

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Chamale-Eustace v. State Univ. of N.Y. at Stony Brook

2026 NY Slip Op 00236 · No. 2023-11413 · Decided January 21, 2026

SUMMARY

The New York Appellate Division, Second Department, reversed an order denying Matthew Berchuck’s motion to dismiss claims arising from alleged gender-based mistreatment of a surgical technologist during surgery. The court held that the complaint did not allege a sufficient adverse employment action for a disparate-treatment claim under 42 USC § 1983, that Berchuck could not be liable for aiding and abetting his own alleged NYSHRL violation, and that the negligence claim was abandoned. The court therefore granted dismissal of the challenged causes of action against Berchuck.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Lara J. Genovesi, J.; Janice A. Taylor, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	January 21, 2026
DOCKET	2023-11413
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant Matthew Berchuck appealed from an order denying his CPLR 3211(a)(7) motion to dismiss claims for gender discrimination under 42 USC § 1983, aiding and abetting violations of the New York State Human Rights Law, and common-law negligence.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the court gives the complaint a liberal construction, accepts the alleged facts as true, affords the plaintiff every favorable inference, and determines only whether the alleged facts fit within any cognizable legal theory.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Matthew Berchuck v. Monica Chamale-Eustace

TOPICS

employment discrimination

section 1983

hostile work environment

motions to dismiss

appellate procedure

PRACTICE AREAS

employment law

civil rights

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the complaint alleged an adverse employment action sufficient to state a disparate-treatment gender-discrimination claim under 42 USC § 1983.
2. Whether Berchuck could be held liable under the New York State Human Rights Law for aiding and abetting his own alleged discrimination.
3. Whether the common-law negligence claim should be dismissed because the plaintiff abandoned it by failing to address it in opposition to the motion and on appeal.

HOLDINGS

1. The complaint failed to state a cause of action under 42 USC § 1983 because the plaintiff did not allege an adverse employment action sufficient to support a disparate-treatment claim.
2. The NYSHRL disparate-treatment and hostile-work-environment claims failed insofar as asserted against Berchuck because he could not be held liable for aiding and abetting his own violation of the NYSHRL.
3. The common-law negligence claim was dismissed because the plaintiff abandoned it by failing to address it in opposition to Berchuck's motion and in her appellate brief.

KEY QUOTATIONS

*“On a motion pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action, the court must give the complaint a liberal construction, accept the facts alleged therein as true, provide the plaintiff the benefit of every possible favorable inference, and “determine only whether the facts as alleged fit within any cognizable legal theory” (*1)*

FACTUAL BACKGROUND

Monica Chamale-Eustace, a female surgical technologist, alleged that during an August 14, 2021 surgery, surgeon Matthew Berchuck struck her arm with a closed fist while holding a surgical instrument, threw instruments and needles at her, and screamed and cursed at her. She also alleged that Berchuck belittled female staff members but did not treat male staff members similarly, and that the institutional defendants knew of similar prior misconduct. She asserted gender-discrimination, hostile-work-environment, aiding-and-abetting, and negligence claims.

PROCEDURAL HISTORY

Monica Chamale-Eustace commenced the action in December 2022 against State University of New York at Stony Brook, Stony Brook University Hospital, Stony Brook Medicine, and Matthew Berchuck. The Supreme Court, Suffolk County, denied Berchuck's motion to dismiss several causes of action for failure to state a cause of action. The Appellate Division reversed insofar as appealed from and granted the challenged branches of Berchuck's motion.

DISPOSITION

reversed

CASES CITED

- Leon v. Martinez, 84 N.Y.2d 83, 87-88
- Cortlandt St. Recovery Corp. v. Bonderman, 31 N.Y.3d 30, 38
- Buon v. Spindler, 65 F.4th 64, 79 (2d Cir.)
- Muldrow v. St. Louis, 601 U.S. 346, 354
- Naumovski v. Norris, 934 F.3d 200, 212 (2d Cir.)
- Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 89 (2d Cir.)
- Mathirampuzha v. Potter, 548 F.3d 70, 73, 78 (2d Cir.)
- Franco v. City of New York, 2025 WL 964014, *5-8, 2025 U.S. Dist. LEXIS 61030, *14-23 (E.D.N.Y.)
- Ahmad v. New York City Health & Hosps. Corp., 2021 WL 1225875, *17, 2021 U.S. Dist. LEXIS 62986, *47-49 (S.D.N.Y.)
- Perez v. Y & M Transp. Corp., 219 A.D.3d 1449, 1451
- Croci v. Town of Haverstraw, 116 A.D.3d 993, 994
- Goldin v. Engineers Country Club, 54 A.D.3d 658, 660
- Elco v. Aguiar, 226 A.D.3d 649, 651
- Ferdous v. Hasan, 236 A.D.3d 992, 994
- Delanerolle v. St. Catherine of Sienna Med. Ctr., 231 A.D.3d 1013, 1015

OPINION

Chamale-Eustace v. State Univ. of N.Y. at Stony Brook 2026 NY Slip Op 00236

PER CURIAM.

Chamale-Eustace v State Univ. of N.Y. at Stony Brook (2026 NY Slip Op 00236) Chamale-Eustace v State Univ. of N.Y. at Stony Brook 2026 NY Slip Op 00236 Decided on January 21, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on January 21, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P.

