

Gruber v Glam, Inc.
2021 NY Slip Op 30696(U)
March 2, 2021
Supreme Court, New York County
Docket Number: 654719/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. ARLENE P. BLUTH</u></p> <p style="text-align: center;"><i>Justice</i></p> <p>-----X</p> <p>BRYCE GRUBER,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>GLAM, INC., MENACHEM BEN-OR</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p>PART <u>IAS MOTION 14</u></p> <p>INDEX NO. <u>654719/2018</u></p> <p>MOTION DATE <u>03/01/2021</u></p> <p>MOTION SEQ. NO. <u>002</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60 were read on this motion to/for DISCOVERY.

The motion by plaintiff to compel production of documents responsive to plaintiff's first set of requests is granted. The cross-motion by defendants to deny plaintiff's request for documents is denied.

Background

This employment discrimination case arises out of plaintiff's employment with defendant Glam (defendant Ben-Or is the CEO of Glam). Plaintiff contends she was hired as a digital editor in February 2018. She contends that she was subjected to harassment and discrimination on the basis of her Jewish faith. Plaintiff argues that her observance of Jewish dietary laws was well known and defendant Ben-Or attended plaintiff's orthodox Jewish wedding in 2012.

Plaintiff alleges that two employees at Glam engaged in anti-Semitic conduct which included commenting that her editorial views were "too Jewish" and she was prohibited from selecting content for publication. She contends that these employees also made disparaging remarks about Jews, including about both plaintiff and defendant Ben-Or. Plaintiff insists she told Ben-Or about this conduct and no action was taken to remediate the problem.

Plaintiff claims that just prior to her termination, she told defendant Ben-Or that she was pregnant and he made a nasty joke about her pregnancy. She argues that when she was fired, defendant Ben-Or told her the company was downsizing and eliminating her position but soon after she discovered that Glam was advertising for her position (and a higher salary was offered).

Discussion

The instant discovery dispute centers on document requests from plaintiff. She claims that defendants should be compelled to produce documents from May 2017. Plaintiff asserts that this is when defendants began recruiting plaintiff to work for Glam and plaintiff was already doing some work for the magazine in May 2017. She insists that her discrimination claims likely date from May 2017 despite the fact that she did not formally work for Glam until February 2018. Plaintiff points out that she seeks 15 months of data from 6 custodians and contends it is not unduly burdensome.

In opposition and in support of their cross-motion, defendants characterize the request as abusive and insist that this is simply a fishing expedition. Defendants observe that they agreed to produce documents from one month before plaintiff's employment at Glam but that there is no reason to expand the date range to May 2017. They insist that this additional discovery period will force defendants to incur the "potential huge additional expenses of approximately \$22,000."

"Disclosure in civil actions is generally governed by CPLR 3101(a), which directs: '[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.' We have emphasized that the words, 'material and necessary', are ... to be interpreted liberally 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. A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is ‘material and necessary’” (*Forman v Henkin*, 30 NY3d 656, 661, 70 NYS3d, 157 [2018] [internal quotations and citations omitted]).

The Court grants plaintiff’s motion and denies the cross-motion. As stated above, the question is whether the discovery request is reasonably calculated to yield relevant information. The request for documents from May 2017 meets that standard—the documents attached by plaintiff in support of the motion (NYSCEF Doc. Nos. 41, 42) demonstrate that there were many interactions between plaintiff and defendants starting in May 2017, including plaintiff’s apparent assistance in hiring for Glam. Moreover, plaintiff alleges in her complaint that she was working for Glam as early as May 2017 and defendant Ben-Or was recruiting her as early as May 2017.

The Court recognizes that plaintiff had a pre-existing relationship with defendant Ben-Or’s wife but the discovery process is supposed to be broad and prevent against unfair surprise. It may be that defendants have no relevant documents between May 2017 and January 2018. But that possibility does not mean that defendants can avoid a reasonable document request by claiming nothing is there. And there is the chance that there are documents that plaintiff may view as supporting her claims.

The Court denies plaintiff’s request for sanctions; this is a simple discovery dispute. That the Court grants the motion does not mean plaintiff is entitled to sanctions.

Accordingly, it is hereby

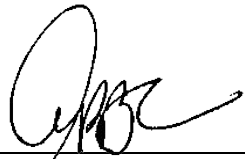
ORDERED that the motion by plaintiff to compel the production of documents in its document requests from May 1, 2017 through August 8, 2018 is granted to the extent that

defendants must produce relevant documents from this time period on or before May 1, 2021 but denied to the extent plaintiff sought sanctions; and it is further

ORDERED that the cross-motion by defendants is denied.

Remote Conference: March 11, 2021 at 3 p.m.

3/2/2021
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	
			<input type="checkbox"/>	REFERENCE	
		<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	OTHER