

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. RUDOLPH E. GRECO, JR.
Justice

IAS PART 32

CAMILLA LLANOS,

ORIGINAL

Plaintiffs,

Index No.: 701451/12

-against-

DECISION/ORDER

See v#3 & 5 & v#4

T-MOBILE USA, INC. GIUSEPPE DIBARTOLO
and PETER BUENO,

Defendants.

The following papers numbered 1 to 9 read on these two motions by defendants for summary judgment dismissing the complaint pursuant to CPLR §3211.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	1 - 3
Notice of Motion-Law Memoranda(2)-Compendium.....	4 - 6
Opposing Affirmation-Exhibits.....	7 - 8
Reply Memorandum of Law.....	9

FILED
AUG -7-2013
COUNTY CLERK
QUEENS COUNTY

Upon the foregoing papers, these motions are determined as follows:

Plaintiff is suing herein for alleged employee discrimination and sexual discrimination, in violation of the laws of New York State and City, battery and slander. Defendants have moved for summary judgment dismissing the complaint entirely. The plaintiff opposed in untimely fashion due to a clerical service filing error. Defendants were timely in replying and the matter went to the Law Department where it was deemed incomplete and returned to the court (Greco, J.). An in camera conference was held on July 28, 2013 with participation of counsel for all parties. At that conference it was revealed that a finding was made by the New York State Division of Human Rights indicating that probable cause exists to believe that these respondents (defendants herein) have engaged in unlawful discriminatory practices. Plaintiff's counsel then discontinued the administrative proceeding and elected to prosecute this matter exclusively in Supreme Court Queens County.

Accordingly after hearing and considering the positions of counsel for all the parties, it is decided that this matter, specifically the CPLR §3211 motion to dismiss the complaint shall be considered fully submitted to include all motion, opposition and reply papers regardless of

technical objections to timeliness thereof. No one in this court's opinion has been prejudiced and this matter merits full consideration of the arguments and considerations of all the litigants.

Defendant's motions to dismiss the complaint are granted in part and denied in part. Regarding plaintiff's actions enumerated first and second and fifth her complaint alleged violations of New York State Executive Law §§296 and 296(7), the instant motions are denied and as to actions designated in said complaint as third, fourth and sixth, the motions are granted.

The motions to dismiss the first and second causes of action are denied based on the New York State administrative determinations of probable cause and subsequent administrative complaint discontinuances.

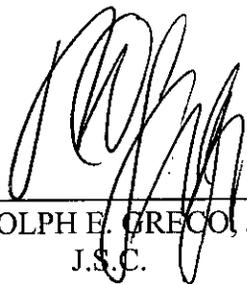
The third and fourth causes of action alleging violations of the New York City Administration Code §§8107(1) and 8-107(e) are dismissed because the underlying conduct complained of is already encompassed in the aforementioned New York State statutes. This court sees no need to try the issues raised more than once.

The motion to dismiss the fifth cause of action complaining of battery is denied at this time because it raises a question of fact as to whether or not the repeated alleged sexual advances add up to a pattern of conduct which is outrageous and beyond decency rather than merely inappropriate. This question will be settled at trial if not after discovery.

The motion to dismiss the sixth cause of action alleging slander is granted in that this court agrees that calling someone "crazy" in the context of a closed business meeting addressing the plaintiff's charges and conduct is not actionable and is a qualified privilege. It should also be noted that damages stemming from the slander are not alleged.

This constitutes the decision and order of this court.

Dated: July 26, 2013
Long Island City, N.Y.



RUDOLPH E. GRECO, JR.
J.S.C.