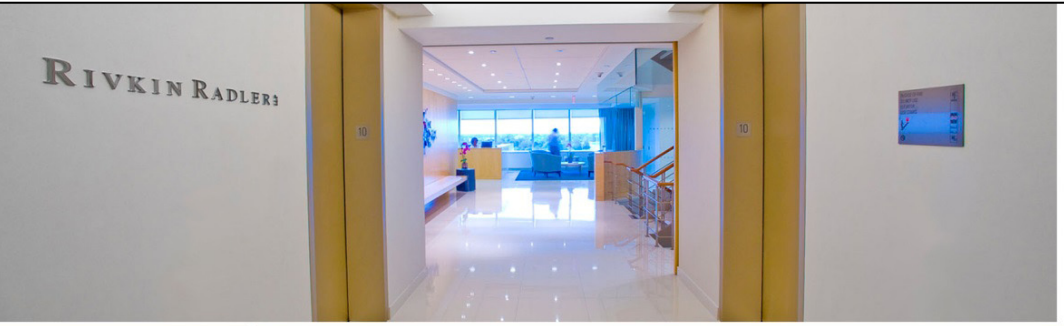

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Relying on Forum-Selection Clause, U.S. Court of Appeals for the Second Circuit Affirms Dismissal of Employment Discrimination Suit

The U.S. Court of Appeals for the Second Circuit has affirmed a federal district court's decision to dismiss a sex-based employment discrimination lawsuit based on a forum-selection clause that designated Lebanon as the exclusive forum for adjudicating disputes related to the plaintiff's employment contract.

The Case

Paul du Quenoy sued his former employer, the American University of Beirut ("AUB"), as well as AUB's president and its former Title IX coordinator (collectively, the "Defendants"). He brought claims for sex-based employment discrimination in violation of Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and state and local law; retaliation in violation of Title VII; breach of contract; and certain torts.

The du Quenoy complaint also sought a declaratory judgment that AUB's investigation of sexual harassment complaints against him, the investigation's findings, and the resulting sanctions were improper and undertaken in bad faith.

After the U.S. District Court for the Southern District of New York dismissed the du Quenoy complaint based on a forum-selection clause designating Lebanon as the exclusive forum for adjudicating disputes related to du Quenoy's employment contract, du Quenoy appealed to the Second Circuit.

The Second Circuit's Decision

The Second Circuit affirmed, finding that dismissal of du Quenoy's complaint was proper.

In its decision, the Second Circuit explained that a freely negotiated forum-selection clause "represents the parties' agreement as to the most proper forum" and "should be given controlling weight in all but the most exceptional cases." Moreover, the circuit court continued, a forum-

selection clause was presumptively enforceable if it "was reasonably communicated to the party resisting enforcement," had "mandatory force," and covered the claims and parties involved in the dispute.

According to the Second Circuit, a party could overcome this presumption only by making a sufficiently strong showing that enforcement would be unreasonable or unjust, or that the clause was invalid for reasons such as fraud or overreaching. Specifically, the circuit court added, a forum-selection clause would not be enforced if:

1. Its incorporation was the result of fraud or overreaching;
2. The law to be applied in the selected forum was fundamentally unfair;
3. Enforcement contravened a strong public policy of the forum in which suit was brought; or
4. Trial in the selected forum would be so difficult and inconvenient that the plaintiff effectively would be deprived of the plaintiff's day in court.

The Second Circuit noted that du Quenoy did not challenge the presumptive enforceability of the forum-selection clause but, instead, principally relied on the third and fourth exceptions for overcoming the presumption. The circuit court was not persuaded by du Quenoy's arguments.

Regarding the third exception, du Quenoy contended that the forum-selection clause, when combined with a choice-of-law clause designating Lebanese law to govern claims under the employment contract, operated as a prospective waiver of du Quenoy's civil rights under Title VII. He claimed that enforcement of the forum-selection clause thus would contravene the strong U.S. federal public policy against employment discrimination.

The Second Circuit agreed that there is a "strong federal public policy favoring enforcement of the civil rights laws," and observed that it would hesitate to enforce a forum selection clause if the party resisting enforcement demonstrated that the foreign forum's anti-discrimination law was insufficient to deter employers from violating the civil rights of employees who otherwise enjoyed the protection of American anti-discrimination laws.

