

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
Justice

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PENGSHENG HUANG, Index No.: 706584/2018

Plaintiff, Motion Date: 11/15/18

- against - Motion Nos.: 18 & 19

AIR CHINA LIMITED, LB OCEANFRONT Motion Seqs.: 1 & 2  
CORP., XUE WENG YU, and HUI YU,

Defendants.

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The following electronically filed documents read on this motion by defendant AIR CHINA LIMITED (seq. no. 1) for an Order pursuant to CPLR 3211(a)(1) and (7), dismissing this action with prejudice or, alternatively, pursuant to CPLR 602 and the plaintiff's consent, consolidating this action with a prior action pending between the parties in this Court; and on this motion by defendants LB OCEANFRONT CORP., XUE WENG YU, and HUI YU (seq. no. 2) for same:

	<u>Papers Numbered</u>
Notice of Motion (seq. no. 1)-Memo. of Law-	
Affirmation-Exhibits.....	EF 4 - 23
Notice of Motion (seq. no. 2)-Affirmation-Exhibits...	EF 24 - 27
Affidavits in Opposition-Exhibits.....	EF 29 - 38
Affirmation in Support.....	EF 41
Reply Affirmation-Exhibits-Memo. of Law.....	EF 42 - 73

Plaintiff brought this action pursuant to the New York State Human Rights Law, N.Y. Exec. Law 296 and the New York City Administrative Code 8-101. Plaintiff alleges that defendants retaliated against him for making complaints to defendants regarding the sexual harassment committed by an Air China employee, Congtao Li, against an individual named Huan Wang who had worked at Air China's facility located at 485 W. Broadway, Long Beach, New York. All defendants seek to dismiss the complaint.

On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314 [2002]; Leon v Martinez, 84 NY2d 83 [1994]; Greer v National Grid, 89 AD3d 1059 [2d Dept. 2011]; Prestige Caterers, Inc. v Siegel, 88 AD3d 679 [2d Dept. 2011]). A complaint must allege the material elements of the cause of action (see Lewis v Village of Deposit, 40 AD2d 730 [1972]; Kohler v Ford Motor Company, Inc., 93 AD2d 205 [3d Dept. 1983]). A court may consider evidentiary material submitted by a defendant in support of a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) (see CPLR 3211(c); Sokol v Leader, 74 AD3d 1180 [2d Dept. 2010]). When evidentiary material is considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the criterion is whether the plaintiff has a cause of action, not whether he or she has stated one (see Basile v Wiggs, 98 AD3d 640 [2d Dept. 2012]).

"To succeed on a motion to dismiss pursuant to CPLR 3211(a)(1), the documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (Teitler v Pollack & Sons, 288 AD2d 302 [2d Dept. 2001]). "A motion to dismiss a complaint based on documentary evidence 'may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law'" (Stein v Garfield Regency Condominium, 65 AD3d 1126 [2009], quoting Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314 [2002]).

To state a claim under the New York City Human Rights Law, a plaintiff must allege that discrimination occurred within the boundaries of New York City (see Robles v Cox and Company, Inc., 841 F. Supp. 2d 615 [EDNY 2012]). Here, the Complaint fails to allege any discriminatory conduct occurred or had an impact in New York City. Rather, the Complaint asserts that all of the discriminatory conduct occurred in Long Beach, which is located in Nassau County. In opposition, plaintiff contends that his residence in Queens County is sufficient to sustain his claim. However, residence alone is insufficient to demonstrate a New York City impact (see Vangas v Montefiore Medical Center, 823 F3d 174 [2d Cir. 2016]; Robles v Cox and Company, Inc., 841 F.Supp.2d 615 [EDNY 2012]; Casper v Lew Lieberbaum & co., Inc., 1998 WL 150993 [SDNY 1998]). Accordingly, the retaliation and aiding and abetting claims brought pursuant to New York City Administrative Code 8-101 are dismissed pursuant to CPLR 3211(a)(7) as the Complaint fails to allege that any discrimination occurred within the boundaries of New York City.

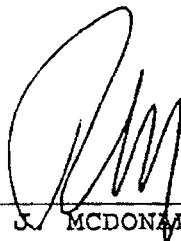
Regarding the retaliation claim brought pursuant to New York State Human Rights Law, N.Y. Exec. Law 296, regardless of whether plaintiff is considered an employee of defendants, plaintiff failed to demonstrate a causal connection between the alleged retaliatory termination and the claimed harassment. Here, plaintiff reported the harassment and discrimination against Huan Wang in October 2015. However, the alleged retaliatory termination occurred in December 2016. Thus, the at-will management contract between plaintiff and Air China continued for more than a year after plaintiff reported the alleged harassment. As such, this Court finds that plaintiff failed to allege temporal proximity between defendants' knowledge of the complained harassment and the alleged adverse employment action (see Clark County School Dist. v Breedan, 532 US 268 [2001] [finding that an adverse employment action taken twenty months later suggests, by itself, no causality at all] [Richmond v ONEOK, Inc., 120 F.3d 205 [10th Cir. 1997] [finding that three months was insufficient]; Hughes v Derwinski, 967 F.2d 1168 [7th Cir. 1992] [finding that four months was insufficient]). As this Court finds that the retaliation claims fail, the aiding and abetting claims must also fail as no underlying violation has been properly pleaded against defendants.

Therefore, plaintiff's complaint fails to state a cause of action pursuant to CPLR 3211(a)(7). As such, the remainder of the motions to dismiss need not be decided herein, including those branches seeking to consolidate this action with a previously commenced action, which are now moot.

Accordingly, and for the reasons stated above, it is hereby

ORDERED, that the motion by defendant AIR CHINA LIMITED (seq. no. 1) and the motion by defendants LB OCEANFRONT CORP., XUE WENG YU, and HUI YU (seq. no. 2) for an Order dismissing this action pursuant to CPLR 3211(a)(1) and (7) is granted, the complaint is dismissed in its entirety, and the Clerk of the Court shall enter judgment accordingly.

Dated: November 20, 2018  
Long Island City, N.Y.



ROBERT J. MCDONALD  
J.S.C.

FILED
DEC 3 2018
COUNTY CLERK QUEENS COUNTY