Belton v Borg & Ide Imaging, P.C.
2022 NY Slip Op 34832(U)
August 24, 2022
Supreme Court, Monroe County
Docket Number: Index No. E2021001739
Judge: Victoria M. Argento
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

RUBY BELTON, M.D.,

Plaintiff,

-vs-

DECISION AND ORDER
Index No. E2021001739

BORG & IDE IMAGING, P.C. and RADNET, INC.,

Defendants.

APPEARANCES: PHILLIP G. STECK, ESQ.
Cooper Erving & Savage
Attorney for Plaintiff

STACEY E. TRIEN, ESQ.
Adams Leclair, LLP
Attorney for Defendants

VICTORIA M. ARGENTO, J.

Defendants have moved to dismiss the complaint pursuant to CPLR 3211(a)(1), (5), and (7). The motion is granted in part and denied in part for the reasons that follow.

Background

Plaintiff Ruby Belton, M.D., filed a complaint with this court on February 26, 2021, claiming defendants unlawfully discriminated against her on the basis of her race and age, and unlawfully retaliated against her in violation of Section 296 of the New York State Human Rights Law (NYSHRL), and that they breached a 2006 Settlement Agreement between the parties. The defendants have moved to dismiss the complaint pursuant to CPLR 3211(1), (5), and (7). They argue that plaintiff's NYSHRL claims are

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barred by res judicata or, alternatively, by collateral estoppel and in any event fail to plead a valid claim of discrimination or retaliation. Moreover, defendant RadNet argues that they were not plaintiff's employer, thus plaintiff cannot sue them for NYSHRL violations. As for plaintiff's breach of contract claim, defendants' argue that RadNet was not a party to the Settlement Agreement allegedly breached and that plaintiff has failed to allege breaches against Borg and Ide (B&I) that resulted in damages.

Prior to commencing this action, plaintiff filed a lawsuit against the defendants in United States District Court for the Western District of New York, alleging race-based and sex-based discrimination and retaliation pursuant to 42 U.S.C. 1981, Title VII of the Civil Rights Act of 1964, and NYSHRL, as well as breach of contract under New York State law. Defendants moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim pursuant to 28 U.S.C. 1367, and Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. In a written Decision and Order dismissing the 1981, Title VII, and NYSHRL claims, U.S. District Court Judge David G. Larimer determined that plaintiff failed to "plausibly allege that she suffered an adverse employment action under circumstances giving rise to an inference of discrimination" or to plausibly allege] a retaliation claim under Title VII or the NYSHRL. Judge Larimer determined that the breach of contract claim "appears to be a bona fide dispute," but having dismissed plaintiff's federal claims he declined to exercise supplemental jurisdiction over the remaining state law breach of contract claim and dismissed it for that reason.

Plaintiff's NYSHRL Claims

Under the doctrine of res judicata, "a valid final judgment bars future actions between the same parties on the same cause of action," and "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*Parker v. Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 [1999]; *see also Troy v. Goord*, 300 AD2d 1086 [4th Dept. 2002]). The doctrine therefore "applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation" (*Matter of Hunter*, 4 NY3d 260, 269 [2005]; *see also Incredible Investments Ltd. ex rel. One Niagara, LLC v. Grenga*, 125 AD3d 1362 [4th Dept. 2015]). A Federal Court determination will bar a subsequent State claim "[w]hen the elements of proof required for establishing a prima facie case in Federal and State actions are nearly identical" (*State Div. of Human Rights v. Dunlop Tire & Rubber Corp.*, 105 AD2d 1071, 1072 [4th Dept. 1984]).

The elements of proof required for a valid NYSHRL claim are nearly identical to those required for a Federal Title VII claim (*id*; *Askin v. Dept. Of Educ. of City of New York*, 110 AD3d 621 [1st Dept. 2013]; *Soloviev v. Goldstein*, 104 F.Supp.3d 232, 247 [E.D.N.Y. 2015]), and here, the factual allegations underlying plaintiff's State and Federal actions are nearly identical. Thus, the State cause of action is barred by the Federal Court's decision (*Sanders Grenadier Realty, Inc.*, 102 AD3d 460 [1st Dept. 2013]; *McKinney v. City of New York*, 78 AD2d 884 [2nd Dept. 1980]). Moreover, even if the allegations in the State complaint were not identical to those in the Federal case, all of

the allegations before the Court occurred prior to the entry of the Decision and Order in Federal court and therefore could have been brought in that action (*Matter of Hunter*, 4 NY3d at 269).

Alternatively, even if plaintiff's claims were not barred by res judicata, her complaint must be dismissed for failure to state a cause of action pursuant to CPLR 3211(a)(7). To state a valid NYSHRL claim "plaintiff must show that (1) she has engaged in protected activity, (2) that her employer was aware that she participated in such activity, (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action" (*Forrest v. Jewish Guild for the Blind*, 3 NY3d 295, 313 [2004]). For the reasons set forth in the defendants' Memorandum of Law and Judge Larimer's decision plaintiff has failed to plead that she was subjected to any adverse employment action under circumstances giving rise to an inference of discrimination, and failed to plead the requisite causation between a protected activity and an adverse action as it relates to her retaliation allegations.

