

Kurland & Assoc., P.C. v Glasdoor, Inc.

2021 NY Slip Op 33927(U)

March 22, 2021

Supreme Court, New York County

Docket Number: Index No. 162083/2018

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

-----X

KURLAND & ASSOCIATES, P.C.,
Plaintiff,

- v -

GLASSDOOR, INC., JANE DOE, JOHN DOE
Defendant.

INDEX NO. 162083/2018
MOTION DATE N/A, N/A
MOTION SEQ. NO. 006 007

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 109, 110, 111, 112, 121, 123, 124, 125, 130, 132, 133, 136

were read on this motion to/for ORDER OF PROTECTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 113, 114, 115, 116, 117, 118, 119, 120, 122, 129, 131, 134, 135, 137, 141, 142, 143, 144, 145, 146, 147, 148

were read on this motion to/for DISMISS

Upon the foregoing documents, and for the reasons set forth herein, defendant's motion to dismiss is granted in part and denied in part, and defendant's motion for a protective order is granted.

Plaintiff, Kurland & Associates, P.C. d/b/a The Kurland Group (hereinafter "TKG"), commenced this action against defendants, Glassdoor, Inc. ("Glassdoor") and John/Jane Doe (hereinafter "Doe"), alleging that defendants misused Glassdoor's website to publish and endorse defamatory, disparaging, and untruthful information about TKG. The crux of TKG's complaint centers around a workplace review allegedly describing the working conditions at TKG that Doe posted on Glassdoor's website on January 13, 2018 ("the Review"). Glassdoor operates a website that provides a platform for third-party users, specifically current or former employees, to post reviews describing their working experiences. The Review that encompasses the core of plaintiff's complaint states as follows:

This place looks good on paper but please STAY AWAY. Management is completely clueless about how to effectively manage their employees. They are either oblivious to how unhappy they are, or, more likely, they do not care. Average employees only stay about 3-6 months, which should be your first indication that this is not a good workplace. Don't waste your time

because you will be looking for a new job in a month. Pay is below average and expectations are unrealistic. Management micromanages employees, often not wanting even an email sent without review, but also criticizes employees for not being independent. It is a difficult and confusing environment. You will often be expected to stay into all hours of the night, though the amount of work frequently does not justify it, because you work on the upper management's whim. Vacation time and permission to take days off or leave early is scarce for most employees.

(NYSCEF Doc. No. 116.)

Plaintiff commenced the instant action in April 2019. Plaintiff's second amended complaint alleges breach of contract, negligence, defamation per se, tortious interference with business relations, and unfair and deceptive business practices. On July 22, 2020, the New York Senate and Assembly passed a new strengthened law against the filing of "Strategic Lawsuits Against Public Participation," which was signed into law by Governor Cuomo on November 10, 2020 and codified at New York Civil Rights Law §§ 70-a, 76-a (hereinafter, "the new anti-SLAPP law"). The new anti-SLAPP law broadened the definition of "an action involving public petition and participation" and imposed the requirement that a plaintiff "establish by clear and convincing evidence that any communication which gave rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action." The new anti-SLAPP law also requires courts to award attorney's fees to defendants who prevail on a motion to dismiss.

Defendants now move to dismiss plaintiff's second amended complaint pursuant to the new anti-SLAPP law. Although the matter is close, this Court finds the content of the Review to be solely opinion and thus should be afforded the protection of the new anti-SLAPP law. Plaintiff has failed to demonstrate by clear and convincing evidence that the posting of the Review constituted breach of contract, negligence, tortious interference with business practices, and/or unfair or deceptive business practices. (In any event, plaintiff has no privity of contract with Glassdoor.) Accordingly, plaintiff's first, second, fourth, and fifth causes of action are hereby dismissed.

However, although this Court finds the Review to be opinion, Doe also entered salary information in conjunction with the Review. The salary information states that "Associate Attorney" positions earn "\$46K - \$50K/yr"; that "Legal Fellow" positions earn "1K/mo"; and that "Attorney-Internship" positions earn "1K/mo" (hereinafter "the Salary Postings"). (<https://www.glassdoor.com/Salary/The-Kurland-Group-Salaries-E1596610.htm>.) As the Salary Postings are not opinion, plaintiff's cause of action for defamation per se, incorporated into TKG's second amended complaint at ¶ 18, may survive a motion to dismiss on the limited dispute over what attorneys earn at TKG. At oral argument, plaintiff's principal, a lawyer and an officer of the court, clearly claimed that plaintiff pays significantly more than the amounts posted on Glassdoor.

Defendant’s motion for a protective order striking plaintiff’s request for admissions is granted. The law in New York is well-settled that “requests for admissions may not cover ultimate conclusions which can only be made after a full and complete trial” and that “[a]s a disclosure device, their purpose is to eliminate from contention factual matters which are easily provable and about which there can be no controversy.” Berg v Flower Fifth Ave. Hosp., 102 AD2d 760 (1st Dept. 1984). The requests for admissions served by plaintiff clearly exceed the intent of this disclosure device, as plaintiff seeks admissions of legal and factual disputes at this heart of this action. In any event, the requests for admissions are premature, as defendant has not yet answered. Consequently, plaintiff’s requests for admissions are hereby stricken.

Accordingly, the Clerk is hereby directed to enter judgment dismissing plaintiff’s first, second, fourth, and fifth causes of action. Defendant’s motion for a protective order striking plaintiff’s requests for admissions is hereby granted. The parties are further directed to participate in a virtual preliminary conference on the surviving limited defamation claim on April 15, 2021.

Although, to date, this Court’s strenuous attempts to get the parties to settle this action have been noticeably fruitless, the Court has not given up hope and would be happy to continue its efforts.

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3/22/2021

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE