

**NAACP N.Y. State Conference Metro. Council of
Branches v Philips Elecs. N. Am. Corp.**

2016 NY Slip Op 31342(U)

July 15, 2016

Supreme Court, New York County

Docket Number: 156382/15

Judge: Manuel J. Mendez

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

PRESENT: MANUEL J. MENDEZ Justice

PART 13

NAACP NEW YORK STATE CONFERENCE METROPOLITAN COUNCIL OF BRANCHES,

INDEX NO. 156382/15 MOTION DATE 05-25-16 MOTION SEQ. NO. 003 MOTION CAL. NO.

Plaintiffs, -against-

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION, KONIKLIJKE PHILIPS N.V., NTT DATA, INC., RECALL HOLDINGS LIMITED, RECALL TOTAL INFORMATION MANAGEMENT, INC., ADVANCE TECH PEST CONTROL, and DOES 1-100,

Defendants,

AND

MONSTER WORLDWIDE, INC., ZIPRECRUITER, INC., INDEED, INC.,

Joined Defendants.

The following papers, numbered 1 to 9 were read on this Motion pursuant to CPLR §3211 [a],[3],[7] to Dismiss :

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... Answering Affidavits — Exhibits cross motion Replying Affidavits

Table with 2 columns: PAPERS NUMBERED, 1-4, 5-6, 7-9

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers it is Ordered that defendant, NTT Data, Inc.'s motion pursuant to CPLR §3211 [a],[3],[7], to dismiss this action in its entirety, with prejudice, is denied. Defendant, Philips Electronics North America Corporation's motion filed under Motion Sequence 004, pursuant to CPLR §3211 [a],[2],[3], to dismiss the complaint in its entirety, is denied.

The NAACP New York State Conference Metropolitan Council of Branches (plaintiff), is comprised of fourteen (14) local branches of the National Association for the Advancement of Colored People, Inc. (NAACP), within the City of New York. This class action was brought by the plaintiff on behalf of African American residents of the City of New York that are banned from employment by the defendants because they have a felony conviction. This class action seeks a declaratory judgment against the named defendants individually and as representatives of a defendant class of entities that post job openings on the joined defendants' websites. Plaintiff claims that defendants practices are unlawful pursuant to the New York City Human Rights Law, and Article 23-A of the New York State Corrections Law. The joined defendants are named as necessary parties because their platforms are utilized by the defendant class to disseminate ads that include the blanket felony bans.

NTT Data, Inc.'s motion pursuant to CPLR §3211 [a],[3] and [7], seeks to dismiss the complaint in its entirety with prejudice.

Philips Electronics North America Corporation's motion filed under Motion Sequence 004, pursuant to CPLR §3211 [a],[2],[3], seeks to dismiss the complaint in its entirety.

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

Philips Electronics North America Corporation (hereinafter referred to individually as “Phillips”), seeks to dismiss the complaint pursuant to CPLR §3211[a],[2], arguing that there is no subject matter jurisdiction and this action is moot because Philips has completely and permanently removed any job posting that excludes potential applicants with felony or drug arrests.

The Court’s policy to “rule on issues of great public significance which are likely to recur, particularly when it involves broad statutory interpretations,” is a basis to decline to find this action is moot (See, National Org. for Women v. New York State Div. of Human Rights, 34 N.Y. 2d 416, 314 N.E. 2d 867, 358 N.Y.S. 2d 124 [1974]. Philips by posting the potentially discriminatory job listing on-line where it was available to the public, can be found to have aided and abetted in the future discrimination of plaintiff’s members, and to have inspired other entities to similarly discriminate. Philips has also not established that it is not continuing to discriminate against plaintiffs members by denying applications, warranting denial of the CPLR §3211[a],[2] relief sought by Philips.

Both NTT Data, Inc. and Philips, argue that pursuant to CPLR §3211[a][3], the plaintiff lacks standing to bring this action because there has been no showing that any individual members suffered an “injury in fact” as a result of the advertisements placed for a job.

An action may be dismissed pursuant CPLR §3211[a][3], on the grounds that the plaintiff lacks either standing or the capacity to sue. The determination of standing requires that the party seeking relief sufficiently establish a recognizable stake in the proceedings and their outcome so that the dispute is capable of judicial resolution (Community Bd. 7 of Borough of Manhattan v. Schaffer, 84 N.Y. 2d 148, 639 N.E. 2d 1, 615 N.Y.S. 2d 644 [1994]). A determination of standing, “should not be heavy handed” or applied, “...in an overly restrictive manner” (Matter of Association for a Better Long Is., Inc. v. New York State Dept. of Env’tl. Conservation, 22 N.Y. 3d 1, 11 N.E. 2d 188, 988 N.Y.S. 2d 115 [2014]). The standing of an organization or association requires that at least one member of the organization has standing to sue, that the organization is representative of the interests sought to be protected and that individual members would not be required to participate in the action (New York State Assn. of Nurse Anesthetists v. Novello, 2 N.Y. 3d 207, 810 N.E. 2d 405, 778 N.Y.S. 2d 123 [2004] and Schlemme v. Planning Bd. F City of Poughkeepsie, 118 A.D. 3d 893, 988 N.Y.S. 2d 640 [2nd Dept., 2014]). “When legislation proscribes conduct against a class, the complaining party need not allege and specify injured parties...The complainant, as here, may be a bona fide recognized organization representing that class with a specific interest in the litigation in question” (National Org. for Women v. New York State Div. of Human Rights, 34 N.Y. 2d 416, supra at 420).

NTT Data, Inc. and Philips have failed to establish that the plaintiff does not have standing. The NAACP is a bona fide nationally recognized organization dedicated to eliminating discriminatory practices, and has associational standing. The interests asserted by the NAACP on behalf of African American residents of the City of New York that are banned from employment by the defendant class because they have a felony conviction, is relevant and germane to its purpose. The provisions of New York City Administrative Code §8-107[10], New York Corrections Law §752 and §753[1], proscribe conduct against a class, and bars employers from denying employment because a person was convicted of one or more criminal offenses without consideration of eight relevant factors, and any certificate of relief from civil disabilities, or a certificate of good conduct issued to the applicant. It is not necessary to include the participation of individual members of NAACP to establish standing. NAACP has also provided an affidavit of Kenneth Cohen, the director of NAACP Metropolitan Counsel, he states that individual members have come forward to claim that they were discriminated against as a result of the defendants’ practices, stating an alternative basis to establish standing.

NTT Data, Inc., argues that pursuant to CPLR §3211[a][7], the plaintiff has failed to state a cause of action. NTT Data, Inc. argues that plaintiff has not established that any individual member of its organization was unable to obtain, or was actually denied employment as a result of a job application on an allegedly unlawful Network/Systems Administrator posting.

Plaintiff has stated a potential claim against NTT Data, Inc. at this stage of the action. Dismissal pursuant to CPLR §3211[a][7], requires a reading of the pleadings to determine whether a legally recognizable cause of action can be identified and is properly pled. A cause of action does not have to be skillfully prepared but it does have to present facts so that it can be identified and establish a potentially meritorious claim (Leon v. Martinez, 84 N.Y. 2d 83,638 N.E. 2d 511, 614 N.Y.S. 2d 972 [1994]). Plaintiff has stated a claim. NTT Data, Inc. is merely restating the same arguments made for lack of standing. The extent of NTT Data, Inc.'s participation, a determination of any alleged discrimination, together with potential damages, warrants in favor of denying dismissal at this stage of the action. Plaintiff has stated a potential claim for investigation of NTT Data, Inc.'s interests and actions after the identification of potential class members.

NTT Data, Inc. attempts to argue for the first time in its reply papers that plaintiff's claims asserted against it are moot because any job posting that excluded potential applicants with felony or drug arrests was removed after the filing of the Summons and Complaint. New arguments raised for the first time in reply papers, deprive the opposing party of an opportunity to respond, and are not properly made before the Court (Ambac Assur. Corp. v. DLJ Mtge. Capital Inc., 92 A.D. 3d 451, 939 N.Y.S. 2d 333 [1st Dept.,2012] and Chavez v. Bancker Const. Corp., Inc., 272 A.D. 2d 429, 708 N.Y.S. 2d 325 [2nd Dept., 2000]). There is no basis to render a determination on NTT Data Inc.'s claim that this action is moot.

Accordingly, it is ORDERED that defendant, NTT Data, Inc.'s motion pursuant to CPLR §3211 [a],[3],[7], to dismiss this action, in its entirety, with prejudice, is denied, and it is further,

ORDERED that, defendant, Philips Electronics North America Corporation's motion filed under Motion Sequence 004, pursuant to CPLR §3211 [a],[2],[3], to dismiss the complaint in its entirety, is denied and it is further,

ORDERED that, joined defendants NTT Data, Inc. and Philips Electronics North America Corporation are each directed to serve an answer to the Amended Complaint within twenty (20) days after service of a copy of this Order with Notice of Entry.

ENTER:



MANUEL J. MENDEZ,
J.S.C.

MANUEL J. MENDEZ
J.S.C.

Dated: July 15, 2016

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