United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-7089 **September Term, 2019**

FILED ON: April 22, 2020

CHERYL RENEE SAID,
APPELLANT

v.

NATIONAL RAILROAD PASSENGER CORPORATION, A DISTRICT OF COLUMBIA CORP.,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-01289)

Before: HENDERSON, GRIFFITH and WILKINS, *Circuit Judges*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED AND ADJUDGED that the judgment of the District Court be **AFFIRMED**.

Until November 2011, Cheryl Renee Said worked for the National Railroad Passenger Corporation ("Amtrak") as a Lead Service Attendant in Washington, D.C. The terms of her employment were governed by a collective bargaining agreement (CBA) between Amtrak and Said's union. On February 1, 2011, Said's husband suddenly died, and Amtrak's management authorized her to take a leave of absence until April 30, 2011. On February 24, 2011, Said moved her residence from Washington, D.C., to Maryland. Amtrak emailed Said a change-of-address form, but Said does not remember if she completed the form, and it is undisputed that Amtrak has no record of Said returning the form.

Sometime around April 2011, Said's supervisor, Phyllis McClinton, verbally extended her leave "without a specific return date." J.A. 860-61. Then, in July 2011, McClinton herself took a medical leave of absence, and Patricia Baylor assumed some of McClinton's supervisory duties. After noticing that Said had been absent for an extended period of time, Baylor tried to contact Said by phone, but was unsuccessful. Baylor also contacted Amtrak's medical department and was told that there was no record of Said being on approved medical leave.

On October 12, 2011, Amtrak management sent a letter to Said at the address it had on file – her Washington, D.C., address. The letter advised that Amtrak's medical department had not received an update for her absence from work and that she needed to contact the medical department immediately to provide a medical update. It further warned that "failure to comply with these instructions will invoke Rule 24 of the [CBA]." J.A. 864. Rule 24 reads, in relevant part: "Employees who are absent from work for ten (10) days without notifying the corporation shall be considered as having resigned from the service, unless the corporation is furnished satisfactory evidence that circumstances beyond their control prevented such notification." J.A. 204. The Rule 24 notification letter was returned to Amtrak as undeliverable, so Amtrak management contacted Said's union to see if it had a different address, but her union responded that it had the same address on file for Said that Amtrak did. On November 4, 2011, because Said had not responded to the Rule 24 letter, Amtrak sent her a second letter, officially notifying her that she was considered resigned under the CBA.

Said filed suit against Amtrak on August 11, 2015, alleging violations of: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2; Section 1981 of the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981; the District of Columbia Human Rights Act (DCHRA), D.C. Code § 2-1402.11(a)(1) (2012); the Due Process Clause of the Fifth Amendment to the United States Constitution; and District of Columbia tort law. Said later sought leave of court to amend her complaint to add breach of contract and promissory estoppel claims, but the District Court denied the motion as futile. Said moved the District Court to reconsider, but the District Court denied the motion.

After discovery, Amtrak moved for summary judgment on all claims. The District Court denied summary judgment on Said's claim of race discrimination under § 1981 and her claims of race and gender discrimination under the DCHRA, but it granted Amtrak's motion on the remaining claims. *Said v. Nat'l R.R. Passenger Corp.*, 317 F. Supp. 3d 304 (D.D.C. 2018), *amended on reconsideration,* 390 F. Supp. 3d 46 (D.D.C. 2019). With regard to Said's race and gender discrimination claims, the District Court concluded that, while Amtrak had provided a legitimate nondiscriminatory reason for her discharge (her prolonged absence and failure to respond to the Rule 24 letter), a reasonable jury could conclude that Said had established that the proffered reason was a pretext for race and gender discrimination. *Id.* at 320-34. Specifically, the District Court explained that, in light of an allegedly discriminatory comment by one of the supervisors with influence over the discharge decision and the context surrounding her communications with Amtrak about her new address, a reasonable jury could disbelieve Amtrak's proffered reason for her firing. *Id.*

Amtrak moved for reconsideration of the District Court's decision to deny summary judgment on the race and discrimination claims, arguing that it needed to reexamine its ruling in light of the Railway Labor Act (RLA), 45 U.S.C. § 151 *et seq*. It argued that much of the District Court's pretext determination was based on its interpretations of the CBA, and such interpretations are prohibited under the RLA. *Said v. Nat'l R.R. Passenger Corp.*, 390 F. Supp. 3d 46, 53-56 (D.D.C. 2019). The District Court agreed, realizing that it had impermissibly interpreted the CBA in conducting its pretext analysis. *Id.* (citing, *inter alia*, *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 260 (1994), and *Brown v. Ill. Cent. R.R. Co.*, 254 F.3d 654, 658 (7th Cir. 2001)). Specifically, the District Court explained that whether Said "notified" Amtrak of the reasons for her absence and whether Amtrak exercised diligence in ascertaining her new address are both questions that would require the jury to interpret Rule 24 of the CBA, in violation of the RLA. *Id.* at 55. As such, the District Court reversed its

conclusion that Said could establish her race and gender discrimination claims through "indirect" evidence. *Id.* at 57. And because Said put forward no direct evidence of race or gender discrimination, the District Court granted summary judgment on those claims. *Id.* at 57-58.

