



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CUTTINO MOBLEY,

Plaintiff,

11 Civ. 8290 (DAB)  
MEMORANDUM AND ORDER

- against -

MADISON SQUARE GARDEN LP;  
MSG HOLDINGS, L.P.; and  
MADISON SQUARE GARDEN, INC.,

Defendants.

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DEBORAH A. BATTIS, United States District Judge.

Plaintiff Cuttino Mobley ("Plaintiff" or "Mobley") brings the above-captioned action against MSG Holdings, L.P. and The Madison Square Garden Company ("Defendants," the "New York Knicks"<sup>1</sup> or the "Knicks")<sup>2</sup> alleging discrimination on the basis of actual or perceived disability, pursuant to New York State Human Rights Law, Executive Law § 290 et seq. ("NYSHRL") and the Administrative Code of the City of New York § 8-107 et seq. ("NYCHRL").

This matter is before the Court on a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), filed by Defendants on December 29, 2011. For the reasons below, Defendants' Motion to

<sup>1</sup> The New York Knicks are a division of MSG Holdings, L.P.  
<sup>2</sup> Plaintiff's Compliant identifies the Defendants as Madison Square Garden LP, MSG Holdings L.P., and Madison Square Garden, Inc. The Court here uses the corrected names as indentified in Defendants' Rule 7.1 Statement.

Dismiss the Complaint is GRANTED and the Complaint is DISMISSED in its entirety, without prejudice.

I. Background<sup>3</sup>

Plaintiff Mobley is a professional basketball player who began his career with the National Basketball Association ("NBA"). (Compl. ¶ 1.) Defendants are companies that own and operate the NBA team the New York Knicks. (Compl. ¶ 4.) In 1999, at the beginning of his NBA career, Mobley was diagnosed with hypertrophic cardiomyopathy ("HCM"), a genetic mutation which causes thickening of the wall of the heart. (Compl. ¶ 23.) During extreme exertion, HCM can cause dizziness, collapses, and even sudden heart failure. (Compl. ¶ 24.) From his HCM diagnosis through 2008, however, Mobley had been medically cleared to play every year subject to signing a waiver of liability. (Compl. ¶ 24.)

In 2008, the New York Knicks began trade negotiations with the Los Angeles Clippers to obtain Plaintiff, a ten year veteran of the NBA. (Compl. ¶¶ 17-22.) Plaintiff alleges that the Knicks attempted to use his condition to leverage further concessions from the Clippers in the trade, but the Clippers

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<sup>3</sup> Since this Motion To Dismiss is filed pursuant to Fed. R. Civ. P. 12(b)(6), all of Plaintiff's allegations are assumed to be true.

refused. (Compl. ¶ 27.) Aware of Plaintiff's condition, the Knicks waived Mobley's pre-trade physical examination and the teams concluded the deal. (Compl. ¶ 28.)

Pursuant to Mobley's contract, immediately following his arrival to the Knicks in September 2008, he was required to submit to a physical examination. (Compl. ¶¶ 34-35.) (See also Leblang Decl., Ex. B ¶ 10(c)) ("The player further agrees that, immediately upon reporting to the assignee team, he will submit to a physical examination conducted by a physician designated by the assignee team."). Plaintiff was sent by the Knicks to two cardiologists, Dr. Mark Estes and Dr. Barry Maron, to evaluate his ability to play. (Compl. ¶ 35.) Plaintiff alleges that Dr. Estes and Dr. Maron are both known opponents of allowing athletes with HCM to play competitive athletics. (Compl. ¶ 36.) Following Mobley's exam, both doctors recommended he should discontinue playing professional basketball. (Compl. ¶ 37.)

Plaintiff alleges that contrary to the recommendations of Dr. Estes and Dr. Maron, there had been no change in his heart condition from 1999 to 2008 and he was perfectly fit to play. He further asserts that the risk of heart failure as a result of HCM generally decreases with age. (Compl. ¶ 38.) Plaintiff alleges that even if HCM made it too dangerous for him to play professional basketball without accommodation, it would have

been possible to implant a defibrillator in his heart to shock him back to life if his heart were to stop. (Compl. ¶ 39.)

Plaintiff alleges that he asked both the doctors and the Knicks if there was any way he could be allowed to play, but was told he had no options. (Compl. ¶ 41.) In December 2008, Plaintiff announced his retirement from the Knicks. Plaintiff alleges that the Knicks forced him to retire against his will. (Compl. ¶ 48.)

Plaintiff contends that the Knicks disqualified him intentionally in order to save money and avoid paying the NBA's "luxury tax" (imposed on teams when their total payroll exceeds a certain threshold called the "salary cap").<sup>4</sup> (Compl. ¶ 29.) Because the salary of a player who cannot play for medical reasons does not count against the team's salary cap, (Compl. ¶ 31), Mobley alleges that the Knicks saved approximately \$19 million through insurance payments and avoided luxury tax when the team deemed him medically unfit to play. (Compl. ¶¶ 43-44.)

Plaintiff alleges that by intentionally having him declared medically unfit to play and forcing him to retire, Defendants

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<sup>4</sup> The NBA requires that for every dollar of payroll above that threshold, the team pays a tax of 100% of the amount over the salary cap to the league. (Compl. ¶ 29.) In 2007, the Knicks owed a tax of over \$45 million and the team's payroll similarly exceeded the salary cap in 2008. (Compl. ¶ 30.)

discriminated against him on the basis of a perceived or actual disability in violation of NYSHRL and NYCHRL. (Compl. ¶¶ 53-61.)

## II. Discussion

### A. Legal Standard for Motion to Dismiss under Rule 12(b)(6)

For a complaint to survive dismissal under Rule 12(b)(6), the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility," the Supreme Court has explained,

when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'

Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 556-57). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotation marks omitted). "In keeping with these principles," the Supreme Court has stated,

a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Iqbal, 129 S.Ct. at 1950.

In ruling on a 12(b)(6) motion, a court may consider the complaint as well as "any written instrument attached to the complaint as an exhibit or any statements or documents incorporated in it by reference." Zdenek Marek v. Old Navy (Apparel) Inc., 348 F.Supp.2d 275, 279 (S.D.N.Y. 2004) (citing Yak v. Bank Brussels Lambert, 252 F.3d 127, 130 (2d Cir. 2001) (internal quotations omitted)).

#### B. Defendants' Disability Discrimination

To establish a prima facie case for disability discrimination under the NYSHRL and NYCHRL, Plaintiff must allege facts sufficient to demonstrate that (1) his employer was subject to the NYSHRL and/or NYCHRL; (2) he was disabled within the meaning of those statutes; (3) he was otherwise qualified to perform the essential functions of the job, with or without reasonable accommodation; and (4) he suffered adverse employment action because of his disability. Graves v. Finch Pruyn & Co.,

Inc., 457 F.3d 181, 184 n.3 (2d Cir. 2006); Roberts v. Ground Handling, Inc., 499 F.Supp. 2d 340, 357 (S.D.N.Y. 2007).

Here, the first two elements of Plaintiff's disability discrimination claim—the fact that Defendants were subject to the statutes and Mobley suffered from a statutorily protected disability—are not disputed. Defendants contest the third element, however, and allege the Plaintiff was not a *qualified* disabled individual entitled to the protections of the NYSHRL and the NYCHRL.

For an individual "[t]o be entitled to the protection of the Human Rights Law, the disabled individual must have the requisite job qualifications as well as be able to satisfactorily perform in the job." N.Y. Comp. Codes R. & Regs. tit. 9, § 466.11 (2012). Satisfactory performance is defined as the "minimum acceptable performance of the essential functions of the job as established by the employer" and the "employer's judgment as to what is minimum acceptable performance will not be second-guessed, so long as standards for performance are applied equivalently to all employees in the same position." N.Y. Comp. Codes R. & Regs. tit. 9, § 466.11(f)(2) (2012). See also Ruiz v. Cnty. of Rockland, 609 F.3d 486, 492 (2d Cir. 2010) (Plaintiff has the burden of demonstrating "satisfactory job performance, in accordance with the particular employer's

criteria for satisfactory performance") (internal citations omitted).

Plaintiff alleges that he was qualified because he had been playing skilled basketball with HCM for ten years and did not have any adverse symptoms. Defendants contend that Plaintiff was not qualified to play basketball with sufficient skill and competitive ability because two doctors determined he should discontinue playing professional basketball due to his HCM; the Knicks therefore deemed Mobley medically unfit to perform the essential functions of the job.

Plaintiff here has failed to allege sufficiently that he had the requisite qualifications and could perform satisfactorily in his job with the Knicks. Plaintiff has only alleged facts to show that he was qualified in the past and does not offer any evidence to discredit the opinions of the Knicks' doctors at the time they evaluated him. Plaintiff's reliance on Slattery v. Swiss Reinsurance America Corp., 248 F.3d 87, 92 (2d Cir. 2001) and Winston v. Verizon Servs. Corp., 633 F. Supp. 2d 42, 49-50 (S.D.N.Y. 2009) with regard to past performance creating an inference of qualification is unavailing. Those cases involved gender and race discrimination, not disability discrimination. Here, the uniqueness of a career as a professional basketball player and the associated extreme

physical demands require Plaintiff to allege facts specific to his present qualification in those circumstances. See Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) ("Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."). Plaintiff has failed to do so. Mobley does not allege that any doctors cleared him to play professional basketball after he joined the Knicks, nor does he offer any medical evidence to support his conclusory allegations that HCM improves with age and that he was physically fit to play despite his adverse medical assessments. Plaintiff has thus failed to allege that he was qualified without reasonable accommodation to perform the essential tasks of a professional basketball player for the Knicks.

Plaintiff next contends that even if he could not play professional basketball without accommodation, it would have been possible to accommodate his disability by implanting a defibrillator in his heart to shock him back to life were it to stop. He alleges that this was a reasonable accommodation that was not afforded.

While reasonable accommodation is generally required, N.Y. Comp. Codes R. & Regs. tit. 9, § 466.11(g)(2), Admin. Code of the City of N.Y. § 8-107(15)(a), NYSHRL states that "reasonable

accommodation is not required where the disability or the accommodation itself poses a direct threat." Direct threat means a "significant risk of substantial harm to the health or safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation." N.Y. Comp. Codes R. & Regs. tit. 9, § 466.11(g)(2). Employers are required to make an individualized assessment to determine whether a direct threat exists, based on reasonable judgment that relies on current medical knowledge or on the best available objective information. Id.

Here, Plaintiff concedes that after joining the Knicks, two cardiologists provided professional medical opinions stating that he should stop playing because of the significant risks from his HCM, including sudden heart failure. (Compl. ¶ 37.) If the Knicks believed Mobley's HCM posed a direct threat to him, they were not required to engage in the accommodation process. N.Y. Comp. Codes R. & Regs. tit. 9, § 466.11(g)(2). Mobley has not alleged facts sufficient to show that his HCM did not pose a direct threat and that he was therefore entitled to reasonable accommodation.

Moreover, Plaintiff has not alleged facts sufficient to show it would have been reasonable for the Knicks to accommodate him with a defibrillator. The NYCHRL defines "reasonable

accommodation" as "such accommodation that can be made that shall not cause undue hardship in the conduct of the covered entity's business." Admin. Code of the City of N.Y. § 8-102[18]. Plaintiff's only allegation with regard to the reasonableness of his proposed accommodation is a statement that the Knicks would not have been burdened by allowing Mobley to have a defibrillator. (Compl. ¶ 42.) However, Plaintiff's formulaic recitation of the elements of reasonable accommodation claim does not provide grounds for relief. Twombly, 550 U.S. at 555. Accordingly, Plaintiff has not alleged sufficiently that he was qualified to perform the essential tasks of a professional basketball player for the Knicks, and has thus failed to state a claim upon which relief can be granted. Defendants' Motion to Dismiss is hereby GRANTED, without prejudice.

### III. CONCLUSION

For the reasons above, Plaintiff's Complaint is hereby DISMISSED, without prejudice and with leave to amend. When a complaint has been dismissed, permission to amend it "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Accordingly, within 30 days of the date of this Order, Plaintiff shall file an Amended Complaint. Failure to do so shall be deemed a waiver of filing an Amended Complaint. Within 30 days

of the filing of Plaintiff's Amended Complaint, the Defendants shall move against or answer it.

SO ORDERED.

DATED: June 14, 2012  
New York, New York

Deborah A. Batts

Deborah A. Batts  
United States District Judge