

23-200

Giurca v. Bon Secours Charity Health Sys. et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
2 Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the
3 26th day of January, two thousand twenty-four.

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5 PRESENT:

6 BARRINGTON D. PARKER,
7 MYRNA PÉREZ,
8 SARAH A. L. MERRIAM,
9 *Circuit Judges.*

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12 Dr. Dan Giurca,

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14 *Plaintiff-Appellant,*

15
16 v. No. 23-200

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18 Bon Secours Charity Health System, Westchester
19 County Health Care Corporation, Good Samaritan
20 Hospital,

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22 *Defendants-Appellees. **

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* The Clerk of Court is respectfully directed to amend the official caption as set forth above.

1 **FOR PLAINTIFF-APPELLANT:** MICHAEL H. SUSSMAN (Jonathan R. Goldman, *on*
2 *the brief*), Sussman & Goldman, Goshen, NY.

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4 **FOR DEFENDANTS-APPELLEES:** MICHAEL J. KEANE (Gillian Barkins, *on the*
5 *brief*), Garfunkel Wild, P.C., Great Neck, NY.
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7 Appeal from a judgment of the United States District Court for the Southern District of
8 New York (Seibel, *J.*).

9 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
10 **DECREED** that the judgment of the district court is **AFFIRMED**.

11 Plaintiff-Appellant Dan Giurca seeks review of two district court rulings in favor of
12 Defendants-Appellees Good Samaritan Hospital (“Good Samaritan”), Bon Secours Charity
13 Health System (“Bon Secours”), and Westchester County Health Care Corporation
14 (“WMCHealth”)¹: (1) dismissal of his religious discrimination and failure to accommodate
15 claims under Title VII; and (2) summary judgment on his retaliation claim under Title VII.

16 For the reasons set forth below, we conclude that the district court did not err in
17 dismissing Giurca’s claims. We assume the parties’ familiarity with the underlying facts, the
18 procedural history of the case, and the issues on appeal, which we reference only as necessary to
19 explain our decision to affirm.

20 **I. Religious Discrimination and Failure to Accommodate**

21 First, we conclude that the district court did not err in granting the Hospital Defendants’
22 motion to dismiss.

23 “To survive a motion to dismiss under [Rule] 12(b)(6), a complaint must allege sufficient
24 facts, taken as true, to state a plausible claim for relief.” *Johnson v. Priceline.com, Inc.*, 711 F.3d
25 271, 275 (2d Cir. 2013) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)). The

¹ Defendants-Appellees will hereinafter be referred to as the “Hospital Defendants.”

1 Court is not required to credit “mere conclusory statements” or “[t]hreadbare recitals of the
2 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550
3 U.S. at 555). The Court reviews de novo the grant of a motion to dismiss under Rule 12(b)(6).
4 *See Allaire Corp. v. Okumus*, 433 F.3d 248, 249–50 (2d Cir. 2006).

5 “Under Title VII, an employer cannot discriminate against any employee on the basis of
6 the employee’s religious beliefs unless the employer shows that he cannot ‘reasonably
7 accommodate’ the employee’s religious needs without ‘undue hardship on the conduct of the
8 employer’s business.’” *Philbrook v. Ansonia Bd. of Educ.*, 757 F.2d 476, 481 (2d Cir. 1985)
9 (quoting 42 U.S.C. § 2000e(j)). A plaintiff claiming discrimination under Title VII must first
10 “make out a prima facie case of discrimination.” *Id.*

11 A plaintiff in a [Title VII] case makes out a prima facie case of religious
12 discrimination by proving: (1) he or she has a bona fide religious belief that
13 conflicts with an employment requirement; (2) he or she informed the employer of
14 this belief; (3) he or she was disciplined for failure to comply with the conflicting
15 employment requirement.
16
17 *Id.* (quoting *Tupen v. Missouri-Kansas-Texas R.R. Co.*, 736 F.2d 1022, 1026 (5th Cir. 1984)).

18 Here, dismissal was appropriate because Giurca fails at the very first step. Even
19 accepting the sincerity of his religious beliefs, Giurca’s Amended Complaint does not adequately
20 plead a conflict between his Orthodox Christian faith and the alleged employment requirement—
21 that Giurca agree that his employment be “subject to” and services be “provided in accordance
22 with” the Ethical and Religious Directives of the Roman Catholic Church (“ERDs”). Joint
23 App’x at 22.

24 In discussing an offer of employment with Bon Secours in 2017, Giurca was presented
25 with two contracts. The Professional Services Contract provided:

1 1.2 Standards. Physician agrees to ensure that the Services shall be provided in
2 accordance with: (i) the Ethical and Religious Directives for Catholic Health Care
3 Services promulgated by the United States Conference of Catholic Bishops, as
4 interpreted by the Sisters of Bon Secours

5 Joint App’x at 47. The Per Diem Contract provided:

6 Your employment is subject to the policies, procedures and guidelines of the PC
7 and Hospital, including but not limited to . . . the Ethical and Religious Directives
8 of the Roman Catholic Church.

9 *Id.* at 37 ¶ 4.

10 However, Giurca’s Amended Complaint is devoid of any facts plausibly alleging that
11 signing either contract, and therefore agreeing that his employment would be “subject to” or that
12 he would provide services “in accordance with” the ERDs, would actually conflict with his
13 personal religious beliefs. Without sufficient allegations of an actual conflict, Giurca has not
14 stated a “plausible claim for relief” as to his religious discrimination and accommodation claims.

15 *Johnson*, 711 F.3d at 275 (citing *Twombly*, 550 U.S. at 555–56).

16 **II. Retaliation**

17 We further conclude that the district court properly granted summary judgment on
18 Giurca’s claim for retaliation under Title VII.

19 On appeal, a court will affirm a grant of a motion for summary judgment only if,
20 construing the evidence in the light most favorable to the nonmoving party, “there is no genuine
21 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.
22 R. Civ. P. 56(a). A dispute is genuine “if the evidence is such that a reasonable jury could return
23 a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
24 Like a grant of a motion to dismiss, the Court conducts a de novo review of a district court’s
25 grant of summary judgment. *See Fabrikant v. French*, 691 F.3d 193, 205 (2d Cir. 2012).

1 Retaliation claims are analyzed using the *McDonnell Douglas* burden-shifting
2 framework. *See Zann Kwan v. Andalex Grp. LLC*, 737 F.3d 834, 843 (2d Cir. 2013) (citing
3 *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973)). The first step of the
4 *McDonnell Douglas* framework requires the plaintiff to establish a prima facie case of
5 retaliation. *See id.* at 844. “Once the plaintiff has established a prima facie showing of
6 retaliation, the burden shifts to the employer to articulate some legitimate, non-retaliatory reason
7 for the [adverse] employment action.” *Id.* at 845. If the defendant carries this burden, the
8 plaintiff must then present evidence demonstrating that retaliation was a “but-for” cause of the
9 adverse action. *Id.* at 845.

10 Here, summary judgment was appropriate because, even if Giurca had adequately
11 established a prima facie case of retaliation, the Hospital Defendants presented legitimate, non-
12 retaliatory reasons for their decision to not hire Giurca, and Giurca failed to carry his burden of
13 demonstrating that retaliation was the but-for cause of the adverse employment action.

14 **A. Legitimate, Non-Retaliatory Reasons**

15 The Hospital Defendants clearly identified “legitimate, non-retaliatory reason[s]” for
16 declining to hire Giurca. *Zann Kwan*, 737 F.3d at 845. When Giurca inquired about
17 employment with Good Samaritan in March 2019, the hospital was not considering applications
18 for the consultant liaison position in which he expressed an interest. Colavito—the recruiter with
19 whom Giurca had been communicating—then learned that Giurca had lied during his interview
20 about being presently employed at another hospital, despite having been terminated “due to
21 bizarre behavior.” Joint App’x at 1218. Due to his lack of candor, Colavito chose not to
22 consider Giurca for subsequent job openings. In July 2019, after Giurca interviewed for a
23 consultant liaison position, the only position he expressed an interest in, at WMCHHealth, Bartell

1 and Ferrando—the decisionmakers—recommended against hiring Giurca because he did not
2 have the necessary experience or certifications.

3 **B. But-For Cause**

4 Because the Hospital Defendants met their burden at the second step of the *McDonnell*
5 *Douglas* framework, the burden then shifted to Giurca to demonstrate that retaliation was a but-
6 for cause of their failure to hire him. But Giurca failed to do so.

7 First, the record does not support Giurca’s assertion that the proffered reasons for hiring
8 another candidate for the consultant liaison position at Good Samaritan are pretextual. By the
9 time Giurca inquired about the position in March 2019, Good Samaritan had already extended an
10 offer of employment to Afful and his contracts were under review.

11 Second, Giurca’s challenge to WMCHHealth’s conclusion that he was unqualified for the
12 consultant liaison position is similarly unavailing. Although Afful was not board-certified when
13 offered the consultant liaison position at Good Samaritan, the consultant liaison position for
14 which Giurca was deemed unqualified was an entirely separate position at an entirely different
15 hospital. The record does not suggest that the position for which Afful was hired and the
16 position from which Giurca was rejected required the same qualifications, much less that the
17 Hospital Defendants chose to enforce qualifications for one position but not the other.

18 Finally, in the absence of other evidence of a retaliatory motive, the temporal proximity
19 between Giurca’s allegedly protected activity and the adverse employment action is insufficient
20 to support an inference of retaliation. *See Ya-Chen Chen v. City Univ. of N.Y.*, 805 F.3d 59, 72
21 (2d Cir. 2015) (“‘[T]emporal proximity’ between a protected complaint and an adverse
22 employment action ‘is insufficient to satisfy [plaintiff’s] burden to bring forward some evidence
23 of pretext’” (quoting *El Sayed v. Hilton Hotels Corp.*, 627 F.3d 931, 933 (2d Cir. 2010) (per

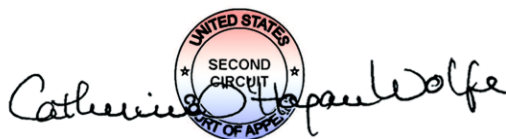
1 curiam))). We therefore conclude that Giurca failed to present sufficient evidence from which a
2 reasonable jury could conclude that retaliation was the but-for cause for the decision to not hire
3 Giurca.

4 * * *

5 We have considered Giurca's remaining arguments and find them to be without merit.
6 For the foregoing reasons, we **AFFIRM** the judgment of the district court.

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FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

A handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written in a cursive style and is positioned over a circular official seal. The seal is for the United States Second Circuit Court of Appeals, featuring the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around the perimeter, with two stars on either side of the word "CIRCUIT".