Ajala v Limani 51
2024 NY Slip Op 34444(U)
December 17, 2024
Supreme Court, New York County
Docket Number: Index No. 153433/2023
Judge: Richard G. Latin
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD G. LATIN** **PART** **46M**

Justice

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INDEX NO. 153433/2023

MOTION DATE 08/05/2024

MOTION SEQ. NO. 002

MALIK AJALA,

Plaintiff,

- v -

LIMANI 51, LLC,ESTIATORIO LIMANI LLC,CHRISTOS SPYROPOULOS, ONIRO TAVERNA LLC D/B/A LIMANI TAVERNA, ONIRO TAVERNA ROSLYN LLC D/B/A LIMANI MEZZE, SPYROPOULOS HOSPITALITY LLC D/B/A LIMANI GRILLE

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30

were read on this motion to/for DISMISSAL.

Plaintiff Malik Ajala ("plaintiff") commenced this class action against defendants Limani 51, LLC d/b/a Limani ("Limani of Manhattan"), Estiatorio Limani LLC d/b/a Limani ("Limani of Roslyn"), Oniro Taverna LLC d/b/a Limani Taverna ("Taverna"), Oniro Taverna Roslyn LLC d/b/a Limani Mezze ("Mezze"), Spyropoulos Hospitality LLC d/b/a Limani Grill ("Grill"), and Christos Spyropoulos ("Spyropoulos") (collectively referred to as "defendants"). Plaintiff, a former employee at Limani of Manhattan, alleges that defendants operate as a part of a single integrated enterprise and that their tip and wage policies violate the New York Labor Law ("NYLL") provisions, and defendants engaged in sexual harassment, and race and national origin discrimination in violation of the New York State Human Rights Laws ("NYSHRL") and New York City Human Rights Laws ("NYCHRL"). Defendants now move pre-answer to dismiss the first amended complaint pursuant to CPLR 3211 (a) (5) and (7) against defendants Limani of Roslyn, Taverna, Mezze and Grill, and dismiss plaintiff's claims of constructive discharge in his

second and third causes of action. Plaintiff opposes. For the foregoing reasons, defendants' motion is denied in its entirety.

I. Factual Background

The following allegations are taken from the first amended complaint and are presumed true for purposes of the instant motion. Plaintiff, who is a Muslim man of Croatian and Libyan nationality, was employed as a server for Limani of Manhattan from March 2019 to March 2020 (NY St Cts Elec Filing [NYSCEF] Doc No. 23, First Amended Complaint). Plaintiff claims the restaurants are liable for his injuries, because they are operated as a single integrated enterprise. The restaurants are New York companies, owned and operated by Spyropoulos, and he is listed on the liquor licenses (*id.* ¶ 14). Limani at Roslyn and Limani at Manhattan share the "LIMANI" trademark, and the employees wear uniforms with the same trade name and logo (*id.*). The restaurants share a common look and feel and serve Mediterranean food (*id.*). They have a centralized payroll and human resources and provide the same terms of employment to employees at all of the restaurants (*id.*). The employees are subject to the same wage policies and receive the same employee handbook (*id.*). Spyropoulos exercised the power to fire and hire employees, determine rate and method of pay, determine work scheduled, and affect the quality of employment (*id.* ¶ 28).

Plaintiff alleged on behalf of himself and the class that defendants engaged in improper time shaving, improper tip credit practices, improper meal credit practices, and a variety of other violations of NYLL (*id.* ¶ 38). Plaintiff further alleges in substance that defendants discriminated against him based on race and national origin and created a hostile work environment. Specifically, "Manager George" made sexually charged comments and gestures towards plaintiff and other employees with the purpose of sexually harassing them (*id.* ¶¶ 67-69). He alleges that "Manager

George" made several derogatory slurs and racially charged statements towards him and other Arab employees (*id.* ¶¶ 74-75). Plaintiff alleges that defendants were on notice of the discriminatory conduct and failed to take an action to resolve it (*id.* ¶ 103). Lastly, plaintiff alleges that his constructive termination after his complaints constitutes further discrimination and retaliation in violation of § 8-107 (7) of NYCHRL (*id.* ¶ 104).

II. Parties' Contentions

Defendants contend the amended complaint must be dismissed because plaintiff makes generalized allegations against all defendants rather than alleging any specific factual allegations or claims against each defendant (NYSCEF Doc No. 28, Memorandum of Law in Support of Louis Perchman, Esq. (memo), at 4). Second, plaintiff's claims that Limani of Roslyn, Taverna, Mezze and Grill are a single integrated enterprise pursuant to NYLL should be dismissed because plaintiff failed to plead any facts or non-conclusory allegations showing that they shared centralized labor relations with Limani of Manhattan, or whether plaintiff worked directly for these restaurants (*id.* at 7-8). Defendants argue that unlike the court in *Rahman v Limani 51 LLC*, 2022 US Dist. LEXIS 157705 [SD NY 2022], where it was held that Limani of Roslyn and Limani of Manhattan were an integrated enterprise for the purpose of the Fair Labor Standards Act, NYCHRL and NYCHRL, plaintiff has not sufficiently alleged that the defendants exercised any control over plaintiff's employment (*id.* at 14). Additionally, Mezze and Grill were not in operation during the time that plaintiff worked for Limani of Manhattan (*id.* at 16). Furthermore, defendants argue that plaintiff's discrimination claims against Limani of Roslyn, Taverna, Mezze and Grill should be dismissed as they do not qualify as plaintiff's employer under NYSHRL and NYCHRL, and the amended complaint lacks allegations that they comprise a single integrated enterprise or functioned as plaintiff's employer (*id.* at 17-19). There was no contractual relationship between plaintiff and

Limani of Roslyn, Taverna, Mezze and Grill, and plaintiff does not allege that these restaurants intervened in the management of Limani of Manhattan (*id.* at 18-19). Lastly, they argue that plaintiff's allegations of retaliation by constructive discharge in violation of § 8-107 (7) are insufficient as he did not allege a single adverse employment action as a result of the alleged discrimination, or allege defendants acted purposefully or deliberately to make him resign from his position (*id.* at 19-20).

In opposition, plaintiff argues that the amended complaint does not allege group pleadings and each defendant has received notice of what it is alleged to have done (NYSCEF Doc No. 29, Memorandum of Law in Opposition of C.K. Lee, Esq, (opp memo), at 3). As to the question of single integrated enterprise, plaintiff argues that defendants are collaterally estopped from asserting that Limani of Roslyn was not plaintiff's employer as in *Rahman*, it was previously held that restaurants should be treated as a single integrated enterprise (*id.* at 3-4). Furthermore, the amended complaint sufficiently alleges that defendants were plaintiff's employer as they are a part of a single enterprise (*id.* at 8-9). Regarding Taverna, Mezze and Grill, plaintiff argues that they are a single employer and not a joint employer, and "exercising direct control" is not required (*id.*). Plaintiff further contends that pursuant to the ruling in *Rahman*, Limani of Manhattan and Limani of Roslyn have been conclusively adjudicated to be a single integrated enterprise under NYHRL and NYCHRL, even though the plaintiff worked at one location and not the other (*id.* at 20-21). Lastly, the amended complaint, specifically in paragraphs 68, 74 and 75, alleges the hostile workplace environment based on plaintiff's race, national origin, and sex, which is sufficient to satisfy the constructive discharge cause of action (*id.* at 21).

III. Discussion

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the pleading is afforded a liberal construction and the court must accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). In assessing the sufficiency of the complaint, this court must also consider the allegations made in both the complaint and the accompanying affidavit, submitted in opposition to the motion, as true and resolve all inferences which reasonably flow therefrom, in favor of the plaintiff (*see Joel v Weber*, 166 AD2d 130, 135-136 [1st Dept 1991] [internal quotation marks and citations omitted]). New York's pleading standard is embodied in CPLR 3013, which provides that

> "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense."

However, vague and conclusory allegations cannot survive a motion to dismiss (*see Kaplan v Conway & Conway*, 173 AD3d 452, 452-453 [1st Dept 2019]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*Cortland St. Recovery Corp. v Bonderman*, 31 NY3d 30, 38 [2018] [citation omitted]). "[U]nlike on a motion for summary judgment where the court searches the record and assesses the sufficiency of the parties' evidence, on a motion to dismiss the court merely examines the adequacy of the pleadings" (*id.*). "[W]hether the pleading will later survive a motion for summary judgment, or whether the party will ultimately prevail on the claims, is not relevant on a pre-discovery motion to dismiss" (*Oluwo v Sutton*, 206 AD3d 750, 752 [2d Dept 2022] [internal quotation marks and citations omitted]).

