

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Shojae v. Harlem Hosp. Ctr.

No. 18-392-cv, United States Court of Appeals for the Second Circuit (April 18, 2019)

SUMMARY

The Second Circuit affirmed summary judgment dismissing the plaintiff's hostile work environment, disparate treatment, and retaliation claims under Title VII, § 1981, and the New York State Human Rights Law (NYSHRL). However, the court vacated dismissal of the plaintiff's New York City Human Rights Law (NYCHRL) discrimination and retaliation claims against her supervisor and the hospital, holding she presented admissible evidence that she was treated "less well" based on gender, race, or national origin—a broader standard under NYCHRL. The case was remanded for the district court to determine whether to exercise supplemental jurisdiction and whether the statute of limitations for NYCHRL claims is tolled while an EEOC charge is pending.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Pierre N. Leval; Raymond J. Lohier, Jr.; Lewis A. Kaplan
JURISDICTION	Federal
DECIDED	April 18, 2019
DOCKET	18-392-cv
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from summary judgment entered by the United States District Court for the Southern District of New York (Forrest, J.) dismissing plaintiff's claims.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Unpublished
PARTIES	Pari Shojae v. Harlem Hospital Center, New York City Health and Hospitals Corporation, Shahnawaz Khan, and Hinnah Farooqi

TOPICS

employment discrimination

title vii

retaliation

hostile work environment

summary judgment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court properly granted summary judgment dismissing plaintiff's hostile work environment, disparate treatment, and retaliation claims under Title VII, §1981, NYSHRL, and NYCHRL.
2. Whether the district court properly dismissed the NYCHRL discrimination and retaliation claims against Khan and the Hospital.

HOLDINGS

1. Vacated because plaintiff provided admissible evidence that she was treated 'less well' based on protected characteristics.
2. Vacated and remanded for determination of whether to exercise supplemental jurisdiction, because NYCHRL retaliation is construed as broadly as discrimination.

KEY QUOTATIONS

“Shojae provided at least some admissible evidence that she was treated 'less well' based on her gender, race, or national origin.” (3)

“we give the anti-retaliation provisions of the NYCHRL a construction as broad as the statute's anti-discrimination provisions” (4)

FACTUAL BACKGROUND

Pari Shojae, a Shia Muslim of Persian ethnicity, was employed at Harlem Hospital Center. She alleged that her supervisor Shahnawaz Khan altered her job terms, made derogatory comments about her gender, religion, and ethnicity, and favored Pakistani employees. She filed claims of discrimination, retaliation, and hostile work environment under federal, state, and city law.

PROCEDURAL HISTORY

Plaintiff brought suit alleging discrimination and retaliation. The district court granted summary judgment in favor of defendants. Plaintiff appealed.

DISPOSITION

other

REMAND INSTRUCTIONS

On remand, the district court is to determine whether to exercise supplemental jurisdiction over the NYCHRL discrimination and retaliation claims or to dismiss them without prejudice. It may also decide the tolling issue if it exercises jurisdiction.

CASES CITED

- Mihalik v. Credit Agricole Cheuvreux N. Am., Inc., 715 F.3d 102 (2d Cir. 2013)
- Williams v. N.Y.C. Hous. Auth., 872 N.Y.S.2d 27 (1st Dep't 2009)
- Schneider v. Wal-Mart Stores, Inc., No. 16-cv-2010 (NSR), 2019 WL 294309 (S.D.N.Y. Jan. 23, 2019)
- Cameron v. N.Y.C. Dep't of Educ., No. 15-cv-9900 (KMW), 2018 WL 1027710 (S.D.N.Y. Feb. 21, 2018)

OPINION

PER CURIAM.

18-392-cv Shojae v. Harlem Hosp. Ctr. et al. UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT=S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION ASUMMARY ORDER@).

A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. 1 At a stated term of the United States Court of Appeals for the Second Circuit, 2 held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the 3 City of New York, on the 18th day of April, two thousand nineteen. 4 5 PRESENT: PIERRE N. LEVAL, 6 RAYMOND J. LOHIER, JR., 7 Circuit Judges, 8 LEWIS A. KAPLAN, 9 District Judge.

10 ----- 11 PARI SHOJAE, 12 13 Plaintiff-Appellant, 14 15 v. No. 18-392-cv 16 17 HARLEM HOSPITAL CENTER, NEW YORK 18 CITY HEALTH AND HOSPITALS 19 CORPORATION, SHAHNAWAZ KHAN, 20 INDIVIDUALLY, and HINNAH FAROOQI, Judge Lewis A. Kaplan, of the United States District Court for the Southern District of New York, sitting by designation.

1 INDIVIDUALLY, 2 3 Defendants-Appellees. † 4 5 ----- 6 FOR PLAINTIFF-APPELLANT: Jonathan A. Tand, John C. 7 Luke, Jr., Tand & Associates, 8 Westbury, NY. 9 10 FOR DEFENDANTS-APPELLEES Claude S. Platton, Jane L. 11 HARLEM HOSPITAL CENTER, Gordon, and Ellen S. Ravitch, 12 NEW YORK CITY HEALTH AND Assistant Corporation 13 HOSPITAL CORPORATION, and Counsel, for Zachary W. 14 HINNAH FAROOQI, INDIVIDUALLY: Carter, Corporation Counsel of 15 the City of New York, New 16 York, NY.

