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Cited

As of: Dec 26, 2013

**Luz Sanchez, Respondent, v. Brown, Harris, Stevens, Inc., Appellant, et al.,  
Defendants.**

59174

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST  
DEPARTMENT**

234 A.D.2d 170; 651 N.Y.S.2d 477; 1996 N.Y. App. Div. LEXIS 12551

**December 19, 1996, Decided  
December 19, 1996, ENTERED**

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Defendant, the managing agent for the condominium at issue, appealed an order of the Supreme Court of New York County (New York) which denied its motion for summary judgment to dismiss plaintiff former employee's complaint against it alleging employment discrimination on the basis of sex.

**OVERVIEW:** The trial court denied a motion, brought by the managing agent for the condominium at issue, for summary judgment to dismiss the former employee's complaint alleging employment discrimination by the condominium superintendent on the basis of sex. The managing agent appealed, arguing that it could not be held liable for the alleged discriminatory actions of the superintendent because it was not the employer of either the former employee or the superintendent. The court affirmed, noting that while the former employee was paid by the condominium, there was evidence indicating that she was hired, supervised, and fired by the managing

agent. Accordingly, there was a triable issue of fact as to whether there was an employment relationship between the managing agent and the former employee.

**OUTCOME:** The trial court's decision that denied the motion for summary judgment brought by the condominium managing agent seeking to dismiss the former employee's complaint alleging employment discrimination on the basis of sex, was affirmed.

**COUNSEL:** [\*\*\*1] For Plaintiff-Respondent: Arthur P. Xanthos.

For Defendant-Appellant: Neal Schwarzfeld.

**JUDGES:** Concur--Rosenberger, Rubin, Kupferman and Williams, JJ.

**OPINION**

[\*170] [\*\*477] Order, Supreme Court, New York

234 A.D.2d 170, \*170; 651 N.Y.S.2d 477, \*\*477;  
1996 N.Y. App. Div. LEXIS 12551, \*\*\*1

County (Beverly Cohen, J.), entered on or about December 18, 1995, which, insofar as appealed from, denied defendant-appellant's motion for summary judgment dismissing the complaint as against it, affirmed, without costs.

Alleging employment discrimination on the basis of sex and an unspecified disability, plaintiff seeks to recover damages against the condominium, where she had been employed as a concierge and whose superintendent allegedly harassed her, and the condominium's managing agent. The managing agent argues that it cannot be held liable for the alleged discriminatory actions because it was not the employer of either plaintiff or the superintendent. The motion court found that while plaintiff was paid by the condominium, there was evidence indicating that she was hired, supervised and fired by the managing agent, and that such was sufficient to raise an issue of fact as to whether there was an employment relationship between plaintiff and the managing agent, [\*\*\*2] citing *State Div. of Human Rights v GTE Corp.* (109 AD2d 1082, 1083). We agree, given that the evidence of the managing [\*\*478] agent's day-to-day control over both plaintiff and the superintendent was quite substantial. We would add that an issue of fact also exists as to whether the managing

agent, even if not plaintiff's employer, aided and abetted the superintendent's harassment of plaintiff, which would render it liable under Executive Law § 296 (6) (see, *Peck v Sony Music Corp.*, 221 AD2d 157; *Steadman v Sinclair*, 223 AD2d 392).

Concur--Rosenberger, Rubin, Kupferman and Williams, JJ.

**CONCUR BY: SULLIVAN**

**CONCUR**

Sullivan, J. P., Concur in a memorandum as follows: I agree that there is a question as to whether the relationship of employer and employee exists between the managing agent and plaintiff and that, therefore, summary judgment was properly denied. However, while aiding and abetting discriminatory conduct is a predicate for liability under Executive Law [\*171] § 296 (6) ( *Peck v Sony Music Corp.*, 221 AD2d 157), the complaint fails to allege a cause of action under that section and plaintiff should not be permitted to argue, for the first time [\*\*\*3] on appeal, that that section is a predicate for liability.