

<b>Brown v Sears Holding Corp.</b>
2015 NY Slip Op 30977(U)
May 12, 2015
Supreme Court, Bronx County
Docket Number: 0307244/2012
Judge: Laura G. Douglas
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX PART 11

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BROWN, CAROLENE

Plaintiff(s),

- against -  
SEARS HOLDING CORP.

Defendant(s).

-----X

Index No. 0307244/2012

Calendar No.

**DECISION/ORDER**

**Present:**

**HON. LAURA G. DOUGLAS**  
**J.S.C.**

Motion by plaintiff for an order striking defendants' answer and cross-motion by defendant for an order compelling plaintiff to respond to outstanding discovery requests, are consolidated and decided as follows:

This is an action in which plaintiff alleges that she was subjected to a hostile work environment and sexual harassment while working for defendants. Plaintiff filed a Supplemental Summons and Verified Amended Complaint on September 12, 2012 (Plaintiff's Exhibit B). Defendants served their Verified Answer and Affirmative Defenses on January 4, 2013 (Plaintiff's Exhibit C). Defendants served their Notice of Discovery and Inspection and Interrogatories on January 14, 2013 (Defendants' Exhibits B and C). Plaintiff served a Demand for a Bill of Particulars as to Defendant's Affirmative Defenses and a Notice for Discovery Inspection on May 20, 2013 (Plaintiff's Exhibit D). Plaintiff served her Response to Interrogatories on or about August 29, 2013 (Defendant's Exhibit H) and her Response to Defendant's Notice for Discovery and Inspection on or about September 12, 2013 (Defendants' Exhibit G). Defendants served their Verified Bill of Particulars as to Defendants' Affirmative Defenses as well as Objections and Responses to Plaintiff's Notice for Discovery and Inspection on October 14, 2013 (Plaintiff's Exhibits F and G). Plaintiff listed what was termed as

defendants' "deficiencies" in her letter dated October 28, 2013 ( Plaintiff's Exhibit H), and Defendants responded in their letter dated November 14, 2013 (Plaintiff's Exhibit I). Defendants objected to the deficiencies in plaintiff's responses their Interrogatories and discovery demands in their letter dated November 14, 2013 (Defendants Exhibit I).

Plaintiff objected to defendants' response to Demand # 1 in her Demand for a Verified Bill of Particulars which addressed defendants' Second affirmative defense (Plaintiff's Exhibit D). In that affirmative defense, defendants alleged that defendants "acted in good faith and for good cause based on reasonable factors other than Plaintiff's gender" and that defendants did not violate any law, rule, regulation code or guideline. Plaintiff sought particulars as to each act of "good faith" and particulars as to each "reasonable factor." In their response, defendants respond concerning their actions related to a complaint that plaintiff made to them regarding an incident in 2009 (Plaintiff's Exhibit F). However, they failed to respond to the other three incidents alleged by plaintiff in the complaint regarding: Donald Freeman (Paragraph 9) Sedecki Reede (Paragraph 10) and Pinnock Livingston (Paragraph 11), all of which took place in 2010 or 2011. Defendants are directed to further particularize their Second affirmative defense as to paragraphs 9-11 of the complaint. Defendants may comply by reference to documents that they may attach.

Plaintiff objects to defendants' response to Demand # 5 in her Demands, which addresses defendants' Seventh affirmative defense. That affirmative defense states that "Plaintiff's claims for punitive damages are barred" because defendants made good faith efforts to comply with all applicable laws. Defendants responded, as in the previous demand, referring only to the 2009 incident (Plaintiff's Exhibit F). As above,

previous demand, referring only to the 2009 incident (Plaintiff's Exhibit F). As above, defendants are directed to particularize their seventh affirmative defense as it relates to paragraphs 9-11 of the complaint.

Plaintiff objects to defendants' responses to a number of document demands. In Document Demand # 1 plaintiff seeks "All correspondence between Plaintiff and Defendants, and either of them." Defendant responded by asking plaintiff to discuss reasonable parameters for their production (Plaintiff's Exhibit G) Plaintiff refused. Clearly, this demand is overboard, as it would include irrelevant material. Document Demand # 4 demands all documents related to complaints by plaintiff to defendants related to "conditions of her employment, hostile work environment, discrimination, and/or harassment." Defendants object, based on attorney-client privilege, work-product privilege, as well as material prepared in anticipation of litigation, among other reasons. Subject to their objections, defendants produced over three hundred and seventy (370) page documents in response, and states that "it has produced all documents in its possession responsive to this request."

In Demand # 19 plaintiff seeks "All documents relating to review and/or investigation and/or consideration of Plaintiff's complaints concerning co-workers, supervisors or third parties." Defendants response is to refer to their response to Demand # 4. Plaintiff claims that there are no documents produced related to the 2009 or 2013 incident, while defendants claim that all documents in its possession have been produced.

The court accepts the statement by defendants' attorneys that it has produced all documents. However, it is not clear whether there are documents which defendants

# 19, if there are any such documents, defendants are directed to turn over those documents to the Court, in Chambers, Room 521, along with a privilege log within forty-five (45) days of service upon them of a copy of this order with notice of entry. If there are no such documents, defendants shall so state to plaintiff and the Court within the same time period.

In Demand # 12, plaintiff seeks "all documents identifying the names of each of Plaintiff's supervisors during her employment with defendants . . ." Defendants responded that plaintiff refer to plaintiff's personal files, which were provided. Defendants are not required to produce a document which did not previously exist in response to a document demand.

In Demands # 15, 16, 17 and 18, plaintiff seeks complaints, from 2009 to the present from persons other than plaintiff, about its employees David Love, James Kiernan, Donald Freeman and Pinnock Livingston, respectively, and any investigations of those complaints. Defendants initially responded that it was searching for those documents (Exhibit G). However, defendants subsequently stated that they have no such documents. If however, these are documents which defendants believe are privileged, they should be treated as any documents in Demands # 4 and # 19, noted above.

Accordingly, plaintiff's motion is granted only to the extent stated above, directing defendants to further particularize their Second and Seventh affirmative defenses, which shall be provided within thirty (30) days of service upon them of a copy of this order with notice of entry, and to provide any allegedly privileged documents to the Court, for in camera inspection as directed above.

In their cross-motion, defendants seek to compel outstanding discovery. Initially,

defendants state that plaintiff's response to defendants' interrogatories was not verified. However, plaintiff attaches a verification of her response in her opposition to the cross-motion (Exhibit A). Defendants also allege that plaintiff's responses to a number of interrogatories is insufficient (Defendants Exhibits H and I).

As to Interrogatory # 1, defendants seek the names of persons who have knowledge of the subject matter of this action and what specific knowledge each has. Plaintiff listed a number of persons and stated, as to the knowledge of each, "the allegations of the complaint". This is a sufficient answer. Interrogatory # 2 asks plaintiff to identify each person she has contacted regarding the allegations of this action, the date of the communication any and all witnesses thereto and any related documents. Plaintiff's response was that the communication occurred from the time the harassing conduct began and continuing. While this response is not responsive, the Court finds that this interrogatory is vague, and overbroad.

As to plaintiff's response to Defendant's Interrogatory # 6, plaintiff is directed to further particularize the dates of the acts committed by defendants' employee Sedecki Reede, or provide a statement that she cannot particularize any further than "in and around 2009 and continuing."

In Interrogatory # 11, defendants ask for the name of the representative of the Yonkers Police Department referred to in paragraph 13 of the complaint. Plaintiff responded that she didn't have the information but would obtain it. If not already provided, plaintiff shall provide defendants with the name or names in question.

In Interrogatory # 13, defendants asked plaintiff to identify any documents or computer files that she has that relate to plaintiff's employment with defendants' and also

account for any documents she had but which are no longer in her possession. Plaintiff objected as "overbroad and vague." In Defendants' Exhibit I, defendants amended the Interrogatory by limiting the question to documents which relate to the allegations contained in the Verified Amended Complaint. Plaintiff shall provide defendants with the information requested in the amended interrogatory.

In Interrogatory # 17, defendants ask for plaintiff to identify any documents submitted to government agencies for government benefits since January 1, 2007, as well as authorizations for such documents. Plaintiff objected as "overbroad and vague." Defendants state that this interrogatory would be withdrawn if plaintiff stipulated that she is not seeking any monetary damages for lost wages (Exhibit I). Plaintiff has done so (Plaintiff's Reply, paragraph 7). Therefore, the Interrogatory # 17 is deemed withdrawn.

In Interrogatory # 18, defendants ask plaintiff to identify the medical providers that she has visited for her physical and mental care since January 1, 2007, and related information, as well as authorizations for these providers. Plaintiff objected as "overbroad and vague." The Court directs plaintiff to provide the defendants with information and authorizations requested, limited to treatment for the allegations alleged in the complaint. If there was no such treatment, plaintiff shall so respond.

As to Interrogatory # 20, plaintiff responded that she would provide the dates of her job applications and would attempt to provide the applications in a supplement. Plaintiff shall provide such material to defendants, or if information cannot be provided, a statement to that effect shall be provided and an explanation of what attempts plaintiff made to locate it.

Interrogatory # 21 seeks information related to her income and tax records.

Defendants stated that this request would be withdrawn if plaintiff stipulated that she is not seeking monetary damages for lost wages. She has done so, as noted above, so this interrogatory is deemed withdrawn.

Defendants also object to plaintiff's responses to Demand # 25, 28, 30 and 35 in their Notice for Discovery and Inspection ( Defendants' Exhibits B and G). Demands # 25, 28 and 30 have already been addressed in relation to the related interrogatories above. Demand # 35 seeks all diaries, calendars and date books plaintiff maintained from January 2007 to date. Plaintiff responded by referring defendants to the documents attached as Exhibit B of their response. Defendants, however, seek the opportunity to view the originals of these materials. This demand is denied with leave to renew after the deposition of the plaintiff.

Accordingly, the cross-motion is granted to the extent stated above. Plaintiff shall respond as ordered above within thirty (30) days of service upon her of a copy of this order with notice of entry.

This constitutes the decision and order of the Court.

Dated: 5-12-15  
Bronx, New York

LGD  
Hon. Laura G. Douglas, J.S.C.