

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No.: 150790/2016

HOLLY FAUROT,

Plaintiff,

-against-

**AFFIRMATION
IN SUPPORT OF
MOTION TO DISMISS**

JIVAMUKTI YOGA CENTER, INC., RUTH
LAUER-MANENTI, individually and as
Agent of Jivamukti, CARLOS MENJIVAR,
DAVID ROBERT KIRKPATRICK a/k/a DAVID
LIFE and SHARON GANNON,

Defendants.

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SIOBHAN HEALY, an attorney at law duly admitted to practice law before the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am a member of the firm of Babchik & Young, LLP, attorneys for Defendants JIVAMUKTI YOGA CENTER, INC., RUTH LAUER-MANENTI, individually and as Agent of Jivamukti, CARLOS MENJIVAR, DAVID ROBERT KIRKPATRICK a/k/a DAVID LIFE and SHARON GANNON.

2. I make and respectfully submit this Affirmation in support of Defendants' motion for an Order pursuant to CPLR §§ 3211(a)(5) and (a)(7), dismissing the Complaint against Defendants based on the applicable statute of limitations and failure to state a cause of action, or in the alternative, pursuant to CPLR § 3024(b), to strike portions of the Complaint, together with such other, further and different relief as this Court deems just and proper.

3. Plaintiff formerly worked as a part-time teacher at the Jivamukti Yoga Center. In this action, Plaintiff alleges that between Fall 2011 and Fall 2013, her former co-worker, Ruth Lauer-Manenti, made sexual overtures toward her, including "spooning and cuddling," in the

privacy of Plaintiff's home, in which Lauer-Manenti was an invited guest. (Exhibit A, ¶ 35-49). According to the Complaint, Plaintiff last had contact with Lauer Manenti in February 2014, and she resigned completely from the Yoga Center in September 2014. (Exhibit A ¶ 53-54; 57; Exhibit B). Plaintiff did not make a complaint about Lauer-Manenti to the Yoga Center until October 2015. (Exhibit A ¶ 60).

4. On February 1, 2016, contemporaneously with her notifying the New York Daily News and New York Post, Plaintiff, filed a Summons and Complaint in the Supreme Court, New York County, alleging seven (7) causes of action, as set forth below.

5. A true and accurate copy of the Summons and Complaint is annexed hereto as Exhibit A.

6. A true and accurate copy of email correspondence from Plaintiff to defendant Carlos Menjivar regarding Plaintiff's resignation from Jivamukti Yoga Center is annexed hereto as Exhibit B.

7. The crux of the instant action is that Defendants failed "to conduct an investigation" of her claims in violation of New York State and New York City Human Rights Laws, and its own Guidelines. Specifically, the Complaint asserts seven (7) causes of action against Defendants: (1) violation of New York City Administrative Code and Charter (Human Rights Law) 8-107; (2) punitive damages under New York City Administrative Code and Charter (Human Rights Law); (3) violation of New York State Executive Law 291, et. seq., (4) aiding and abetting violation of the New York State and City Human Rights Laws by defendant Menjivar; (5) Assault against defendant Lauer-Manenti; (6) Battery against defendant Lauer-Manenti; and (7) Breach of Contract. (Exhibit A).

8. As set forth more fully in Defendants' accompanying Memorandum of Law, Plaintiff's Complaint must be dismissed in its entirety for the following reasons:

- A. Plaintiff's first and only Complaint to Jivamutki about Lauer-Manenti alleged conduct was made more than one (1) year after she ceased her employment relationship with Defendants, without which she cannot state a claim under the New York State or City Human Rights Laws;
- B. In the absence of a claim against an employer for violation of the New York State or City Human Rights Laws, Plaintiff cannot state a claim for "aider and abettor liability" as a matter of law;
- C. There is no independent cause of action for punitive damages;
- D. Plaintiff's causes of actions for assault and battery are barred by the one-year statute of limitations; and
- E. The Ethical Guidelines provided as part of the teacher training that Plaintiff completed in or about 2009 did not create a binding agreement between Plaintiff and the Jivamutki Yoga Center.¹

9. Defendants vigorously deny Plaintiff's allegations. However, a motion to dismiss pursuant to CPLR § 3211(a)(7), "the pleading is deemed to allege whatever can be implied from its statements by fair intendment, the allegations are assumed to be true and the question is whether there can be fairly gathered from all the averments the requisite allegations of a valid cause of action cognizable by the court of this State." *East Hampton v. Sandpebble*, 66 A.D.3d 122 (2d Dept. 2009), citing *Cohn v. Lionel Corp.*, 21 N.Y.2d 559 (1968). However, it is well-settled that

¹ In the alternative, those portions of the Complaint that use the word "rape," should be stricken as prejudicial, in light of the fact that Plaintiff does not allege facts that would support use of that term.

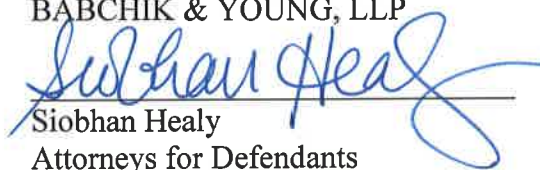
conclusory allegations “consisting of bare legal conclusions” are insufficient to survive a motion to dismiss. *Caniglia v. Chicago Tribune–N.Y. News Syndicate*, 204 A.D.2d 233 (1st Dept. 1994).

10. Although, in the context of a motion to dismiss, employment discrimination cases are generally analyzed under a lenient notice pleading standard, it is important to remember that “the abuse of the anti-discrimination laws enacted in furtherance of [] policy, by unscrupulous plaintiffs who take advantage of laws affording vital protection to society by filing frivolous – sometimes even mendacious – claims thereunder for personal financial gain, is just as much of a threat” to the State’s equal opportunity policy. *Poolt v. Brooks*, 38 Misc.3d 1216(A) (Sup. Ct, N.Y. Cty 2013).

11. With these standards in mind, is it respectfully submitted that Plaintiff’s Complaint should be dismissed in its entirety.

WHEREFORE, Defendants JIVAMUKTI YOGA CENTER, INC., RUTH LAUER-MANENTI, individually and as Agent of Jivamukti, CARLOS MENJIVAR, DAVID ROBERT KIRKPATRICK a/k/a DAVID LIFE and SHARON GANNON, respectfully request that this Court issue an Order dismissing the Complaint together with any further relief this court deems just and proper.

Dated: White Plains, New York
March 11, 2016

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