However, the Second Circuit ruled, du Quenoy "failed to carry his burden on this point." The circuit court reasoned that it was "not enough" that the foreign law or procedure was different or less favorable than that of the United States. According to the circuit court, the "mere fact" that the

claims and remedies available under Lebanese law might differ from those available under Title VII was "insufficient to overcome the presumptive enforceability of the forum selection clause" where du Quenoy failed to show that Lebanese law would deprive him of a remedy for employment discrimination.

The circuit court reasoned that Lebanese law permitted du Quenoy to sue AUB for terminating his employment contract, including termination motivated by a discriminatory intent; Lebanese courts would evaluate such a claim by applying general principles of equity; and, if termination was wrongful, Lebanese law provided a damages remedy.

Finding that du Quenoy had not demonstrated that the claims and remedies available in Lebanon would be ineffective at deterring AUB from discriminating against its employees, the circuit court concluded that du Quenoy's public policy argument did not overcome the presumptive enforceability of the forum-selection clause.

Regarding the fourth exception, du Quenoy pointed to various difficulties of litigating in Lebanon that he claimed would effectively deprive him of his day in court, but the Second Circuit also found this argument unavailing.

In the circuit court's view, du Quenoy's complaints about the time, expense, and difficulty associated with litigating in Lebanon were nothing more than "the obvious concomitants of litigation abroad." The circuit court also dismissed du Quenoy's allegations concerning corruption within the Lebanese judiciary, reasoning that "bare denunciations and sweeping generalizations" of corruption, rather than particularized allegations of targeted bias, did not permit it to pass value judgments on the adequacy of justice and the integrity of Lebanon's judicial system. The circuit court also found that du Quenoy had not shown that political unrest in Lebanon would defeat the Lebanese judiciary's ability to adjudicate his claims.

Accordingly, the Second Circuit concluded, because du Quenoy failed to demonstrate that enforcement would contravene a public policy or deprive him of his day in court, he failed to carry the "heavy burden" required to overcome the presumptive enforceability of the forum-selection clause, and the clause had to be given "controlling weight."

The case is *Du Quenoy v. American University of Beirut*, No. 19-3182 (2d Cir. Oct. 2, 2020).

Mediation Agreement That Resolved Plaintiff's Employment Discrimination Claims Was Enforceable, Federal District Court Rules

The U.S. District Court for the Southern District of New York has ruled that a mediation agreement that resolved an employment discrimination lawsuit brought by a plaintiff was enforceable, notwithstanding the plaintiff's contention that she signed the agreement under duress.

The Case

After the plaintiff sued the Institute of International Education for employment discrimination, the parties engaged in court-referred mediation. Following mediation, the parties, counsel, and mediator signed a mediation agreement that set out the terms of the resolution between the parties.

The plaintiff subsequently alleged that during mediation she was "nervous and confused," that she told her attorney that she did not approve of the settlement amount, that her attorney "applied extreme pressure" on her to settle, that she felt intimidated, and that she felt that she "had no choice but to sign."

The plaintiff's counsel and defense counsel later negotiated a "full settlement agreement" that provided additional terms that were not in the mediation agreement, including the defendant's disclaimer of liability, the plaintiff's agreement not to seek employment with the defendant, a confidentiality agreement, and a non-disparagement clause, among other provisions.

The plaintiff never signed the settlement agreement and instead retained new counsel and expressed to the court that she had been under duress when she signed the mediation agreement.

The plaintiff did not return to work and, consistent with the mediation agreement, the defendant paid the plaintiff for her final week and for all accrued but unused paid time off. The defendant then moved to enforce the mediation agreement.

A magistrate judge concluded that the mediation agreement was a binding settlement agreement and that the plaintiff could not evade the agreement by claiming duress. Accordingly, the magistrate judge issued a report and recommended that the district court grant the defendant's motion to enforce the agreement.

The plaintiff objected to the magistrate's report and recommendation, arguing that that the mediation agreement was only a preliminary, non-binding agreement and that she had signed the mediation agreement under duress from her counsel and the mediator.

The Court's Decision

The court overruled the plaintiff's objections and adopted the magistrate judge's report and recommendation.

In its decision, the court explained that four factors governed whether the mediation agreement was enforceable:

1. Whether there was an express reservation of the right not to be bound in the absence of a writing;
2. Whether there was partial performance of the mediation agreement;
3. Whether all of the terms of the alleged contract – that is, the mediation agreement – had been agreed on; and
4. Whether the mediation agreement was the type of contract usually committed to writing.

The court then considered each of the four factors.

