

Sabbagh v State of New York
2026 NY Slip Op 31978(U)
May 6, 2026
Supreme Court, New York County
Docket Number: Index No. 450867/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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ABRAHAM SABBAGH, LEGAL REPRESENTATIVE FOR
THE ESTATE OF SHARON SABBAGH,
Plaintiff,

INDEX NO. 450867/2018
MOTION DATE 04/02/2026
MOTION SEQ. NO. 003 004

- v -

STATE OF NEW YORK, NEW YORK STATE OFFICE OF
COURT ADMINISTRATION, LAWRENCE KNIPEL,
individually and in his official capacity as Justice of the
Supreme Court, Kings County, and YVONNE LEWIS,
individually and in her official capacity as Justice of the
Supreme Court, Kings County

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 38, 39, 59, 61, 62, 63, 64, 65, 67, 70, 72, 74, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 93, 94, 95

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 68, 71, 73, 75, 87, 88, 89, 90, 91, 92, 96, 97, 98

were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 003 and 004 are consolidated for disposition. Defendants Knipel, Lewis and the State of New York (collectively, the “State Defendants”)’s motion (MS003) to dismiss is denied. Defendant New York State Office of Court Administration (“OCA”)’s motion to dismiss is denied. Plaintiff’s cross-motion for leave to amend in response to both motions is granted.

Background

Now-deceased plaintiff Sharon Sabbagh (hereinafter, “plaintiff”) brings this case seeking damages for purported sexual harassment she suffered by former Justice David Schmidt. Justice Schmidt passed away during the pendency of this action and was subsequently dropped as a

defendant from this case (NYSCEF Doc. No.28). Plaintiff insists that she was fired from her job as Justice Schmidt's secretary in retaliation for complaining about his constant sexual harassment the day after she made a formal complaint. She insists that defendant Knipel and Lewis (the "Judicial Defendants") failed to take appropriate actions to remedy Justice Schmidt's inappropriate behavior.

MS003

The Judicial Defendants contend that they were not plaintiff's employer. They contend that there are no allegations in the operative amended complaint that either of these defendants had any control over plaintiff's working conditions or the power to make any hiring or firing decisions. The Judicial Defendants argue that Justice Schmidt possessed those powers. They insist that therefore, plaintiff cannot maintain a New York City Human Rights Law ("NYCHRL") discrimination or retaliation claim against either of the judicial defendants.

The Judicial Defendants also contend that the complaint should be dismissed against them because Justice Schmidt was not their agent or employee and, instead, an independent member of the judiciary. They also argue that there is no basis to sustain an aiding and abetting claim for discrimination under the NYCHRL or the state human rights law ("NYSHRL") because no facts are alleged to show that either of these defendants participated in discriminatory conduct. They emphasize that the operative pleading contends that neither defendant knew about the alleged misconduct by Justice Schmidt until December 2013, only about a month before her termination. With respect to Justice Lewis, the Judicial Defendants argue that there are no assertions that she had any power to take remedial action against Justice Schmidt. They insist that the allegation that Justice Knipel told Justice Schmidt about the grievance filed by plaintiff does not save this cause of action because, even if this were true, Justice Schmidt would have

been told about the investigation. Finally, the Judicial Defendants claim that they, as well as defendant the State of New York, are protected by the doctrine of sovereign immunity as they were acting in their official capacity for the judicial branch.

OCA contends that Justice Schmidt fired plaintiff the day after she filed a formal complaint about him. It contends that it investigated these claims from February through September 2014 after which it was referred to the Commission on Judicial Conduct. That investigation was suspended upon Justice Schmidt's resignation from the bench on April 29, 2015. That resignation deprived the Commission of its jurisdiction to continue the investigation. OCA argues that there is no subject matter jurisdiction over it with respect to the NYCHRL claims. It adds that the NYSHRL claims should be dismissed because it was not plaintiff's employer and that she was hired by Justice Schmidt and her salary and benefits were controlled by the State of New York.

In opposition and in support of her cross-motion to for leave to amend, plaintiff emphasizes that she was subjected to many instances of discriminatory conduct. She insists that she wants to amend her complaint to clarify that Justices Lewis and Knipel aided and abetted in violations of the NYSHRL and NYCHRL. Plaintiff insists that her proposed second amended complaint (NYSCEF Doc. No. 79) has four causes of action. The first is for sex discrimination/hostile work environment in violation of NYSHRL against OCA and the State of New York. The second is for retaliation against OCA and the State of New York under the NYCHRL. The third claim is for aiding and abetting discrimination under the NYSHRL against all defendants and the fourth claim is for aiding and abetting discrimination under the NYCHRL against defendants Knipel and Lewis.

Plaintiff insists that apart from adding defendants State of New York and OCA to the aiding and abetting cause of action in the amended complaint, this proposed pleading also clarifies employment status allegations and removes the individual Judicial Defendants from the first and second causes of action.

Discussion

“A party may amend his or her pleading at any time by leave of court or by stipulation of all parties. Generally, leave to amend a pleading shall be freely given absent prejudice or surprise resulting directly from the delay unless the proposed amendment is palpably insufficient or patently devoid of merit” (*Spina v Browning Hotel Properties, LLC*, 230 AD3d 613, 613, 217 NYS3d 169 [2d Dept 2024] [granting cross-motion for leave to amend and denying a motion to dismiss]).

Here, the Court is confronted with a proposed amended pleading that substantially changes the nature of plaintiff’s claims at least with respect to the motions to dismiss. For instance, plaintiff now alleges that defendants Lewis and Knipel were not sued as employers but rather only as part of an aiding and abetting claim and that the first two causes of action are no longer alleged against them. OCA and the State of New York were also added to the aiding and abetting cause of action and more allegations regarding the status and identity of plaintiff’s employer were included.

The Court finds that the proposed amended pleading is not palpably insufficient and that there is no prejudice to defendants in permitting this amendment. To be sure, this case has been pending for 10 years but, as plaintiff observes, somehow no discovery has occurred. And, of course, amendment must be freely given. In any event, this Court finds that the better course of action is to permit the amendment and then allow defendants to answer or otherwise respond

(including making motions to dismiss targeted towards the new pleading). This will ensure, assuming that defendants make new motions, that the parties can create a clean record should any party wish to appeal rather than attempt to piece together which arguments are still valid given the amendment. For instance, OCA filed two replies—one addressed to its motion and the other to the allegations in the proposed second amended complaint.


Accordingly, it is hereby

ORDERED that defendants’ motions to dismiss (MS003 and 004) are denied; and it is further

ORDERED that plaintiff’s cross-motions for leave to amend are granted and plaintiff shall upload a copy of the proposed amended pleading as a separate e-filed document (it is now only an exhibit) on or before May 12, 2026 and defendants shall answer or otherwise respond on or before June 4, 2026.

Conference: August 10, 2026 at 10 a.m. By August 3, 2026, the parties are directed to upload a proposed discovery stipulation or, if there are disagreements, letters explaining the nature of these disputes. The failure to upload anything by August 3, 2026 will result in an adjournment of this conference or, possibly, an order directing the filing of a note of issue.

Now that the case has been reassigned to this part, this would be a good time to familiarize yourselves with the part’s rules regarding motions and conferences.

<u>5/6/2026</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER	
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	