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| Brock v Covenant House |
| 2013 NY Slip Op 33671(U) |
| April 10, 2013 |
| Sup Ct, New York County |
| Docket Number: 400112/12 |
| Judge: Eileen A. Rakower |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER
Justice

PART 15

MANDEL T. BROCK,
Plaintiff,
- v -

INDEX NO. 400112/12
MOTION DATE _____
MOTION SEQ. NO. 004

COVENANT HOUSE, KEVIN RYAN, EMEYSON
SIMON, LENORE HAAS, KIM PAGE, YVONNE
HUDSON, and JERRY DILLON,
Defendants.

MOTION CAL. NO. _____

FILED

APR 16 2013

**COUNTY CLERK'S OFFICE
NEW YORK**

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

| | <u>PAPERS NUMBERED</u> |
|---|------------------------|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | <u>1</u> |
| Answer — Affidavits — Exhibits _____ | <u>2</u> |
| Replying Affidavits _____ | <u>3</u> |

Cross-Motion: Yes X No

Plaintiff Mandel T. Brock ("Plaintiff") brings this action against his previous employer Covenant House. Plaintiff's Amended Complaint includes, among others, claims of retaliation, denial of access to human resources, wrongful termination, defamation, failure to issue a final paycheck, theft of wages, and conspiracy to steal wages. Plaintiff alleges that Covenant House improperly withheld child support payments from his paychecks, and that they wrongfully terminated him after he complained about the improper withdrawals. Defendants allege that they withheld those payments in accordance with a North Carolina child support order.

Defendants move for an Order, pursuant to CPLR §3124, compelling Plaintiff to provide complete and timely answers to document requests and interrogatories served by defendant Covenant House. Plaintiff opposes.

Covenant House served its First Set of Requests for Documents and First Set of Interrogatories on Plaintiff on October 8, 2012. Covenant House states that at the January 8, 2013 preliminary conference, Plaintiff produced a document entitled "Affidavit of Information," which contained written responses to Defendants' Document Request and Interrogatories. Although the copy of Plaintiff's response that is provided to the Court by Defendants is illegible, Plaintiff sets forth his objections

to the outstanding discovery in opposition to Defendants' motion.

Covenant House's Documents Requests

Document Request No. 1 requests, "All documents concerning Plaintiff's allegation in Paragraph 6 of the Amended Complaint that "At all relevant times until October 27, 2011, Plaintiff was considered an above average tele-fundraiser." In opposition, Plaintiff objects but states that he has "no other documents are in his possession, custody, or control other than what he has produced to show his 'cognizable claims.'"

Document Requests No. 2 - 7:

Document Request No. 2 asks for documents concerning the North Carolina child support case entitled *Guilford County on behalf of Christel Dews v. Mandel T. Brock*, No. 07CVD 010958.

Document Request No. 3 asks for documents concerning the New York case entitled *In the Matter of Mandel T. Brock v. Human Resources Administration*, Index No. 400359/2011.

Document Request No. 4 asks for documents concerning the New York case entitled *In the Matter of Mandel T. Brock, Debtor, No. 11-13044*, in the U.S. Bankruptcy Court for the Southern District of New York.

Document Request No. 5 asks for documents concerning the New York case entitled *In the Matter of a Support Proceeding Mandel Tarij Brock v. Corporation Counsel- NYC, Christel Dews*, File No. 123726, Docket No. F-26796-10/10A, CSMS No. NW14813N1.

Plaintiff objects to producing documents in response to Document Request No. 2 on the basis that he will not be "forced" or "compelled" to subject himself to personal jurisdiction of the North Carolina courts. Plaintiff objects to Document Requests Nos. 3-5 on the basis that they are not reasonably calculated to lead to admissible evidence and do not request information that is relevant and material to this action.

CPLR §3101(a) generally provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The Court of Appeals has held that the term "material and necessary" is to be given a liberal

interpretation in favor of the disclosure of “any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity,” and that “[t]he test is one of usefulness and reason” (*Allen v. Cromwell-Collier Publishing Co.*, 21 N.Y.2d 403, 406 [1968]). However, a party is not required to respond to discovery demands which are “palpably improper.” A demand is palpably improper if it seeks information which is irrelevant or confidential, or is overbroad and unduly burdensome (*Gilman & Ciocia, Inc. v. Walsh*, 2007 NY Slip Op 8410, *1 [2nd Dept. 2007]).

Here, as Plaintiff’s North Carolina child support case is relevant to Defendants’ defense that they properly withheld wages in accordance with the North Carolina child support order rendered in this action, Plaintiff is directed to provide documents responsive to Defendant’s Request No. 2. Defendants have failed to demonstrate how the other proceedings are relevant to their defense to this action.

Document Request No. 6 asks for “[a]ll documents concerning any other litigation in which Plaintiff is or was a party, including litigation that was started by not pursued.” This document request is overbroad and unduly burdensome.

Document Requests Nos. 7-14

Document Request No. 7 seeks, “All documents, including but not limited to emails, letters, and notes, between and among Plaintiff and Defendants’ behalf concerning Plaintiff’s allegations in his Amended Complaint.”

Document Request No. 8 seeks, “All documents concerning Plaintiff’s final paycheck issued by Covenant House . . .”

Document Request No. 9 seeks, “All documents Plaintiff received from Defendants concerning Defendants’ employment policies.”

Document Request No. 10 seeks, “All documents evidencing Plaintiff’s wages and earnings from 2005 to the present.”

Document Request No. 11 seeks, “All documents in which Plaintiff contends that he was defamed by any of the Defendants.”

Document Request No. 12 seeks, “All documents referring or relating to communications between Plaintiff and actual or prospective donors to

Covenant House.”

Document Request No. 13 seeks, “All documents referring or relating to the terms of Plaintiff’s employment by Covenant House.”

Document Request No. 14 seeks, “All documents referring or relating to any damages claimed by Plaintiff in this action.”

As Requests Nos. 7-14 seek documents relevant and material to Plaintiff’s claims and Defendants’ defenses thereto, Plaintiff is directed to respond to the same.

Covenant House’s First Set of Interrogatories

With the exception of Interrogatory No. 4 which calls for Plaintiff to “list all persons from whom [he has] requested or received documents relating to, or in connection with this matter” and is overly broad, Plaintiff is directed to respond to the remainder of Covenant House’s Interrogatories (Interrogatory Nos. 1-3, 5-7).

Wherefore it is hereby

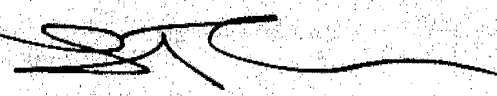
ORDERED that Defendants’ motion is granted to the extent that Plaintiff shall provide complete responses to Covenant House’s Document Requests 2, 7-14, and Interrogatories Nos. 1-3, 5-7 within 30 days of receipt of a copy of this Order with Notice of Entry thereof; and it is further

This constitutes the decision and order of the court. All other relief requested is denied.

Dated:

4/10/13

FILED



APR 10 2013

J.S.C.
HON. EILEEN A. RAKOWER

COUNTY CLERK'S OFFICE
NEW YORK

Check one:

FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:

DO NOT POST

REFERENCE