17 18 FOR DEFENDANT-APPELLEE Shahnawaz Khan, pro se, 19 SHAHNAWAZ KHAN: Whitestone, NY. 20 21 Appeal from a judgment of the United States District Court for the 22

Southern District of New York (Katherine Bolan Forrest, Judge). 23 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, 24 AND DECREED that the judgment of the District Court is AFFIRMED IN PART 25 and VACATED AND REMANDED IN PART.

26 Pari Shojae appeals from a judgment of the District Court (Forrest, J.) † The Clerk of Court is directed to amend the official caption as shown above. 2 1 granting summary judgment in favor of Shojae's former employer, the Harlem 2 Hospital Center, its owner and operator, the New York City Health + Hospitals 3 Corporation (collectively, "the Hospital"), and certain Hospital employees.

4 Shojae claimed that the Defendants discriminated against her because of her 5 gender, race, religion, and national origin, retaliated against her, and subjected 6 her to a hostile work environment, in violation of 42 U.S.C. § 1981, Title VII of the 7 Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e-2 et seq., the New York State 8 Human Rights Law (NYSHRL), and the New York City Human Rights Law 9 (NYCHRL).

We assume the parties' familiarity with the underlying facts and 10 the record of prior proceedings, to which we refer only as necessary to explain 11 our decision to affirm in part and vacate and remand in part. 12 With respect to Shojae's hostile work environment claims and her 13 disparate treatment and retaliation claims under federal and state law, upon 14 review of the record on appeal, we affirm the judgment substantially for reasons 15 stated by the District Court in its opinion and order of January 12, 2018.

16 However, we vacate the dismissal of Shojae's NYCHRL discrimination claims 17 against Khan and the Hospital, as well as the dismissal of her NYCHRL 3 1 retaliation claim. 2 As to Shojae's timely NYCHRL discrimination claims with respect to 3 certain adverse actions, it appears that Shojae provided at least some admissible 4 evidence that she was treated "less well" based on her gender, race, or national 5 origin.¹ See *Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 6 110 (2d Cir.

2013) (quoting *Williams v. N.Y.C. Hous. Auth.*, 872 N.Y.S.2d 27, 39 7 (1st Dep't 2009)). In particular, Shojae testified that Khan, while acting as her 8 supervisor, altered the terms of Shojae's job, made derogatory comments to her 9 about her gender, identity as a Shia Muslim, and Persian ethnicity, and openly 10 favored employees of Pakistani origin. See App'x 453-54, 456-59, 498, 587-88.

11 We therefore vacate the dismissal of Shojae's NYCHRL discrimination claims 12 against Khan and the Hospital.² 1 Summary judgment was properly granted in favor of Defendant-appellee Farooqi, as Shojae presented no admissible evidence of discrimination relating to Farooqi. 2 We

have not resolved whether the statute of limitations under the NYSHRL and NYCHRL is tolled while a complaint is pending with the Equal Employment Opportunity Commission.

See *Schneider v. Wal-Mart Stores, Inc.*, No. 16-cv-2010 (NSR), 2019 WL 294309, at *3-4 (S.D.N.Y. Jan. 23, 2019) (collecting cases and concluding that, while the Second Circuit has not yet decided the issue, there is a “clear trend” among district courts in this circuit that the filing of an EEOC charge tolls NYSHRL claims); *Cameron v. N.Y.C. Dep’t of Educ.*, No. 15-cv-9900 (KMW), 2018 WL 1027710, at 4 1 Because we vacate the dismissal of Shojae’s NYCHRL claim of 2 discrimination and remand to the District Court, and because we give the anti- 3 retaliation provisions of the NYCHRL a construction as broad as the statute’s 4 anti-discrimination provisions, *Mihalik*, 715 F.3d at 109 (“[C]ourts must...

5 constru[e] the NYCHRL’s provisions broadly in favor of discrimination 6 plaintiffs.”), we also vacate the dismissal of Shojae’s NYCHRL retaliation claim 7 and remand to the District Court to determine in the first instance whether to 8 exercise supplemental jurisdiction over that claim and the NYCHRL 9 discrimination claim or to dismiss them without prejudice.

10 We have considered Shojae’s remaining arguments and conclude that they 11 are without merit. For the foregoing reasons, the judgment of the District Court 12 is AFFIRMED IN PART and VACATED IN PART, and the case is REMANDED. 13 FOR THE COURT: 14 Catherine O’Hagan Wolfe, Clerk of Court 15 *11 (S.D.N.Y. Feb. 21, 2018) (same, with respect to NYCHRL claims).

Of course, on remand, we leave it to the District Court to decide the tolling issue should it decide to exercise supplemental jurisdiction over the remaining claims under the NYCHRL. 28 U.S.C. § 1367(c). 5