

2000 WL 20697

Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

Velma RICHARDS on behalf of herself and on
behalf of all other similarly situated, Plaintiff,
v.

CITY OF NEW YORK, Department of Police and
Mayor Giuliani, Defendants.

No. 99 CIV. 3416(RPP).

|
Jan. 12, 2000.

Attorneys and Law Firms

Velma Richards, Bronx.

[Michael D. Hess](#), Corporation Counsel, Attn: [William S.J. Fraenkel](#), Asst. Corp. Counsel, New York.

OPINION AND ORDER

[PATTERSON](#), D.J.

*1 Defendants City of New York Department of Police and Mayor Giuliani move to dismiss this putative class action brought by pro se plaintiff, Velma Richards, on behalf of herself and on behalf of all others similarly situated. By order entered December 8, 1999, the Court denied plaintiff's motion for class certification and the appointment of a "private master."

Defendants' motion to dismiss the complaint is based on assertions that the majority of plaintiff's claims are barred by principles of *res judicata* and collateral estoppel or barred by the 300-day time constraints applicable to Charge No. XXX-XX-XXXX filed with the Equal Employment Opportunity Commission ("EEOC") on October 16, 1998; that the complaint fails to meet the requirements of [Rule 8 of the Federal Rules of Civil Procedure](#); and that the remaining paragraphs of the complaint fail to state a claim upon which relief might be granted.

Plaintiff filed two earlier claims with the EEOC alleging

various forms of discrimination and, following receipt of right to sue letters, commenced actions in this Court, 97 Civ. 0179(RPP) and 97 Civ. 5828(RPP), which were consolidated by order of this Court entered January 6, 1998. By opinion and order dated January 22, 1999 ("1/22/99 Op."), this Court partially granted defendants' motion for summary judgment and dismissed the majority of plaintiff's claims in the consolidated proceeding as time-barred and for other various reasons. The remaining claims were tried to a jury which reached a verdict for the defendants on May 14, 1999.

On February 18, 1999, over three weeks after the Court's January 22, 1999 opinion, the instant putative class action complaint was received by the Pro Se Office but was not filed with the Clerk's Office until May 12, 1999. In general, it seeks to convert the plaintiff's prior actions into a class action and broaden those claims to assert every kind of discrimination available under the law. It alleges adverse and non-adverse actions by a large number of employees of the Police Department against plaintiff, from 1983 to present, involving claims of termination of her employment, failure to promote, failure to accommodate a disability, unequal terms and conditions of employment, retaliation and other acts based on plaintiff's race, gender/sex, national origin, age, disability, color and religion.

On learning of the imminence of this motion, plaintiff stated in open Court she would not file responsive papers and was advised of the possibility of the dismissal of this action if she did not file a proper response to defendants' motion. She was also advised to use the good offices of the Pro Se Office of this Court. On December 13, 1999, plaintiff filed a bound Memorandum of Law in Opposition of Motion to Dismiss containing a series of disjointed statements and precepts of law with attached appendices. Defendants have elected not to file reply papers.

Discussion

This action is based on a right to sue letter issued to plaintiff by the EEOC on December 1, 1998 in connection with plaintiff's EEOC charge filed on October 16, 1998 against the New York City Police Department, EEOC Charge No. XXX-XX-XXXX. Accordingly, all actions of defendants which occurred before December 20, 1997, 300 days before October 16, 1998, are time-barred, absent

evidence of a continuing violation. See [Butts v. City of New York Dep't of Housing](#), 990 F.2d 1397, 1401 (2d Cir.1993).

*2 With respect to the possibility that plaintiff could be granted relief for adverse actions which occurred prior to December 20, 1997 under the continuing violation doctrine, each of plaintiff's claims, up to and including her termination on December 23, 1997, involving Mayor Giuliani, Captain White, Lt. McCarthy, Captain Falco, Lt. Stein, Sergeant Hickson, Sergeant Ilchert, and the N.Y.P.D. Medical Division were disposed of by the Court in the prior consolidated actions brought by plaintiff, based on a complete absence of any showing that plaintiff had been retaliated against or discriminated against on the grounds alleged in her EEOC charges, or by a jury after hearing plaintiff's testimony and a number of those officers called as witnesses.¹ To the extent this complaint contains a reiteration of those claims of discrimination, plaintiff is barred from relitigating them on principles of estoppel. See [Flaherty v. Lang, et al.](#) (2d Cir.12/21/1999). In this complaint, plaintiff has also broadened her complaint to charge additional categories of discrimination that were not previously charged. Nevertheless, the material acts of defendants and their

employees complained of in those EEOC charges and Court complaints are the same as the material acts of defendants charged in this complaint.² Those acts of defendants have been litigated. Consequently, plaintiff is barred from relitigating those same actions in this proceeding by principles of *res judicata*. See [Woods v. Dunlap Tire Corp.](#), 972 F.2d 36, 38 (2d Cir.1992) (claims arising from identical facts surrounding the occurrence are barred by prior determination regardless of different underlying theories). The remaining factual allegations in the complaint are discursive and fail to state a claim upon which relief might be granted.

For the foregoing reasons, the defendants' motion to dismiss is granted. Enter judgment.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2000 WL 20697

Footnotes

- ¹ In its January 22, 1999 opinion and order partially granting defendants' motion for summary judgment, the Court dealt with plaintiff's claim of retaliatory discharge on December 23, 1997 for filing EEOC claims of discrimination on November 2, 1994 and August 21, 1995. 1/22/99 Op. at 28-29. Plaintiff did not object to or move for reconsideration of that determination. Furthermore, since the claims relating to plaintiff's discharge are not alleged to have involved Mayor Giuliani and he is not a named defendant in the EEOC charge number XXX-XX-XXXX, the complaint is dismissed against him.
- ² The claim by plaintiff that her discharge on December 23, 1997 was in retaliation for her testimony during her deposition on December 22, 1997 (Compl.¶¶ 106) would not receive credence by a rational jury. The Court found in its January 22, 1999 opinion that, on December 23, 1997, the Police Commissioner signed the final document terminating plaintiff based on recommendations of dismissal of May 29, 1997, September 15, 1997, and December 10, 1997 forwarded up the chain of command based on Richards' "continuing refusal to perform her duties while on dismissal probation," 1/22/99 Op. at 28-29, and that a rational jury would not find that her termination was caused by her earlier EEOC filings of November 2, 1994 or August 21, 1995.