

Choudhry v Community Urgent Care, P.C.

2024 NY Slip Op 33892(U)

October 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 520882/2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 520882/2022
Motion Date: 7-22-24
Motion Seq No. 7

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SHOAIB MOHAMMAD CHOUDHRY,

Plaintiff,

DECISION/ORDER

-against –

COMMUNITY URGENT CARE, P.C., ASISA 49TH
STREET LLC, ASISA FLATBUSH LLC, SUNRAY
CDPAP LLC, HEALTH SITE LLC, CUC LB INC, ELIO
HASANI, JONNI DOE, NOOR BOUSAEED, KARAM
DOE, and JOHN LIEBERMAN

Defendants.

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Upon the following e-filed documents, listed by NYSCEF as item numbers 71-74, 83-84, 86, the motion is decided as follows:

In this action alleging employment discrimination in violation of the New York State Human Rights Law (“NYSHRL”) and the New York City Human Rights Laws (“NYCHRL”), defendant JOHN LIEBERMAN moves for an Order dismissing the First Amended Complaint against him with prejudice for failure to state a claim upon which relief may be granted (CPLR 3211(a)(7)). Plaintiff SHOAIB MOHAMMAD CHOUDHRY opposes the motion.

Background:

Plaintiff commenced this action claiming that while working as a COVID-19 swabber at a mobile testing site, he suffered discrimination on the bases of religion, national origin, and race/color, as well as retaliation under the NYCHRL and NYSHRL due to the actions of two of his co-workers, defendants Elio Hasani and Jonni Doe. The defendants apparently owned and operated mobile COVID19 testing businesses. In his amended complaint, plaintiff alleges that seven of the defendants, defendants Community Urgent Care, P.C., Asisa 49th Street LLC, Asisa Flatbush LLC, Sunray Cdpap LLC, Cuc Lb Inc., Karam Doe and Noor Bousaeed, were his actual employers. He also alleges that defendant John Lieberman was an “employer” within the meaning of the NYSHRL and the NYCHRL, but curiously did not allege that Mr. Lieberman was his employer.

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Plaintiff was assigned to work with defendants ELIO HASANI and JONNI DOE, who he claims, repeatedly hurled racist insults at him. He further claims that on March 22, 2022, Hasani attacked him and fractured his nose. Plaintiff argues that despite having actual or constructive notice of the racist insults and the attack, the defendants, including Mr. Lieberman, did virtually nothing to prevent the harassment or remediate the situation.

The individual defendants Hasani and Jonni are alleged to be agents, servants, or employees of the two CUC entities, the two Asisa entities, Sunray, and Health Site, but not of Mr. Lieberman. In conclusory fashion, plaintiff further alleges that the eleven defendants acted together through a “single integrated enterprise.” (Id. ¶ 249).

With respect to the moving defendant John Lieberman, plaintiff alleges that he is a principal, owner, or executive Community Urgent Care, PC, Asisa 49th Street LLC, and Asisa Flatbush LLC. He goes on to allege:

182. Upon information and belief, Defendant JOHN LIEBERMAN coordinated for payroll through Sunray to pay workers like Plaintiff to administer COVID19 tests.

183. Defendant JOHN LIEBERMAN exercised managerial or supervisory responsibility over Plaintiff.

184. Defendant JOHN LIEBERMAN knew of offending employee(s)’s unlawful discriminatory conduct toward Plaintiff and either acquiesced or failed to take immediate and appropriate corrective action.

185. Defendant JOHN LIEBERMAN should have known of the conduct yet failed to exercise reasonable diligence to prevent it.

186. Defendant JOHN LIEBERMAN aided, abetted, compelled, coerced, or otherwise engaged and participated in employment discrimination and/or harassment against Plaintiff.

There are no specific allegations in the amended complaint as to how Mr. Lieberman aided, abetted, compelled, coerced, or otherwise engaged and participated in employment discrimination and/or harassment against Plaintiff.