First, the court decided that the mediation agreement reflected an intent to be bound, noting that its title was "mediation agreement"; the mediation agreement included the language "IT IS HEREBY AGREED" and "agreement has been reached on all issues"; and there was no express reservation of the right not to be bound. The court was not persuaded by the plaintiff's contention that the mediation agreement was unenforceable because there was supposed to be a settlement agreement, reasoning that it was "well established" that preliminary, written agreements could create binding obligations despite the presence of later, more formal agreements.

The court also rejected the plaintiff's contention that the language of the mediation agreement that favored enforceability – including the statements "IT IS HEREBY AGREED" and "agreement has been reached on all issues" – should not be given effect because that language was pre-printed on the court mediation form, noting that the parties were free to amend the mediation agreement, including the pre-printed language, before signing.

With respect to the second factor, the court found that there had been partial performance under the mediation agreement because the defendant had paid the plaintiff a week of her salary.

On the third factor, the court observed that the additional terms introduced after the mediation agreement that were to be included in the settlement agreement "were not essential to the agreement already achieved."

Regarding the fourth and final factor, the court agreed that the mediation agreement fell into the category of agreements that parties might expect to be bound by even before the agreement was memorialized in a more formal written document.

Finally, the court rejected the plaintiff's contention that the mediation agreement should not be enforced because she had signed it under duress. The court concluded that, to the extent that the plaintiff's duress claim was based on alleged statements of the plaintiff's attorney and the mediator, those statements were nothing more than comments on the strength of the plaintiff's case and the consequences of failure to settle, and did not amount to duress.

The case is *Murphy v. Institute of International Education*, No. 19-CV-1528 (ALC) (S.D.N.Y. Sept. 23, 2020).

University Defeats Assistant Professor's Claim of Discrimination in Violation of the Federal Rehabilitation Act

The U.S. District Court for the Western District of New York has dismissed a lawsuit under the federal Rehabilitation Act brought against a university by an assistant professor who claimed that he had been discriminated against on the basis of a disability.

The Case

The plaintiff, an assistant professor in the Communication Department of the State University of New York at Buffalo, sued the university for discriminating against him on the basis of his disability – namely, post-traumatic stress disorder ("PTSD") – in violation of the federal Rehabilitation Act.

The defense moved to dismiss.

The Court's Decision

The court granted the motion to dismiss.

In its decision, the court explained that to make out a prima facie claim of employment discrimination in violation of the Rehabilitation Act, a plaintiff must allege that:

1. The plaintiff's employer was subject to the Rehabilitation Act;
2. The plaintiff was disabled within the meaning of the Rehabilitation Act;
3. The plaintiff was otherwise qualified to perform the essential functions of his or her job, with or without reasonable accommodation; and
4. The plaintiff suffered an adverse employment action because of his or her disability.

The court then found that the plaintiff had not plausibly alleged that he was disabled within the meaning of the Rehabilitation Act.

The court reasoned that although the plaintiff alleged that he suffered from PTSD and that his PTSD had some effect on his work, he had not plausibly alleged that any impact his PTSD had on his ability to work was "substantial." The court noted that the plaintiff alleged that his PTSD merely caused him to "miss classes on occasion" and that notwithstanding the effects of his condition and without any accommodation, he "made up all classwork and administrative responsibilities missed."

In other words, the court decided, the plaintiff's factual allegations were inconsistent with the conclusion that his PTSD substantially limited his ability to perform work. Therefore, the court ruled, the plaintiff had not plausibly alleged that he was disabled within the meaning of the Rehabilitation Act.

The court also decided that the plaintiff had not plausibly alleged that the university had regarded him as having a disability or that he had been subject to an adverse employment action or a hostile work environment on that basis.

In conclusion, the court also found that although the plaintiff asserted that the university had refused to grant him a reasonable accommodation based on his disability, he acknowledged that he had not specifically requested any such accommodation.

The case is *Oyer v. New York*, No. 1:19-CV-01201 EAW (W.D.N.Y. Sept. 22, 2020).

Federal Court Rejects Former School Psychologist's Discrimination and Retaliation Suit

The U.S. District Court for the Eastern District of New York has granted summary judgment in favor of a school district and related parties in an employment discrimination and retaliation lawsuit brought by a former school psychologist.

The Case

The plaintiff in this case worked as a school psychologist for the Remensburg-Speonk Union Free School District until she was terminated following a 12 day arbitration.

Then, pursuant to New York State Education Law Section 3020-a, the plaintiff petitioned the Supreme Court, Suffolk County, to vacate the arbitration decision that had recommended her termination. The court rejected her request and affirmed the arbitration decision, and the Appellate Division, Second Department, affirmed that judgment.

