

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 41M

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NOELLE DUNPHY,	INDEX NO. <u>650033/2023</u>
Plaintiff,	MOTION DATE <u>03/26/2025</u>
- v -	MOTION SEQ. NO. <u>004</u>
RUDOLPH W. GIULIANI, GIULIANI PARTNERS LLC,GIULIANI GROUP, LLC,GIULIANI SECURITY & SAFETY, LLC,JOHN AND/OR JANE DOES 1-10,	DECISION + ORDER ON MOTION
Defendant.	
-----X	

HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153
 were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

Before the Court is the defendants' motion to dismiss the amended complaint in its entirety pursuant to CPLR 3211(a)(1)-(3) and (7). For the reasons set forth below, the motion is denied in its entirety.

I. Factual Background and Procedural Standard

On a motion to dismiss pursuant to CPLR § 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]). When evidentiary material is submitted, the criterion becomes whether the proponent of the pleading has a cause of action, not whether they have stated one (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

The plaintiff Noelle Dunphy alleges that in January 2019, the defendant Rudolph W. Giuliani hired her as the Director of Business Development and executive assistant for the Giuliani companies. She alleges she was promised a salary of \$1 million per year, which Giuliani insisted must be both deferred and

kept secret pending the conclusion of his acrimonious divorce proceeding. As an added inducement, Giuliani offered to provide Ms. Dunphy with *pro bono* legal representation in an ongoing domestic violence dispute involving an abusive ex-partner.

Ms. Dunphy alleges that Giuliani used his position of power as her boss and attorney to subject her to a hostile work environment, sexual harassment, and gender-motivated violence. The amended complaint details several instances wherein Giuliani allegedly forced Ms. Dunphy to perform oral sex and engage in sexual intercourse without her consent, often while she and/or Mr. Giuliani were intoxicated. Ms. Dunphy further alleges she was subjected to sexist, racist, and homophobic remarks. On January 31, 2021, Ms. Dunphy alleges she was terminated without cause and without receiving any compensation after she confronted Giuliani about her fear of him.

The defendants dispute these allegations entirely. They characterize the relationship between Mr. Giuliani and Ms. Dunphy as a brief, consensual romantic relationship rather than an employment relationship. However, on a motion to dismiss, the Court cannot resolve factual disputes or weigh credibility. The Court must analyze the legal sufficiency of the claims as pled.

II. Concessions and Abandoned Arguments

During oral argument held on February 2, 2026, defense counsel made several critical concessions that significantly narrowed the issues before the Court:

1. **The Adult Survivors Act (ASA):** Defendants initially argued in their moving papers that Ms. Dunphy's assault and battery claims did not constitute "sexual offenses" under Penal Law Article 130 and thus could not be revived by the ASA. At oral argument, Defendants conceded that the plaintiff's allegations of forced oral sex and intercourse were legally sufficient to plead battery under the ASA, preserving their challenge only as to the assault claim.
2. **Preemption of the VGMPL:** Defendants initially argued that the New York City Victims of Gender-Motivated Violence Protection Law (VGMPL) was preempted by the state-level ASA. At oral argument, Defendants explicitly abandoned this preemption argument.

3. **COVID-19 Tolling:** Defendants effectively conceded that a 228-day tolling period implemented during the COVID-19 pandemic applies to Ms. Dunphy's causes of action.

III. Discussion

A. Standing and Damages

The defendants argue that Ms. Dunphy lacks standing because her demand for damages suspiciously increased from \$3.1 million in her *pro se* Summons with Notice to \$10 million in her amended complaint, which they claim demonstrates a lack of injury-in-fact. This argument is without merit. Ms. Dunphy alleges she was sexually assaulted and deprived of approximately \$2 million in wages. Being the victim of sexual assault and wage theft constitutes a concrete, cognizable injury. Furthermore, under New York law, a summons with notice does not cap the damages in a subsequently filed complaint once the defendant appears; the complaint becomes the controlling document (*see Everitt v Everitt*, 4 NY2d 13, 16 [1958]; *Andrulis v Fox*, 284 AD2d 1001 [4th Dept 2001]).

B. Assault, Battery, and the Adult Survivors Act

With the defendants' concession that the battery claim survives under the ASA, the Court addresses the assault claim. The ASA created a one-year revival window (beginning November 24, 2022) allowing adult survivors of sexual offenses to file civil suits regardless of the expired statute of limitations. (*Carroll v Trump*, 650 FSupp3d 213, 218 [S.D.N.Y. 2023]; *Ciotti v. City of New York*, 2025 WL 308022, at *25 [S.D.N.Y. Jan. 27, 2025]; *see also* CPLR 214-j) Ms. Dunphy commenced this action within that window. The amended complaint alleges that Mr. Giuliani placed the plaintiff in reasonable apprehension of unwarranted sexual contact. Because these threats of violence were intertwined with the allegedly consummated sexual offenses alleged under Penal Law Article 130, the assault claim is sufficiently pled and preserved by the ASA.¹

¹ Giuliani's alleged actions would, if proven, constitute sexual offenses as defined in Article 130 of the New York Penal Law, including but not limited to rape in the first degree (§ 130.35), rape in the third degree (§ 130.25) sexual abuse in the first degree (§ 130.65), sexual abuse in the third degree (§ 130.55), sexual misconduct (§ 130.20), and forcible touching (§ 130.52).

C. Victims of Gender-Motivated Violence Protection Law (VGMPL)

To state a claim under the VGMPL, a plaintiff must allege a crime of violence committed "due, at least in part, to an animus based on the victim's gender." (Administrative Code of the City of New York § 10-1103). The defendants argue that Ms. Dunphy failed to adequately plead gender-based animus. The defendants are wrong. The plaintiff's claims in the amended complaint that she was subjected to non-consensual sexual intercourse and/or oral sex are sufficient to allege animus on the basis of gender (*see Breest v Haggis*, 180 AD3d 83, 94 [1st Dept 2019]). Rape and sexual assault are inherently dehumanizing violations of bodily autonomy, and "animus inheres where consent is absent." (*Id.* at 94). Because Ms. Dunphy explicitly alleges non-consensual sexual intercourse and oral sex, the animus requirement is satisfied at the pleading stage. Furthermore, the amended complaint details numerous misogynistic and degrading remarks made by Giuliani, providing independent support for gender-based animus.

D. NYSHRL and NYCHRL Claims (Jurisdiction and Timeliness)

The defendants seek dismissal of the State and City Human Rights Law (HRL) claims, arguing that Ms. Dunphy, a Florida resident, cannot show the discrimination had an impact in New York. The Court of Appeals has held that a nonresident, such as the plaintiff, "must plead and prove that the alleged discriminatory conduct had an impact in New York [State and City, respectively]." (*Hoffman v Parade Pubs.*, 15 NY3d 285, 289 [2010]). The plaintiff is a Florida resident who was living in Florida at the time she purportedly interviewed for a job with Mr. Giuliani. She also makes specific allegations concerning events that took place in Florida. However, it is clear that a non-resident plaintiff need not be a resident of New York or New York City to bring claims under the New York State and City Human Rights laws. Whether New York courts have subject matter jurisdiction over a nonresident plaintiff's claims under the State or City Human Rights Laws turns primarily on the plaintiff's physical location at the time of the alleged discriminatory acts (*see Wolf v Imus*, 170 AD3d 563, 564 [1st Dept 2019]). Ms. Dunphy alleges she was flown to New York, introduced to staff in New York, and performed substantial work (and suffered severe abuse) inside Giuliani's Upper East Side apartment. These allegations, and numerous others like them that are plead throughout the amended complaint, are more than sufficient to establish a sufficient nexus and impact in New York to survive a motion to dismiss.

The defendants also argue that the HRL claims are barred by the three-year statute of limitations. This argument fails for two reasons. First, the defendants have already conceded the applicability of the 228-day COVID-19 tolling period applies to this action. Second, Ms. Dunphy alleges a continuous pattern of sexual harassment and retaliation extending through her termination in January 2021, rendering her claims timely under the continuing violation doctrine.