With regard to defendant RadNet, plaintiff has failed to sufficiently allege that they were her employer. To recover under the NYSHRL a plaintiff must demonstrate that she had an employment relationship with the defendant (*Strauss v. New York State Dept. of Educ.*, 26 AD3d 67, 69 [3rd Dept. 2005]). Plaintiff has failed to allege that RadNet was her direct employer or that she was subject to their control (*see Esposito v. Altria Group, Inc.*, 67 AD3d 499 [1st Dept. 2009]). Therefore, even if plaintiff's stated causes of action under the NYSHRL were not barred by res judicata, they would nevertheless be

dismissed as to RadNet on the grounds that they were not plaintiff's employer.

Finally, defendants are correct that the statute of limitations bars any NYSHRL claims arising from events that took place more than three years before plaintiff filed her complaint in State Court, i.e. before February 26, 2018 (CPLR 214[2]; *Mouscardy v. Consolidated Edison Company of New York, Inc.*, 185 AD3d 579 [2nd Dept. 2020]). Therefore, alternatively, any such claims are dismissed for that reason pursuant to CPLR 3211(a)(5).

Plaintiff's Breach of Contract Claims

The breach of contract claims are not barred by res judicata because Judge Larimer expressly declined to exercise supplemental jurisdiction over them (*Bielby v. Middaugh*, 120 AD3d 896, 898 [4th Dept. 2014]). The elements of a breach of contract claim are "the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages" (*Niagara Foods, Inc., v. Ferguson Elec. Service Co., Inc.* (111 AD3d 1374, 1376 [4th Dept. 2013]). The only parties to the 2006 Settlement Agreement allegedly breached are plaintiff and B&I. Because RadNet was not a party to that agreement, the breach of contract cause of action against them is dismissed pursuant to CPLR 3211(a)(1) and (7).

Plaintiff alleges B&I violated the Settlement Agreement by failing to properly apply the work scheduling formula in the agreement. Contrary to B&I's contention, plaintiff has sufficiently pleaded damages as a result of the alleged breach of contract regarding the application of the scheduling formula. "It [is] sufficient that the complaint contained allegations from which damages attributable to the defendant's breach might be

reasonably inferred" (*CAE Indus. v. KPMG Peat Marwick*, 193 AD2d 470, 473 [1st Dept. 1993]; *see also Harmit Realties LLC v. 835 Ave. of Americas, L.P.*, 128 AD3d 460 [1st Dept. 2015]). It could be reasonably inferred from the allegation that B&I failed to properly implement the scheduling formula that plaintiff was undercompensated as a result. The Court agrees with plaintiff that specific damages that may have occurred as a result of the alleged breach cannot be determined without discovery and access to information within the defendants' control. Defendants' motion to dismiss this claim is therefore denied.

Plaintiff also alleges that B&I breached clause three of the Settlement Agreement which required B&I to "adopt written procedures for reporting and responding to any complaints of harassment/unlawful discrimination alleged to have occurred at any of the Group's offices and/or health care facilities serviced by the Group..." (Atty Aff in Support of Motion to Dismiss, Exh. 4). Plaintiff has failed to allege damages resulting from the alleged failure of B&I to adopt such written procedures. And, unlike the first alleged breach, the complaint does not contain allegations "from which damages attributable to the defendant's breach might be reasonably inferred" (*CAE Indus.*, 193 at 473; *see also Gordon v. Dino De Laurentis Corp.*, 141 AD2d 435, 436 [1st Dept. 1988]). Therefore, that cause of action is dismissed pursuant to CPLR 3211(a)(1) and (7).

Conclusion

Accordingly, for the reasons set forth herein, the first, second, and third causes of action in the complaint alleging race and age discrimination and retaliation are dismissed in their entirety without leave to amend. The fourth cause of action (titled the "fifth"

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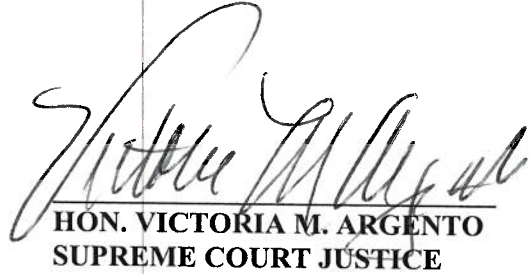
cause of action in the complaint) alleging breach of contract is dismissed in its entirety as to defendant RadNet, and dismissed in part as to B&I as set forth above without leave to amend.

This constitutes the Decision and Order of the Court.

Dated this 24th day of August, 2022, at Rochester, New York.



HON. VICTORIA M. ARGENTO
SUPREME COURT JUSTICE