UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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CUTTINO MOBLEY,

Plaintiff,

11 Civ. 8290 (DAB)
MEMORANDUM AND ORDER

v.

MADISON SQUARE GARDEN LP;
MSG HOLDINGS, L.P.; and
MADISON SQUARE GARDEN, INC.,

Defendants.
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DEBORAH A. BATTS, United States District Judge.

Plaintiff Cuttino Mobley ("Plaintiff" or "Mobley") brings the above-captioned action against MSG Holdings, L.P. and the Madison Square Garden Company ("Defendant," "New York Knicks,"[1] or "Knicks")[2] alleging discrimination on the basis of actual or perceived disability, pursuant to the New York State Human Rights Law, Executive Law § 290 et seq. ("NYSHRL") and the Administrative Code of the City of New York § 8-107 et seq. ("NYCHRL").

This matter is before the Court on a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), filed by Defendants on

[1] The New York Knicks are a division of MSG Holdings, L.P.

[2] Plaintiff's Complaint identifies the Defendants as Madison Square Garden LP, MSG Holdings L.P., and Madison Square Garden, Inc. The Court here uses the corrected names as identified in Defendants' Rule 7.1 Statement.

July 27, 2012. For the reasons below, Defendants' Motion to Dismiss the Complaint is DENIED.

I. BACKGROUND

A. Facts

The following facts are drawn from the Complaint and are assumed to be true for present purposes. Plaintiff Mobley is a professional basketball player who began his career with the National Basketball Association ("NBA") in 1998 as a player for the Houston Rockets, and subsequently played for the Orlando Magic, the Sacramento Kings, and the Los Angeles Clippers. (Am. Compl. ¶¶ 1, 17-20.) Defendants are companies that own and operate the NBA team the New York Knicks. (Id. ¶ 5.) In 1998, at the beginning of his NBA career, Mobley was diagnosed with hypertrophic cardiomyopathy ("HCM"), a genetic mutation which causes thickening of the wall of the heart. (Id. ¶ 23.) During extreme exertion, HCM can cause dizziness, collapses, and even sudden heart failure. (Id. ¶ 24.) However, Mobley had been medically cleared to play every year from 1999 to 2008, by every NBA team he played for except the Knicks, subject to signing a waiver of liability. (Id. ¶¶ 24, 33.)

In 2008, the New York Knicks entered into trade negotiations with the Los Angeles Clippers to obtain Mobley,

then a ten-year veteran of the NBA. (Id. ¶ 22.) Plaintiff alleges that the Knicks knew of and attempted to use his heart condition to leverage additional trade concessions from the Clippers. (Id. ¶¶ 25-28.) The Clippers, however, refused to give any additional concessions. (Id. ¶ 27.) Aware of Plaintiff's heart condition, the Knicks waived Mobley's pre-trade physical examination and the teams concluded the deal. (Id. ¶ 28.)

Pursuant to Mobley's contract, immediately following his arrival to the Knicks in September 2008, he was required to submit to a physical examination. (Id. ¶ 34; see also Leblang Decl., Ex. B ¶ 10(c) ("The player further agrees that, immediately upon reporting to the assignee team, he will submit to a physical examination conducted by a physician designated by the assignee team").) The Knicks sent Mobley to two cardiologists, Dr. Mark Estes ("Dr. Estes") and Dr. Barry Maron ("Dr. Maron"), to evaluate his ability to play. (Am. Compl. ¶ 35.) Plaintiff alleges that Dr. Estes and Dr. Maron are both known opponents of allowing athletes with HCM to play competitive athletics. (Id. ¶ 36.) Following Mobley's examination, both cardiologists concluded that Mobley was medically unfit and recommended that he discontinue playing professional basketball. (Id. ¶¶ 37, 43.)

