

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**ANN MARIE LEGG, NANCY REYES, and
PATRICIA WATSON,**

Plaintiffs,

v.

**1:09-CV-550
(FJS/RFT)**

**ULSTER COUNTY; PAUL J. VANBLARCUM,
in his official capacity as Sheriff of the County of
Ulster and individually; RICHARD BOCKELMANN,
in his official capacity as Sheriff of the County of Ulster
and individually; BRADFORD EBEL, in his official
capacity as Superintendent of the Ulster County Jail and
individually; and RAY ACEVEDO, in his official capacity
as Deputy Superintendent of Ulster County Jail and
individually,**

Defendants.

APPEARANCES

OF COUNSEL

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SCULLIN, Senior Judge

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Pending before the Court is Defendant Ulster County's motion for judgment as a matter of law or, in the alternative, for a new trial with regard to Plaintiff Watson's hostile work environment claims. *See* Dkt. No. 138.¹

II. BACKGROUND

Plaintiff Watson and three other female corrections officers at the Ulster County Jail filed this lawsuit on May 11, 2009, pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), New York State Human Rights Law ("NYSHRL"), and 42 U.S.C. § 1983.

On January 7, 2011, Defendants filed a motion for summary judgment, arguing that Plaintiffs' claims failed for various reasons. *See* Dkt. No. 29. In a Memorandum-Decision and

¹ Defendant has effectively filed two briefs regarding this motion. *See* Dkt. Nos. 121, 138. However, the Court has only considered Defendant's most recent brief, *see* Dkt. No. 138, filed in accordance with the Court's May 31, 2015 Text Order.

Order dated November 21, 2013, the Court dismissed several of Plaintiffs' claims. However, the Court determined that a trial was necessary to adjudicate, among others, Plaintiff Watson's Title VII hostile work environment claim against Defendant County and her § 1983 hostile work environment claim against Defendant County. *See generally* Dkt. No. 55.

After Plaintiffs presented their case-in-chief, Defendants moved for a directed verdict on several of Plaintiffs' claims, including Plaintiff Watson's hostile work environment claims. Defendants' counsel generally argued that "the proof ha[d] been insufficient to set forth the prima facie case[.]" *See* Dkt. No. 137-8 at 602:16-17. The Court reserved its decision on the hostile work environment claims. The jury then returned a verdict on August 19, 2014, finding no cause of action for all of Plaintiffs' remaining claims with the exception of Plaintiff Watson's Title VII and § 1983 hostile work environment claims. *See* Dkt. No. 98. The jury awarded Plaintiff Watson \$200,000 in compensatory damages for her Title VII claim and \$200,000 in compensatory damages for her § 1983 claim. *See id.*

After the Court excused the jury, the Court discussed post-trial motions with counsel. The Court averred that it would give the parties two weeks after the date that the trial record was prepared to file their post-trial motions. *See* Dkt. No. 166 at 71. The Court entered judgment on August 20, 2014. *See* Dkt. No. 102.

Defendant² originally filed its motion for judgment as a matter of law or, in the alternative, for a new trial regarding Plaintiff's hostile work environment claims on November 5, 2014. *See* Dkt. No. 121. However, pursuant to Rule 50(b) and Rule 59(b), these motions had to be filed no later than 28 days after the entry of judgment. *See* Fed. R. Civ. P. 50(b), 59(b). The

² The term "Defendant" when used alone refers exclusively to Ulster County, and the term "Plaintiff" when used alone refers exclusively to Ms. Watson.

Court noted that, "[g]enerally, a court may extend the time to act for good cause; however, Rule 6(b)(2) of the Federal Rules of Civil Procedure explicitly provides that '[a] court **must not** extend the time to act under **Rules 50(b)** and (d), 52(b), **59(b), (d), and (e)**, and 60(b).'" *See* Dkt. No. 122 at 2 (quoting Fed. R. Civ. P. 6(b)(2) (emphasis added)). Thus, on November 6, 2014, before Plaintiff responded to Defendant's motion, the Court denied Defendant's motion as untimely because it was filed beyond the 28-day window.

On the same day, November 6, 2014, Defendant filed a letter motion asking the Court to reconsider its decision to deny its Rule 50/59 motion as untimely. *See* Dkt. No. 123. For support, Defendant argued that the Court had previously granted its request to delay filing post-trial motions until two-weeks after the parties had received the trial record. *See id.* Further, Defendant's attorney stated that he had received the trial transcript on October 22, 2014, and filed the motion less than two-weeks after that. *See id.*

The Court denied Defendant's motion for reconsideration. *See* Dkt. No. 124. In doing so, the Court reasoned that "Rule 6(b)(2) renders the deadlines for filing motions pursuant to Rule 50(b) and Rule 59(b) jurisdictional. Therefore, the Court lacked the authority to extend those deadlines." *See id.* at 2 (citations omitted). Thus, "[t]he fact that the Court instructed Defendants that they had two weeks from the time they received the trial transcript to file their post trial motions did not change the fact that, under Rules 50(b) and 59(b), Defendants were required to file any such motions '[n]o later than 28 days after the entry of judgment . . .'" *See id.* (quoting Fed. R. Civ. P. 50(b)).

Defendant appealed this Court's ruling to the Second Circuit. *See* Dkt. No. 127. In reversing this Court's decision, the Second Circuit first explained that "[a] time limitation is jurisdictional only if it is prescribed by statute." *Legg v. Ulster Cty.*, 820 F.3d 67, 78 (2d Cir.

2016). However, "procedural rules which have no statutory analogue, although 'mandatory' in the sense that a party may insist upon their enforcement, do not affect the power of the courts and are subject to waiver or equitable exception." *Id.* at 78-79 (citation omitted). The Second Circuit concluded that Rule 6(b)(2) was not jurisdictional. *See id.* at 79 (citations omitted). Accordingly, the Second Circuit held that, "even though the district court was without authority to grant an extension under Rule 6(b)(2), it retained the power to consider whether the plaintiffs had waived compliance with the rule or whether an equitable exception applied." *Id.* (citation omitted). Thus, the Second Circuit remanded the case to this Court with instructions to consider "whether the plaintiffs waived objection to the court's improper grant of an extension of time or whether an equitable exception to the prohibition of such extensions applied on the facts of this case." *Id.*

After reviewing the Second Circuit's decision, this Court held a conference with counsel and directed the parties to submit briefs regarding the waiver/equitable exception issue and the merits of the underlying motion. The parties did so, *see* Dkt. Nos. 136, 138; and each filed a reply brief, *see* Dkt. Nos. 170, 172.

III. DISCUSSION

A. Waiver

With respect to waiver, the important consideration is axiomatically whether the opposing party timely objected to the motion. *See Art Attacks Ink, LLC v. MGA Entm't Inc.*, 581 F.3d 1138, 1143 (9th Cir. 2009) (stating that the plaintiff "never objected to the timeliness of [the defendant's] Rule 50(b) motion for summary judgment before the district court[; a]ccordingly,

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