

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DORIS LING-COHAN PART IAS MOTION 36

Justice

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KATHERINE HARRIS, SYDNEY MCNEAL, YUQING WEI

Plaintiff,

INDEX NO. 154172/2018

MOTION DATE

MOTION SEQ. NO. 004

- v -

CHARLIE ROSE INC., CHARLES ROSE,

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 33, 34, 35, 36, 45, 53, 55, 58, 60, 62, 63, 64, 65, 66, 70, 71, 72, 73, 74, 78

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is

ORDERED that the within motion to dismiss is denied in accordance with the attached memorandum decision.

10/9/2019

DATE

DORIS LING-COHAN, J.S.C.

CHECK ONE:

Form with checkboxes for Case Disposed, Granted, Settle Order, Includes Transfer/Reassign

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

Checked box for Denied

DENIED

Form with checkboxes for Non-Final Disposition, Granted in Part, Submit Order, Fiduciary Appointment

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

Other checkbox

OTHER

Reference checkbox

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 36

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KATHERINE BROOKS HARRIS, SIDNEY
McNEAL, and YUQING ("CHELSEA") WEI,

Plaintiffs,

-against-

Index No. 154172/18

Motion Seq. No.: 004

CHARLIE ROSE INC, and CHARLES PEETE
ROSE Jr. a/k/a CHARLIE ROSE,

Defendants.

-----X
DORIS LING- COHAN, J.:

Defendants Charlie Rose, Inc. (CRI) and Charles Peete Rose Jr. a/k/a Charlie Rose (Rose) move, pursuant to CPLR 3211 (a) (7), to dismiss the complaint, for failure to state a cause of action. The complaint alleges sexual discrimination and retaliation, in violation of the New York City Human Rights Law (Administrative Code of City of NY § 8-107 [HRL]). The complaint, as amplified by the affidavits of plaintiffs Sydney McNeal (McNeal), Katherine Brooks Harris (Harris), and Yuqing ("Chelsea") Wei (Wei), alleges that Rose, while he and plaintiffs were employed at CBS, repeatedly touched them in unwelcome ways, in which he did not touch male employees. Specifically, Wei and McNeal state that Rose repeatedly put his arm around their waists and pulled them against him so that their bodies would be touching, and that, while sitting, he would put an arm around their waists, draw them close, and keep his hand on their bodies for the duration of the conversation. Harris avers that, on at least one occasion, Rose, who was sitting on a bench, put his hand next to himself, on the spot where Harris was about to sit, and

that, when they were sitting next to each other, Rose slid his hand under her buttocks.

In the face of the allegations in these averments, which are absent from the complaint, defendants acknowledge that the case against Rose may proceed. *See* Reply Memorandum of Law, at 2. Accordingly, the only issue left to be decided herein is whether plaintiffs' sufficiently stated a claim of retaliation against the remaining defendants.

To make a prima facie claim of retaliation under the HRL, a plaintiff must allege that he or she engaged in a protected activity of which his or her employer was aware, and that, because of that activity, the defendant took an action that disadvantaged the plaintiff. *Harrington v City of New York*, 157 AD3d 582, 585 (1st Dept 2018). Other than Wei's claim, that Rose once called her "a [expletive] idiot," Wei's allegations of retaliation are all directed at her employer, former party CBS.¹ The complaint, and plaintiffs' affidavits allege no facts to show that McNeal and Harris engaged in any protected activity, other than that, on one occasion, Harris complained to Yvette Vega, the CRI executive producer of the Charlie Rose Show, about a sexual remark that Rose had made about her and McNeal. In any event, the only retaliatory acts alleged by McNeal and Harris are that Rose once called McNeal "a [expletive] idiot," and Harris "a [expletive] kindergardener," and that, following a November 20, 2017 Washington Post article describing Rose's multi-year predation of female employees, CRI fired them. Inasmuch as CBS fired Rose the day after that article was published, McNeal and Harris cannot show that they were fired for any reason, other than that there was no longer any work for them, or, indeed, for any of CRI's other employees. *See Smith v Federal Defenders of N.Y., Inc.*, 161 AD3d 506, 507

¹ This case has settled and been discontinued against former defendants CBS News Communications Inc. and CBS News Inc.

(1st Dept 2018) (“Reductions in work force for economic reasons are a legitimate nondiscriminatory basis for termination of employment”). Moreover, plaintiffs cited no case law in which yelling or cursing of the nature alleged here, constitutes retaliation.

Although the complaint alleges only two causes of action, to wit, discrimination and harassment, and retaliation, paragraph 129 of the complaint recites that “[d]efendants aided, abetted, incited, compelled or coerced unlawful discrimination and/or unlawful retaliation.” This allegation fails to specify whom defendants may have aided. Therefore, it fails to state a claim.

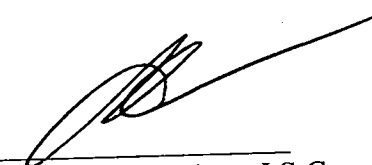
Accordingly, it is

ORDERED that the motion of defendants Charlie Rose, Inc., and Charles Peete Rose Jr. a/k/a Charlie Rose to dismiss the complaint is granted to the extent that the second cause of action for retaliation is dismissed, and the motion is otherwise denied; and it is further

ORDERED that the parties shall complete discovery expeditiously; and it is further

ORDERED that within 30 days of entry of this order, plaintiffs shall serve a copy upon defendants, with notice of entry.

Dated: October 9, 2019



Hon. Doris Ling-Cohan, J.S.C.

J:\Judge_Ling-Cohan\Dismiss\Harris v charlie Rose.wpd s. cherniak.wpd