Mobley claims that contrary to the recommendations of Dr. Estes and Dr. Maron, there had been no change in his heart condition from 1998 to 2008. (Id. ¶ 38.) Mobley alleges that, in or about Fall 2011 and Spring 2012, two leading cardiologists and a prominent echo-cardiologist examined him and his medical records and concluded that there was no material change in his heart condition or the thickness of his heart walls from approximately Fall 1998 to November 2008, and from November 2008 to the present (id. ¶ 53); at least two doctors have noted that Plaintiff was as fit to play professional basketball in Fall 2008 as he was in 1998 and 2012 (id. ¶ 2). Mobley further alleges that according to reports published in sources respected in the scientific cardiology community, the risks associated with HCM generally decrease with age. (Id. ¶ 54.) Last, Plaintiff asserts that even if his heart condition made it too dangerous to play professional basketball without accommodation, it would have been possible to implant a defibrillator in his heart to shock him back to life if his heart were to stop. (Id. ¶ 39.)

Mobley alleges that he spoke with Dr. Estes, Dr. Maron, and the Knicks and asked if there was any way he could be allowed to play, but was told he had no options. (Id. ¶ 41.) In

December 2008, Mobley announced his retirement. He alleges that the Knicks forced him to make this announcement. (Id. ¶ 48.)

Plaintiff contends that the Knicks intentionally disqualified him from employment to save money and avoid paying the NBA's "luxury tax" (imposed on teams when their player payroll exceeds a designated threshold called the "salary cap").[3] (Id. ¶ 29.) Because the salary of a player who cannot play for medical reasons does not count against the team's salary cap, (id. ¶ 31), Mobley alleges that the Knicks saved approximately $19 million through insurance payments and luxury tax by trading for Mobley and having him declared medically unfit to play. (Id. ¶¶ 43-44.) Plaintiff alleges that by forcing him to retire, Defendants discriminated against him on the basis of a perceived or actual disability in violation of the NYSHRL and the NYCHRL.

B. Procedural History

Mobley commenced this action on November 16, 2011. On June 14, 2012, Mobley's Complaint was dismissed by this Court on Defendants' 12(b)(6) motion because Mobley failed to plead facts

[3] The NBA requires that for every dollar of payroll above that threshold, the team pay a tax of 100% of the amount over the salary cap to the league. (Am. Compl. ¶ 29.) In 2007, the Knicks owed a tax of over $45 million, which was the highest luxury tax in the NBA. The team's payroll similarly exceeded the salary cap in 2008. (Id. ¶ 30.)

showing that he was qualified to perform his job at the time of his trade to the Knicks. Mobley v. Madison Square Garden LP, No. 11 Civ. 8290 (DAB), 2012 WL 2339270, at *3 (S.D.N.Y. June 14, 2012). Mobley was, however, granted leave to amend his Complaint to cure this deficiency. Id. at *4. On June 27, 2012, Mobley filed an Amended Complaint. Now before the Court is Defendants' Motion to Dismiss Plaintiff's Amended Complaint.

II. DISCUSSION

A. Legal Standard for Motion to Dismiss Under Rule 12(b)(6)

For a complaint to survive a motion brought pursuant to Rule 12(b)(6), the Plaintiff must have pleaded "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility," the Supreme Court has explained,

> when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of entitlement to relief."

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 556–57). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels

and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotation marks omitted). "In keeping with these principles," the Supreme Court has stated,

> [A] court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Iqbal, 556 U.S. at 679.

In considering a motion under Rule 12(b)(6), the Court must accept as true all factual allegations set forth in the Complaint and draw all reasonable inferences in favor of the Plaintiff. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 508 n.1 (2002); Blue Tree Hotels Inv. (Canada) Ltd. v. Starwood Hotels & Resorts Worldwide, Inc., 369 F.3d 212, 217 (2d Cir. 2004). However, this principle is "inapplicable to legal conclusions," Iqbal, 556 U.S. at 678, which, like the Complaint's "labels and conclusions," Twombly, 550 U.S. at 555, are disregarded. Nor should a court "accept [as] true a legal conclusion couched as a factual allegation." Id. at 555.