LARA J. GENOVESI

JANICE A. TAYLOR

JAMES P. MCCORMACK, JJ. 2023-11413

(Index No. 207511/22) [*1]Monica Chamale-Eustace, respondent, v State University of New York at Stony Brook, et al., defendants, Matthew Berchuck, etc., appellant. Rachel Schulman, Esq. PLLC, Great Neck, NY, for appellant. Brendan Chao (Bergstein & Ullrich, New Paltz, NY [Stephen Bergstein], of counsel), for respondent. DECISION & ORDER In an action, inter alia, to recover damages for employment discrimination on the basis of gender in violation of 42 USC § 1983 and the New York State Human Rights Law, the defendant Matthew Berchuck appeals from an order of the Supreme Court, Suffolk County (James F. Quinn, J.), dated August 8, 2023. The order, insofar as appealed from, denied those branches of that defendant's motion which were pursuant to CPLR 3211(a)(7) to dismiss the first and sixth causes of action and the third and fourth causes of action insofar as asserted against him. ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and those branches of the motion of the defendant Matthew Berchuck which were pursuant to CPLR 3211(a)(7) to dismiss the first and sixth causes of action and the third and fourth causes of action insofar as asserted against him are granted. On or about August 14, 2021, the plaintiff, a female surgical technologist employed by the defendants State University of New York at Stony Brook, Stony Brook University Hospital, and Stony Brook Medicine (hereinafter collectively the Stony Brook defendants), assisted in a surgery performed by the defendant Matthew Berchuck, a surgeon employed by the Stony Brook defendants. The plaintiff alleged that during the surgery, Berchuck, inter alia, struck the plaintiff in the arm with a closed fist while holding a surgical instrument, threw surgical instruments and needles at her, and screamed and cursed at her. In addition, the plaintiff alleged that Berchuck belittled other female staff members who were assisting in the surgical procedure, but he did not treat male staff members in a similar manner. Further, the plaintiff alleged that the Stony Brook defendants were aware of and failed to address similar incidents of misconduct by Berchuck in the past. In December 2022, the plaintiff commenced this action, asserting causes of action alleging, among other things, employment discrimination on the basis of gender in violation of 42 USC § 1983 based on disparate treatment against Berchuck (first cause of action), employment discrimination on the basis of gender in violation of the New York State Human Rights Law (NYSHRL) (Executive Law § 296) based on disparate treatment (third cause of action) and hostile work environment (fourth cause of action), and common-law negligence against Berchuck (sixth cause of action). In the third and fourth causes of action, the plaintiff alleged that Berchuck aided [*2]and abetted violations of the NYSHRL. Berchuck moved, inter alia, pursuant to CPLR 3211(a)(7) to dismiss the first and sixth causes of action and the third and fourth causes of action insofar as asserted against him. In an order dated August 8, 2023, the Supreme Court, among other things, denied those branches of the motion. Berchuck appeals. On a motion pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action, the court must give the complaint a liberal construction, accept the facts alleged therein as true, provide the plaintiff the benefit of

every possible favorable inference, and "determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez* , 84 NY2d 83, 87-88 ; see *Cortlandt St. Recovery Corp. v Bonderman* , 31 NY3d 30, 38). The Supreme Court should have granted that branch of Berchuck's motion which was pursuant to CPLR 3211(a)(7) to dismiss the first cause of action. A plaintiff asserting a disparate treatment claim under 42 USC § 1983 must allege that he or she "suffered an adverse employment action" (*Buon v Spindler* , 65 F4th 64, 79 [2d Cir]; see *Muldrow v St. Louis* , 601 US 346 , 354; *Naumovski v Norris* , 934 F3d 200, 212 [2d Cir]). Here, even accepting the allegations in the complaint as true and giving the plaintiff the benefit of every possible favorable inference, the plaintiff failed to allege an adverse employment action that would be sufficient to state a cause of action alleging disparate treatment under 42 USC § 1983 (see *Vega v Hempstead Union Free Sch. Dist.* , 801 F3d 72, 89 [2d Cir]; cf. *Mathirampuzha v Potter* , 548 F3d 70, 73, 78 [2d Cir]; *Franco v City of New York* , 2025 WL 964014 , *5-8, 2025 US Dist LEXIS 61030 , *14-23 [ED NY, No. 19-CV-5905 (AMD) (CLP)]; *Ahmad v New York City Health & Hosps. Corp.* , 2021 WL 1225875 , *17, 2021 US Dist LEXIS 62986 , *47-49 [SD NY, No. 20 Civ. 675 (PAE)]). The Supreme Court also should have granted those branches of Berchuck's motion which were pursuant to CPLR 3211(a)(7) to dismiss the third and fourth causes of action, alleging violations of the NYSHRL, insofar as asserted against him. The complaint failed to state causes of action alleging aiding and abetting discrimination against Berchuck, as he may not be held liable for aiding and abetting his own violation of the NYSHRL (see *Perez v Y & M Transp. Corp.* , 219 AD3d 1449, 1451 ; *Croci v Town of Haverstraw* , 116 AD3d 993, 994 ; *Goldin v Engineers Country Club* , 54 AD3d 658, 660 ; cf. *Elco v Aguiar* , 226 AD3d 649 , 651). Further, the Supreme Court should have granted that branch of Berchuck's motion which was pursuant to CPLR 3211(a)(7) to dismiss the sixth cause of action, alleging common-law negligence against him. The plaintiff abandoned that cause of action by failing to address it in opposition to Bercheck's motion and in her brief on appeal (see *Ferdous v Hasan* , 236 AD3d 992 , 994; *Delanerolle v St Catherine of Sienna Med. Ctr.* , 231 AD3d 1013 , 1015). Berchuck's remaining contention need not be reached in light of our determination. CONNOLLY, J.P., GENOVESI, TAYLOR and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court