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

Kevin AGUILAR et al., Plaintiffs,
v.
THE NEW YORK CONVENTION CENTER OPERATING CORPORATION, Gerald T. McQueen, Richard Powers, and Al Tomaczuk, Defendants.

No. 00 CIV. 4637(CBM). | May 2, 2002.

Opinion

MEMORANDUM OPINION AND ORDER

MOTLEY, District J.

***1** Plaintiffs in this matter are eighty-eight current and former employees of the New York Convention Center Operating Corporation ("the NYCCOC"), the entity that operates the Jacob K. Javitz Convention Center in Manhattan. They claim that the NYCCOC—together with defendant McQueen, its Chief Executive Officer, defendant Powers, its Dockmaster, and defendant Tomaczuk, its Director of Cleaning Services (collectively the "Individual Defendants")—have engaged in widespread race discrimination in violation of 42 U.S.C. § 1981 and 42 U.S.C. § 1983.

On November 5, 2001, the court granted in part defendants' motion to dismiss, dismissing plaintiffs' claims under the Equal Pay Act, the New York State Human Rights Law, and the New York City Civil Rights Law, and ordering plaintiffs to replead their section 1981 and section 1983 claims with greater clarity. *See Aguilar v. New York Convention Ctr. Operating Corp.,* 174 F.Supp.2d 49 (S.D.N.Y.2001). Plaintiffs filed an amended complaint on January 4, 2002, which the NYCCOC answered. The Individual Defendants, however, moved to dismiss the amended complaint on a variety of grounds. For the reasons set forth below, the Individual Defendants' motion to dismiss the amended complaint is hereby DENIED.

First, the Individual Defendants argue that the amended complaint should be dismissed to the extent that it purports to assert section 1981 claims alleging discrimination based upon national origin, gender, or religion. Plaintiffs readily concede that claims of discrimination based on national origin, gender, or religion are not cognizable under section 1981. *See Anderson v. Conboy,* 156 F.3d 167, 170 (2d Cir.1998). Plaintiffs correctly observe, however, that each of them is either (a) a member of a racial or ethnic minority or (b) a white person alleging retaliation against attempts to protect the civil rights of minority coworkers. Although plaintiffs' secondary allegations of discrimination based upon national origin, gender, and religion are not cognizable under section 1981, it is clear that each of them has standing to pursue race and ethnicity discrimination claims under the statute.

Second, the Individual Defendants argue that the amended complaint does not adequately allege that they were personally involved in the discrimination. At a minimum, however, plaintiffs have alleged that each of the Individual Defendants was aware of the discrimination but failed to take remedial action. *See* Amended Cplt. ¶¶ 100–02. The Second Circuit has made clear that in addition to directly participating in discrimination, a defendant may be "personally involved" for purposes of section 1983 by failing to remedy a known wrong or by being grossly negligent in managing subordinates who caused the discrimination. *See Williams v. Smith,* 781 F.2d 319, 323–34 (2d Cir.1986). There is no question that the allegations in plaintiff's amended complaint—while spare and conclusory—satisfy their pleading burden with respect to the Individual Defendants' personal involvement in the alleged discrimination.[1]

[1] To be sure, to the extent that plaintiffs ultimately seek to establish personal involvement by relying on the Individual Defendants' alleged failure to take corrective action, plaintiffs will have the burden of establishing that *each* Individual Defendant was aware of the discrimination against *each* plaintiff. This is not a class action, after all, and each plaintiff ultimately will have to prove each element of his or her individual claims against each defendant. Although the court suspects this burden may present a formidable obstacle to at least some of the claims asserted against the Individual Defendants, plaintiffs' short and plain statement of the Individual Defendants' alleged failure to take corrective action easily suffices to defeat the motion to dismiss.

***2** Finally, the Individual Defendants argue that the bulk of plaintiffs' claims should be deemed time-barred because the amended complaint fails to set forth the dates on which many of the alleged discriminatory acts occurred.[2] The Individual Defendants rely on *Swierkiewicz v. Sorema N.A.,* 122 S.Ct. 992, 534 U.S. 506 (2002), for the proposition that an employment discrimination complaint is fatally defective if it does not set forth relevant dates. That case compels virtually the opposite conclusion, however. In *Swierkiewicz,* the Supreme Court held that a discrimination complaint need not set forth facts sufficient to establish a prima facie case

under the *McDonnell Douglas* framework; instead, a discrimination complaint need only satisfy the requirement contained in Federal Rule of Civil Procedure 8(a) that it provide a "short and plain statement" that "give[s] the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." 122 S.Ct. at 998 (citing *Conley v. Gibson,* 335 U.S. 41, 47 (1957)). To be sure, the Supreme Court noted in passing that the complaint in that case had "provided relevant dates," *id.* at 999, but nothing in the Court's opinion remotely suggested that doing so was required. Plaintiffs' amended complaint gives defendants ample notice of the nature of their claims—even though the complaint does not always provide relevant dates—and any statute of limitations issues can and will be resolved at the summary judgment stage.

[2] Both sides agree that the statute of limitations with respect to plaintiffs' section 1981 and section 1983 claims is three years.

For the foregoing reasons, the Individual Defendants' motion to dismiss the amended complaint is DENIED.

SO ORDERED.