On appeal, Said challenges four rulings by the District Court.

First, Said challenges the District Court's decision to deny as futile the motion to amend the complaint to add a breach of contract claim and a promissory estoppel claim. We review *de novo* a district court's decision to deny a motion to amend as futile. *Singletary v. Howard Univ.*, 939 F.3d 287, 295 (D.C. Cir. 2019).

With regard to the breach of contract claim, the District Court concluded that it would be futile to add such a claim because (1) it would require the court to interpret the CBA and is therefore preempted by the RLA, and (2) none of the exceptions to preemption apply. Said argues that, in denying the motion to amend the complaint, the District Court did not give her "the benefit of all inferences, if any at all[.]" Appellant's Opening Br. at 16. It's not clear, however, what inferences Said wants drawn in her favor, and she does not dispute that a breach of contract claim would require interpreting the CBA or that the need for such interpretation deprives federal courts of jurisdiction to hear the claim. *See Oakey v. U.S. Airways Pilots Disability Income Plan*, 723 F.3d 227, 234-38 (D.C. Cir. 2013). For this reason, we see no error in the District Court's decision to deny her request to add a breach of contract claim on grounds of futility.

With regard to the promissory estoppel claim, the District Court explained that District of Columbia law precludes promissory estoppel claims where a written agreement exists, and that adding such a claim here would be futile because Said pleaded the existence of an enforceable CBA. J.A. 274-75 (citing, *inter alia*, *Bldg. Servs. Co. v. Nat'l R.R. Passenger Corp.*, 305 F. Supp. 2d 85, 95 (D.D.C. 2004), and *Parnigoni v. St. Columba's Nursery Sch.*, 681 F. Supp. 2d 1, 26 (D.D.C. 2010)). Said does not challenge this principle, but argues that "there is no connection [between her promissory estoppel] claim and the CBA." Appellant's Opening Br. at 12. This argument has no merit, because Said admits that the alleged "relevant promises here" are "not to terminate her, or to later claim that she never provided a medical leave of absence notice." *Id.* These alleged promises directly implicate the terms of her employment and are thus governed by the CBA. Accordingly, the District Court did not err when it denied as futile Said's request to add a promissory estoppel claim.

Second, Said argues that the District Court wrongly refused to reconsider its order denying leave to amend the complaint. Appellant's Opening Br. 6-8, 16-17; Reply Br. 29-30. We review the denial of a motion to reconsider for abuse of discretion. *Ark Initiative v. Tidwell*, 749 F.3d 1071, 1075 (D.C. Cir. 2014). Said argues that the District Court abused its discretion in denying the motion to amend the complaint, because "it failed to consider all relevant evidence," such as "how Amtrak intentionally made it humanly impossible for her to know[] what it was up to, and [for Said to] be able to defend herself." Appellant's Reply Br. at 19. Again, however, Said identifies no error in the District Court's conclusion that the CBA governs the terms of her employment, thus precluding the addition of breach of contract and promissory estoppel claims. We therefore find no abuse of discretion in the District Court's decision to reconsider its order denying the motion to amend the complaint.

Third, Said argues that the District Court erred in granting summary judgment on her disability

discrimination claim. Appellant's Opening Br. at 20-22. We review the grant of summary judgment *de novo*. *Baylor v. Mitchell Rubenstein & Assocs., P.C.*, 857 F.3d 939, 944 (D.C. Cir. 2017). The District Court held that Said failed to establish a prima facie case of disability discrimination, because a reasonable jury could not conclude that Amtrak was on notice of Said's alleged disability. *Said*, 317 F. Supp. 3d at 337-39. While Said challenges this conclusion, she does not challenge the District Court's additional holding, namely, that even assuming Amtrak were on notice of the alleged disability, Said cannot establish that Amtrak's proffered reason for discharging her is a pretext for disability discrimination. *Id.* at 339. Because Said does not challenge the District Court's pretext determination (and because we agree with that determination), we affirm the District Court's decision to grant summary judgment on her disability discrimination claim.

Finally, Said challenges the District Court's decision to grant Amtrak's motion to reconsider the partial denial of summary judgment, Appellant's Opening Br. at 22-24, an issue we review for abuse of discretion, *Tidwell*, 749 F.3d at 1075. On this issue, Said's opening brief argues only that the District Court "overlooked" the "bedrock 12(b)(6) rule" that courts "must accept as true all of the factual allegations" in the complaint. Appellant's Opening Br. at 23. But Rule 12(b)(6) of the Federal Rules of Civil Procedure governs a motion to dismiss and therefore has no bearing on the District Court's decision to grant a motion for summary judgment. FED. R. CIV. P. 12(b)(6). The District Court correctly applied the standard for summary judgment motions, which requires the movant to show that there is "no genuine dispute as to any material fact" and that it is "entitled to judgment as a matter of law." FED. R. CIV. P. 56. Accordingly, Said has identified no error in the District Court's decision to grant the motion to reconsider the partial denial of summary judgment.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(b).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk