

McKanic v Amigos Del Museo Del Barrio

2008 NY Slip Op 32746(U)

September 29, 2008

Supreme Court, New York County

Docket Number: 602360/05

Judge: Martin Shulman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARTIN SHULMAN
J.S.C.

PART 1

Index Number : 602360/2005
MCKANIC, JANULYN
vs.
AMIGOS DEL MUSEO DEL BARRIO
SEQUENCE NUMBER : 004
COMPEL

INDEX NO. 602360/05
MOTION DATE _____
MOTION SEQ. NO. 004
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits - Exhibits

1, 2
3
4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

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

FILED
OCT 07 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: SEP 29 2008

MARTIN SHULMAN
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 1

-----X
JANULYN MCKANIC,

Plaintiff,

-against-

AMIGOS DEL MUSEO DEL BARRIO,

Defendant.

MARTIN SHULMAN, J.:

FILED

Index No.: 602360/05

DECISION AND ORDER

OCT 07 2008

COUNTY CLERK'S OFFICE
NEW YORK

Defendant brings the instant motion to compel plaintiff to provide authorizations for the release of her income tax returns pursuant to a discovery order of December 4, 2007. Plaintiff opposes the motion.

Plaintiff initiated the instant employment discrimination suit in 2005, alleging that she was unlawfully terminated.¹ In her suit, plaintiff is claiming lost earnings of \$558,894, but has provided no documentary substantiation for that claim. Defendant asserts that, among other things, the resume plaintiff provided defendant when she was hired is replete with misinformation, and defendant has been unable to verify any of plaintiff's alleged work and salary history. As a consequence, defendant maintains that the tax returns for the period 1995 to 2006 are necessary to defend the lawsuit, and plaintiff has been unable to produce any W-2s, tax returns or any other evidence of her wages.

At a December 4, 2007 status conference, the parties agreed that plaintiff would provide the tax authorizations, and that agreement was "so ordered" by the court. At

¹ Defendant employed plaintiff from May 2001 through July 2002.

that time, plaintiff was represented by counsel, who subsequently withdrew. Plaintiff is now proceeding *pro se*.

DISCUSSION

In *Ahroner v. Israel Discount Bank of New York*, 14 Misc.3d 1205(A), 831 N.Y.S.2d 357 (Sup Ct, NY County 2005), a case strikingly similar to the case at bar, involving an allegation of employment discrimination, the court held that:

[i]n employment discrimination cases, the courts have ordered disclosure of the portion of the income tax returns showing the “amounts and sources of [a plaintiff’s] from wages, salaries, tips and other earned income” when alternative sources are not available to verify claims for lost earnings ... [citations omitted].

In the case at bar, plaintiff has been unable to provide any documentation to substantiate her claim for lost wages, and defendant has been unable to verify her prior employment and salary history because of alleged misstatements on plaintiff’s resume. In such cases, where plaintiff has no documentation to back up her claim for lost wages, ordering the production of income tax returns has been found appropriate. *Kay v. Kay*, 223 A.D.2d 684 (2d Dept. 1996).

Further, courts have allowed the production of income tax returns when the information on the returns is relevant to the litigation. *Rainess v. Consolidated Edison Company of New York, Inc.*, 33 A.D.3d 516 (1st Dept. 2006). In the instant matter, plaintiff’s income tax returns are not only relevant to her claim for lost wages, but are also relevant to the defense that plaintiff misstated her employment history.

Although tax returns are generally not discoverable in civil suits, in the case at bar defendant has made a strong showing of the necessity of acquiring plaintiff’s tax

information (*Dore v. Allstate Indemnity Co.*, 264 A.D.2d 804 [2d Dept. 1999]), the court has previously ordered plaintiff to provide authorizations for the release of her income tax records, and plaintiff has been unable to provide any other documentation to back up her lost wages claim. Under these circumstances, defendant's motion is granted.

The court is not unmindful of plaintiff's objections to turning over personal financial information for a lengthy period. However, defendant has established its inability to obtain this material from any other source and, under the circumstances, the records for the time period sought (6 years prior to plaintiff's 2001 hiring to date) are relevant to the issues in this action. The court notes plaintiff's claim that defendant has not provided requested discovery. However, plaintiff does not cross-move for any affirmative relief with respect to defendant's alleged discovery defaults, nor do her papers detail the specific items demanded. Under these circumstances, the court is not in a position to determine the propriety of such demands and the extent of the alleged default.

CONCLUSION

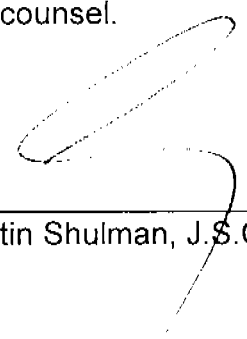
Based on the foregoing, it is hereby

ORDERED that plaintiff is directed to provide defendant with authorizations for her income tax returns for filing years 1995 to 2007 within 20 days of the date of this order or the action will be dismissed upon defendant's submission of an affirmation of default and a proposed dismissal order.

The parties are directed to appear for a status conference on December 2, 2008 at 9:30 a.m. at 111 Centre Street, Room 1127B, New York, New York.

The foregoing constitutes the Decision and Order of this Court. Copies of this Decision and Order have been sent to plaintiff and defendant's counsel.

Dated: New York, New York
September 29, 2008



Hon. Martin Shulman, J.S.C.

FILED
OCT 07 2008
COUNTY CLERK'S OFFICE
NEW YORK