Dorzilor v MSH 1538, LLC
2026 NY Slip Op 31434(U)
April 8, 2026
Supreme Court, New York County
Docket Number: Index No. 159191/2025
Judge: Phaedra F. Perry-Bond

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PHAEDRA F. PERRY-BOND** **PART** **35**

Justice

----------X

SHERRY DORZILOR

Plaintiff,

- v -

MSH 1538, LLC, a/k/a MANHATTAN SCHOOL HOUSE

Defendant.

----------X

INDEX NO. 159191/2025

MOTION DATE 09/05/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 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 were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendant's motion to dismiss Plaintiff's Complaint is granted in part and denied in part.

As alleged in the Complaint, Plaintiff, a 49-year-old African American woman, was formerly employed by Defendant as Defendant's Director of Operations from July 8, 2024 until February 3, 2025. Plaintiff was allegedly hospitalized on January 17, 2025 for gallbladder surgery and was required to take medical leave for three weeks. On February 3rd, 2025, upon returning to work, Plaintiff was allegedly terminated. Plaintiff alleges her termination was discriminatory due to her medical condition and that she was treated differently from similarly situated non-African American employees who took a leave of absence for medical reasons. Plaintiff now sues Defendant for discrimination, harassment, hostile work environment, wrongful termination, and retaliation under the New York City human Rights Law ("NYCHRL") and New York State Human Rights Law ("NYSHRL"). She also sues for negligent infliction of emotional distress.

Defendant moves, pre-answer, to dismiss. Defendant also seeks sanctions for allegedly frivolous litigation. Defendant's motion argues that Plaintiff was terminated for performance

issues and further argues that representations made in Plaintiff's Complaint are false. In opposition, Plaintiff argues the motion is defective because it does not include a copy of the Complaint and because the documents and affirmations submitted for the purpose of disputing Plaintiff's allegations simply raise issues of fact which require discovery.

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). A motion to dismiss based on documentary evidence is appropriately granted only when the documentary evidence utterly refutes the factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

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]). A plaintiff alleging employment discrimination does not need to plead a prima facie case of discrimination but must only give fair notice of the nature of the claim and its grounds (*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140 [1st Dept 2009]). The standard for determining liability for discrimination-based claims under the NYCHRL 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 NYSHRL, which was amended in 2019, mirrors the "play no-role" standard under the NYCHRL (*Hosking v Mem'l Sloan-Kettering Cancer Ctr.*, 186 AD3d 58, 64 n.1 [1st Dept 2020]).

Plaintiff's opposition to the motion on the basis that the Complaint was not annexed to the motion papers is without merit, as this is a NYSCEF case and the Complaint is readily available electronically (*see Reyes v Sanchez-Pena*, 117 AD3d 621 [1st Dept 2014] [failure to annex pleadings was not fatal procedural defect]).[1] However, for purposes of a pre-answer motion to dismiss, where the Court must accept as true the factual allegations and give Plaintiff the benefit of all favorable inferences, Plaintiff has adequately alleged discrimination and wrongful termination under the NYCHRL. Specifically, Plaintiff alleges she was a member of a protected class who was qualified for the position and that she suffered an adverse employment action (namely termination). Moreover, Plaintiff has alleged her termination took place under an inference of discrimination since she was terminated following medical leave while other similarly situated non-African American employees who had been employed for a shorter period than Plaintiff and who also took medical leave were not terminated. While Defendant disputes the veracity of these allegations, those arguments are more appropriately made on a motion for summary judgment as opposed to a pre-answer motion to dismiss.

Plaintiff likewise adequately alleged retaliation as she claims she was terminated immediately upon returning from medical leave, which, accepting the facts alleged as true, gives the inference that she was terminated at least partially in retaliation for using sick leave (*see Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18 [1st Dept 2014]). The affirmations

[1] Defendant's motion is defective in that no memorandum of law was filed on the motion in chief. Because a memorandum of law was filed for the first time on reply, the Court cannot consider it or the arguments raised for the first time in that memorandum (*see nick's Garage, Inc. v Liberty Mut. Fire Ins. Co.*, 120 AD3d 967 [1st Dept 2014]).

from Defendant's employees that dispute the accuracy of Plaintiff's allegations do not constitute documentary evidence (*see Bou v Llamoza*, 173 AD3d 575 [1st Dept 2019]).

However, the motion to dismiss is granted as to the negligent of infliction of emotional distress claim. This cause of action requires a plaintiff to allege a breach of duty which unreasonably endangered her physical safety or cause her to fear for her own safety. There are no allegations involving threats of violence, what is alleged instead was an allegedly discriminatory and improper termination. This alone does not give rise to a negligent infliction of emotional distress claim. In any event, the damages sought for the negligent infliction of emotional distress claim are duplicative of the discrimination claims. Therefore, the negligent infliction of emotional distress claim is dismissed. Finally, because the Complaint survives, the branch of the motion which seeks sanctions is denied.

Accordingly, it is hereby,

ORDERED that Defendant's motion to dismiss is granted solely to the extent that the fourth cause of action alleging negligent infliction of emotional distress is dismissed and the remainder of the motion is denied; and it is further

ORDERED that within twenty days of entry, counsel for Defendant shall serve its Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties shall meet and confer and submit a proposed preliminary conference order to the Court via e-mail on or before May 5th, 2026. If there is a serious discovery dispute requiring a Court conference, the parties shall inform the Court accordingly so an in-person conference may be scheduled; and it is further

ORDERED that if the parties seek to resolve this matter through the Court's sponsored ADR program, the parties shall notify the Court so the appropriate referral order may be issued; 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.

4/8/26
DATE

HON. PHAEDRA F. PERRY-BOND, 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