The plaintiff sued the school district and related parties, alleging discrimination and retaliation in violation of the Americans with Disabilities Act of 1990 ("ADA") and the New York State Human Rights Law ("NYSHRL").

The defendants moved for summary judgment.

The ADA and the NYSHRL

The ADA makes it unlawful for an employer to discriminate against a qualified individual on the basis of disability with respect to job application procedures, the hiring of employees, and other terms, conditions, and privileges of employment. To establish a prima facie discrimination case under the ADA, a plaintiff must allege that:

1. The defendant is covered by the ADA;
2. The plaintiff suffers from or is regarded as suffering from a disability within the meaning of the ADA;
3. The plaintiff was qualified to perform the essential functions of the job, with or without reasonable accommodation; and
4. The plaintiff suffered an adverse employment action because of his or her disability or perceived disability.

The NYSHRL similarly prohibits employers from discriminating against any individual on the basis of disability "in compensation or in terms, conditions or privileges of employment."

The Court's Decision

The court granted the defendants' motion for summary judgment.

In its decision, the court explained that the doctrine of collateral estoppel, also known as issue preclusion, barred relitigation of an issue when (1) the identical issue necessarily was decided in the prior action and is decisive of the subsequent action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to litigate the issue in the prior action.

The court then found that the Section 3020-a proceeding resulting in the plaintiff's termination was an administrative adjudication that precluded the plaintiff's lawsuit because the essential elements of the plaintiff's claims of disability discrimination and retaliation pursuant to the ADA and the NYSHRL had been decided in the Section 3020-a proceeding.

The court explained that the Section 3020-a hearing and the plaintiff's appeal concerned whether there was just cause for the plaintiff's termination. The court noted that the plaintiff stated in her petition accompanying her court challenge to the Section 3020-a proceeding that, at the Section 3020-a hearing and in her challenge to the proceeding, she raised as a defense that the defendants' conduct was motivated by "discriminatory and retaliatory animus."

In her lawsuit, the court continued, the plaintiff contended that her alleged disability led to her termination and that the school did not accommodate her condition. Thus, the court ruled, the plaintiff had raised the issues of discrimination and retaliation in the underlying proceeding and in her lawsuit, and the first prong of the two part test for issue preclusion was satisfied.

The court next found that the second prong of the test was met because the key issues in the plaintiff's lawsuit had been "actually litigated and actually decided" in the Section 3020-a proceeding and by the courts that upheld the arbitration decision. In particular, the court said, both the New York State Supreme Court's decision and the Second Department's decision – that the arbitrator's finding in the Section 3020-a proceeding rejecting the plaintiff's contention that the school district's actions against the plaintiff were discriminatory or retaliatory – had a rational basis, were supported by ample evidence, and were not arbitrary or capricious.

Finally, the court pointed out that the plaintiff was represented by counsel at the Section 3020-a hearing and was given the opportunity to testify; that witnesses and medical experts

testified; and that the parties presented 100 exhibits. The court added that the hearing occupied a total of 12 days over a six-month period and that the hearing officer's decision analyzing the evidence and the arguments was 69 pages long. Accordingly, the court ruled, the plaintiff had a "full and fair opportunity" in the Section 3020-a proceeding to litigate the issues of whether the disciplinary charges against her and the resulting termination of her employment were discriminatory or retaliatory and whether she was otherwise qualified for her position as a school psychologist.

In sum, the court concluded, issues regarding the plaintiff's allegation of retaliation and discrimination satisfied all prongs of the collateral estoppel analysis, and therefore her lawsuit was precluded.

The case is *Razzano v. Remsenburg-Speonk Union Free School District*, No. 11-CV-2920 (KAM) (E.D.N.Y. Sept. 30, 2020).

Appellate Court Reverses Decision in Favor of Defendants in Restrictive Covenant Case

The Appellate Division, Second Department, has reversed a trial court's decision granting summary judgment in favor of the defendants in an action seeking injunctive relief and to recover damages for the alleged misappropriation of the plaintiff company's trade secrets and confidential information.

The Case

After Greystone Staffing, Inc., a recruiter, entered bankruptcy, it sued Green Key, LLC, seeking to permanently enjoin Green Key from employing three former Greystone employees – Wendy Warner, Jessa Niemeyer, and Elaine Kawas (collectively, the "individual defendants") and to enjoin Green Key from using Greystone's confidential information. Greystone asserted claims for tortious interference with Greystone's business relationships with its customers, tortious interference with the employment contracts of the individual defendants, misappropriation of trade secrets, unjust enrichment, and unfair competition.

Greystone also sued the individual defendants, contending that each had signed an employment contract with Greystone that included, among other things, restrictive covenants that

applied during and after their employment with Greystone and that also included provisions characterizing as "Trade Secret[s]" and "Confidential Information" certain information regarding Greystone's customers, including knowledge of each customer's particular staffing needs.

Greystone asserted claims for breach of contract based on "various breaches" of the individual defendants' employment contracts, breach of fiduciary duty, unfair competition, breach of the duty of loyalty, misappropriation of confidential information, and unjust enrichment and seeking to enjoin the individual defendants from using and retaining Greystone's confidential information, doing business with Greystone's customers, working at Green Key, or enticing Greystone's employees to leave Greystone's employment.

Information produced during disclosure reflected that Green Key began communicating with Warner in December 2010 and with Niemeyer in "early 2011" about each of them potentially becoming employed by Green Key. Documents produced by Green Key reflected that Warner sent emails to Green Key in September and October 2011, attaching documents and notes relating to her work at Greystone and her intention to begin employment at Green Key.

Warner and Niemeyer each resigned from employment with Greystone on November 15, 2011, and each began working for Green Key on November 21, 2011. Kawas was terminated from her employment with Greystone on January 13, 2012 and she began working for Green Key on January 24, 2012. Green Key represented that its first contact with Kawas regarding Kawas potentially becoming employed by Green Key was "[i]n or about January 2012."

The Supreme Court, Nassau County, granted summary judgment in favor of Green Key and the individual defendants, and Greystone appealed.

The Appellate Court's Decision

The appellate court reversed, disagreeing with the trial court's determination that the defendants had demonstrated their entitlement to judgment as a matter of law.

In its decision, the appellate court decided that the "conclusory affidavits" submitted by the defendants in support of their motions for summary judgment "failed to eliminate triable issues of fact" as to whether, among other things, they had conspired among themselves to "usurp [Greystone's] corporate opportunities" and to "improperly use and disseminate [Greystone's] confidential information and trade secrets," as alleged by Greystone.

Indeed, the appellate court concluded, the defendants "failed to articulate any cognizable legal argument" entitling them to dismissal of the causes of action Greystone asserted against them.

The case is *Greystone Staffing, Inc. v. Green Key, LLC*, 186 A.D.3d 1339 (2d Dep't 2020).

Court Rejects Salon's Efforts to Bar Former Employees from Competing

A New York trial court has dismissed a salon's lawsuit against six former employees seeking to enforce a non-compete clause contained in the employment agreements the employees had signed with a prior owner of the salon.

The Case

In 2015, six employees of Gemmette Hair Studio signed employment contracts that contained a non-compete clause that stated that for a period of six months after termination of employment, they could not be employed by a hair salon within a three mile radius of Gemmette.

In October 2016, Shane Sorrento purchased Gemmette, renamed it Meraki NYC LLC, and asked the six employees to sign employment contracts replacing the ones they had signed with Gemmette. When none of the employees signed the new contracts by the deadline Meraki imposed, they no longer were employees of Meraki. Meraki contended that the employees quit, while the employees asserted that they were fired because they did not sign the contracts.

Meraki sued the six former employees for breach of contract and to enforce the non-compete clause that was in the contracts they signed with Gemmette, as well as the salon in which Gemmette's former employees then were working.

The defendants moved for summary judgment.

The Court's Decision

The court granted the defendants' motion for summary judgment.

In its decision, the court pointed out that non-compete clauses in employment contracts were "not favored" and only would be enforced "to the extent reasonable and necessary to protect valid business interests." Moreover, the court continued, where an employer terminated the employment relationship without cause, that action destroyed the "mutuality of obligation" on which the non-compete clause rested "as well as the employer's ability to impose a forfeiture."

The court then ruled that Meraki had "failed to make a prima facie showing of damages" or of "any other basis" upon which the court could find the non-compete clause reasonable and

necessary to protect Meraki's valid business interests or as a basis for damages for the defendants' alleged breach of contract.

The court noted that the proof of damages that Meraki provided was the purported difference in income, as reported to the Internal Revenue Service, between the years when the previous owners operated Gemmette and when Sorrento purchased the business. However, the court found, Meraki offered "no explanation" as to how the defendants had caused that difference or that it even had considered any other factors that could have caused the difference.

