

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

PRESENT: MANUEL J. MENDEZ Justice

PART 13

NAACP NEW YORK STATE CONFERENCE METROPOLITAN COUNCIL OF BRANCHES,

INDEX NO. 156382/15 MOTION DATE 02-17-16 MOTION SEQ. NO. 001 MOTION CAL. NO.

Plaintiffs,

-against-

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION, KONIKLIJKE PHILIPS N.V., NTT DATA, INC., RECALL HOLDINGS LIMITED, RECALL TOTAL INFORMATION MANAGEMENT, INC., ADVANCE TECH PEST CONTROL, and DOES 1-100,

Defendants,

AND

MONSTER WORLDWIDE, INC., ZIPRECRUITER, INC., INDEED, INC.,

Joined Defendants.

The following papers, numbered 1 to 5 were read on this Motion pursuant to CPLR §3211 [a],[3],[7] and CPLR §1003 to Dismiss :

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ... Answering Affidavits – Exhibits cross motion Repeating Affidavits

1 - 3

4

5

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers it is Ordered that Monster Worldwide, Inc., Ziprecruiter Inc., and Indeed, Inc.'s motion pursuant to CPLR §3211 [a],[3],[7] and CPLR §1003, to dismiss those causes of action asserted against them with prejudice, is denied.

Plaintiff is comprised of fourteen (14) local branches of the National Association for the Advancement of Colored People, Inc. (NAACP), within the City of New York. This class action was brought by the plaintiff on behalf of African American residents of the City of New York that are banned from employment by the defendants because they have a felony conviction. This class action seeks a declaratory judgment against the named defendants individually and as representatives of a defendant class of entities that post job openings on the joined defendants' websites. Plaintiff claims that defendants practices are unlawful pursuant to the New York City Human Rights Law, and Article 23-A of the New York State Corrections Law. The joined defendants are named as necessary parties because their platforms are utilized by the defendant class to disseminate ads that include the blanket felony bans.

Monster Worldwide, Inc., Ziprecruiter Inc., and Indeed, Inc.'s (hereinafter collectively referred to as "joined defendants") motion pursuant to CPLR §3211 [a],[3] and [7] and CPLR §1003, seeks to dismiss those causes of action asserted against them with prejudice.

It is the joined defendants contention that they are misjoined parties and should be severed from this action pursuant to CPLR §1003, because the complaint does not

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

allege any wrongdoing on their part, and they are not necessary for complete relief to be afforded to plaintiff. Joined defendants argue that the lack of substantive claims asserted against them, renders injunctive relief unavailable.

Pursuant to CPLR §1003, the Court may in its discretion correct misjoinder of parties, to avoid trying claims that have, "only the most superficial common factual grounds" (*Hickson v. Mt. Sinai Medical Center*, 87 A.D. 2d 527, 448 N.Y.S. 2d 6 [1st Dept., 1982]). Severance of joinder should be avoided to prevent no prejudice to a substantial right (*Mothersil v. Town Sports Intern.*, 24 A.D. 3d 424, 804 N.Y.S. 2d 687 [2nd Dept., 2005] and *Scarlino v. Fathi*, 107 A.D. 3d 514, 968 N.Y.S. 2d 28 [1st Dept., 2013]).

Joined defendants have not established that there is only superficial common grounds, linking them to the defendants. The alleged discriminatory content is viewed on the joined defendants websites. The extent of their participation, a determination of any alleged discrimination, potential relief in the form of having the content taken down, together with potential damages warrants in favor of avoidance of misjoinder at this stage of the action.

The joined defendants, as interactive service providers for allegedly tortious content by third-party users, claim they are entitled to immunity under the Federal Communications Decency Act of 1996, Section 230.

In determining immunity from state law liability under the Communications Decency Act of 1996 Section 230, the Court should take into consideration, "if (1) it is a provider or user of an interactive computer service; (2) the complaint seeks to hold the defendant liable as a publisher or speaker; and (3) the action is based on information given by another information content provider" (*Shiamili v. Real Estate Group of New York*, 17 N.Y. 3d 281, 952 N.E. 2d 1011, 929 N.Y.S. 2d 19 [2011]). Active provision of defamatory content by the website's developers or provider that is not merely a heading, subheading or illustration of a third-party's posts, establishes a claim that is not barred by the Communications Decency Act of 1996 (*Shiamili v. Real Estate Group of New York*, 17 N.Y. 3d 281, *supra*).

Plaintiff has stated a potential claim against the joined defendants, at this stage of the action. Dismissal pursuant to CPLR §3211[a][7], requires a reading of the pleadings to determine whether a legally recognizable cause of action can be identified and is properly pled. A cause of action does not have to be skillfully prepared but it does have to present facts so that it can be identified and establish a potentially meritorious claim (*Leon v. Martinez*, 84 N.Y. 2d 83, 638 N.E. 2d 511, 614 N.Y.S. 2d 972 [1994]). Plaintiff's allegations asserted against the joined defendants are seeking to, "investigate discrimination from the producers of discriminatory content," not establish liability as publishers or speakers of the content. The same reasons for avoiding misjoinder warrant a finding that there is a potential claim stated for investigation of the joined defendants potential interests and the identification of potential class members.

Joined defendants argue pursuant to CPLR §3211[a][3], that plaintiff lacks standing to bring this action because there has been no showing that any individual members either used the websites or suffered an "injury in fact."

An action may be dismissed pursuant CPLR §3211[a][3], on the grounds that the plaintiff lacks either standing or the capacity to sue. The determination of standing requires that the party seeking relief sufficiently establish a recognizable stake in the

proceedings and their outcome so that the dispute is capable of judicial resolution (Community Bd. 7 of Borough of Manhattan v. Schaffer, 84 N.Y. 2d 148, 639 N.E. 2d 1, 615 N.Y.S. 2d 644 [1994]). A determination of standing, "should not be heavy handed" or applied, "...in an overly restrictive manner" (Matter of Association for a Better Long Is., Inc. v. New York State Dept. of Env'tl. Conservation, 22 N.Y. 3d 1, 11 N.E. 2d 188, 988 N.Y.S. 2d 115 [2014]). The standing of an organization or association requires that at least one member of the organization has standing to sue, that the organization is representative of the interests sought to be protected and that individual members would not be required to participate in the action (New York State Assn. Of Nurse Anesthetists v. Novello, 2 N.Y. 3d 207, 810 N.E. 2d 405, 778 N.Y.S. 2d 123 [2004] and Schlemme v. Planning Bd. F City of Poughkeepsie, 118 A.D. 3d 893, 988 N.Y.S. 2d 640 [2nd Dept., 2014]).

Joined defendants failed to establish that the plaintiff does not have associational standing. The interests asserted by the NAACP on behalf of African American residents of the City of New York that are banned from employment by the defendant class because they have a felony conviction, is relevant and germane to its purpose. It is not necessary to include the participation of individual members to establish standing.

Accordingly, it is ORDERED that Monster Worldwide, Inc., Ziprecruiter Inc., and Indeed, Inc.'s motion pursuant to CPLR §3211 [a],[3],[7] and CPLR §1003, to dismiss those causes of action asserted against them with prejudice, is denied, and it is further,

ORDERED that, joined defendants are directed to serve an answer to the Amended Complaint within twenty (20) days after service of a copy of this Order with Notice of Entry.

ENTER:

MANUEL J. MENDEZ
J.S.C.



MANUEL J. MENDEZ,
J.S.C.

Dated: April 8, 2016

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE