

Graham v Laporte

2023 NY Slip Op 34399(U)

December 14, 2023

Supreme Court, New York County

Docket Number: Index No. 158575/2019

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

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GARY GRAHAM,

Plaintiff,

- v -

JUSTIN LAPORTE, BEVERLY RIDDICK, HENRY VACA,
CHRISTOPHER D'ELIA, THOMAS FRANCIS, BRIAN
CANNON, UNITED PARCEL SERVICE, INC., UNITED
PARCEL SERVICE OF AMERICA, INC., JOHN DOES 1-10

Defendants.

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INDEX NO. 158575/2019

MOTION DATE 09/20/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 47, 48

were read on this motion to/for DISCOVERY.

In this age, race and national origin discrimination case plaintiff moves pursuant to CPLR § 3124 to compel defendants to produce material and discovery. Defendants oppose the motion arguing that the plaintiff’s requests are irrelevant and overbroad. They also argue that plaintiff has not properly complied with the requirements necessary to compel discovery.

DISCUSSION

Under CPLR § 3124 “if a person fails to ... comply with any request, notice, interrogatory, demand, question or order under this article ... the party seeking disclosure may move to compel compliance or a response.” Rule 202.20-f(b) of the Uniform Civil Rules for the Supreme Court & the County Court requires that parties “consult with one another in a good faith effort to resolve all disputes about disclosure” and if the dispute results in a motion to compel “each such discovery motion shall be supported by an affidavit or affirmation from counsel attesting to counsel having conducted an in-person or telephonic conference.”

CLPR § 3101(a) states that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” “The words ‘material and necessary,’ as used in CPLR 3101(a) are “to be interpreted liberally to require disclosure ... of any facts bearing on the controversy” (*In re Steam Pipe Explosion at 41st St.*, 127 A.D.3d 554, 555 [1st Dept 2015]).

Here plaintiff served supplemental document requests on defendants on June 17, 2023 and July, 18, 2023 (NYSCEF Doc No 39 ¶ 2). Plaintiff affirms that on September 11, 2023 and September 18, 2023 they met and conferred with defendants in an attempt to resolve defendant’s objection. Plaintiff then limited their request regarding one of the demands, but defendant still maintained their objections (*Id.*). Plaintiff has complied with the requirements of Rule 202.20-f(b) of the Uniform Civil Rules by providing the affidavit attesting to the attempts to meet and confer to bring the instant motion.

Thomas Francis Non-Disclosure Agreement

The first demand at issue is for “Any and all documents Defendants requested Defendant Thomas Francis (“Francis”) sign after his separation of employment presented by Defendants UNITED PARCEL SERVICE, INC., UNITED PARCEL SERVICE OF AMERICA, INC. (“Defendant UPS”), including any general releases, mutual releases, Nondisclosure agreements (“NDAs”), separation agreements, severance agreements and/or any agreements” (NYSCEF Doc No 40). Plaintiff became aware of the existence of a non-disclosure agreement signed by Thomas Francis during a deposition of Mr. Francis (NYSCEF Doc No 48).

After being asked “Have you ever fielded from other employees of UPS, any complaints pertaining to Brian Cannon?” defendants’ counsel objected and instructed Mr. Francis not to answer the question because he signed a confidentiality agreement regarding this topic upon his

separation from UPS (NYSCEF Doc No 48 at 87). Both Mr. Francis and Mr. Cannon were UPS employees who managed plaintiff during his time at UPS.

Defendants argue that the confidentiality agreement is irrelevant to any facts in the plaintiff's case and have offered to stipulate that the agreement had nothing to do with plaintiff's employment or his lawsuit (NYSCEF Doc No 45 at 5). However, while this agreement may not directly involve plaintiff, it still may have relevance to his lawsuit. Since both Mr. Francis and Mr. Cannon managed plaintiff throughout his time at UPS, the non-disclosure agreement may provide relevant evidence regarding the workplace environment that was fostered under Mr. Francis and Mr. Cannon. Therefore, the agreement is material and necessary to the case and defendants will be directed to produce records related to the agreement.

Hussein GTS statistics

Plaintiff also requested "Any and all documents concerning Tony Hussein's GTS statistics for the past seven (7) years of employment as an alleged driver for Defendants UNITED PARCEL SERVICE, INC., UNITED PARCEL SERVICE OF AMERICA, INC." (NYSCEF Doc No 44). In their objection to this demand defendants claimed that it was overly broad, unduly burdensome, and not material and necessary to the action (*Id.*). Plaintiff then offered to limit the request to only 2017 and 2018 rather than the full seven years but defendants maintained their objection (NYSCEF Doc No 47).

Defendants argue that the documents which are sought would not be material and necessary to the action since Mr. Hussein was not as a named party in this action. However, plaintiff alleges that the reason he was given for his termination was that he did not properly follow certain UPS safety protocols after a traffic accident involving one of the drivers supervised by plaintiff (NYSCEF Doc No 1). In his deposition Mr. Francis claimed that Mr.

Hussein was a co-chair of the safety committee and among his responsibilities would be to go to the scene of accidents involving UPS drivers (NYSCEF Doc No 48). Plaintiff asserts that Mr. Hussein has manipulated the scenes of accidents to minimize their severity and would cover up some accidents entirely (NYSCEF Doc No 47). Since this allegation speaks to the legitimacy of the stated reason for plaintiff's termination records regarding Mr. Hussein's activities as a chair of the safety committee are material and necessary to the action.

Accordingly, it is

ORDERED that plaintiff's motion to compel is granted; and it is further

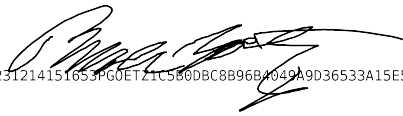
ORDERED that defendant shall produce to plaintiff on or before January 16, 2024 the following documents:

1. Any and all documents Defendants requested Defendant Thomas Francis ("Francis") sign after his separation of employment presented by Defendants UNITED PARCEL SERVICE, INC., UNITED PARCEL SERVICE OF AMERICA, INC. ("Defendant UPS"), including any general releases, mutual releases, Nondisclosure agreements ("NDAs"), separation agreements, severance agreements and/or any agreements
2. Any and all documents concerning Tony Hussein's GTS statistics for 2017 and 2018;

and it is further;

ORDERED that counsel are directed to appear for a status conference at February 1, 2024

at 9:30 AM.


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12/14/2023
DATE

PAUL A. GOETZ, 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