

Baiguang Han v Bytedance Inc.
2021 NY Slip Op 31136(U)
April 9, 2021
Supreme Court, New York County
Docket Number: 150793/2021
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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BAIGUANG HAN,

Petitioner,

For an Order pursuant to Section 3102(c) of the Civil Practice Law and Rules to compel disclosure pre-action from

- v -

BYTEDANCE INC.,

Respondent,

for the identity/identities of Unknown Defendant(s) using a pseudonym on TikTok to retaliate against Petitioner for engaging in activity protected under the Fair Labor Standards Act and New York Labor Law.

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INDEX NO. 150793/2021
MOTION DATE 04/09/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for DISCOVERY - PRE-ACTION.

ORDER

Upon the foregoing documents, it is

ORDERED that petitioner's motion for an order against respondent compelling discovery pursuant to CPLR 3102(c) is granted; and it is further

ORDERED that within thirty days of service of a copy of this order with notice entry, respondent shall produce to petitioner, copies of records, in its possession, that identify the name(s), both actual and user; sign-up method, i.e., whether directly through TikTok or using a mobile phone number of e-mail, or through

a third party platform such as Facebook or Google; sign-up date; address; internet protocol (IP address); and/or e-mail address(es) of the person or persons who posted on the TikTok platform any video concerning activities in which petitioner engaged under the Fair Labor Standards Act and the New York Labor Law; and it is further

ORDERED should no such record(s) be in respondent's possession, respondent must, within thirty days of service of a copy of the order with notice of entry, produce an affidavit of an officer or other agent with knowledge, detailing respondent's search effort, and the results of such search, as set forth in Jackson v City of New York, 185 AD2d 768 (1st Dept 1992).

DECISION

Petitioner has established the existence of a meritorious claim against his now former employer for unlawful retaliation for his having engaged in activities protected under the Fair Labor Standards Act and New York Labor Law. The petition is ambiguous as to whether petitioner was employed by any of the potential defendants on January 8, 2021 when the retaliation, in the form of "blacklisting" took place, so to the extent that petitioner was so employed, his claim has merit. Compare Adler v 20/20 Companies, 82 AD3d 914 (2d Dept. 2011).

In connection with such claim, petitioner seeks an order compelling respondent to produce pre-action discovery of the

identity of the defendant or defendants, agents of such employer, who allegedly violated his rights by posting a video slide show on TikTok warning potential employers, i.e., other Chinese restaurants and owners, not to hire him on the basis of his having engaged in such protected activity, including his bringing a class action lawsuit against such employer for its violations of the Fair Labor Standards Act and New York Labor Law.

In opposition to the petition, respondent submits two affidavits of an employee of Tik Tok, Inc. In both his affidavits, the employee asserts that respondent ByteDance Inc. "is not the provider of TikTok service in the United States." He further states that petitioner has brought this proceeding against the wrong entity, and that the correct entity is Douyin, the Chinese sister app of TikTok, both of whose parent company is ByteDance, Ltd. Nowhere in either affidavit does the affiant state what, if any relationship, respondent ByteDance, Inc. has to Douyin, Tik Tok, Inc. or ByteDance, Ltd. On that basis, respondent ByteDance, Inc. has failed to establish, as a matter of law or fact that it, as opposed to non-parties Tik Tok, Inc. or ByteDance, Ltd., does

not possess the records sought. Therefore, the court shall grant petitioner the relief that he seeks. See Banco de Concepcion v Manfra, Tordella & Brookes, Inc., 70 AD2d 840 (1st Dept 1979).

Debra A. James
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4/9/2021
DATE

DEBRA A. JAMES, J.S.C.

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