once the employer knows of the need for an accommodation, even if a formal accommodation is not officially requested.

Clearly, given the facts and circumstances of this case, the Court finds that are triable issues of fact as to whether Plaintiff requested a reasonable accommodation, whether the defendants were aware of Plaintiff's need for an accommodation, and whether there was a good-faith interactive process between the Plaintiff and Defendants to see a reasonable accommodation would have allowed plaintiff to retain in his role of Superintendent. Defendants' motion for summary judgment dismissing Plaintiff's First through Sixth claims for disability discrimination and failure to accommodate are denied for these reasons.

That branch of the motion in which the defendants seek summary judgment dismissing the Plaintiff's Seventh, Eighth, Tenth, and Eleventh claims asserting violations of the New York Labor Law (NYLL), including those claims for overtime and wages, is also denied. While the defendants have made a prima facie showing that the plaintiff met the criteria for an "exempt janitor" under 12 N.Y.C.R.R. 141-3.4, rendering him generally ineligible for overtime pay for his essential duties as a resident superintendent, summary judgment must nonetheless be denied. In the first instance, the prior order denying Defendants' motion to dismiss these claims based on documentary evidence pursuant to CPLR 3211(a)(1) is not binding. Now before the Court is a motion for summary judgment in which the Court may consider the entire record, not just documentary evidence.

Moreover, even accepting the plaintiff's status as an exempt employee for his primary role, triable issues of fact remain as to whether the extra work documented in eighty-nine pages

of invoices—approximately \$18,367 of which remain unresolved—was performed by Plaintiff as an employee of the defendants but outside the scope of his duties as superintendent. Moreover, material questions of fact exist regarding the amount of time spent on these tasks, whether the plaintiff performed this work under a separate employment agreement with the defendants or as Superintendent, and whether he remained an employee or acted as an independent contractor during those specific hours.

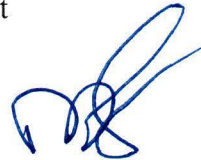
That branch of the motion for summary judgment dismissing Plaintiff’s Fourteenth cause of action, which seeks declaratory and injunctive relief, must also be denied since this court has already determined that the defendants are not entitled to summary judgment on their causes of action for disability discrimination and failure to accommodate,

For all the above reasons, it is hereby

ORDERED that Motion Seq. #12 is **DENIED** in its entirety.

This constitutes the decision and order of the Court

Dated: February 6, 2026



HON. PETER P. SWEENEY

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KINGS COUNTY CLERK'S OFFICE