A complaint in an employment discrimination lawsuit, to survive a motion to dismiss, "need not contain specific facts

establishing a prima facie case of discrimination under the framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)." Twombly, 550 U.S. at 569 (quoting Swierkiewicz, 534 U.S. at 508) (brackets omitted). Even so, "the elements of a prima facie case provide an outline of what is necessary to render a plaintiff's employment discrimination claims for relief plausible." Shallow v. Scofield, No. 11 Civ. 6028 (JMF), 2012 WL 4327388, at *3 (S.D.N.Y. Sept. 21, 2012) (internal quotation marks and brackets omitted). "Accordingly, courts consider these elements in determining whether there is sufficient factual matter in the complaint which, if true, gives Defendant a fair notice of Plaintiff's claim and the grounds on which it rests." Id. (internal quotation marks omitted).

"In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010). Additionally, "[w]here a document is not incorporated by reference, the court may never[the]less consider it where the complaint relies heavily upon its terms and effect, thereby rendering the document integral to the complaint." Id. (internal quotation marks omitted). However, though such

evidence may be considered when attached to or incorporated into the Complaint, the Court's function is "not to weigh the evidence that might be presented at a trial but merely to determine whether the complaint itself is legally sufficient." Holloway v. King, 161 F. App'x 122, 124 (2d Cir. 2005) (internal quotation marks omitted).

B. Defendants' Disability Discrimination

To establish a prima facie case for disability discrimination under the NYSHRL or the NYCHRL, Plaintiff must show that (1) his employer was subject to the statutes; (2) he was disabled within the meaning of the statutes; (3) he was qualified to perform the essential functions of the job, with or without reasonable accommodation; and (4) he suffered adverse employment action because of his disability. Attis v. Solow Realty Dev. Co., 522 F. Supp. 2d 623, 627 (S.D.N.Y. 2007); see Ferraro v. Kellwood Co., 440 F.3d 96, 99-100 (2d Cir. 2006).

The only issue in dispute is the third element of Plaintiff's disability discrimination claim: whether Plaintiff was qualified to perform the essential functions of his job, either with or without reasonable accommodation. The NYSHRL specifically requires that the disabled person have "the ability, with or without accommodation, to satisfactorily

perform the essential functions of the job or occupation." N.Y. Comp. Codes R. & Regs. tit. 9, § 466.11(f)(1) (2012). To perform satisfactorily, one must meet the "minimum acceptable performance of the essential functions of the job as established by the employer." The "employer's judgment as to what is minimum acceptable performance will not be second-guessed" as long as the performance standards are applied equally to all employees in the same position. Id. at (f)(2). Similarly, the NYCHRL requires that the disabled individual have the ability to "satisfy the essential requisites of a job." N.Y. City Admin. Code § 8-107(15).

When this case was last before the Court, Plaintiff alleged that he was qualified because he had played skilled basketball with his heart condition for ten years without any adverse symptoms. Plaintiff relied on the inference that past performance indicated present ability. The Court found this inference unavailing because it failed to show that Mobley was qualified to perform his job duties in 2008 and did nothing to counter the medical opinions of the cardiologists who found Mobley unqualified to play professional basketball. Mobley, 2012 WL 2339270 at *3. Mobley's Amended Complaint makes new factual allegations, discussing three prominent cardiologists' medical opinions regarding the severity of Plaintiff's heart condition

in Fall 2008, and mentioning that medically-respected reports have concluded that the risks associated with HCM decrease with age. (Am. Compl. ¶¶ 2, 53, 54.)

Defendants argue that Plaintiff's Amended Complaint admits he failed physical examinations conducted by several expert cardiologists and therefore remains deficient. (Def. Mem. at 10-14.) Defendants cite to various disability discrimination cases in support of their argument that dismissal is appropriate where an employee fails an employer's physical examination and offers insufficient evidence to show that he is qualified. See e.g., Shannon v. N.Y.C. Transit Auth., 332 F.3d 95 (2d Cir. 2003); Siederbaum v. City of New York, 309 F. Supp. 2d 618 (S.D.N.Y. 2004), aff'd, 121 F. App'x 435 (2d Cir. 2005); Burton v. Metro. Transp. Auth., 244 F. Supp. 2d 252 (S.D.N.Y. 2003).

