

Jinkyu Chang v Arroyave

2021 NY Slip Op 33507(U)

April 22, 2021

Supreme Court, Westchester County

Docket Number: Index No. 55459/2020

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X
JINKYU CHANG,

Plaintiff,

-against-

SONIA ARROYAVE,

Defendant.
-----X

DECISION and ORDER

Index No. 55459/2020

Seq. No. 2

LEFKOWITZ, J.

The following papers were read on this motion by plaintiff seeking an order compelling defendant to provide supplemental responses to plaintiff’s document demands and demand for interrogatories, and for such other and further relief as this Court may deem just and proper:

- Notice of Motion; Affirmation in Support; Exhibits 1-9
- Affirmation in Opposition; Exhibits A-D
- Affirmation in Reply
- NYSCEF File

Upon the foregoing papers, this motion is determined as follows:

Facts and Procedural History

Plaintiff commenced this action by the filing of a summons and complaint on or about May 27, 2020 seeking damages for defendant’s alleged defamation of plaintiff (Ex. 2). The basis of the alleged defamation concerns defendant’s dissemination in April 2020 of a letter with a draft complaint sent to plaintiff and defendant’s mutual employer Universal Remote Control, Inc. (“URC”) and URC’s Chief Executive Officer, Chang K. Park (“Park”).¹ Plaintiff alleges the following statements contained in the draft complaint are false: defendant was “subject to an abusive and hostile work environment [by plaintiff] because of her gender, race, and national origin;” plaintiff engaged in “unlawful conduct which permeates [defendant’s] working environment with discrimination and hostility;” plaintiff “appeared to imply that her [defendant’s] relationship with another employee was inappropriately ‘special’ and sexual in nature;” defendant “continued to endure discriminatory treatment at the hands of plaintiff;” and

¹ In addition to plaintiff herein, the draft complaint named URC, Park, and URC’s Vice President and General Manager, Doug Cole (“Cole”), as defendants. The draft complaint formed the basis for a related lawsuit filed by plaintiff in federal court (Plaintiff’s Affirmation in Opposition, fn. 1).

plaintiff committed “an assault on [defendant]” (Ex. 3). In his complaint plaintiff denied the foregoing allegations and asserted that the allegations were knowingly false; undermined and damaged plaintiff’s personal and professional reputation; exposed plaintiff to, inter alia, contempt, ridicule, aversion, or disgrace; injured plaintiff in his business, trade or profession; cast plaintiff in a negative light; adversely affected his competence in his professional duties; constituted defamation per se; were an attempt to pressure plaintiff to extract a monetary payment for defendant’s claims; and were made with spite/ill-will.

By answer dated August 24, 2020, defendant asserted, inter alia, that the statements made in the draft complaint were either true or substantially true (Ex. 4).

On or about September 29, 2020 plaintiff served a first request for the production of documents (the “document demands”) (Ex. 6) and first request for interrogatories (the “interrogatories”) (Ex. 7). Defendant has served responses to the interrogatories (Ex. 8) and document demands (Ex. 9).

Contentions of the Parties

Plaintiff brings this motion seeking supplemental responses to certain of his document demands and interrogatories (the “demands”).² Plaintiff contends that defendant’s responses to these demands are insufficient. Plaintiff notes that defendant has objected to many of the demands on the ground the information sought is not relevant to the statements which plaintiff alleges forms the basis of his defamation claim. Noting the broad scope of discovery provided for by the CPLR, plaintiff argues that he is entitled to supplemental responses including the disclosure of all matters relevant to the case and those which may lead to the discovery of relevant and admissible evidence. Plaintiff contends that the demands seek information that relates directly to defendant’s claimed discrimination and hostile work claims.

In opposition, defendant states that plaintiff has only identified five statements from the draft complaint as defamatory and that defendant is only required to provide discovery that goes to those statements. Defendant argues that any demands that go beyond those statements are irrelevant and have been properly objected to. Defendant argues that the objected-to demands are also irrelevant because they concern the actions of non-parties, or they seek information pertaining to defendant’s potential damages in her own lawsuit.

In reply, plaintiff contends that defendant has drawn an impermissibly narrow scope of what is allowable discovery in this matter. Plaintiff argues that he is not limited to the five statements but has the right to obtain disclosure of the circumstances, interactions, communications, and documents regarding the alleged discrimination and/or hostile work environment as this disclosure goes to the heart of the allegations upon which the defamation claim is based. Plaintiff argues that the non-parties involved here are those who defendant has claimed in the draft complaint to have been privy to and/or involved in communications regarding the alleged discrimination and hostile work environment upon which the alleged defamatory statements are based. For example, plaintiff argues that although Jon Sienkiewicz, a member of URC’s Human Resource Department, and Cole are nonparties discovery about

² Document demands 4, 12-14, 17-22, 24, 25, 27, 29, 30-32, 34-36, 39, 43-46, 48, and 51; and interrogatories 3-5, 7-12, 14, 17, 19, 21-22, 25, 28, 29, and 31.

plaintiff's interactions with them is relevant because it is alleged in the draft complaint that they witnessed and/or were involved in complaints made by defendant concerning the purported discrimination /hostile treatment of defendant.

Analysis

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." The phrase "material and necessary" is "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" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The court has broad discretion to supervise discovery and to determine whether the information sought is material and necessary in light of the issues in the matter (*Mironer v City of New York*, 79 AD3d 1106, 1108 [2d Dept 2010]; *Auerbach v Klein*, 30 AD3d 451, 452 [2d Dept 2006]).

Defamation is the making of a false statement about a person that "tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him [or her] in the minds of right-thinking persons, and to deprive him [or her] of their friendly intercourse in society" (*Rinaldi v. Holt, Rinehart & Winston*, 42 NY2d 369, 379 [1977]). "The elements are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se" (*Dillon v. City of New York*, 261 AD2d 34, 38 [1st Dept 1999]). A statement is defamatory on its face when it suggests improper performance of one's professional duties or unprofessional conduct (*Frechtman v Gutterman*, 115 AD3d 102, 104 [1st Dept 2014]). Additionally, a determination of defamation requires consideration of the "entire publication, as well as the circumstances of its issuance" (*Silsdorf v Levine*, 59 NY2d 8, 13 [1983]). "Truth provides a complete defense to defamation claims" (*Dillon v City of New York*, 261 AD2d 34, 39 [1st Dept 1999]).

Defendant correctly asserts that some of the demands are irrelevant or overly broad. Defendant properly objected to the following document demands and interrogatories: document demands 4, 13, 20, 31, 36, 44-46, 51, and interrogatories 4, 5, 29, and 31. However, plaintiff is entitled to supplemental responses to some of the demands, including, inter alia, non-party communications concerning plaintiff's conduct as identified and alleged by defendant in the draft complaint. Accordingly, defendant shall serve supplemental responses to document demands 17, 18, 21, 22, 24, 25, 27, 29, 30, 39, and interrogatories 7-9, 11, 12, 14, 17, 19, 21, and 25. Additionally, defendant shall serve supplemental responses to document demands 14, 19, 32, 34, 35, 43, 48, and interrogatories 3, 10, 22, and 28 limited to those documents/ communications/ instances pertaining to plaintiff and/or his alleged conduct.

All other arguments raised on this motion and evidence submitted by the parties in connection thereto have been considered by this court notwithstanding the specific absence of reference thereto.

Accordingly, it is:

ORDERED that the motion is granted to the extent that on or before May 21, 2021 defendant shall serve supplemental responses to plaintiff's document demands and interrogatories as herein noted; and it is further,

ORDERED that in accordance with the Virtual Courtroom Protocol implemented in the Ninth Judicial District, counsel for the parties shall appear for a virtual compliance conference via Microsoft Teams before Court Attorney-Referee Colette Parris on May 27, 2021 at 11:30 a.m., or as the Court may otherwise direct; and it is further

ORDERED that plaintiff shall serve a copy of this Order with notice of entry upon defendant within five (5) days of its entry and shall file proof of service to the NYSCEF website within three (3) days thereof.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
April 22, 2021

HON. JOAN B. LEFKOWITZ, J.S.C.

Service upon all counsel via NYSCEF

cc: Compliance Part Clerk