More importantly, the court continued, even if it were to find the non-compete clause reasonable and necessary, Meraki's continued willingness to employ the defendants was entirely premised on their willingness to sign the new contracts. According to the court, that destroyed the mutuality of obligation on which the non-compete covenant rested, thus negating Meraki's ability to impose a forfeiture under the terms of the contracts the six individual defendants had signed with Gemmette.

The case is *Meraki NYC LLC v. Iervasi*, No.152304-2017 (Sup. Ct. Richmond Co. July 31, 2020).

Court Denies Plaintiff's Request to Bar Ex-Employee From Contacting or Soliciting Its Clients

A trial court in New York has denied a plaintiff's motion for a preliminary injunction to prevent a former employee from contacting or soliciting the plaintiff's existing clients for any business relating to services provided by the plaintiff.

The Case

Devlinhair Productions, Inc. ("DHP"), a business that, among other things, produces meetings and events for large corporate clients, entered into an employment agreement in December 2016 with Katharyn Pinder that provided for Pinder to serve as vice president of business development. The employment agreement, which was effective December 7, 2016 and renewable annually following a performance review, required that Pinder keep all trade secrets of DHP strictly confidential and prohibited Pinder from engaging in any competitive activity while an employee of DHP and for six months thereafter.

In March 2019, the parties began to negotiate the next contract, scheduled to begin on December 7, 2019. Those negotiations, however, did not result in a new contract.

On March 22, 2020, Pinder sent a "good reason" notice of resignation to DHP, alleging that DHP's negotiations for a contract renewal amounted to material breaches of her employment agreement.

On March 24, 2020, DHP terminated Pinder's employment "for cause."

In May 2020, DHP filed suit against Pinder. DHP alleged that Pinder had been soliciting business in violation of the non-compete/non-solicitation clause in her employment contract. DHP alleged breach of contract, breach of the implied duty of good faith and fair dealing, and injury by intentional tort.

In addition, DHP moved for a preliminary injunction preventing Pinder from contacting or soliciting existing clients of DHP for any business relating to services provided by DHP.

In support of its motion, DHP submitted an affidavit of Catherine O'Neal, a managing director at DHP and its client innovation officer; an affidavit of Barbara Hair, a co-founder of DHP; the 2016 employment agreement between DHP and Pinder; and a website screen capture and domain name registration for Pinder's new company, Whistle Communications.

O'Neal's affidavit alleged that an unnamed contact at "Client X" contacted her in March 2020 to inform her that Pinder had contacted them and that an unnamed contact at "Client X" contacted her on June 25, 2020 and informed her that Pinder already was working on a project for "Client X."

Hair's affidavit summarized Pinder's employment history through the most recent contract negotiations and confirmed that DHP had received Pinder's "good reason" resignation on March 22, which DHP had rejected, and that Pinder was terminated "for cause" on March 24.

In support of her position opposing DHP's motion, Pinder submitted an affidavit detailing numerous alleged breaches of the employment contract by DHP; copies of emails between counsel for DHP and Pinder about the contract negotiations; and an email from DHP's counsel presenting Pinder with a non-negotiable contract with terms that were significantly less favorable to Pinder as compared to the 2016 contract.

The Court's Decision

The court denied DHP's motion.

In its decision, the court pointed out that O'Neal's affidavit contained "no supporting documentation" and "utterly fail[ed] to establish the affiant's personal knowledge that Pinder had in fact solicited 'Client X.'" Moreover, the court continued, DHP failed to submit a copy of Pinder's resignation, DHP's rejection of that resignation, or "any admissible documentation" that Pinder was in breach of her employment contract. The court found that DHP only established that Pinder built a website and registered a domain name prior to her termination from DHP.

The court also found that Pinder's submission of her "good reason" letter "at a minimum" created an issue of fact as to whether she had been released from the clauses of her contract that DHP alleged that she violated. Specifically, the court said, Pinder's letter put DHP on notice of its alleged breach of the employment contract and demanded that the breach be rectified within 30 days as required by the contract. The court also noted that Hair's affidavit specifically alleged that Pinder's letter did not include a demand to cure, which was inaccurate. Rather, the court found, DHP made no attempt to cure the alleged breaches, but instead terminated Pinder's employment.

Accordingly, the court ruled, DHP failed to establish a likelihood of success on the merits, which required that it deny DHP's motion.

The case is *Devlinhair Productions, Inc. v. Pinder*, No. 652098/2020 (Sup. Ct. N.Y. Co. Nov. 10, 2020).