

Rennie v Top View/Go N.Y. Tours/S.E. Personnel

2023 NY Slip Op 32142(U)

June 30, 2023

Supreme Court, New York County

Docket Number: Index No. 101031/2022

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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DAVID RENNIE,	INDEX NO.	<u>101031/2022</u>
Plaintiff,	MOTION DATE	<u>05/17/2023</u>
- v -	MOTION SEQ. NO.	<u>002</u>
TOP VIEW / GO NEW YORK TOURS / SOUTH EAST PERSONNEL,		
Defendant.	DECISION + ORDER ON MOTION	

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31
were read on this motion to/for DISMISS.

Defendant Top View / Go New York Tours'¹ motion is granted in part and denied in part.

Background

This case arises out of an alleged wrongful termination. Plaintiff filed a complaint against his former employer, Go New York Tours Inc. (improperly pleaded as “Top View / Go New York Tours”) alleging wrongful termination, discrimination, theft via failure to return a draft training manual, and falsifying business records. The complaint for this matter has not been part of the official court record, though plaintiff attached the complaint as an unnamed exhibit. In this

¹ Movant insists that Top View and Go New York Tours are a single entity, Go New York Tours, Inc. d/b/a Topview Sightseeing. The complaint also does not identify the defendants or distinguish between the three separate names. Accordingly, the Court has no idea if plaintiff intended there to be one defendant or three defendants.

complaint, plaintiff alleged that defendant never produced evidence for his alleged misconduct leading to his termination as a tour bus driver.

Defendant now moves to dismiss plaintiff's claim for discrimination and for falsifying business records. Defendant also requests a stay of the related arbitration proceeding and for a protective order staying its obligation to respond to plaintiff's request for production. Defendant contends that plaintiff has failed to state a cause of action for discrimination as he does not allege what protected characteristic is at the center of his termination. Moreover, it argues that even if plaintiff stated a claim for discrimination, it should be dismissed because plaintiff also filed a complaint with a government agency and plaintiff cannot pursue two complaints in two venues.

Defendant further argues that plaintiff has failed to exhaust his administrative remedies and that plaintiff's cause of action for falsifying business records should be dismissed as it is a criminal statute without a private right of action. Defendant maintains that a pending arbitration of this matter should be stayed because plaintiff missed the appropriate deadlines to file a grievance with the American Arbitration Association, and, in any event, waived arbitration by litigating this action. Finally, defendant requests a protective order for discovery pending the outcome of this motion, as plaintiff continues to serve discovery requests and threatens sanctions against defendant and its counsel.

In opposition, plaintiff requests that this Court to punish employees of defendant with jail time. Plaintiff also argues that sanctions against defendant are appropriate for filing frivolous motions such as the attempt to remove this matter to federal court. He insists he is seeking over \$1.8 million in relief. Plaintiff filed a cross-motion, erroneously titled a motion to compel and motion for sanctions, as plaintiff requests that defendant is prohibited from introducing any late-produced documents in support of its case.

In reply and in opposition to the cross-motion, defendant contends plaintiff failed to address defendant's motion to dismiss and only serve to demonstrate defendant's need for a protective order.

Discussion

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the [pleading] as true, accord [the proponent of the pleading] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]). “At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141, 75 NE3d 1159 [2017] [citation and internal quotations omitted]).

“A plaintiff in an employment discrimination case has the initial burden of showing, prima facie, (1) that the employee is a member of a protected class, (2) that she was discharged, (3) that she was qualified for the position, and (4) that the discharge occurred under circumstances giving rise to an inference of discrimination” (*Schwaller v Squire Sanders & Dempsey*, 249 AD2d 195, 196, 671 NYS2d 759 [1st Dept 1998]).

Plaintiff failed to meet his burden to identify that he is a member of a protected class, a required element in order to sustain a discrimination case. The Court is unable to discern from plaintiff's papers the basis for his discrimination claim and so it must be dismissed.

Plaintiff's claim for falsifying business records is based on a New York criminal statute that does not contain a private right of action. That means that plaintiff cannot seek relief under

it. Only a governmental entity, such as a district attorney, can seek relief against defendant based on this statute. Moreover, plaintiff filed this case in the Civil Division of Supreme Court; this part does not adjudicate criminal matters.


Finally, this Court observes that the purpose of the discovery process is to explore matters that are *material* and *necessary* to a case (*see generally* CPLR 3101). Plaintiff is not entitled to every document in defendant’s possession.

To the extent that defendant seeks a stay of discovery pending the resolution of this motion, that request is denied as this decision resolves the motion. The Court observes that a protective order for all discovery is not yet appropriate. Defendant can, of course, raise objections to discovery requests that it views to be improper. However, that does not preclude defendant from seeking relief in the future should plaintiff continue to inundate it with discovery requests that abuse the discovery process.

The Court also declines to stay the pending arbitration. Defendant can seek such relief before the arbitrator.

Accordingly, it is hereby

ORDERED that the motion is granted to the extent that Counts 2 and 4 of plaintiff’s complaint are severed and dismissed and denied with respect to the remaining requests for relief.

<u>6/30/2023</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
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