Parker v New York City Tr. Auth.
2026 NY Slip Op 31667(U)
April 10, 2026
Supreme Court, Kings County
Docket Number: Index No. 517416/2021
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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ALFREDA PARKER,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY, STEVEN KRAJEWSKI, FRANCIS FIORILLO AND JOHN AND JANE DOE (said names being fictitious, the persons intended being those who aided and abetted the unlawful conduct of the named defendants),

Defendant.
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Index No.: 517416/2021
Motion Date: 12/15/25
Mot. Seq. No.: 4

DECISION/ORDER

The following papers, which are e-filed with NYCEF as items 66-211, were read on this motion:

In this action for injunctive relief, declaratory judgment, and to recover money damages for discrimination, retaliation, sexual harassment, and hostile work environment on the basis of military status, race, color, and sex, the defendants, NEW YORK CITY TRANSIT AUTHORITY, STEVEN KRAJEWSKI, FRANCIS FIORILLO and JOHN AND JANE DOE, move for an order pursuant to CPLR 3212 granting summary judgment in favor of defendants and dismissing plaintiff's Second Amended Complaint in its entirety with prejudice.

Plaintiff ALFREDA PARKER commenced this action against the New York City Transit Authority ("NYCTA") alleging (1) discrimination by military status under the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"), (2) race, color, and sex discrimination under the NYSHRL and NYCHRL (3) sexual harassment on a hostile work environment theory under the NYSHRL and NYCHRL, (4) hostile work environment under the NYSHRL and NYCHRL for being a black woman and her military status, (5) retaliation under the NYSHRL and NYCHRL, (6) discrimination under the New York Military Law ("NYML"), and (7) discrimination under the New York Civil Service law ("NYCSL"). The defendants now move for an order granting them summary judgment dismissing the action in its entirety.

MS#4
G-EXT

I. NYSHRL/NYCHRL Race/Color/Sex/Military Status Discrimination

To establish discrimination under the NYSHRL, the plaintiff must show: (1) protected class membership; (2) qualification for the position; (3) an adverse employment action; and (4) circumstances giving rise to an inference of discrimination.[1] To prevail on a summary judgment motion in an action alleging discrimination in violation of the NYSHRL, "a defendant must demonstrate either the plaintiff's failure to establish every element of intentional discrimination, or, having offered legitimate, nondiscriminatory reasons for the challenged actions, the absence of triable issue of fact as to whether the explanations were pretextual."[2] Under the NYSHRL, an adverse employment action "requires a materially adverse change in the terms and conditions of employment."[3] As they do not affect any ultimate employment decisions, "[b]eing yelled at, receiving unfair criticism, receiving unfavorable schedules or work assignments…do not rise to the level of adverse employment actions."[4]

Here, the only unfavorable change to the terms and conditions of employment alleged by plaintiff that could be considered an adverse employment action with regards to her military status is the change in her work schedule to the afternoon shift upon her return and defendant offers the legitimate non-discriminatory reason of coverage needs during the pandemic.[5] Defendant does not offer sufficient evidence that this decision was pretextual or that it rises to the level of an adverse employment action actionable under the NYSHRL.[6] Summary judgment is granted for defendant on plaintiff's NYSHRL military discrimination claim. Summary judgment is likewise granted for defendant on plaintiff's NYSHRL race, color, and sex discrimination claims for the same rationale. Even considering plaintiff's constructive discharge theory as a possible adverse employment action, plaintiff does not demonstrate "evidence that the defendants deliberately made her working conditions so intolerable that a reasonable person in her position would feel compelled to resign."[7] The record demonstrates that plaintiff voluntarily resigned to pursue a new employment opportunity, which standing alone, defeats the

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[1] Forrest v Jewish Guild for the Blind, 3 NY3d 295, 305 (2004).
[2] Reichman v City of New York, 179 AD3d 1115, 1117 (2d Dept 2020).
[3] Id.
[4] Katz v Beth Israel Med. Ctr., 19 NDLR P 260 (SNDY 2001).
[5] Memorandum of Law in Support, NYSCEF Doc. 67, at 19-20.
[6] Memorandum of Law in Opposition, NYSCEF Doc. 204, at 23; Memorandum of Law in Reply, NYSCEF Doc. 210, at 11.
[7] Memorandum of Law in Reply, NYSCEF Doc. 210, at 20.

constructive discharge claim. Additionally, plaintiff did not contemporaneously claim that she was being forced to resign: no such claim was made in her complaint, her initial entry on her resignation form, or her resignation email to supervisor Peter Stratos, and plaintiff only updated her resignation form characterizing her resignation as involuntary after the fact, upon the advice of counsel.[8] On this record, no reasonable jury could conclude that plaintiff's working conditions caused her resignation.

However, under the NYCHRL, "a plaintiff need not establish that she or he was subjected to a 'materially adverse' change to terms and conditions of employment, but only that he or she was subject to an unfavorable change or treated less well than other employees on the basis of a protected characteristic."[9] Here, shortly after returning from military leave, Parker discovered that her belongings such as a notebook documenting discrimination and irreplaceable family photos were thrown out, remain unrecovered to this day, and her parking pass went missing resulting in difficulty navigating Transit property.[10] These actions create a triable issue of fact as to whether plaintiff was treated less well by her colleagues as a result of her military leave, or as defendant argues, that they constitute "petty slights or trivial inconveniences."[11] Therefore, summary judgment for plaintiff's NYCHRL military status discrimination claim is denied.

As to plaintiff's claim under the NYCHRL for race, color, and sex discrimination, defendant asserts that the Maintainers treated Parker the same as other superintendents.[12] Plaintiff responds by noting an explicit admission by supervisor Krajewski that "[t]hey don't like it because you came in from the outside, you're female, you're a black female, so they're not going to like it" and noting that Tekdemir, a white superintendent was treated more favorably.[13] Parker was also the subject of a petition by the Maintainers with over thirty signatures stating that the Maintainers have "complained about [Parker's] harsh, demoralizing and unprofessional conduct…belligerent behavior, clearly intended to distract from the fact that she does not possess requisite technical knowledge…attitude [that] is condescending and makes for a hostile work

[8] Email from Plaintiff to Peter Stratos Concerning Her Resignation, NYSCEF Doc. 199.
[9] Golston-Green v City of New York, 184 AD3d 24, 38 (2d Dept 2020).
[10] Plaintiff EBT Transcript, NYSCEF Doc. 148, at 146-147; Plaintiff EBT Transcript, NYSCEF Doc. 148, at 156.
[11] Memorandum of Law in Support, NYSCEF Doc. 67, at 18.
[12] Id. at 17.
[13] Memorandum of Law in Opposition, NYSCEF Doc. 204, at 22-23.

environment."[14] Placed in the context of Krajewski's remark, this creates a triable issue of fact as to whether Parker was treated less well by her fellow subordinate Maintainer co-workers in part due to her identity as being black, female, or both. Summary judgment for plaintiff's NYCHRL race, color, and sex discrimination claim is denied.

II. NYML/NYCSL Discrimination

Defendant argues plaintiff was not denied a benefit, right, or privilege of employment on account of her military leave, returning to the same job with the same title.[15] New York Military Law § 242(4) states that "time during which a public officer or employee is absent pursuant [to ordered military duty] …shall not constitute an interruption of continuous employment."[16] The NYML prohibits any "loss or diminution" in seniority, status, or benefits of employees returning from military duty.[17] Parker's loss of her parking pass, removal from emailing and scheduling systems, and her shift reassignment create a triable issue of fact as to whether such actions constitute an "interruption of continuous employment" or a "loss or diminution" of status or benefits under the statute. Summary judgment for plaintiff's NYML military status discrimination claim is therefore denied. Under New York Civil Service Law § 88, a public employer shall not deny "any benefit of employment" based on past enlistment with the armed forces of the United States.[18] The above issues likewise create a triable issue of fact as to whether or not the parking pass, removal from emailing and scheduling systems, and shift reassignment constitute a denial of a benefit of employment. Summary judgment for plaintiff's NYCSL claim is denied.

III. NYSHRL/NYCHRL Retaliation

Defendant argues that plaintiff has not sufficiently laid out a prima facie claim for retaliation under the NYSHRL or NYCHRL. Under the NYSHRL, plaintiff must prove (1) she engaged in a protected activity; (2) defendants were aware of such activity; (3) she suffered an adverse employment action due to her protected activity; and (4) a causal connection exists

[14] Union Petition, NYSCEF Doc. 158.
[15] Memorandum of Law in Support, NYSCEF Doc. 67, at 31-32.
[16] N.Y. Mil. Law § 242(4).
[17] Memorandum of Law in Opposition, NYSCEF Doc. 204, at 23.
[18] N.Y. Civ. Serv. Law § 88.

between the protected activity and adverse employment action.[19] An employee engages in a activity by opposing or complaining about unlawful discrimination and to establish its entitlement to summary judgment under the NYSHRL, a defendant must demonstrate that the plaintiff cannot make out a prima facie claim of retaliation or having offered legitimate, non-retaliatory reasons for the challenged actions, that there exists no triable issue of fact as to whether defendant's explanations were pretexual.[20] Under the NYCHRL, plaintiff must prove (1) she engaged in "protected activity" by opposing or complaining about unlawful discrimination, (2) the Transit Authority was aware of such activity, (3) defendants' conduct was reasonably likely to deter a person from engaging in that protected activity, and (4) there is a causal connection between the protected activity and the alleged retaliatory conduct.[21] An adverse employment action is one which might have dissuaded a reasonable worker from making or supporting a charge of discrimination and it protects an individual not from all retaliation, but from retaliation that produces an injury or harm.[22]

Here, (1) plaintiff's protected activity was the filing of the lawsuit, (2) the Transit Authority became aware of her engagement in protected activity, considering plaintiff's allegations as true for the purpose of summary judgment, once Fiorillo confronted Parker directly about the lawsuit, (3) Stratos' negative final evaluation is activity sufficient enough to count as an adverse employment action because the recommendation of no rehire would likely prevent Parker from ever being rehired at the Transit Authority, and (4) the Stratos' evaluation was written less than two months after Parker filed suit, indicating temporal proximity at the nearest logical time when Stratos could engage in such retaliation as he could only write the final evaluation of separating employee after Parker was separated from her job.[23] Having established a prima facie case, defendant asserts a legitimate, non-retaliatory reason for the challenged final evaluation, namely that plaintiff had already resigned prior to the inclusion of the "do not rehire" recommendation in her termination paperwork.[24] However, defendant's articulation of newly identified attendance issues, absent prior documentation in the record, raises a triable issue of

[19] Memorandum of Law in Support, NYSCEF Doc. 67, at 23.
[20] Diluglio v Liberty Mutual Group, Inc., 230 AD3d 643, 645 (2d Dep't 2024).
[21] Memorandum of Law in Support, NYSCEF Doc. No. 67, at 23.
[22] Reichman, 179 AD3d at 1119.
[23] Summa v Hofstra University, 708 F3d 115, 128 (2013) (finding causation for four-month span as start of season was first moment in time where staff could have retaliated).
[24] Memorandum of Law in Reply, NYSCEF Doc. No. 210, at 18.

fact as to whether the stated reason was pretextual.[25] Summary judgment as to plaintiff's NYSHRL claim is denied. For the same reasons, summary judgment is also denied as to plaintiff's claims under the NYCHRL, as issues of fact similarly exist under the broader "treated less well" standard.

IV. NYSHRL/NYCHRL Sexual Harassment/Hostile Work Environment

Defendant argues that the conduct that plaintiff claims to constitute a hostile work environment is not sufficiently severe or pervasive enough to meet the threshold under the NYSHRL standard prior to October 11, 2019. Under the pre-2019 standard, a plaintiff was required to "establish (1) that the harassment was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, and (2) that a specific basis existed for imputing the objectionable conduct to the employer."[26] Such a workplace must be "permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of victim's employment and create an abusive working environment" and hostility and abusiveness is determined by looking at the totality of circumstances including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."[27] Here, plaintiff's sexually hostile work environment allegations are not sufficiently severe or pervasive enough under the pre-2019 NYSHRL standard. Plaintiff's allegations consist of comments and actions that do not implicate physical contact, and the alleged comments, while sexual in nature, were not severe or pervasive enough under the standard established by case law to constitute a sexually hostile work environment.[28] Additionally, plaintiff does not put forth enough evidence to demonstrate sufficient discriminatory motive for a hostile work environment to be created as a result of her being a black woman or her military status under the severe or pervasive standard. Parker's allegations against Makowski appear to be managerial conflicts based on her perceived

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[25] Stratos EBT Transcript, NYSCEF Doc. 152, at 67-70.
[26] Memorandum of Law in Support, NYSCEF Doc. 67, at 25-26.
[27] Forrest, 3 NY3d 295 at 310-311.
[28] Thompson v Lamprecht Transport, 39 AD3d 846, 847 (2d Dep't 2007) (summary judgment against plaintiff where male coworkers referred to women in the office as "soup chickens" and "peasants" and he intentionally punched her in the left breast); Minckler v United Parcel Service, Inc., 132 AD3d 1186, 1188 (2015) (finding insufficiency in meeting severe and pervasiveness standard due to lack of allegations of physical contact even with allegations of defendant pulling on plaintiff's bra strap, rubbing lubricant on plaintiff's arm, and pulling her hair)

performance and any alleged displeasure at Parker's taking of military leave similarly does not rise to the discriminatory animus necessary for an abusive working environment. Summary judgment for plaintiff's NYSHRL sexual harassment, black woman, and military status hostile work environment claims is granted.

Defendant next argues that plaintiff's hostile work environment allegations are no more than complaints about slights and inconveniences. The NYCHRL is more protective than its state and federal counterpart discrimination standards and the standard for maintaining a hostile work environment claim is lower under the NYCHRL where the plaintiff need not demonstrate that the treatment was severe or pervasive but that they have been treated less well than other employees because of their membership in a protected class. [29] Even if the plaintiff points to evidence of unequal treatment, defendant may prevail by pointing out that the conduct in question could only be reasonably interpreted by a trier of fact as representing no more than petty slights or trivial inconveniences.[30] Summary judgment should normally be denied to a defendant if there exists triable issues of fact as to whether such conduct occurred.[31] Here, Fiorillo's alleged sexual comments were directed at the plaintiff, were of such frequency and offensiveness that it caused Parker to request a transfer to avoid Fiorillo, and Fiorillo's denial of saying these comments to plaintiff in his deposition creates a triable issue of fact as to whether it happened.[32] Plaintiff's allegations of sexual comments, if credited, are sufficient to permit a finding that plaintiff was treated less well than other employees because of gender, and exceeds petty slights or trivial inconveniences. Accordingly, summary judgment on plaintiff's NYCHRL sexual harassment hostile work environment claim is denied. While much of defendant's conduct as to Parker's black woman and military status NYCHRL hostile work environment claim cannot be considered more than petty slights or inconveniences, including: being called a tyrant, having her authority undermined by a supervisor, a supervisor commenting or evaluating Parker's perceived incompetence, the Maintainers' Petition where plaintiff was personally named and Parker's disappearing desk belongings and parking pass issues could be considered as more than just petty slights or inconveniences.[33] As with plaintiff's NYCHRL discrimination claim, the petition

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[29] Jones v Mayflower Hotel International Group, Inc., 1, 6 (2018).
[30] Id.
[31] Williams v New York City Hous. Auth., 61 AD3d 62, 78 (1st Dep't 2009).
[32] Second Amended Complaint, NYSCEF Doc. 70, at 17; Fiorillo Deposition Excerpts, NYSCEF Doc. 79, at 8-11.
[33] Memorandum of Law in Support, NYSCEF Doc. 67, at 22; Union Petition, NYSCEF Doc. 158.

creates a triable issue of fact as to whether the Maintainers treated Parker less well due to her membership in a protected class due to the comment by Krajewski that Parker was being treated this way by the Maintainers because of her identity as a black female.[34] Similarly, the tangible workplace deprivation including her unrecovered desk belongings and parking pass being withheld despite her request for a replacement in the context of this occurring after her return from military leave creates a triable issue of fact as to whether this treatment was because of Parker's military leave. Summary judgment as to plaintiff's NYCHRL hostile work environment claim for being a black woman and her military status is denied.

For the above reasons, it is hereby

ORDERED that defendants' motion for summary judgment is **GRANTED** to the extent that the plaintiff's claims asserted under the NYSHRL alleging discrimination based on military status, race, sex, and color, NYSHRL claims for sexual harassment on a hostile work environment theory, and her NYSHRL hostile work environment claims for being a black woman and her military status are dismissed; and it is further

ORDERED that defendant's motion is **DENIED** as to all remaining claims.

This constitutes the Decision and Order of the Court.

Dated: 4/10/26

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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[34] Memorandum of Law in Opposition, NYSCEF Doc. 204, at 22-23.