Upon a review of the pleadings, this court finds that plaintiff has alleged sufficient facts to withstand dismissal of the action at this stage in the litigation. In determining whether an entity is an employer for purposes of the Labor Law, plaintiff must allege at the pleading stage factors under the economic reality test, including whether the alleged employer, including the owner, had the power to hire and fire the employees; supervised and controlled the employee's conditions of employment, and determined the rate and method of payment (*see Harris v Structuretech N.Y., Inc.*, 191 AD3d 470, 471-472 [1st Dept 2021]; *see also Bonito v Avalon Partners, Inc.*, 106 AD3d 625, 626 [1st Dept 2013]). Here, plaintiff has specifically alleged that the restaurants were owned by Spyropolous and he hired all the managers and supervisors who were delegated the power to hire employees, he frequently visited the restaurants on a weekly basis, supervised and control supervisors of plaintiff and reprimanded employees, and approved wages and employees' request for days off (NYSCEF Doc No. 23, ¶ 28). As to the determination of whether the defendants are a single integrated enterprise, or joint employers, it is essentially a question of fact that cannot be disposed of on a motion to dismiss (*see Dias v Cmty. Action Project, Inc.*, 2009 WL 595601, *6, 2009 US Dist. LEXIS 17562, *20 [ED NY 2009]).

On the issue of constructive termination, a plaintiff states a claim for constructive discharge under the NYCHRL where he/she alleges that the "defendant deliberately created working conditions so intolerable, difficult or unpleasant that a reasonable person would have felt compelled to resign" (*Crooklendale v New York City Health & Hosps. Corp.*, 175 AD3d 1132, 1132 [1st Dept 2019], quoting *Short v Deutsche Bank Sec., Inc.*, 79 AD3d 503, 504 [1st Dept 2010] [internal quotation marks omitted]). "The standard for alleging a claim of constructive discharge is higher than the standard for establishing a hostile work environment where, as here, the alleged constructive discharge stems from the alleged hostile environment" (*Gaffney v City of New York*,

101 AD3d 410, 411 [1st Dept 2012], *lv denied* 21 NY3d 858 [2013] [internal quotation marks and citations omitted]). "A racially hostile work environment exists when the workplace is permeated with discriminatory intimation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 310 [2004] [internal quotation marks and citations omitted]). The court must consider "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" (*id.* at 310-311).

Here, plaintiff sufficiently pleads that the alleged conduct of these defendants created a hostile work environment. The amended complaint's detailed allegations demonstrate that plaintiff was subjected to a constant barrage of disparaging and derogatory remarks about sex and racial comments (*see* NYSCEF Doc No. 23 ¶ 68, 74, 93, 102; *see also Eustache v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 228 AD3d 482, 484 [1st Dept 2024] ["[defendant's] alleged comments about plaintiff's race . . . signaled her discriminatory views on race in the workplace"]). As set forth above, considering the liberal pleading standards afforded these claims and viewing plaintiff's pleadings in the light most favorable to plaintiff, he has sufficiently pleaded that his working conditions were beyond the reasonable person standard set forth above. Based on the foregoing, defendants' motion to dismiss pursuant to CPLR 3211 (a) (7) is denied.

Although defendants' motion seeks dismissal of the amended complaint pursuant to CPLR 3211 (a) (5), they do not address any legal arguments for this relief. All remaining arguments have been considered and are either without merit or need not be addressed given the findings above.

Accordingly, it is hereby ORDERED that defendants LIMANI 51, LLC, d/b/a LIMANI, ESTIATORIO LIMANI LLC d/b/a LIMANI, ONIRO TAVERNA LLC d/b/a LIMANI TAVERNA, ONIRO TAVERNA ROSLYN LLC d/b/a LIMANI MEZZE, SPYROPOULOS HOSPITALITY LLC d/b/a LIMANI GRILL, and CHRISTOS SPYROPOULOS' motion to dismiss the amended complaint pursuant to CPLR 3211 (a) (5) and (7) is denied; and it is further

ORDERED that defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to jointly submit a proposed preliminary conference order to Part 46 via email on or before January 17, 2025, or let the court know that the parties are at an impasse and require a conference.

12/17/2024
DATE

RICHARD G. LATIN, 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