# GIBSON v. GABLES RESIDENTIAL SERVICES, INC.

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HALSTON GIBSON,

Plaintiff, v. GABLES RESIDENTIAL SERVICES, INC.,

Defendant.

No. 21-cv-2952 (DLF)

MEMORANDUM OPINION Halston Gibson says that Gables Residential Services, Inc., her former employer, discriminated against her based on her disability when it did not allow her to work remotely during the COVID-19 pandemic. Gables replies that Gibson could not perform essential elements of her job offsite 26. For the reasons that follow, the Court will grant the motion. I. BACKGROUND 1

Gables is a real estate company Statement of Undisputed Material Facts ¶ 1, Dkt. 26- U buildings in the Washington, DC area. Id. ¶ 7. Its properties include the Berkshire, near American University, with 759 units; Yuma Gardens, in Van Ness, with 36 units; and 215 C Street, on Capitol Hill, with 64 units. Id. ¶¶ 7 8, 12 13; Search

https://perma.cc/T3EW-5QC5 (showing location of each building).

1 Talavera v. Shah, 638 F.3d 303, 308 (D.C. Cir. 2011). Gibson began working at Gables in November 2018 . UF ¶ 10. She served the Berkshire, Yuma Gardens, and 215 C Street, with a focus on the Berkshire. Id. ¶¶ 10, 12. , they agree that she helped s Facts ¶ 66, Dkt. 31- They also agree that her role carried several back-office responsibilities, including assisting with corporate inspections her supervisor when necessary. Resp. -1 (backup roles); 48; Dep. of Halston Gibson 100:13 101:10, Dkt. 31- . Gibson attended weekly staff meetings at the Berkshire, Gibson Dep. 108:21 [s]upervisi[ng] Gibson Dep. ex. 9 at 1, Dkt. 31-2.

Gibson suffers from lupus, an autoimmune disease. SUF ¶ 16. As a result, when the COVID-19 pandemic began in March 2020, Gibson felt unsafe working from her normal office in SUF ¶ 77; SUF ¶ 22. She asked whether she could work from home or from 215 C Street until the pandemic subsided, or at least for a significant period of time. See SUF ¶¶ 7 SUF ¶¶ 79 82. She added that she could visit

the Berkshire after usual business hours, when the building was less crowded, to perform tasks she could not perform SUF SUF ¶ 7. s. Instead, it placed her on medical SUF ¶ 92; Gibson Dep. 167:5 8. Her last day in the office was March 17, 2020. Gibson Dep. 115:10 11, 145:3 6.

Gibson took leave through April 23, 2020. On April 23, consistent with an offer Gables extended to all its employees, Gables allowed Gibson to work remotely one day a week to SUF ¶ 156 (uncontroverted). 2 Gibson did so and spent her remaining four days per week on leave. Id. ¶ 166. In June 2020, however, Gables returned to full-time in-person work. Id. ¶ 167. Gibson did not return to the office SUF ¶ 26. Gables declined and terminated her. Id. ¶¶ 27 28. Her termination took effect on July 20, 2020. Id. ¶ 27 28. Gibson sued under the D.C. Human Rights Act for disability discrimination, failure to accommodate, and retaliation. Compl. ¶¶ 79 108, Dkt. 1-2. After approximately nine months of discovery, Min. Order of Dec. 6, 2021, Gables moved for summary judgment, Dkt. 26. II. LEGAL STANDARDS Under Rule 56 of the Federal Rules of Civil Procedure, a litigant may move for summary hows that there is no

Id. a verdict for the nonmoving pa Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

2 of Undisputed Material Facts does not dispute and does not offer citations to the record disputing it in substance. Consistent with Federal Rule of Civil Procedure 56, the Court will treat the facts asserted in that paragraph as undisputed for purposes of this motion. See Fed. R. Civ. P. 56(c)(1) (A) citing to particular parts of materials in the record . . . or (B) showing that the materials cited id. fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the Reeves v. Sanderson Plumbing Prods.,

530 U.S. 133, 150 (2000).

Menoken v. Burrows, 656 F. Supp. 3d 98, 104 (D.D.C. 2022) (cleaned up of proo Id. (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

III. ANALYSIS A. Disability Discrimination The DCHRA . . . discriminate against any -1402.11(a), (a)(1)(A). her]

position with or without a reasonable accommodation[] and that she suffered an adverse Hunt v. Dist. of Columbia, 66 A.3d 987, 990 (D.C. 2013) (cleaned up). The Court will grant summary judgment to Gab discrimination claim because no reasonable jury could conclude that Gibson was qualified for her

position with or without a reasonable accommodation.

if given a reasonable accommodation, a standard mirroring the Americans with Disabilities Act . Id. (quoting Carr v. Reno, 23 F.3d 525, 529 (1994)). Under the DCHRA, as under the ADA, courts of job

requirements, including whether a function is essential. Id. (quoting Ward v. Mass. Health Rsch. Inst., 209 F.3d 29, 34 (1st Cir. 2000)); see Turner v. D.C. Off. of Hum. Rts., 243 A.3d 871, 876 (D.C. 2021). They also consider

employees spend substantial periods of time performing the function, and whether other current or past employees have performed that function. 29 C.F.R. § 1630.2(n)(3)(ii); see Hunt, 66 A.3d at 991 (citing 29 C.F.R. § 1630.2(n)(3)). And they examine whether, in fact, an employee who could not perform that function could still do her job well. See, e.g., id.; George v. Molson Coors Beverage Co. USA, LLC, 610 F. Supp. 3d 280, 289 (D.D.C. 2022).

Some cases illustrate how this test applies in practice. On one side of the line, consider Hunt. A prison guar at 989. She said she could do her job anyway by avoiding inmate contact and by taking breaks

after contact occurred. Id. at 990 91. The D.C. Court of Appeals disagreed and granted summary judgment for the prison, holding correctional of and that taking breaks after contact would not be feasible as a matter of law.

Id. at 991. Or consider Doak v. Johnson, a case whose facts mirror those of this case. 798 F.3d 1096, 1105 (D.C. Cir. 2015). An illness miss a significant amount Id. at 1098. The employee asked to start her day late and to work from home, insisting that doing so Id. at 1106. Her employer disagreed, as did the Circuit. Given the record on summary judgment, the Circuit

she be present for interactive meetings to meet with coworkers and engage in other in-person activities. Id. at 1106 07.

On the other side, take Langon v. Department of Health and Human Services. 959 F.2d 1053 (D.C. Cir. 1992). A computer programmer suffered from multiple sclerosis. Id. at 1054. She asked to work from home and testified that she could program well outside of the office. Id. at 1054 55. Her employer replied that programming di to working at . . . testimony saying so. Id. at 1060. The Circuit found that a factual question existed as to whether programming required in-person attendance. Id. at 1060 61. Or take Solomon v. Vilsack. 763 F.3d 1 (D.C. Cir. 2014). A disabled employee could

Id. sed a single work deadline throughout the Id. Her employer fired her anyway, insisting that regular hours were essential to her job. Id. at 7 8. The Circuit let a jury decide the issue immaculate performance on a flexible schedule. Id. at 12.

In this case, the parties agree that Gibson has a disability, that she suffered an adverse employment action, and that she was qualified for her position only if she could work remotely. See, e.g. 8, Dkt. 31. They disagree as to whether in-person attendance at the Berkshire was necessary to perform functions. Because any reasonable jury would find that it was, the Court finds that Gibson was

not qualified for her position as a matter of law and will -discrimination claim.

The Court begins wit view gives Hunt, 66 A.2d at 990 (cleaned up); Molson Coors, 610 F. Supp. 3d at 289. According to Gables

Senior Vice President for Human Resources Decl. of Philip Altschuler ¶ 13, Dkt. 26-4. Indeed, while Gables allowed assistant community managers (including Gibson) to work remotely for one day a week during the height of the COVID-19 pandemic, it ended that arrangement as quickly as it could -day Philip Altshuler 33:11 15, Dkt. 26-11. No evidence suggests that Gables ever saw things differently. Other contextual factors confirm Gables -person work, it listed

[e]ssential [j]ob [f]unctions that would have required Gibson to be physically present in her office at the

time that she was hired. Gibson Dep. ex. 9 at 1, Dkt. 31-2 (job description); see Def. SUF ¶ 150 while out of the office at the time Gibson was hired); Gibson Decl. ¶ 15(d) (acknowledging that

files and records . 3

So too, Gibson does not contest that all other Gables assistant community managers spent most of their time working in-person, even during the pandemic. See, e.g., ; Decl. of Patti Ney ¶ 22, Dkt. 26-12. Nor does she contest that the assistant community managers before and after her worked in person. Decl. of Jacqueline Gerber ¶ 5, Dkt. 26-7 (predecessor); Decl. of Raashir- ¶ 4, Dkt. 26-8 (successor). All this suggests that in-person work was necessary for Hunt, 66 A.2d at 991; 29 C.F.R. § 1630.2(n)(3)(i).

3 SUF ¶ 150; see Dep. of Jose Alvarado 23:6 9, Dkt. 31-7. In context, however, her systems. See Dep. of Jose Alvarado 22:21 25:22. The Court therefore concludes that no reasonable juror could find that Gibson would have been able to answer phone calls to the Berkshire remotely before the pandemic. but the deposition testimony she cites in support of that proposition does not discuss file maintenance, see Gibson Dep. 259:19 260:8. Most importantly, the record makes clear beyond genuine dispute that Gibson could not have done her job well remotely to tend to complaints and requests. Gibson represents that she could have handled such tenant requests by phone and email. Id. ¶ 60. But any reasonable jury would find that approach inadequate. Uncontroverted evidence shows that some residents of the Berkshire who had Berkshire for decades . . . -person communication

a necessity. Decl. of Raashir- . Compare with As to the rest, the record shows more than a

marginal number of residents sought in- during the pandemic. 4

See Decl. of Jose Alvarado ¶ 24, Dkt. 26-6; Decl. of Patti Ney ¶ 6, Dkt. 26-

4 Gibson finds it unlikely that residents of the Berkshire sought to communicate in-person with building staff during March, April, and May of 2020 to Summ. J. at 4 n.2

remarks about behavior during that period are not evidence and (1)(B). Gibson also offers a declaration she describes as showing t to Summ. J. at 5. That is not what the declaration actually declares, however. Rather, it there were many weeks [when] only 1-2 residents would come to the office, [f]oot-traffic to the management office could be significant from time to time Gibson needed to be prepared to handle in-person complaints and requests from residents. Gibson Decl. ¶ 4 (emphasis added). In any event, Gibson was not present at the Berkshire after March 17, 2020. Gibson Dep. 115:10 11, 145:3 6. As a result, she lacks personal knowledge whether meetings were held there after that time and cannot offer admissible evidence on the point. Fed. R. Evid. 602. Finally, Gibson asserts that walk- Al - foreign exchange . Decl. of Jose Alvarado ¶ 24, Dkt. 26-6. Gibson replies tha 12. Plus, as Gables explained in 2020 and as Gibson does not dispute Regardless of how frequently the need for face-to-face

meetings arose, Gables was entitled to hire an assistant community manager who could meet onsite with tenants when necessary. Cf. Molson Coors, 610 F. Supp. 3d at 289 (holding on summary judgment that company could permissibly insist that salesman meet in-person with clients, even though salesman alleged he could sell effectively while remote). Similarly, any reasonable jury would find that -office duties required her to work in person. Gibson does not seriously contend that she could have helped with internal audits or inspections offsite, and for good reason the evidence -person attendance at the Berkshire during normal business hours. Compare 48 community manager is required to be present onsite during property audits to facilitate any needs

the auditors may ha with 48 (contesting only how frequently audits occurred). So too, the record clearly shows that well from outside the office . During the

included [ing] with cleaning and sanitizing touchpoints [ing] - ¶ 120 21 (uncontested). Before the

pandemic, they encompassed assessing damaged apartments and dealing with disruptive residents. Id. ¶ 75 (uncontested); Decl. of Jose Alvarado ¶ 9 & ex. 1. Those are not tasks Gibson could have

exchange students did not ask questions s management in person, that reality performed well remotely, and Gibson does not offer admissible evidence suggesting otherwise. 5 Even if Gibson could have managed some of them while away from the Berkshire for example, by deputizing maintenance worker the DCHRA did not forbid from keeping a fully capable assistant on hand. Cf. Molson Coors co

Finally, and independently, any reasonable jury would find that responsibilities required her to be present at the Berkshire during business hours. Gables held

onsite meetings once a week during the pandemic, meetings Gibson does not say she could have attended remotely 157, 166; cf. Doak, 798 F.3d at 1105 (finding employee

present in the office to participate in interactive, on- And n ex. 9 at 1, a responsibility that Gibson all but concedes

required in-person attendance. In short, even setting asid roles, the meeting- outside the Berkshire.

5 final inspection of the units -out, and tak[ incurred inspect damaged units herself and tha assistant community manager. Gibson Dep. 91:10 17. Accordingly, any reasonable jury would damaged apartments herself, at least occasionally. Gibso flat. Although Gibson insists that she could have done her job remotely, her say-so does not create a dispute of material fact contrary position. Cf. Hunt, 66 A.3d at 890 91. Similarly, even if Gibson could have handed off

tasks requiring in- to assist disabled employees. Strass v. Kaiser Found.

Health Plan of Mid-Atl., 744 A.2d 1000, 1008 (D.C. 2000).

Gibson says another Gables employee works remotely in a role like that Gibson could have worked remotely as well. But that employee, Jacqueline Gerber, holds a

different title than Gibson. substantially different duties too. See, e.g., Dep. of Jacqueline Gerber at 5:15 18, Dkt. 31- responsibilities are primarily admin, reporting, [and] overseeing residential files from . . . move- in to move- 6

Confirming that Gibson and Gerber play different roles at Gables, Gerber emphasizes (and Gibson does not contest) that -time on- Gerber serves as a centralized business manager. Id. at 22:1 7.

does not give a reasonable jury grounds for thinking that Gibson could have worked remotely as an assistant community manager. To the extent that Gibson contends instead that Gables should have created an extra centralized business manager role for her to fill, that contention fails as a matter of law. Hunt, 66 A.3d at 991 92 (explaining that, under the DHCRA, an employee may only seek reassignment to an existing and vacant position).

6 California that describes the duties of a centralized business manager differently. Gibson Dep. ex. 1 at 1, Dkt. 31-2. She offers no evidence from which a jury could conclude that the does not. Dep. of Jacqueline Gerber at 16:5 13, Dkt. 31-10. Accordingly, the record does not

Gibson points to aspects of her role that she says she could perform remotely or outside regular business hours, like processing rent checks or handling lease renewals. See, e.g. ¶¶ 4, 57. But an employee must be able to perform all the essential functions of her position to be

qualified for it. Cf. Adams v. District of Columbia, 50 F. Supp. 3d 47, 54 55 (D.D.C. 2014); McNair v. District of Columbia, 11 F. Supp. 3d 10, 15 16 (D.D.C. 2014). Gibson does not suggest ability to perform the rest of her job irrelevant. 28 C.F.R. § 1630.2(n)(1).

aining arguments rest on factual assertions she does not adequately support or on evidence that actively undermines her position. Gibson says that the testimony of Desiree Marshall, a former Gables assistant community manager, creates a jury question as to whether she could have handled resident complaints and requests remotely. See Marshall did testify would be the leasing professional, because they have to tour prospects throughout the community. Dep. of Desiree Marshall at 38:1 6, 19 21, Dkt. 31-11; see also id. at 31:19 20 (adding to ). But Marshall added that

her residents did visit building management with complaints or requests and that, when residents appeared in-person, someone from Gables would need to assist them. Id. at 38:16 39:14. ithout reallocating one aspect of her essential duties responding to resident complaints and requests to another Gables employee. 7

Cf. Strass, 744 A.2d at 1008.

7 - cate . . . via email and

assertion, and the Court can find none supporting it either. The Court will therefore disregard it. Fed. R. Civ. P. 56(e).

Similarly, Gibson acknowledges that her job required her to assist with internal Gables audits but insists that those audits generally only happened once a year. ¶ 48; Gibson Decl. ¶ 15(d). Regardless, the uncontested record evidence indicates that at least one , with Gibson away, Decl. of Jose Alvarado ¶ 18. And Gibson says nothing at all about the undisputed evidence that she could not participate in in-person staff meetings or help monitor resident compliance with social- See, e.g. 119 21, 157, 166. Those concessions alone doom case. See

Doak - part of .

Changing gears, Gibson accepts (or at least does not contest) that she could not effectively supervise the -person employees from offsite. But she denies that she held ¶ 47. But see 26, Dkt. 31- ute that her job

absence of the [c]ommunity [m]anager. Gibson Dep. ex. 9 at 1. What is more, Gibson conceded . See Gibson Dep. 116:14 17. In response, Gibson says her deposition testimony establishes that all supervisory [m] 117:1). Rather, it says that Gibson 16:10 as the same job description says she did. Gibson Dep.

ex. 9; cf. George v. Leavitt, 407 F.3d 405, 407 (D.C. Cir. 2005) (describing scenario in which d direct day-to-

McNair, 11 F. Supp. 3d at 15; see Hunt, 66 A.3d at 991.

Here, Gables says that its assistant community managers must work at the communities they help manage, and it offers direct and circumstantial evidence supporting its position. Gibson responds by speculating that she could have handled parts of her job from elsewhere. That is not enough: a does not authorize courts or juries - business judgment. Elhusseini v. Compass Grp. USA, Inc., 578 F. Supp. 2d 6, 22 (D.D.C. 2008)

(cleaned up). its assistant community managers must work onsite was anything besides a permissible exercise of business judgment, B. Failure to Accommodate - to-accommodate claim. The DCHRA requires employers to grant reasonable accommodations to qualified employees requests. Molson Coors, 610 F. Supp. 3d at 290. But those duties do not attach when an employee is not qualified. See id. Because the Court has already concluded that Gibson was not qualified -to-accommodate claim fails.

Indeed, a and for failure to accommodate, Gibson does not argue that her failure-to-accommodate claims

survive even if her disability discrimination claims fail. As a result, she has forfeited any argument that they do. Cf. Barot v. Embassy of Republic of Zam., 299 F. Supp. 3d 160, 165 n.1 (D.D.C. 2018) (explaining that, although a plaintiff cannot forfeit a motion for summary judgment, she may forfeit specific arguments against summary judgment). The Court will independently grant summary judgment to Gables on that basis.

C. Retaliation

To send her retaliation claim to the jury, Gibson must offer evidence that Gables took adverse action against her because she requested an accommodation or otherwise exercised her rights under the DCHRA. . , 174 F.3d 231, 235 n.3 (D.C. Cir. 1999); see D.C. Code § 2-1402.61. Gibson offers no such evidence. Instead, the record clearly reflects that Gables concluded she was unqualified for her position. Right or wrong, that is not retaliation under the DCHRA.

CONCLUSION order accompanies this memorandum opinion.

_____ March 22, 2024 DABNEY L. FRIEDRICH

United States District Judge