

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 3

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OTIS TAYLOR

Plaintiff,

against

THE CITY OF NEW YORK and SERGEANT MARTIN
TOCZEK,

Defendants.

----- X

NOTICE OF ENTRY

Index No. 816934/2021E

Justice Mitchell J. Danzinger

PLEASE TAKE NOTICE that annexed is a true copy of an order duly entered on
the 1st day of October 2024, in the Bronx County Clerk's office, NYSCEF Doc. No. 104.

Dated: New York, New York
October 17, 2024

MURIAL GOODE-TRUFANT
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By: 
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To: FRED LICHTMACHER
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 3**

OTIS TAYLOR,

Index №. 816934/2021E

-against-

Hon. Mitchell J. Danziger

THE CITY OF NEW YORK, et. al.,

Justice Supreme Court

The following papers were read on these motions (Seq. No. 2 &3) to dismiss noticed for February 2, 2024 and May 10, 2024 and submitted on May 16, 2024

Notice of Motion- 002 - Affirmation and Exhibits/Memo of Law	NYSCEF Doc. # 58-64
Notice of Motion- 003 - Affirmation and Exhibits/Memo of Law	NYSCEF Doc. # 78-86
Affirmation in Opposition and Exhibits- 002	NYSCEF Doc. # 67-77
Memo of Law in Opposition and Exhibits- 003	NYSCEF Doc. # 88-99
Memo of Law in Reply- 003	NYSCEF Doc. # 100

Motion (002) by defendant, the City of New York (“City”), for an order to dismiss plaintiff’s complaint pursuant to CPLR §§3211(a)(7), and 3211(e), on the grounds that plaintiff’s complaint fails to state a cause of action and Motion (003) by defendant, Sergeant Martin Toczek (“Toczek”), for an order pursuant to CPLR §§3211(7) and 3212, are decided as follows:

Plaintiff’s complaint alleges following two causes of action: 1) racial discrimination disparate treatment by defendants, City and Toczek, in violation of New York City Administrative Code §8-107(1); and 2) racial discrimination hostile work environment by defendant, City, in violation of New York City Administrative Code §8-107(13)(b).

Plaintiff alleges the following facts in his complaint: Plaintiff is a black male. He entered the NYPD police academy in 2006. He started working in the Auto Crimes Unit in the Bronx in 2015. The Auto Crimes Unit was comprised almost entirely of white officers. Sgt. Toczek was plaintiff’s direct supervisor from 2015 to his retirement. Sgt. Toczek frequently made it known he did not like black people and that he had a Constitutional right not to like black people. Sgt. Toczek placed posters on the walls of the Auto Crimes Unit that were insulting to black people. Sgt. Toczek made derogatory statements about black icons of the civil rights movement. Sgt. Toczek treated his black subordinate officers differently and worse than white officers. Sgt. Toczek made racist comments about his direct supervisor and another Hispanic Sergeant in the unit. The abovementioned acts took place from the date plaintiff entered the Auto Crimes Unit until his retirement. Plaintiff injured his shoulder and had surgery in 2016. He had to undergo further surgery in 2018. On January 30, 2019, plaintiff was on restricted duty and was not allowed to conduct enforcement activities. Sgt. Toczek endangered plaintiff by ordering him to make an arrest as opposed to the available white detectives. Plaintiff

was injured during the course of that arrest and alleges that Sgt. Toczek knew that arrestee had a history of fighting with cops. He was forced to retire on May 31, 2020.

Plaintiff testified that conversations in the office changed around the time that Colin Kaepernick took a knee during an NFL game. Plaintiff did not partake in the conversations for the most part. However, Sgt. Toczek took issue with the position some of the NFL players were taking. At one point he said it was his Constitutional right to like black people. Sgt. Toczek continued to participate in these conversations and “was annoying the entire office.” There were also text chains with the officers with messages and videos regarding the football issue. Plaintiff testified it was nonstop and the collection of those things lead plaintiff to believe Sgt. Toczek did not like black people. Plaintiff testified that none of Sgt. Toczek’s comments were specifically made at him. No racial epithets were directed at him. With regard to the arrest that injured plaintiff’s shoulder, plaintiff testified that he believed that Sgt. Toczek knew it was a risk that plaintiff would get hurt. The arrestee usually resisted arrest. Plaintiff knew this because two other officers were injured as a result of arresting the man. Both of those officers were white. Plaintiff testified that arresting anyone came with a risk that the officer could get hurt.

The City moves to dismiss plaintiff’s complaint and submits that plaintiff’s complaint fails to state a cause of action under the governing legal standards and under the New York City Human Relations Law (“NYCHRL”). Plaintiff’s deposition testimony contradicts his claim of disparate treatment and discrimination because his theory of discovery is entirely tort-based and barred by the statute of limitations and plaintiff’s failure to file a Notice of Claim. Plaintiff has failed to allege any facts that show a racial animus towards black people or plaintiff specifically was a motivating factor in any supervisory action made by Sgt. Toczek related to plaintiff. Further, the City avers that the NYCHRL does not provide a remedy for plaintiff’s line of duty shoulder injury as a claim pursuant to the NYCHRL is not a tort claim.

Sgt. Toczek moves to dismiss plaintiff’s discrimination claim as against him on the grounds that plaintiff’s claims are undated and untimely and that plaintiff fails to sufficiently allege a claim for violation of the NYCHRL against Sgt. Toczek. Plaintiff fails to allege an adverse employment action, or any comparator information. Sgt. Toczek submits that plaintiff does not adequately plead a hostile work environment claim as plaintiff does not describe a work environment that is “permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” (*Chiara v. Town of New Castle*, 126 A.D.3d 111 [2nd Dept. 2015]). Sgt. Toczek avers he is entitled to summary judgment because plaintiff has failed to set forth any evidence to support his claims. Lastly, plaintiff cannot recover against Sgt. Toczek for his line of duty injury.

Plaintiff opposes the City’s motion and asserts he sufficiently stated a claim as against the defendants for discriminating against him. He further contends that plaintiff is not attempting to bring an intentional tort claim

here and there are no limitations as to what the permissible damages are pursuant to the NYCHRL. The City's invocation of the Firefighter's Rule is misplaced.

Plaintiff opposes Sgt. Toczek's motion submitting he has sufficiently stated a claim, that Sgt. Toczek is not entitled to summary judgment and that plaintiff is entitled to damages under the NYCHRL which allows for an extremely broad measure of compensation.

Failure to State a Claim

To meet his burden on an employment discrimination claim in violation of the NYCHRL, plaintiff must show (1) he is a member of a protected class; 2) he is qualified to hold the position; 3) he was terminated from employment or suffered another adverse employment action; and 4) the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination. (*Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295 [2004]). To support a claim for a hostile work environment under the NYCHRL, a plaintiff must show that he was treated less well than other employees because of his protected status and is subject to more than "petty slights and trivial inconveniences." *Chin v. New York City Hous. Auth.*, 106 A.D.3d 443 [1st Dept. 2013]). Under NYCHRL, plaintiff can adduce facts sufficient to plead discriminatory animus by showing that similarly situated comparators were treated differently. (*Whitfield-Ortiz v. Department of Educ. of City of New York*, 116 A.D.3d 580 [1st Dept. 2014]). In terms of an adverse employment action, plaintiff must plead events that were more than petty slights and trivial inconveniences. (*Alshami v. City of University of New York*, 162 N.Y.S.3d 720 [1st Dept. 2022])

Here, plaintiff does not sufficiently show that he was treated differently than others in a way that was more than trivial, insubstantial, or petty, nor does he show he was treated differently than other officers giving rise to an inference of discrimination. According to plaintiff's deposition testimony, Sgt. Toczek was having conversations about Colin Kaepernick and his taking a knee during football games as a method of protest, which Sgt. Toczek was clearly upset by. However, these conversations were with the entire office. Plaintiff testified he was annoying the whole office. He would come out of his office and "people would be like, here this guy goes again." Generally, plaintiff did not even participate in the conversations that were taking place with others, however, on the one occasion he testified he did, Sgt. Toczek told him that in reference to his comment about "these people" he meant NFL players. In response to plaintiff's comment that the players had a Constitutional right to protest, Sgt. Toczek stated "it was his right if I want to like black people." Plaintiff testified that Sgt. Toczek never said he did not like black people, he never made a racial slur, or said anything disparaging like that. He never directly threatened plaintiff regarding his job. Plaintiff testified he did not work as much overtime because he was in a rush to get out of there each day.

Plaintiff testified that regarding the arrest of Wendell Phillips, he believed that Sgt. Toczek knew it was a possibility that plaintiff would get hurt because Mr. Phillips had a history of assaulting officers who tried to

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AFFIRMATION OF SERVICE

THE CITY OF NEW YORK and SERGEANT
MARTIN TOCZEK,

Defendants.

-----X

Gavin B. Mackie, an attorney duly admitted to practice in the State of New York, affirms as follows this 17th day of October, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

On October 17, 2024, I served a true and correct copy of this Court’s Decision and Order on Motion Sequences 2 and 3 (NYSCEF Doc. Nos. 104-105) along with a Notice of Entry, on Plaintiff and Co-Defendant at the below addresses via First Class Mail:

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399 Knollwood Road, Suite 220
White Plains, NY 10603

Dated: October 17, 2024
New York, New York

/s/ Gavin B. Mackie
Gavin B. Mackie
Assistant Corporation Counsel