Discussion:

Plaintiff's amended complaint does not allege a viable cause of action for discrimination against Mr. Lieberman, in his individual capacity, or as an employee of one of the defendant business entities under either the NYCHRL or the NYSHRL. Under the NYSHRL, an individual defendant may be held liable "only on an aider-and-abettor theory." (*Baptiste v. C.U.N.Y.*, 680 F. Supp. 3d 415, 427 (S.D.N.Y. 2023); see *Doe v. Bloomberg, L.P.*, 167 N.E.3d 454, 455–56 (N.Y. 2021) (clarifying previous decisions which had been taken to suggest that an individual in a supervisory role could be held liable as an "employer"); *Luo v. AIK Renovation Inc.*, No. 23-CV-5878 (LJL), 2024 WL 4444283, at *17 (S.D.N.Y. Oct. 8, 2024). While the plaintiff alleges that Mr. Lieberman aided, abetted, engaged and participated in the alleged employment discrimination and harassment, plaintiff fails to allege any specific facts supporting these allegations. While it is true that on a motion pursuant to CPLR 3211(a)(7), all of allegations in the complaint are deemed true, and that the plaintiff is accorded the benefit of every possible favorable inference (see *Matter of Johnson v. County of Orange*, 138 A.D.3d 850, 850–851, 29 N.Y.S.3d 502; *Matter of Schlemme v. Planning Bd. of City of Poughkeepsie*, 118 A.D.3d 893, 895, 988 N.Y.S.2d 640; *Matter of Brown v. Foster*, 73 A.D.3d 917, 918, 900 N.Y.S.2d 432), where, as here, a complaint contains only bare legal conclusions, it fails to state a cause of action and must be dismissed pursuant to CPLR 3211(a)(7) (see *Corporate National Realty v. Philson, Ltd.*, 232 A.D.2d 518, 648 N.Y.S.2d 974; see, e.g., *Doria v. Masucci*, 230 A.D.2d 764, 646 N.Y.S.2d 363; *Lovisa Constr. Co. v. Metropolitan Transp. Auth.*, 198 A.D.2d 333, 603 N.Y.S.2d 886; *Kenneth R. v. Roman Cath. Diocese of Brooklyn*, 229 A.D.2d 159, 162, 654 N.Y.S.2d 791, 794). The amended complaint therefore does not state a viable cause of action against Lieberman under the NYSHRL.

The amended complaint also fails to state a viable cause of action against Mr. Lieberman under the NYCHRL. NYCHRL § 8–107(13) provides:

“[a]n employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

“(1) the employee or agent *exercised managerial or supervisory responsibility*; or

“(2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

“(3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct” (emphasis added).

Significantly, the amended complaint does not allege an employer-employee relationship between Mr. Lieberman and defendants Elio Hasani and Jonni Doe. In fact, the amended complaint alleges that defendants ELIO HASANI and JONNI DOE acted as agents, servants, or employees of Defendants COMMUNITY URGENT CARE, P.C., ASISA 49TH STREET LLC, ASISA FLATBUSH LLC, SUNRAY CDPAP LLC, HEALTH SITE LLC, and CUC LB INC.” (¶¶ 111, 113).

The amended complaint also alleges:

249. As alleged herein, Defendants themselves, and by and through the individuals identified herein, acted as a single integrated enterprise with interrelated operations, centralized control over labor relations, common management, and common ownership or financial control. Defendants use common décor, name, marketing, and employees at the same or similar locations and, use the same central office(s) and vehicles and spaces and common guidelines and procedures.

The allegation that Mr. Lieberman was part of the alleged “single integrated enterprise” is not synonymous with an allegation that Mr. Lieberman employed Elio Hasani and Jonni Doe. Since there are no allegations that Mr. Lieberman employed Elio Hasani and Jonni Doe, the amended complaint does not state a basis to hold Mr. Lieberman for their alleged discriminatory conduct under NYCHRL § 8-107(13).

Accordingly, it is hereby

ORDERED, the motion is in all respects **GRANTED**, without prejudice to replead.

This constitutes the decision and order of this court.

Dated: October 25, 2024

PPS

PETER P. SWEENEY, J.S.C.

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

KINGS COUNTY CLERK
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