E. Aiding and Abetting

The Defendants argue that Ms. Dunphy's aiding and abetting allegations under both the State Human Rights Law and the City Human Rights Law should be dismissed because Giuliani cannot aid or abet his own harassment. The defendants ignore the fact that Giuliani could aid and abet the corporate defendants' conduct, and they could aid and abet his. Ms. Dunphy alleges that Giuliani aided and abetted the Giuliani companies' discriminatory conduct—specifically their failure to implement sexual harassment policies, lack of HR oversight, and condonation of his actions—and that the companies similarly aided and abetted Giuliani. An individual can be held liable for aiding and abetting an employer's unlawful discrimination, even if the individual's own actions served as the predicate (*see McHenry v Fox News Network, LLC*, 510 FSupp3d 51, 73 [SDNY 2020]), The claims survive.

F. Breach of Contract and Statute of Frauds

The defendants argue the oral employment contract is too vague to enforce and violates the Statute of Frauds because it could not be performed within one year. As the Court noted during oral argument, an oral agreement for employment without a specified duration is presumed to be employment at will (*see Stucklin v Kabro Assocs.*, 18 AD3d 461, 462 [1st Dept 2005]). Because at-will employment can be terminated by either party within a year, it falls entirely outside the Statute of Frauds (*see Cron v Hargro Fabrics, Inc.*, 91 NY2d 362, 367 [1998]; *Monheit v Petrocelli Elec. Co., Inc.*, 73 AD3d 714, 715 [2d Dept 2010]). Furthermore, the alleged agreement (\$1 million salary plus expenses in exchange for business development and assistant services) is sufficiently definite for pleading purposes.

G. New York Labor Law Claims

The defendants contend that Ms. Dunphy is exempt from New York Labor Law overtime requirements because her promised \$1 million salary makes her a highly compensated employee. As the Court observed from the bench, it is

logically incoherent for an employer to claim a highly compensated employee exemption as a shield against labor law violations when the employer never actually paid the employee any of the promised compensation and indeed denies the very existence of an employer-employee relationship (*see, e.g., Kirby v Carlo's Bakery 42nd & 8th LLC*, 212 AD3d 441 [1st Dept 2023]).

H. Quasi-Contract Claims (Unjust Enrichment & Quantum Meruit)

The defendants argue the equitable claims of unjust enrichment and quantum meruit must be dismissed as duplicative of the breach of contract claim. Because the Defendants vehemently deny the existence or validity of the employment contract, Ms. Dunphy is explicitly permitted to plead these quasi-contract claims in the alternative.

I. Freelance Isn't Free Act

The defendants argue the claim for failure to provide a written contract under the Freelance Isn't Free Act is barred by a two-year statute of limitations. Ms. Dunphy was terminated on January 31, 2021. Incorporating the 228-day COVID-19 tolling period, her January 2023 Summons with Notice was timely filed.

J. Breach of Fiduciary Duty

The defendants argue the breach of fiduciary duty claim is completely duplicative of the breach of contract claim regarding her unpaid wages. This mischaracterizes the amended complaint. The amended complaint alleges the existence of a relationship beyond a merely contractual one, specifically pointing to Mr. Giuliani's offer and provision of *pro bono* legal advice to Ms. Dunphy regarding a highly sensitive domestic violence matter. Ms. Dunphy alleges Giuliani exploited his position of trust as her legal advisor to extract sexual favors. This establishes an independent tort duty separate from the employment agreement, defeating the motion to dismiss (*see Hartshorne v Roman Catholic Diocese of Albany*, 200 AD3d 1427, 1430-1431 [3d Dept 2021]).

IV. Conclusion

The Court finds that the amended complaint states legally cognizable claims upon which relief can be granted. Factual disputes over the credibility of the

plaintiff's narrative or the exact contours of the relationship are reserved for summary judgment or trial.

The motion to dismiss is denied in its entirety. The defendants shall answer the amended complaint within 20 days of notice of entry of this Decision and Order, unless otherwise previously stipulated to by the parties. The parties shall continue with discovery immediately.

This constitutes the decision and order of the Court.


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3/30/2026
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>	REFERENCE