

Parts Co. Must Face Ex-Exec's Bias, Retaliation Suit

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By **Danielle Nichole Smith**

Law360 (February 8, 2019, 7:35 PM EST) -- A New York federal judge has ruled that a former executive for a small mechanical parts company can move forward with his suit claiming he was fired for his complaints about the company's CEO, who allegedly used racial slurs and touched women nonconsensually.

In his Thursday order, U.S. District Judge Denis R. Hurley largely denied the motion to dismiss from Designatronics Inc., its parent company Dyson Dyson & Dunn Inc. and its CEO Robert Kufner. The judge found that Wayne Martin had adequately pled discrimination and retaliation claims against all three defendants and had demonstrated that the court had personal jurisdiction over Dyson at the current stage of the litigation.

Martin originally sued the parties in August 2017, bringing claims under Section 1981 of the Civil Rights Act of 1866 and the New York State Human Rights Law. He amended his suit in February 2018 to add claims under Title VII of the Civil Rights Act of 1964 after having received a right-to-sue letter for those claims from the U.S. Equal Employment Opportunity Commission.

In his suit, Martin claimed that Kufner had a history of bad behavior at the company, allegedly referring to black people using the N-word at a football game, touching women without permission and commenting on workers' sexual orientation. Martin said that Kufner often bragged about being protected by his friends at Dyson.

According to Martin, the head of human resources at the company called Kufner a "misogynistic pig" and "an HR nightmare" in response to reports about his conduct to the department. Kufner was eventually fired in April 2017 as a result of the complaints made by Martin and others. After the firing, Martin and another employee took over the duties for the president and CEO role, with Martin taking on the "lion's share of the responsibilities," his complaint said. But less than two months later, Kufner returned as the CEO of the company "at the behest of his friends" at Dyson, the complaint alleged, and within a few hours of returning fired Martin in relation.

The defendants moved to dismiss the suit in May, saying that Martin didn't show that the court had personal jurisdiction over Dyson in New York and didn't properly serve the complaint. Martin also failed to demonstrate that Dyson was his employer or to make a sufficient case of retaliation against any of the three parties, the defendants argued.

The defendants said Designatronics' board of directors had been unaware of the complaints Martin made when it made the decision to remove him from the position of president and CEO — to which they said he had been appointed after Kufner's firing — and to hire Kufner in his place. Though that decision was made in June 2017, Martin continued in the position until the following July when a board member traveled to the Designatronics facility and informed Martin of the decision. Martin had "instigated the collection of information" that he could use to get Kufner fired, the defendants contended.

But Judge Hurley was unconvinced, finding Thursday that Martin had established that the court had jurisdiction over Dyson under New York's so-called long-arm statute. And Martin adequately alleged that Designatronics was a subsidiary of Dyson, a fact the defendants did not dispute, and that Dyson had played a role in his termination, the judge said.

Additionally, Martin sufficiently made a case of retaliation against Designatronics since he demonstrated a retaliatory purpose through the timing of his firing, the judge found. And Martin's retaliation claim against Dyson could stand as well since he alleged the parent company had a hand in the adverse employment action against him, the judge said.

The judge noted that Title VII claims can't be brought against individuals, a fact that Martin conceded, and so dismissed those retaliation claims against Kufner. The judge allowed the retaliation claims against Kufner under the other two laws to move forward. The judge also sided with the defendants over the service of the suit but gave Martin until March 8 to perform proper service.

"It has become all too common that defendants file baseless motions to dismiss as a tactic to stall meritorious actions," David E. Gottlieb, an attorney for Martin, said. "We look forward to now proceeding with discovery and moving forward toward trial."

Counsel and representatives for the defendants didn't respond Friday to requests for comment.

Martin is represented by David E. Gottlieb and Kenneth D. Walsh of [Wigdor LLP](#).

Designatronics, Dyson and Kufner are represented by Frank W. Brennan of Forchell Deegan Terrana LLP.

The case is Martin v. Designatronics Inc. et al., case number [2:17-cv-04907](#), in the U.S. District Court for the Eastern District of New York.

--Editing by Jack Karp.