

2015 WL 5916687

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United States District Court,
S.D. New York.

Katarzyna ZACH, Plaintiff,

v.

EAST COAST RESTORATION & CONSTRUCTION
CONSULTING CORP. and Greg Sobolewski
Jonczyk, individually, Defendants.

No. 15 Civ. 0007(NRB). | Signed Oct. 7, 2015.

Attorneys and Law Firms

Erica L. Shnyder, Esq., Arce Law Group, PC, New York, NY, for Plaintiff.

Michael M. Rabinowitz, Esq., Rabinowitz and Galina, Esqs., Mineola, NY, for Defendants.

MEMORANDUM AND ORDER

NAOMI REICE BUCHWALD, District Judge.

*1 By letter-motion dated September 4, 2015, (ECF No. 13) plaintiff requests leave to amend her complaint to incorporate two changes. As discussed below, the motion is granted in part and denied in part.

First, plaintiff seeks to add Maiber Polanco, the President of East Coast Restoration & Construction Consulting Corp., as an individually named defendant in this action. However, plaintiff's Proposed Amended Complaint does not allege any knowledge, participation, or involvement whatsoever by Polanco in the alleged sexual misconduct, discrimination, and retaliation detailed in the Complaint. Indeed, the only place Polanco is mentioned by name is to identify him as a party. *See* Proposed Amended Complaint ¶¶ 13–15, ECF No. 13–2. Moreover, Polanco's sworn statement, which plaintiff cites in her letter to suggest his involvement, shows just the opposite: that Zach never brought to his attention improper conduct by an East Coast employee. *See* Statement of Maiber Polanco ¶ 11, ECF No. 13–1.

Plaintiff is correct that an individual may be liable for discrimination in violation of the New York State and New York City Human Rights Laws as an “employer,”

see N.Y. Exec. Law § 296(1), and that New York law defines “employer” in this context as someone having “any ownership interest or any power to do more than carry out personnel decisions made by others,” Patrowich v. Chemical Bank, 63 N.Y.2d 541, 543–44 (1984).

A literal reading of this definition would mean that a plaintiff could add any supervisor or owner of the alleged liable corporation, regardless of what that prospective defendant knew or did. Such a broad and counter-intuitive result is unreasonable. Instead, the caselaw requires some allegation of participation by the individual. *See Feingold v. New York*, 366 F.3d 138, 157 (2d Cir.2004) (“A supervisor is an ‘employer’ for purposes of establishing liability under the NYSHRL if that supervisor ‘actually participates in the conduct giving rise to [the] discrimination.’ “ (alteration in original) (quoting *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1317 (2d Cir.1995)); *Schanfield v. Sojitz Corp. of Am.*, 663 F.Supp.2d 305, 344 (S.D.N.Y.2009) (same); *Marchuk v. Farugi & Farugi, LLP*, 2015 WL 363625, at *3 (S.D.N.Y. Jan. 28, 2015) (“[T]he law is not so broad that it imposes strict liability on an individual for simply holding an ownership stake in a liable employer. None of the cases ... that this Court is aware of [] go that far.”); *Anderson v. Davis Polk & Wardwell LLP*, 850 F.Supp.2d 392, 403 (S.D.N.Y.2012) (Buchwald, J.) (“[I]ndividuals may only be held liable under the NYSHRL and NYCHRL where they participated in discriminatory conduct.”); *Smith v. AVSC Int'l, Inc.*, 148 F.Supp.2d 302, 309 (S.D.N.Y.2001) (“At a minimum, both the City and State HRL require a plaintiff to allege that the defendant engaged in a discriminatory act against the plaintiff in order to withstand a motion to dismiss.”). Therefore, plaintiff's request to add Polanco as an individual defendant is denied.

*2 Second, plaintiff requests permission to add specific *quid pro quo* sexual harassment language to the Complaint. Defendants' letters dated September 3, 2015, (ECF No. 14) and September 21, 2015, (ECF No. 15) do not appear to oppose this request. While the Court is unsure why the addition is necessary at this time, it has no objection to the proposed amendments should plaintiff desire to make them.

Accordingly, the Court grants plaintiff leave to file an amended complaint that includes the additional *quid pro quo* language but does not add Maiber Polanco as individual defendant.

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