Leshchenko v Go N.Y. Tours, Inc.
2026 NY Slip Op 31934(U)
May 4, 2026
Supreme Court, New York County
Docket Number: Index No. 162179/2025
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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VIKTOR LESHCHENKO

Plaintiff,

- v -

GO NEW YORK TOURS, INC.,

Defendant.

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INDEX NO. 162179/2025

MOTION DATE 10/30/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendant's motion to dismiss and to strike irrelevant and prejudicial allegations is granted in part and denied in part.

I. Background

Plaintiff, who is gay, began working as an entertainer for Defendant on February 7, 2023 at 2 East 42nd Street, New York, New York. Plaintiff took on additional hours working as a server, busser, and runner in Defendant's kitchen. Allegedly, on November 26, 2023, an individual named "Ricky" who was employed by Defendant and worked in Defendant's kitchen repeatedly used homophobic language, including the derogatory slur "faggot." When Ricky was confronted by a supervisor, Nico Torrez, and told to stop using that language, Ricky allegedly became defense and aggressive, continued using the derogatory language, and defended its use. Ricky allegedly continued using the language after Torrez left.

On November 27, 2023, several employees, including Plaintiff, sent a collective e-mail to Michael Crowley ("Crowley"), Defendant's manager of entertainment, and Anissa Barbato ("Barbato"), Defendant's director of entertainment, expressing their discomfort with Ricky's

actions. On December 1, 2023, Barbato responded to the e-mail by apologizing for Ricky's behavior and informed Plaintiff and his coworkers that the situation would be addressed. Ricky was apparently told that he could not behave in a similar manner again.

On or about January 4, 2024, Plaintiff's workspace changed, and he was relocated to a kitchen where he worked in close proximity to Ricky. Plaintiff claims that he feared working with Ricky because he previously made homophobic comments, and he often cursed and used profanity. On January 15, 2024, Plaintiff e-mailed Barbato and another supervisor complaining that he was uncomfortable working in close proximity to Ricky given Ricky's prior homophobic statements. In response, Barbato allegedly wrote "[i]f you feel that you are working in a hostile work environment, then I accept your resignation." Plaintiff responded, stating he did not resign and asked if he was fired. Barbato stated she was "replying to [Plaintiff's] request to fire an employee, and that [she] accepts his resignation." Plaintiff alleges he was merely asking for correction action or another solution and not to fire an employee and stated "I have not resigned. are you firing me for asking for safety at the workplace?" Barbato then responded "Yes, I accept your resignation, please return all uniform and equipment items. Your shifts have been removed from the schedule." Plaintiff wrote again stating he did not resign and was simply asking for corrective action, but Barbato did not reply, and Plaintiff was not scheduled for any more shifts.

Prior to this lawsuit, Plaintiff sued Defendant in the United States District Court Southern District of New York the ("SDNY Action") for retaliation under Title VII and the NYSHRL and NYCHRL. On June 30, 2025, United States District Judge John P. Cronan dismissed Plaintiff's Title VII claim and refused to exercise supplemental jurisdiction over the NYSHRL and NYCHRL claims. Judge Cronan also granted Plaintiff an opportunity to amend his pleading if he believed he could address the identified pleading deficiencies. Judge Cronan dismissed Plaintiff's Title VII

claim because he found Plaintiff could not plausibly allege that at the time of Plaintiff's January 2024 e-mail to Crowley and Barbato, Plaintiff could not reasonably have believed that Defendant was discriminating against him in violation of Title VII. Judge Cronan explicitly wrote he did not address the merits of Plaintiff's claims under the NYSHRL and NYCHRL.

Plaintiff then sued Defendant in this Court alleging retaliation under the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"). Defendant responds with a pre-answer motion to dismiss arguing that Plaintiff did not suffer any adverse employment action from participating in the November 2023 group e-mail, and Plaintiff's January 2024 complaints were not protected activity. Defendant also asks for certain purportedly irrelevant, prejudicial, and scandalous allegations be stricken from the Complaint. In opposition, Plaintiff claims that under New York's liberal pleading standards, he has sufficiently alleged retaliation for his complaints about feeling unsafe working in close proximity to an individual who had a known prior violent and homophobic outburst at work.

II. Discussion

On a pre-answer motion to dismiss under CPLR 3211(a)(7), the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and accept all factual allegations as true (*see Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). Employment discrimination cases are reviewed under notice pleading standards and need not plead a prima facie case of discrimination so long as there is fair notice of the nature of the claim and its grounds (*see Vig v New York hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009]).

New York Local Law 35 § 1 expressly instructs courts to interpret NYCHRL liberally and independently of state and federal anti-discrimination laws to create an independent body of

jurisprudence for the NYCHRL that is maximally protective of civil rights in all circumstances (*see Chauca v Abraham*, 30 NY3d 325 [2017]).

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 68, 64 n.1 [1st Dept 2020] ["this amendment is remarkably similar to the City HRL's Restoration Act"]; *Golston-Green v City of New York*, 184 AD3d 24, 35 [2d Dept 2020]).

The motion to dismiss the claims for retaliation under the NYSHRL and NYCHRL is denied. Accepting the facts alleged as true, giving Plaintiff the benefit of all favorable inferences, and considering New York applies a liberal notice pleading standard to discrimination claims, the Court finds that Plaintiff sufficiently alleged that as a gay man, he believed he was subject to an unsafe work environment based on being relocated to work in close proximity with an individual who was known to have recently engaged in a violent homophobic outburst (*see, e.g. Sandiford v City of New York Dept. of Educ.*, 22 NY3d 914 [2013]). Immediately after complaining about having to work closely with an individual with a documented history of homophobic outbursts, Plaintiff was terminated, which shows a causal nexus between the protected activity (a complaint about alleged discrimination) and an adverse employment action (the termination) (*see Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 25 [1st Dept 2014]). Rather than try to accommodate Plaintiff or seek ways to address his fears, which were not unfounded given the recent and allegedly aggressive homophobic outburst of a coworker he now had to share a cramped space with, Defendant fired Plaintiff immediately after Plaintiff complained.

Defendant's arguments, which rely on outdated case law the pre-dates the amendments to the NYSHRL and NYCHRL, or non-binding federal court opinions, are unavailing (*see also Herskowitz v State*, 222 AD3d 587, 589-590 [1st Dept 2023]; *Thomas v Mintz*, 182 AD3d 490, 490-491 [1st Dept 2020]; *O'Rourke v National Foreign Trade Council, Inc.*, 176 AD3d 517, 517-518 [1st Dept 2019]; *Petit v Department of education of city of new York*, 177 AD3d 402 [1st Dept 2019]; *Anderson v Edmiston & Co., Inc.*, 131 AD3d 416, 417 [1st Dept 2015]). Given the procedural juncture and considering there has been no discovery through which to test the allegations, Defendant's arguments are inappropriate on the instant motion but may be raised on a future motion for summary judgmentt after the record has been developed. Therefore, the motion to dismiss is denied. However, Plaintiff does not oppose this portion of Defendant's motion which seeks to strike certain irrelevant and prejudicial allegations. Therefore, paragraphs 33-35 and 45 of the Complaint are stricken without opposition.

Accordingly, it is hereby,

ORDERED that motion is granted solely to the extent that paragraphs 33-35 and 45 of the Complaint are stricken without opposition, but the remainder of the motion is denied; and it is further

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

ORDERED that the parties shall meet and confer and submit a proposed preliminary conference order, but in no event shall it be submitted any later than June 9, 2026. If the parties have a serious discovery dispute requiring a conference, they shall notify the Court so that an in-person appearance can be scheduled; 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.

5/4/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION		
	☐	GRANTED	☐ DENIED	☒	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE