Westchester County Round-Up:
Recent Significant Decisions from the
Westchester Federal and State Courts
January 2016

This article continues Yankwitt LLP's quarterly review of decisions from the Federal District Court and State Supreme Court in White Plains, New York. This article reviews decisions from the fourth quarter of 2015.

Judge Román Dismisses Case Against Department of Veterans Affairs Alleging Religious Discrimination and Retaliation

In *Shaw v. McDonald*, No. 14 CV 5856 (NSR), 2015 WL 8484570 (S.D.N.Y. Dec. 8, 2015), **Judge Nelson S. Román** granted Defendants' motion to dismiss Plaintiff's claims for religious discrimination and retaliation pursuant to Title VII and dismissed the nondiscrimination claims against the individual defendants. Plaintiff, a Muslim, was employed with the Department of Veterans Affairs (the "VA"). According to Plaintiff, from the outset of his employment, he was subjected to antagonizing statements by his supervisor and discriminatory comments by his coworkers concerning his religion. When the VA allegedly failed to address Plaintiff's concerns, Plaintiff allegedly filed complaints with the EEOC in 2008/2009 and 2012. In 2013, following a dispute with a patient, Plaintiff was investigated and eventually terminated. The termination was later mitigated to a thirty-day suspension. Plaintiff brought suit, alleging racial discrimination and retaliation for filing complaints with the EEOC. In dismissing the discrimination claim, Judge Román analyzed Plaintiff's allegations and determined they were too speculative to support a plausible inference of discrimination. With respect to Plaintiff's retaliation claim, the Court held that Plaintiff failed to establish the necessary causal connection because at least a year elapsed between the alleged filing of his last EEOC complaint and his adverse employment action. Finally, the Court dismissed the individual defendants because Title VII does not provide for individual liability in the Second Circuit. In light of the fact that Plaintiff was *pro se*, however, the Court granted Plaintiff leave to amend his complaint and allege additional facts to support his discrimination claim against the VA.

Judge Seibel Holds County Did Not Violate First Amendment with Local Price Labeling Law

In *Poughkeepsie Supermarket Corp. v. County of Dutchess*, N.Y., No. 14-CV-1702 (CS), 2015 WL 6128800 (S.D.N.Y. Oct. 15, 2015), **Judge Cathy Seibel** granted Defendant's motion to dismiss Plaintiff's § 1983 claim alleging that a retail food establishment labeling law violated Plaintiff's free speech rights under the First Amendment. Plaintiff Poughkeepsie Supermarket Corp. d/b/a Market Fresh has operated in the City of Poughkeepsie since 2011. In 1991, Dutchess County enacted a consumer protection law requiring retail food establishments to individually label each item for sale. As a consequence, to comply with the law, if a seller wishes to change the price of an item, even if that change is temporary (*e.g.*, as with a one-day sale price), it must change the label on every individual item. Plaintiff alleged the local law was unduly burdensome, prevented retailers from offering promotional sales, and that the County's true reasons for enactment were to raise revenue through the impositions of fines for noncompliance and to create jobs by forcing retailers to hire additional employees to ensure compliance. In evaluating Plaintiff's claims, Judge Seibel noted initially that the dispute involved non-expressive conduct, as opposed to speech, and so was likely not protected by the First Amendment. Even if Plaintiff's claims did raise First Amendment concerns, the Court held Plaintiff failed to state a constitutional claim. The Court first noted that as a commercial disclosure requirement, the local law must only be "reasonably related to the State's interest in preventing deception of consumers" to pass constitutional muster. Judge Seibel then determined the law did not violate the First Amendment because individually pricing products is reasonably related to the objectives of protecting consumers' interest in obtaining accurate, accessible price information and facilitating informed shopping. The Court found no support for Plaintiff's contention that the stated legislative intent was pretextual. Finally, the Court rejected Plaintiff's assertion that the law was unduly burdensome, noting that compelled disclosure laws typically involve some burden and there was nothing extraordinary about the law at issue to undermine the rational basis finding.

Judge Karas Dismisses Trademark Dilution and Cybersquatting Claims But Declines to Grant Summary Judgment on Declaratory Relief Claim Invalidating Trademark

In *New World Solutions, Inc. v. NameMedia Inc.*, No. 11-CV-2763 (KMK), 2015 WL 8958390 (S.D.N.Y. Dec. 15, 2015), **Judge Kenneth M. Karas** granted Defendant's cross-motion for summary judgment on Plaintiff's claims for trademark dilution, cybersquatting and deceptive trade practices and advertising under federal and New York state laws but denied Defendant's motion for summary judgment on its counterclaim for declaratory relief to invalidate Plaintiff's trademark. Plaintiff, a technology staffing company, claimed to have advertised and publicized the mark "New World Solutions" since at least 2007. Defendant offers a marketplace for the purchase and sale of domain names by and for others and also purchases and sells domain names for its own accounts. Defendant purchased the domain name in 2005, and was allegedly unaware of Plaintiff's existence at the time. Plaintiff contacted Defendant in 2010, seeking a price quote for the Domain Name, and

was quoted $2,588, at which time Plaintiff officially registered the mark with the Patent and Trademark Office. Plaintiff then demanded that Defendant transfer ownership of the domain name to Plaintiff. When Defendant refused, Plaintiff commenced litigation, claiming Defendant employed technology specifically designed to divert web traffic and confuse consumers and that the sole purpose of holding the domain name for New World Solutions was to divert traffic to Defendant's website. The parties cross-moved for summary judgment. In granting Defendant's motion on the trademark dilution claim, the Court held that the mark was not famous at the time of Defendant's conduct. On the cybersquatting claim, which imposes liability for registering a domain name in a bad faith attempt to profit from the mark's notoriety, Judge Karas ruled there was no evidence the mark was famous or distinctive, or even that it was necessarily in use, at the time in question. The Court also held Plaintiff's cybersquatting claim failed because there was not sufficient evidence that Defendant acted in bad faith with intent to profit from Plaintiff's mark. As to Defendant's counterclaim seeking declaratory relief, the Court denied that motion, finding there was an issue of fact whether Plaintiff made fraudulent statements to the PTO in registering the mark. Finally, the Court denied Defendant's motion to deem the case "exceptional" under the Lanham Act, which would carry an award of attorneys' fees, because while there was circumstantial evidence of bad faith, there was no direct evidence that Plaintiff had engaged in fraud or acted in bad faith during the litigation.

Judge Briccetti Declines to Dismiss Plaintiff's Race Discrimination Claim

In *Coleman v. Nonni's Foods, LLC*, No. 15 CV 2791 (VLB), 2015 WL 8773467 (S.D.N.Y. Dec. 14, 2015), **Judge Vincent L. Briccetti** denied the motion to dismiss of defendant Nonni's Foods, LLC ("Nonni's") and granted the motion to dismiss of defendant Hoffman Business Enterprises, Inc. d/b/a Pinpoint Personnel's ("Pinpoint") on Plaintiff's complaint asserting race discrimination under Section 1981, Title VII, and the New York Human Rights law. Plaintiff worked at Nonni's food processing facility from October 14, 2014 through January 11, 2015, performing maintenance, cleaning, and other related duties. Plaintiff was placed in that position by Pinpoint, which Nonni's had retained to perform staffing functions on an as-needed basis. On January 2, 2015, Plaintiff warned a co-worker to be careful opening a door because there was someone behind the door, to which the co-worker allegedly responded with racist remarks. Plaintiff complained about the remarks to her supervisors, who made the co-worker apologize. Later that week, Plaintiff's supervisor allegedly made further derogatory comments while Plaintiff was present. There were no allegations that Pinpoint was ever informed about the racist remarks. Plaintiff was fired a few days after the alleged remarks were made, purportedly because she was no longer needed. Plaintiff alleged that this reason was pretextual, however, as she had been working seven days a week with some overtime prior to her termination. In denying Nonni's motion to dismiss, the Court held Plaintiff pleaded sufficient facts to support the claim that Nonni's decision to terminate Plaintiff was motivated by discriminatory intent. With respect to Pinpoint, the Court granted its motion to dismiss because there were no allegations that created a plausible inference Pinpoint knew or should have known about the alleged racist remarks and because Pinpoint was not involved in the day-to-day operations at Nonni's facility.

Justice Ruderman Dismisses Slip-and-Fall Claim Against Local Municipality

In *Roemer v. Village of Ardsley*, 49 Misc. 3d 1213(A) (N.Y. Sup. Ct. 2015), **Justice Terry Jane Ruderman** granted Defendant's motion for summary judgment on liability in Plaintiff's slip-and-fall case. Plaintiff commenced the action against the Village of Ardsley for damages sustained when he allegedly fell over a metal stub embedded in a public sidewalk to which a street sign had previously been attached. The Village moved to dismiss on two grounds: (i) that the maintenance of the sign and post is the responsibility of the State of New York; and (ii) that no prior written notice of the defect was given to the Village Clerk as required by local law. Plaintiff argued the Village maintained the obligation to maintain the sidewalk despite its designation as a State Road. Plaintiff further argued the prior written notice law was inapplicable because not all complaints were logged and because the Village Foreman should have observed the defect in his travels through the Village. The Court ruled that while the Village likely did have a duty to repair the broken signpost, summary judgment was nonetheless appropriate because the absence of prior written notice was dispositive. In particular, Justice Ruderman held constructive notice is insufficient to satisfy the statutory requirement of prior written notice. Furthermore, speculation that the Village Department of Public Works may have received notice of the defect would not have obviated the statutory requirement of providing written notice to the Village Clerk. Finally, the Court noted that, based on the statutory language, the notice requirement would not be satisfied if the Village Department of Public Works failed to forward written notice to the Village Clerk.