

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

Brouillard v. Sunrun, Inc.

2023 NY Slip Op 04184 (N.Y. Ct. App. 2023) · No. 2020-03610 · Decided August 9, 2023

SUMMARY

The Appellate Division, Second Department affirmed an order addressing claims brought by Luke Brouillard against Sunrun, Inc. arising from the rescission of a job offer after a positive marijuana test. The court held that the complaint failed to state a disability-discrimination claim under the New York State Human Rights Law because it did not allege that the plaintiff could perform the job’s essential functions with reasonable accommodation, but sufficiently stated claims under the broader New York City Human Rights Law.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Joseph J. Maltese, J.; Paul Wooten, J.; Barry E. Warhit, J.
JURISDICTION	New York
DECIDED	August 9, 2023
DOCKET	2020-03610
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed and plaintiff cross-appealed from an order resolving defendant's CPLR 3211(a) motion to dismiss employment-discrimination claims.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the court determines whether the pleading states a cause of action, accepting the alleged facts as true and determining whether they fit within any cognizable legal theory.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Sunrun, Inc. v. Luke Brouillard

TOPICS

disability discrimination

reasonable accommodation

employment discrimination

appellate procedure

standard of review

PRACTICE AREAS

employment law

civil rights

QUESTIONS PRESENTED

1. Whether Brouillard stated a cause of action for disability discrimination under the New York State Human Rights Law.
2. Whether Brouillard stated a cause of action for disability discrimination under the New York City Human Rights Law based on Sunrun's refusal to hire him after a positive marijuana test despite knowledge that he used medical marijuana to treat a medical condition.

HOLDINGS

1. The complaint failed to state a cause of action under the NYSHRL because it did not allege facts sufficient to show that, with reasonable accommodations, Brouillard could perform the essential functions of the job.
2. The complaint sufficiently stated NYCHRL disability-discrimination claims because it alleged that Brouillard was disabled and was discriminated against based on his disability.

KEY QUOTATIONS

“To state a claim under the [NYS]HRL, the complaint and supporting documentation must set forth factual allegations sufficient to show that, ‘upon the provision of reasonable accommodations, [the employee] could perform the essential functions of [his or] her job’”

“Refusing to hire the plaintiff because he tested positive for marijuana while knowing that he was being treated with marijuana by a licensed physician for a medical condition effectively denied the plaintiff the opportunity of a reasonable accommodation, and therefore, under these circumstances, is appropriately recognized as a cognizable cause of action to recover damages for employment discrimination on the basis of disability in violation of the NYCHRL ”

FACTUAL BACKGROUND

Sunrun offered Brouillard a position as a field sales consultant. Brouillard alleged that he had several physical conditions causing chronic pain and that he possessed a New York medical-marijuana registry identification card to treat those conditions. After he tested positive for marijuana in a pre-employment drug test, he provided Sunrun with his medical-marijuana documentation, but Sunrun rescinded the job offer.

PROCEDURAL HISTORY

Luke Brouillard sued Sunrun, Inc., alleging disability discrimination under the New York State Human Rights Law and the New York City Human Rights Law after Sunrun rescinded a job offer following a positive

marijuana test. The Supreme Court, Kings County, dismissed the NYSHRL cause of action under CPLR 3211(a) (7) but denied dismissal of the NYCHRL causes of action. Sunrun appealed the denial of dismissal, and Brouillard cross-appealed the dismissal of the NYSHRL claim. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Jacobsen v. New York City Health & Hosps. Corp., 22 NY3d 824, 834
- Romanello v. Intesa Sanpaolo, S.p.A., 22 NY3d 881, 884-885
- Staskowski v. Nassau Community Coll., 53 AD3d 611, 611
- McKenzie v. Meridian Capital Group, LLC, 35 AD3d 676, 677
- Gordon v. Consolidated Edison Inc., 190 AD3d 639, 641
- Millman v. CVS Caremark, 2015 WL 6760204, 2015 U.S. Dist. LEXIS 150488 (E.D.N.Y. 2015)
- Barbuto v. Advantage Sales & Mktg., LLC, 477 Mass. 456, 466-467, 78 NE3d 37, 47

OPINION

PER CURIAM.

Brouillard v Sunrun, Inc. (2023 NY Slip Op 04184) Brouillard v Sunrun, Inc. 2023 NY Slip Op 04184 Decided on August 9, 2023 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 August 9, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

JOSEPH J. MALTESE PAUL WOOTEN BARRY E. WARHIT, JJ. 2020-03610 (Index No. 518516/19) [*1]Luke Brouillard, respondent-appellant, vSunrun, Inc., appellant-respondent. Paduano & Weintraub LLP, New York, NY (Meredith Cavallaro and Noah H. Bunzl of counsel), for appellant-respondent. Phillips & Associates, PLLC, New York, NY (H. Joseph Cronen and Steven Fingerhut of counsel), for respondent-appellant.

DECISION & ORDER In an action to recover damages for employment discrimination on the basis of disability in violation of Executive Law § 296 and Administrative Code of the City of New York § 8-107, the defendant appeals, and the plaintiff cross-appeals, from an order of the Supreme Court, Kings County (Peter P. Sweeney, J.), dated February 26, 2020.

The order, insofar as appealed from, denied those branches of the defendant's motion which were pursuant to CPLR 3211(a) to dismiss the second and third causes of action. The order, insofar as cross-appealed from, granted that branch of the defendant's motion which was pursuant to CPLR

3211(a) to dismiss the first cause of action. ORDERED that the order is affirmed, without costs or disbursements.

The plaintiff alleged that on December 12, 2018, the defendant offered him a job as a field sales consultant. He further alleged that he had certain conditions that rendered him disabled, including congenital bilateral dislocated patellas, patella alta, hypoplastic patella, and a dextro convex scoliotic curvature, and caused him to suffer from general chronic pain and chronic pain in his knees.

On or about December 12, 2018, the New York State Department of Health issued the plaintiff a medical marijuana program registry identification card, which, the plaintiff alleged, deemed him as having a disability under the Executive Law (see Public Health Law § 3369).

After taking a pre-employment drug test, the defendant informed the plaintiff that he had tested positive for marijuana. Although the plaintiff explained that he had a prescription for medical marijuana to treat his conditions and provided the defendant his medical marijuana program registry identification card and other documents, the defendant rescinded the job offer.

The plaintiff then commenced this action, asserting causes of action to recover damages for employment discrimination on the basis of disability in violation of the New York State Human Rights Law (Executive Law art 15; hereinafter NYSHRL) (first cause of action) and the New York City Human Rights Law (Administrative Code of City of NY § 8-101 et seq.; hereinafter NYCHRL) (second and third causes of action).

The defendant moved pursuant to CPLR 3211(a) to dismiss the complaint. The Supreme Court granted that branch of the motion which was to dismiss the cause of action alleging a violation of the NYSHRL and denied those branches of the motion which were to dismiss the causes of action alleging a violation of the NYCHRL.

The defendant appeals, and the plaintiff cross-appeals. The Supreme Court correctly concluded that the plaintiff failed to state a cause of action to recover damages for employment discrimination on the basis of disability in violation of the NYSHRL and granted dismissal of the first cause of action pursuant to CPLR 3211(a)(7). A complaint states a cause of action to recover damages for employment discrimination on the basis of disability in violation of the NYSHRL if it alleges that the plaintiff suffers from a disability and that the disability engendered the behavior for which they were discriminated against in the terms, conditions, or privileges of their employment or refusal to hire (see *Jacobsen v New York City Health & Hosps.*

Corp., 22 NY3d 824, 834). "To state a claim under the [NYS]HRL, the complaint and supporting documentation must set forth factual allegations sufficient to show that, 'upon the provision of reasonable accommodations, [the employee] could perform the essential functions of [his or] her

job'" (Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881, 884, quoting Staskowski v Nassau Community Coll., 53 AD3d 611, 611).

Here, the complaint alleged employment discrimination on the basis of disability in violation of the NYSHRL. However, the complaint failed to set forth factual allegations, which, if true, would be sufficient to show that, upon the provision of reasonable accommodations, the plaintiff could perform the essential functions of the job (see Staskowski v Nassau Community Coll., 53 AD3d at 611; McKenzie v Meridian Capital Group, LLC, 35 AD3d 676, 677).

Thus, the court properly concluded that the complaint failed to state a cause of action to recover damages for employment discrimination on the basis of disability in violation of the NYSHRL. The NYCHRL provides broader protections than the NYSHRL (see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d at 885).

To state a cause of action to recover damages for employment discrimination on the basis of disability in violation of the NYCHRL, a complaint must allege that the plaintiff was disabled and was discriminated against based on their disability (see *id.*).

Here, the complaint sufficiently alleged that the plaintiff was disabled and was discriminated against based on his disability. We find unavailing the defendant's contention that the complaint failed to state a cause of action to recover damages for employment discrimination on the basis of disability in violation of the NYCHRL because the defendant chose not to hire the plaintiff based only on his positive drug test and not his disability.

Refusing to hire the plaintiff because he tested positive for marijuana while knowing that he was being treated with marijuana by a licensed physician for a medical condition effectively denied the plaintiff the opportunity of a reasonable accommodation, and therefore, under these circumstances, is appropriately recognized as a cognizable cause of action to recover damages for employment discrimination on the basis of disability in violation of the NYCHRL (see e.g. Gordon v Consolidated Edison Inc., 190 AD3d 639, 641; Millman v CVS Caremark, 2015 WL 6760204, 2015 US Dist LEXIS 150488 [ED NY, No. 15-0134 (DRH) (GRB)]; Barbuto v Advantage Sales & Mktg., LLC, 477 Mass 456, 466-467, 78 NE3d 37, 47).

Accordingly, the Supreme Court properly denied those branches of the defendant's motion which were to dismiss the causes of action to recover damages for employment discrimination on the basis of disability in violation of the NYCHRL.

The parties' remaining contentions need not be reached in light of our determination. DILLON, J.P., MALTESE, WOOTEN and WARHIT, JJ., concur. ENTER: Darrell M. Joseph Acting Clerk of the Court