These cases are inapposite. All were decided on summary judgment against Plaintiffs who offered no evidence that they were qualified to perform the essential functions of their jobs. See Shannon, 332 F.3d at 101 ("Shannon offered no evidence to the contrary, either by testimony of a medical expert or otherwise."); Siederbaum, 309 F. Supp. 2d at 630 (finding, where Plaintiff admitted to having bipolar disorder, that the absence of bipolar disorder was an essential function of being a bus driver with the New York City Transit Authority); Burton, 244 F.

Supp. 2d at 261 ("Burton offers no evidence of his own about the risks or lack of risks associated with Coumadin."). Here, in contrast, Plaintiff's case is at the pleading stage, and thus he is required only to plead facts sufficient to state a claim that is plausible on its face. Moreover, Plaintiff has pled facts that contradict the views of Dr. Estes and Dr. Maron and make it plausible that he was qualified to perform safely the essential functions of a professional basketball player. Accepting as true the factual allegations in Plaintiff's Amended Complaint, several prominent cardiologists have determined that there was no material change in the thickness of the walls of Plaintiff's heart (and, thus, in his heart condition) between the beginning of his professional basketball career and the present time, and that Plaintiff was as medically fit to play in Fall 2008 as he was in 1998 and 2012. (Am. Compl. ¶¶ 2, 53.) Plaintiff was medically cleared to play each season for ten consecutive years, including two months prior to his trade to the Knicks. (Id. ¶¶ 24, 33.) Plaintiff further alleges that reports published in sources respected in the scientific cardiology community have concluded that the risks associated with HCM decrease with age. (Id. ¶ 54.) Together, these allegations make it plausible that Plaintiff was as qualified to play professional basketball in Fall 2008 for the Knicks as he was during the period of 1999 to

September 2008, when he was medically cleared to play for the Houston Rockets, the Orlando Magic, the Sacramento Kings, and the Los Angeles Clippers. (Id. ¶¶ 17-20, 24, 33.)

Defendants contend that the medical opinions to which Plaintiff cites are irrelevant because they were obtained in 2011 and 2012 rather than in 2008, when the Knicks evaluated Plaintiff. (Def. Mem. at 17.) Defendants reason that Plaintiff's failure to obtain these medical views during his employment is fatal to his claim because he "could have sought to obtain such contrary evidence during his employment with the Knicks." (Id.) Defendants fail to point to any statutory or case authority in support of their argument, and the Court is aware of none. Indeed, while the NYSHRL and the NYCHRL require plaintiffs to show they were qualified to perform their job duties at the time of their employment, neither the statute requires that such evidence be obtained while the plaintiff is employed. See N.Y. Comp. Codes R. & Regs. tit. 9, § 466.11; N.Y. City Admin. Code § 8-107(15). As discussed above, Plaintiff has shown plausibly that he was qualified to perform the essential functions of his job in Fall 2008; he need not have collected the evidence of his qualifications at that time.

Plaintiff's Amended Complaint has cured the shortcomings in his original Complaint. His factual allegations make it facially

plausible that he was qualified to perform the essential functions of a professional basketball player without accommodation subsequent to his trade to the Knicks.[4] Plaintiff has therefore stated a claim upon which relief can be granted. Defendants' Motion to Dismiss is hereby DENIED.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED in its entirety. Defendants shall file and serve their Answer to the Complaint within thirty days of the date of this Order.

SO ORDERED.

DATED: March 15, 2013
New York, New York

Deborah A. Batts
United States District Judge

[4] The Court need not address Parties' arguments concerning whether Mobley could perform the essential functions of his job with the reasonable accommodation of a defibrillator because Plaintiff has already defeated Defendants' motion on the basis of being qualified without accommodation. Similarly, the Court need not address Parties' arguments concerning direct threats because they fall under a reasonable accommodation analysis.