

Sandiford v City of N.Y. Dept. of Educ.
2007 NY Slip Op 30460(U)
March 27, 2007
Supreme Court, New York County
Docket Number: 0104190/2006
Judge: Paul G. Feinman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL G. FEINMAN
Justice

PART 52

SANDIFORD

INDEX NO.

104190/06

MOTION DATE

3/3/07

MOTION SEQ. NO.

001

MOTION CAL. NO.

9

- v -

CITY OF NEW YORK, et al

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Cross Motion

PAPERS NUMBERED

1-3

Answering Affidavits — Exhibits _____

4

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *a cross motion are*

decided in accordance with annexed decision order.

Courtesy copies mailed.

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APR 02 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/27/07

[Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X
AYODELE SANDIFORD,

Plaintiff,

against

CITY OF NEW YORK DEPARTMENT OF
EDUCATION, THE RESEARCH FOUNDATION,
LOWELL R. COLEMAN, in his official capacity and
individually, PAUL SHORTER, in his official capacity
and individually,

Defendants.
-----X

Index Number 104190/2006
Submission Date Jan. 3, 2007
Mot. Seq. No. 001
Cal. No. 2

DECISION AND ORDER

For the Plaintiff:
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For Research Foundation Defendants
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Papers considered in review of this motion for protective order and cross-motion to compel

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross-Motion & Memo of Law.....	<u>2,3</u>
Attorney Affirmation in Further Support.....	<u>4</u>

PAUL GEORGE FEINMAN, J.:

This is an employment discrimination action. Plaintiff moves pursuant to CPLR 3103(a) for a protective order regarding certain medical and psychiatric records and income tax records. Defendant The Research Foundation cross-moves pursuant to CPLR 3124 to compel production of the same documents. Although appearing at oral argument, the defendant City of New York did not submit papers on the motion and cross-motion. Certain branches of the motion were resolved by stipulation of the parties at oral argument on January 3, 2007. Left for the court to determine is that branch of the motion and cross-motion which concerns the demand by The

Research Foundation for plaintiff's income tax records for the years 2005 to the date of trial.

According to the amended complaint, plaintiff was employed by the Department of Education as a school aide since 2001, and employed part time since 2004 by the Research Foundation at the City University of New York in an after school program as a basketball coach (Not. of Mot. Ex. B, Am. Compl. ¶¶ 9, 15, 16). She was terminated from her employment as of June 20, 2005 after the defendants substantiated a claim brought against plaintiff of corporal punishment, a claim and finding which plaintiff alleges to have been motivated by animus based on her sexual orientation (Am Compl. ¶ 33, 35). In addition to claims of disparate treatment and discrimination based upon sexual orientation, and retaliation, the amended complaint sets forth allegations of emotional distress and "substantial losses, including loss of past and future earnings and other employment benefits" (Am. Compl. ¶ 67).

Plaintiff seeks a protective order as concerns the production of her income tax records from 2005 and going forward. Although she herself does not submit an affidavit concerning her work history following her June 2005 termination, her attorney states that after plaintiff's termination, she was employed for "approximately one month in December of 2005," and has received public assistance for disability "based upon her chronic and severe depression," the records of which she has produced (Not. of Mot. Meenan Aff. ¶¶ 20-22). This statement appears to conflict with those contained in the defendants' memorandum of law that while plaintiff "produced a number of pay stubs from various employers and government agencies . . . [she] has not produced a single W-2 for the New York City Department of Education, the Research Foundation or any of her former or current employees," and that the "one page of pay statements" concerning employment with the Department of Education offers incomplete earnings

information (Memo of Law at 15).

Discovery procedures are to be liberally construed (*Rios v Donovan*, 21 AD2d 409 [1st Dept 1964]). In general, there shall be “full disclosure of all matter material and necessary” to prosecute or defend an action (CPLR 3101[a]). The words “material and necessary” have been interpreted to “require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publishing Co*, 21 NY2d 403, 406 [1968]). Full disclosure permits disclosure between all parties in the litigation regardless of the burden of proof (*Lombardo v Pecora*, 23 AD2d 460 [2d Dept 1965]).

Despite the broad standard for discovery in New York law, disclosure of tax returns is generally disfavored because of their confidential and private nature (*Briton v Knott Hotels Corp.*, 111 AD2d 62, 62 [1st Dept. 1985]). A party seeking disclosure of tax returns must demonstrate “a strong showing of necessity” (*Roth v American Colonial Ins. Co.*, 159 AD2d 370, 370 [1st Dept. 1990]). The party must establish that the information contained in the returns ““is indispensable to this litigation and unavailable from other sources”” (*Nanbar Realty Corp. v Pater Realty Co.*, 242 AD2d 208, 209 [1st Dept. 1997], quoting *Briton v Knott Hotels Corp.*, 111 AD2d at 63). The party “must identify the particular information the return will contain and its relevance, explain why other possible sources of the information sought are inaccessible or likely to be unproductive and limit examination of the return to relevant material through redaction of extraneous information” (*Nanbar Realty Corp.*, at 209-210, citing 6 WEINSTEIN-KORN-MILLER, NY CIV PRAC P 3101.10a).

Defendants argue that they are not in possession of any earnings information regarding

plaintiff's employment with the Department of Education other than the one page of pay statements and that cannot adequately assess her claim for lost earnings without recourse to her income tax returns. They note that the "most reliable and compelling evidence" of earnings and income comes from income tax returns and that because she has placed her income and earnings at issue, she may not claim a privacy interest, citing *Altman v City of New York*, 46 Misc. 2d 133 (Sup. Ct. NY County 1965) ("where a plaintiff in a negligence action puts in issue the matter of his loss of earnings, a defendant may secure discovery and inspection of the plaintiff's pertinent income tax returns [*Elmer v Byrd*, 32 Misc. 2d 408, *aff'd*, 16 AD2d 744" (4th Dept. 1962)]).

Plaintiff argues that defendants improperly speculate that she has withheld earnings information from them and that their attempt to discover whether she has mitigated her damages by obtaining other employment is an inappropriate basis to seek disclosure of her tax returns. She also argues that defendants have failed to articulate a compelling need for her taxes as articulated in *Briton*, *Roth*, and *Nanbar*.

To the extent that plaintiff has put lost wages into issue, the issue of her income for 2005, 2006, and until the trial, is relevant and discoverable. The Department of Education and the Research Foundation together should have all relevant information for plaintiff's work history for those two institutions for the year 2005 in that they generate W-2 forms issued to the plaintiff. Thus, to the defendants are to exchange copies of those relevant records with each and with plaintiff, and, plaintiff, to the extent necessary shall sign authorizations to facilitate this exchange.

Plaintiff's attorney asserts that she has supplied the documentation for the one-month job plaintiff held in December 2005 as well as the records related to receipt of public assistance for

disability. Unless the records for public assistance do not cover the months of July-November 2005, and January 2006 and forward, it is unclear what information defendants lack.¹

Nonetheless, defendants are entitled to learn the extent of plaintiff's loss of earnings. Therefore, plaintiff is directed to produce the aforementioned public assistance records reflecting her receipt of disability payments. To the extent that these records do not reflect assistance for the partial year 2005 or the year 2006, which would indicate that plaintiff earned no income other than the disability income, then she is directed to produce within 20 days of the date of entry of this order, copies of any 1099 and W-2 forms filed with her federal income taxes for the years at issue. If after the deposition of the plaintiff there is a good faith basis to believe that plaintiff has additional sources of income not yet disclosed by counsel, the movant may renew its motion to compel. Accordingly, it is

ORDERED that the motion for a protective order is granted to the extent set forth above and otherwise denied; and it is further

ORDERED that the cross-motion for an order to compel is granted to the extent set forth above; and it is further

ORDERED that the foregoing is to be accomplished by May 2, 2007 and the parties are to appear for their previously scheduled compliance conference on May 9, 2007, at 2:00 p.m., in room 103 of Supreme Court, 80 Centre Street, New York, New York.

This constitutes the decision and order of the court.

Dated: March 27, 2007
New York, New York

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¹Without a first-person affidavit from plaintiff, it is difficult to understand the course of plaintiff's history following her termination.