

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER
Justice

PART 36

HISPANIC AIDS FORUM,

Plaintiff,

INDEX NO. 112428/01

-against-

MOTION SEQ. NO. 004

ESTATE OF JOSEPH BRUNO, et. al.,

Defendants.

The following papers, numbered 1 to 4, were read on this motion:

PAPERS NUMBERED

Notice of Motion — Affidavits — Exhibits

1

Answering Affidavits — Exhibits

2,3

Replying Affidavits — Memorandum of Law

4

Cross-Motion: Yes No

Upon the foregoing papers it is hereby ordered that defendant's motion to dismiss is decided as set forth below.

Background

Plaintiff Hispanic Aids Forum ("HAF") is a non-profit organization whose treatment and education services seek to reduce HIV transmission and secure necessary support services for Latinos in New York City who are affected by HIV/AIDS. HAF operates three community-based offices in the City's largest Latino neighborhoods, including Lower Manhattan, Western Queens and the South Bronx. In March 1991, HAF entered into a two-year lease ("the lease") with the defendants for office space in the Bruson Building ("the building"), located at 74-09 37th Avenue in Jackson Heights. The defendants own, operate and manage the building. The

lease was subsequently renewed without dispute. By 1995, HAF needed more space and the parties entered into a lease on March 15, 1995 for suite 306 on the third floor of the building, and another lease on December 15, 1995 for suite 305. Both leases signed in 1995 expired April 30, 2000. In addition to HAF, there are two other social services agencies and several attorneys' offices located on the third floor that all share the common areas which include the bathrooms located in the main hallway. Although the bathrooms were often unlocked, each commercial tenant had keys to the women's and men's bathrooms. In 1996 or 1997, Carboni Travel leased office space down the hall from HAF.

In late 1999, HAF alleges that one of its transgendered¹ clients informed HAF staff member Blanca Carranza that an employee for Carboni Travel had approached her in the bathroom and asked why she was using the women's bathroom (Complaint ¶ 5). Shortly after that incident, HAF alleges that one of Carboni Travel's employees told Carranza that they did not like "those men that look like women using the bathroom" (Complaint ¶ 6) to which Carranza explained why transgendered Latinas use the women's bathroom (*Id.*).

Responding to the increasing need for HIV/AIDS services among transgendered Latinas, HAF initiated greater outreach and the number of transgendered clients being serviced at the Jackson Heights office increased. In 2000, a new support group for transgendered clients was formed at HAF and the bi-monthly meetings were regularly attended by approximately five or six transgendered clients. In Spring 2000, HAF and the defendants negotiated a new five-year lease

¹"Transgendered people are those who have a strong and persistent cross-gender identification and experience persistent discomfort about their assigned sex "(Diagnostic and Statistical Manual of Mental Disorders 532-33 [4th ed.]). "Transgendered individuals include people who present as the other sex but take no hormones and have no surgery, people who take hormones to change their secondary sex characteristics but have no surgery, and people who have a range of surgical procedures to alter their anatomical sex. Only a small percentage of transgendered people have surgery, and still a smaller percentage have all the surgery required to change all aspects of the anatomical sex" (*Id.*).

for suite 306 and it was agreed that HAF would renovate suite 306. On March 31, 2000, the defendants sent HAF a renewal lease for suite 306 to commence on May 1, 2000. The lease was signed by HAF and mailed to the defendants on April 24, 2000. On or about May 5, 2000, HAF hand-delivered to the defendants' office manager a rent check for the first month, supplemental security deposit and the required insurance documents, which the manager accepted. HAF alleges that the manager mentioned that other tenants were complaining because "men who think they're women are using the women's bathroom" (Complaint ¶ 20). Toward the end of May 2000, HAF alleges it was told by the defendant manager that they were not going to sign the renewal lease because the defendants received complaints from other tenants and had issues with "men who think they're women using the women's bathrooms and women who think they're men using the men's bathrooms" (Complaint ¶ 21). HAF alleges that they were told by the defendants that the lease would not be renewed unless HAF prevented its transgendered clients from using common area in the building, including the main entrance and the bathrooms (Complaint ¶ 2). HAF alleges that several conversations took place between its attorney and the defendant property manager during which time defendant allegedly made several offensive comments and ridiculed HAF clients, including that he "just needed to get rid of 'all these Queens' " (Complaint ¶ 24). HAF alleges instead of making efforts to accommodate its clients, on June 30, 2000, HAF received an eviction notice demanding that suite 306 be vacated by July 31, 2000 (Complaint ¶ 3). Defendants then commenced an eviction proceeding in housing court. The parties entered into a stipulation where HAF agreed to vacate the premises by January 31, 2001, which it did. HAF then commenced this action against the defendants on the grounds of unlawful discrimination in refusing to rent to HAF because of its transgendered clients.

Discussion

Defendant brings this motion to dismiss the complaint pursuant to CPLR § 3211 for failure to state a cause of action. In a CPLR § 3211 motion to dismiss, the factual allegations of the complaint are deemed true and the affidavits submitted on the motion are considered only for the limited purpose of determining whether the plaintiff has stated a claim, not whether plaintiff has one (*Wall Street Associates v Brodsky*, 257 AD2d 526 [1st Dept 1999]). It is well settled that a pleading shall be liberally construed and will not be dismissed for insufficiency merely because it is inartistically drawn (*Foley v D'Agostino*, 21 AD2d 60 [1st Dept 1964]). The relevant inquiry is whether the requisite allegations of any valid cause of action cognizable by the state courts can be fairly gathered from the four corners of the complaint (*Id.*). “Defects shall be ignored if a substantial right of a party is not prejudiced” (*Id.* at 65).

The complaint asserts four causes of action against the defendants. The first cause of action alleges discrimination on the basis of sex in violation of the New York State Human Rights Law (Complaint ¶ 3) discrimination on the basis of gender in violation of the New York City Administrative Code §§§ 8-107(4)(a), 8-107(5)(b) and 8-502. The third cause of action alleges discrimination on the basis of actual or perceived disability in violation of New York State Human Rights Law §§§ 290, 296(5)(b)(1), (2), and 297(9). The fourth cause of action alleges discrimination on the basis or actual or perceived disability in violation of the New York City Administrative Code §§§ 8-107(4)(a), 8-107(5)(b) and 8-502.

Sex/Gender Discrimination Causes of Action

The State Human Rights law provides that “[i]t shall be an unlawful discriminatory practice to refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons land or commercial space because of the race, creed, color, national origin, sex, age, disability of such person or persons” (New York Executive Law § 296(5)(b)(1)). The City Administrative Code contains similar provisions except that the term “gender” is used instead of “sex” and provides that “[i]t shall be an unlawful discriminatory practice to refuse to sell, rent, lease approve the sale, rental, lease or otherwise deny to or withhold from any person or group of persons land such a housing accommodation or an interest therein because of the actual or perceived race, creed, color, national origin, gender, age, disability of such person or persons” (NY City Administrative Code sect 8-107(5)(b)(1)). Defendants argue that the State and City Human Rights Laws do not apply to transgendered people. This Court disagrees. In fact, courts in this State have already held² that transgendered people are protected under the provisions of the State Human Rights Law, including the prohibitions against discrimination on the basis of sex and/or disability (*see Maffei v Kolaeton Industry, Inc.*, 164 Misc2d 547 [Sup Ct NY Cty 1995][sexual harassment against an employee because he is transgendered constitutes discrimination based on sex under the City Human Rights Law]; *Richards v US Tennis Association*, 93 Misc2d 713 [Sup Ct NY County 1977][barring a transgender player from competing as a woman until she agreed to take a chromosome test to determine her “true” sex was “grossly unfair, discriminatory and inequitable, and violative of her rights under the Human Rights Law of this State”]; *Rentos v Oce-Office Systems*, 1996 WL 737215 [SDNY

²This decision discussed only cases decided prior to the Sexual Orientation Non-discrimination Act (“SONDA”) which was enacted in 2003 and which all parties agree are inapplicable to this action.

1996][defendant's motion to dismiss a complaint alleging sex discrimination and harassment of a transgender employee was denied because the federal court held that the plaintiff's claims of sex discrimination were viable under the State Human Rights Laws]). In the instant action, HAF alleges that they were told by the defendants that the lease would not be renewed unless HAF prevented its transgendered clients from using common areas in the building, including the main entrance and the bathrooms (Complaint ¶ 2). HAF was told by the defendant's manager that they were not going to sign the renewal lease because the defendants received complaints from other tenants and had issues with "men who think they're women using the women's bathrooms" and "women who think they're men using the men's bathrooms" (Complaint ¶¶ 20, 21). HAF alleges that several conversations took place between its attorney and the defendant's property manager during which time defendant allegedly made several offensive comments and ridiculed HAF's clients, including that he just needed to get rid of "all these Queens" (Complaint ¶ 24). These allegations, if taken as true, are sufficient to plead viable claims of sex and gender discrimination under the State and City Human Rights Laws. Further, discrimination against HAF because of its association with transgender people is also protected by the Human Rights Laws (*see Bernstein v 1995 Associates*, 185 AD2d 160 [1st Dept 1992]; *Matter of Barton v New York City Commission on Human Rights*, 140 Misc2d 554 [Sup Ct NY County 1988]). Defendants' counsel's difficulty grasping the concept of transgendered persons as expressed in his affirmations is irrelevant to the fact that plaintiff has met its pleading burden to sustain the first and second causes of action.

Disability Causes of Action

While the State and City Human Rights Laws cited by the plaintiff ban discrimination in

commercial leasing based on a person's actual or perceived disability, plaintiff has failed to specifically allege the exact physical, mental or medical impairment or condition, as required by New York Executive Law § 292(2), or the physical, medical, mental or psychological impairment suffered or perceived to be suffered by its clients, as required by the New York City Administrative Code § 8-102(16)(b)(1). In HAF's memorandum of law, it discusses a diagnosable condition known clinically as Gender Identity Disorder or gender dysphoria, but the presence or perceived presence of this condition in HAF's transgendered clients is not alleged anywhere within the four corners of the complaint. This Court finds that HAF has failed to adequately plead its disability claims, and accordingly the third and fourth causes of action are dismissed without prejudice.

This reflects the decision and order of this Court.

Dated: 10/8/03

S/

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION