

Second Circuit Rejects Application of McDonnell Douglas to New York City Human Rights Law - But Grants Summary Judgment Under More Lenient Analysis

Drinker Biddle

Article By

[William R. Horwitz](#)

[Drinker Biddle & Reath LLP](#)

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The U.S. Court of Appeals for the Second Circuit recently affirmed a district court's summary judgment dismissal of a lawsuit that an **attorney filed against her former employer alleging race discrimination** under federal, state and New York City law. In **Simmons v. Akin Gump Strauss Hauer & Feld, LLP**, 2013 U.S. App. LEXIS 1571 (2d Cir. 2013), the Court explained that the trial court had erroneously applied the McDonnell Douglas analysis to a New York City Human Rights Law claim, rather than only to the federal and state claims. Nonetheless, the Second Circuit concluded that the trial court properly dismissed all of the claims.

Plaintiff Tameka Simmons worked as an associate for defendant law firm, Akin Gump Strauss Hauer & Feld, LLP ("Akin Gump"), from 2007 to late 2009. In 2009, the firm was "experiencing significant economic difficulties." For economic reasons, Akin Gump laid off forty-seven attorneys in March 2009. In April 2009, the firm announced deferred start dates for incoming associates. In June 2009, the firm

converted a full-time associate to an hourly employee. At the end of 2009, the firm discharged Simmons.

Simmons filed a lawsuit against Akin Gump in the U.S. District Court for the Southern District of New York. Her claims included race discrimination in violation of: (1) Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981; (2) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; (3) the New York State Human Rights Law, N.Y. Exec. Law § 296; and (4) the New York City Human Rights Law, NYC Admin. Code § 8-101 et seq. After discovery, Akin Gump filed a motion for summary judgment. The district court granted the motion, dismissing the lawsuit in its entirety. Simmons appealed.

The Second Circuit analyzed the federal and state claims under the “burden-sifting framework” of the McDonnell Douglas case. In so doing, the Court considered whether Simmons could establish a prima facie case of discrimination by showing: (1) that she was a member of a protected class; (2) that her job performance was satisfactory; (3) that she experienced an adverse employment action; and (4) “circumstances giving rise to an inference of discrimination” based on her membership in the protected class.

The Court concluded that Simmons could not establish the fourth prong of the analysis, because no evidence gave “rise to a reasonable inference of discrimination due to her race.” According to the Court, the evidence demonstrated that Akin Gump terminated her employment solely for economic reasons.

In any event, the Court explained, even if Simmons had been able to establish a prima facie case of discrimination, she could not have satisfied the next step in the McDonnell Douglas analysis, which was demonstrating that the firm’s proffered reason for her termination was pretextual. To satisfy this burden, Simmons would have had to present “sufficient evidence to support a rational finding that the legitimate, non-discriminatory reasons proffered by [the firm] were false, and that more likely than not discrimination was the real reason for the employment action.” The Court acknowledged that Simmons provided “some evidence” – such as the “low percentage of African-American associates” in her department of the firm – but it was insufficient. According to the Court, “[n]o reasonable jury could have found, on this record, that Simmons was selected for the reduction-in-force at least in part because of her race.”

The Second Circuit then turned to Simmons’ claims under the New York City Human Rights Law. The Court explained that the New York City law “was intended to provide a remedy reaching beyond those provided by the counterpart federal civil rights laws.” Accordingly, under the City law, Akin Gump could only obtain summary judgment by “showing that, based on the evidence before the court and drawing all reasonable inferences in [favor of Simmons], no jury could find that [Akin Gump] treated Simmons ‘less well’ than other employees at least in part because of her race.”

The Second Circuit observed that the district court had erred in failing to apply this more lenient analysis. Nonetheless, even under this analysis, the Second Circuit concluded that Simmons could not maintain her claim. The Court concluded that “Simmons failed to raise a triable issue as to whether she was treated less well than

other employees based in whole or in part on discrimination, and not because of the non-discriminatory reasons proffered by [Akin Gump].”

As the *Simmons v. Akin Gump* case makes clear, the analysis that courts apply to discrimination claims under the New York City Human Rights Law is more lenient than the analysis under federal and state anti-discrimination laws. Employers with New York City employees should be aware of the more liberal analysis, but understand that – even under this analysis – courts will dismiss claims as long as employers can provide adequate support for their decisions. The keys to this effort include maintaining clear policies and documenting reasons for employment decisions.

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