

fabricated documentary evidence she produced during discovery in this action. For the following reasons, the motion to dismiss is granted, and monetary sanctions are imposed on Rossbach, Altaras, and the DSLG.

Background

The facts set forth in this Opinion are derived from this Court's March 11, 2021 Opinion and Order granting partial summary judgment to the defendants, see Rossbach v. Montefiore Medical Center, No. 19cv5758 (DLC), 2021 WL 930710 (S.D.N.Y. Mar. 11, 2021) (the "2021 Opinion"), the Court's findings of fact at the April 22, 2021 evidentiary hearing in this case, and the parties' submissions made in conjunction with the April 22 evidentiary hearing. Familiarity with the 2021 Opinion is presumed.

I. Rossbach's Claims and the Events Leading to the Evidentiary Hearing

Rossbach filed this lawsuit on June 16, 2019. Her complaint alleges federal, state, and New York City discrimination and tort claims arising from two related sets of events. Rossbach alleged that she was subjected to a campaign of sexual harassment by defendant Norman Morales, her supervisor. The complaint also alleges that, after she objected to Morales' sexual harassment, Morales and defendant Patricia

Veintimilla retaliated against her, which culminated in her firing by Montefiore. The defendants moved on November 20, 2020 for summary judgment on some of Rossbach's claims -- primarily those related to Rossbach's discharge -- and the 2021 Opinion largely granted that motion. Most of the claims stemming from Morales' alleged sexual harassment remained for trial.

On March 15, 2021, the defendants sought leave to move to dismiss Rossbach's remaining claims with prejudice and for sanctions against Rossbach and her counsel. As a basis for this relief, the defendants alleged that certain documentary evidence produced during discovery had been fabricated, citing a forensic analysis of that evidence. The defendants further alleged that Rossbach had spoliated evidence and committed perjury at her deposition in this case. Later that day, Rossbach was ordered to notify the Court if she intended to engage a forensic expert to analyze the disputed evidence. On March 19, Rossbach informed the Court that she intended to engage an expert, and the Court ordered the parties to submit their respective expert reports in anticipation of an evidentiary hearing. Those reports were submitted on April 16.

II. The Evidentiary Hearing and the Court's Findings of Fact Regarding to the Disputed Evidence

On April 22, the Court held an evidentiary hearing regarding the allegations of fabrication of evidence.¹ Daniel L. Regard II and Joseph Caruso testified as forensic experts for the defendants and Rossbach, respectively, and Rossbach also testified. The Court received the expert reports of Regard and Caruso as their direct testimony, and they were subject to cross examination regarding that testimony at the hearing. Rossbach was subject to both direct and cross examination at the hearing. At the conclusion of the hearing, the Court found by clear and convincing evidence that Rossbach had fabricated the disputed text message evidence and had given false testimony about how the evidence had been produced. As a result, the defendants' request to move to dismiss and for sanctions was granted. The Court's findings of fact are outlined below.

A. The Allegations Against Morales and the Disputed Evidence

In her complaint, Rossbach alleged that Morales, who was one of her supervisors, subjected her to, among other things, a series of unwanted sexual comments and to unwanted sexual touching. Rossbach never made a formal complaint regarding this

¹ Due to the ongoing COVID-19 pandemic, the evidentiary hearing was, with the consent of the parties, conducted via videoconference.

alleged conduct,² however, and there is very little documentary evidence that supports her claims. The primary piece of documentary evidence supporting Rossbach's allegation that she was sexually harassed by Morales is the following image that purports to depict a series of text messages sent by Morales to Rossbach.



This image is a fabrication.

The image was produced to the defendants twice. The image was first produced to the defendants during discovery on May 20,

² Rossbach claims that she orally complained about Morales' sexual harassment to Patricia Veintimilla, a supervisor, and to her union representative, but there is no written documentation of these complaints.

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