

Document: Gilbert v. Related Mgmt. Co., L.P., 254 A.D.2d 53

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Supreme Court of New York, Appellate Division, First Department

October 6, 1998, Decided ; October 6, 1998, Entered

2140

Reporter

254 A.D.2d 53 | 678 N.Y.S.2d 326 | 1998 N.Y. App. Div. LEXIS 9980

Cliff Gilbert, Respondent, v. Related Management Co., L.P., Appellant.

Core Terms

disability, alleges, ignorance, demoted, facie

Case Summary

Procedural Posture

Appellant employer sought review of the decision of the Supreme Court, New York County (New York), which denied its motion for summary judgment dismissing appellee employee's first and second causes of action of disability discrimination.

Overview

The employee brought an action against the employer for disability discrimination based on the employee's HIV-positive status. The employer sought summary judgment to dismiss the action but the lower court denied the motion and the court affirmed. The court found that the employee's allegations that his supervisor told him that she was concerned that he had AIDS and his subsequent demotion and discharge established a prima facie case that the employer discriminated

against him in employment by reason of his disability.

Outcome

The court affirmed the decision of the lower court that denied the employer's motion for summary judgment concerning the employee's claims of disability discrimination.

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HN1  Once a prima facie showing of disability discrimination has been established, the burden of proof shifts to the employer to demonstrate that the disability prevented the employee from performing the duties of the job in a reasonable manner or that the employee's termination was motivated by a legitimate nondiscriminatory reason. [Shepardize](#) - [Narrow by this Headnote](#)


Counsel: For Plaintiff-Respondent: [Gregory Antollino](#) ▼.

For Defendant-Appellant: [Kevin B. Leblang](#) ▼.

Judges: Concur--Rosenberger, J. P., [Ellerin](#) ▼, Wallach and Williams, JJ.

Opinion

[53] Order, Supreme Court, New York County ([Edward Lehner](#) ▼, J.), entered May 28, 1998, which, to the extent appealed from, denied defendant's motion for summary judgment dismissing plaintiff's first and second causes of action alleging disability discrimination, unanimously affirmed, without costs.

Plaintiff, an openly gay man, alleges that, upon his return to work following a bout with the shingles, his supervisor told him that she was concerned that he had AIDS. He further alleges that subsequent to this conversation he was demoted and thereafter discharged altogether. These allegations were sufficient to establish a prima facie case that defendant discriminated against plaintiff in employment by reason of his disability, i.e., his HIV-positive status (see, [Ferrante v American Lung Assn.](#), 90 NY2d 623, 629; [Matter of McEniry v Landi](#), 84 NY2d 554, 558). **HN1**  Once such a prima facie showing has been established, "the burden of proof shifts to the employer to demonstrate that the disability prevented the employee from performing the duties of the job in a reasonable manner or that the employee's termination was motivated by a legitimate nondiscriminatory reason" ([Matter of McEniry v Landi](#), *supra*, at 558; see also, [Ferrante v American Lung Assn.](#), *supra*, at 629).

Although defendant, relying upon averments by three of its staff as to their ignorance of plaintiff's HIV-positive status, maintains that plaintiff has failed to prove its awareness of his medical condition, much

less that the complained of demotion and discharge were premised on that condition, the truthfulness [54] of defendant's assertions of ignorance is properly left for determination by the factfinder (see, *Ferrante v American Lung Assn.*, *supra*, at 630-631).

Concur--Rosenberger, J. P., [Ellerin](#) ▼, Wallach and Williams, JJ.

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