

EASTERN DISTRICT ROUNDUP

Court Rulings: Dismissals and Denials in Employment, Criminal, and Civil Cases

By Thomas Kissane and John Moore

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1. Discrimination Claims Dismissed For Failure To State A Claim, Tort Claim For Lack Of Personal Jurisdiction

In *Koenig v. Celitech Inc.*, 26 CV 90 (EDNY, Apr. 21, 2026), Judge Cogan held that plaintiff failed to state a claim of gender discrimination against her former employer, Celitech, and that personal jurisdiction over Celitech's Chief Commercial Officer (CCO) was lacking for purposes of a foreign tort claim.

Plaintiff Lauren Koenig asserted (a) an assault claim against Celitech's COO under Portuguese law; and (b) claims against Celitech under the New York State Human Rights Law and the New York City Human Rights Law (NYCHRL), and for negligent supervision and retention under the common law. While the complaint alleged gender discrimination, it raised no federal claims.

The assault claim arose from an incident where the CCO allegedly struck plaintiff during a business trip in Portugal. There was no general jurisdiction over the CCO because he was not a New York resident, was not served in New York, and did not consent to jurisdiction.

Plaintiff's allegations of other offensive actions by the CCO in New York were insufficient to



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establish specific jurisdiction over him because "she fails to connect that conduct to her only claim against him, i.e., his alleged tort in Portugal," and the resulting injuries alleged in the complaint were "downstream consequences" insufficient to establish jurisdiction for a foreign tort under *Atlantica Holdings, Inc. v. Sovereign Wealth Fund*, 813 F.3d 98, 113 (2d Cir. 2016).

Plaintiff failed to state a claim against *Celitech* under the Human Rights Laws because she "alleges nothing supporting her contention that her termination was partially due to gender discrimination." While plaintiff alleged that she was the only female executive at Celitech, "it is well settled that sole membership in a protected class does not make every disagreeable employment decision an act of discrimination."

Plaintiff's allegation that Celitech's Chief Executive Officer reacted negatively to her taking leave of a kind freely permitted to her male

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colleagues was likely insufficient because the NYCHRL is not a ‘general civility code.’” Quoting *Milhalik v. Credit Agricole Cheuvreux N. Am, Inc.*, 715 F.3d 102, 110 (2d Cir. 2013).

“In any event, the complaint did not allege that plaintiff was terminated because she took leave, but rather “because she complained about being ‘bombarded’ with work requests while she was on leave,” and “firing an employee for trying to set work-life boundaries is just ‘poor management[,] not discrimination.’” Quoting *Hardial v. Emblemhealth, Inc.*, No. 14-cv-4968, 2016 WL 3693750, at *13 (E.D.N.Y. July 7, 2016), and collecting cases.

The complaint’s allegations of verbal abuse, intimidation, and physical aggression failed to state a hostile work environment claim for three reasons. First, the allegations of verbal abuse did not identify the statements made. Second, the allegations of offensive conduct were deficient because “the law does ‘not authorize a hostile work environment claim for conduct that was merely offensive’”. Quoting *Fitzgerald v. Henderson*, 251 F.3d 345, 356-57 (2d Cir. 2001). Third, as to both words and conduct, “[p]laintiff alleges nothing suggesting that [it] occurred because of plaintiff’s gender, other than the mere fact that plaintiff is a woman.”

Finally, the complaint’s attempt to hold Celitech responsible for its CCO’s alleged assault in Portugal based on a claim of negligent supervision or retention was a negligence claim under Portuguese law, and “the exclusive remedy for negligence claims against an employer’ is ‘the New York Workers’ Compensation law.’”

Cogan rejected plaintiff’s argument that the Workers’ Compensation law’s restriction on negligence claims did not apply because Celitech’s failure to supervise enabled its CCO to commit the intentional tort of assault. The complaint did not allege that the CCO committed the tort at Celitech’s direction but rather that it resulted from a failure of supervision, which plainly described negligence.

2. Motion To Suppress Denied

In *United States v. Flowers*, 24 CR 458 (EDNY, Apr. 16, 2026), Judge Block denied defendant’s

motion to suppress the fruits of two search warrants, concluding that errors in the warrant applications did not render the warrants improper.

Defendant was charged with securities fraud, wire fraud, and money laundering arising from his management of a hedge fund. Following that indictment, two warrants were authorized and executed, one for a vacation home in Arizona and one for an apartment in Nevada.

The Arizona warrant authorized a search for evidence, fruits, and instrumentalities of the charged offenses from Jan. 1, 2018, to the present based on a supporting affidavit indicating defendant had been indicted for offenses between November 2018 and April 2023.

In fact, the charged offenses occurred between 2020 and 2023. Noting the inaccuracy of the time period described in the affidavit, defendant moved to suppress the warrant as overbroad. The Arizona warrant was supported by probable cause and suppression was inappropriate, however, because the affidavit described facts dating back to 2018 involving defendant’s management of a prior fund that would likely be relevant to the charges in the indictment.

“The Nevada Warrant [was] much more troubling.” It contained copy-and-pasted material from a different warrant in a different case. Specifically, the “things to be seized” portion of the warrant, in addition to relevant materials, also authorized a search for obviously irrelevant material like “any information related to source of drugs.” Defendant moved to suppress this warrant, arguing that the errors demonstrated that the magistrate judge who approved it had abandoned his judicial role and rubber stamped the warrant.

But defendant failed to satisfy the criteria for suppressing a warrant under *United States v. Leon*, 468 U.S. 897 (1984). To start, there was no indication that the magistrate was misled by the affirmation. Moreover, the clear “typographical sloppiness” of the warrant did not rise to the level of reckless disregard for the truth.

Next, while the magistrate “may have made a serious mistake in failing to closely read the

warrant and failing to notice the copy-paste error,” that is not the same as abandoning his judicial role. Such abandonment requires a showing that the judge had assumed the role of an adjunct law enforcement officer. The “failure to pay close attention does not make a judge into a police officer, and this factor therefore does not encompass the situation at hand.”

Finally, the Nevada warrant was not facially deficient and was supported by sufficient probable cause. The warrant specified the places to be searched and the things to be seized. The fact that it included additional erroneous items in the list of evidence to be seized did not undermine the validity of the warrant.

Nonetheless, Block severed the infirm portions of the warrant and ruled that any evidence seized pursuant to those portions would be suppressed. There was no reason, Block noted, to think that any evidence had been seized under those improper sections. If events make “clear that any evidence was improperly seized pursuant to this now severed portion of the warrant the court will promptly order that evidence suppressed.”

3. Motion To Dismiss Complaint Alleging RICO Claim Granted

In *All Island Counter Tops & Millwork Inc. v. Serpas*, 25 CV 0744 (EDNY, Apr.30, 2026), Judge Seybert granted defendants’ motion to dismiss the federal claims against them, declined to exercise supplemental jurisdiction over plaintiffs’ New York state law claims, and denied plaintiffs’ cross-motion to amend.

Plaintiffs’ lawsuit arose out of an alleged side business that the individual defendants, all employees of plaintiff All Island Counter Tops & Millwork Inc. during the relevant time period, allegedly conducted on All Island’s time using All Island’s material and infrastructure. Certain of the individual defendants formed

defendant Rota Stone to operate this side business. Plaintiffs alleged wire fraud, bank fraud, and violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), as well as various state law claims.

The bank and wire fraud claims were dismissed because neither of the applicable statutes, 18 U.S.C. §1343 and 18 U.S.C. §1344, includes a private right of action.

Seybert also dismissed plaintiffs’ RICO claim. Plaintiffs relied on the claims of bank fraud and wire fraud to allege the requisite predicate acts. But “a RICO plaintiff who is not a financial institution...lacks...injury to bring a RICO claim based on bank fraud as the predicate act.” Turning to the wire fraud claim, the court concluded that plaintiffs’ list of alleged side jobs “does not suffice to state the typical ‘who, what, where, when, and why’ required to plead a fraud-based claim with particularity.”

Plaintiffs’ allegations were insufficient for the further reasons that the claims about the individual defendants’ involvement were conclusory, and plaintiffs failed to quote a single verbal statement made by any individual defendant, failed to mention any affirmative misrepresentation that would have allowed the individual defendants to hide the side business, and improperly grouped all defendants together. Since plaintiffs lacked injury to rely on the alleged bank fraud as a predicate act and failed to allege the claimed wire fraud with particularity, plaintiffs’ RICO claim was dismissed.

With the dismissal of plaintiffs’ claims under federal law, Seybert declined to exercise supplemental jurisdiction over plaintiffs’ remaining state law claims. The court also denied plaintiffs’ cross-motion to amend because the proposed amendments “would not cure the Amended Complaint’s fatal deficiencies.”