

Hill v CVS Pharmacy, Inc.

2012 NY Slip Op 30679(U)

March 19, 2012

Supreme Court, New York County

Docket Number: 108282/10

Judge: Judith J. Gische

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James Hill

Plaintiff (s),

INDEX NO.

108282/10

MOTION DATE

MOTION SEQ. NO.

002

MOTION CAL. NO.

CVS Pharmacy, Inc et al.
Defendant (s).

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, the court's decision on this (these) motion (s) is as follows:

FILED

MAR 20 2012

Motion (s) decided in accordance with the accompanying memorandum decision *order* NEW YORK COUNTY CLERK'S OFFICE

This matter is set for a Compliance conference on May 10, 2012 @ 9:30am, at 60 Centre Street, Am-232.

Dated: 3/19/12

J. Gischa
Hon. Judith J. Gischa, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE SETTLE/SUBMIT ORDER

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

James Hill,
Plaintiff,

-against-

CVS Pharmacy, Inc. et. al.
Defendants.

DECISION/ORDER
Index No.: 108282/10
Mot. Seq. #002

Present:
Hon. Judith J. Gische
J.S.C.

Hon. Gische, J.:

Pursuant to CPLR 2219(A) the following numbered papers were considered by the court in connection with this motion:

PAPERS	FILED	NUMBERED
N/M, RFW affirm., Affirm. Of gf, exhibits.....		1
YDS affirm., exhibits.....		2
RFW affirm.....	MAR 20 2012	3
YDS reply.....		4

NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers the decision and order of the court is as follows:

Plaintiff moves for an order compelling defendant to respond to his Further Demand for Discovery and Inspection dated September 19, 2011 ("9/19/11 D & I"). Defendants oppose the motion. The underlying complaint alleges that on January 11, 2010, while plaintiff was lawfully in a certain CVS store, he was falsely imprisoned by defendants. In the 9/19/11 D & I, plaintiff requested information pertaining to the ethnic make-up of individuals stopped and/or detained by store security under the suspicion of shoplifting for the six month period prior to the date of the alleged occurrence. Plaintiff also sought the names and addresses of all people who were stopped. Although the complaint does not allege any discrimination, plaintiff is seeking this information to

determine whether, when defendant stopped him without cause, they were improperly profiling him. Defendants deny that plaintiff was improperly stopped. In addition they objected to producing the information requested as being "vague, ambiguous, overly broad, unduly burdensome, not relevant and not likely to lead to the discovery of relevant information." This motion to compel production ensued.

The court rejects out of hand defendants' argument that this motion should be denied because the affidavit of good faith, required as a prerequisite to any discovery motion, is not in proper form. It was clear from the conferences the court held on this case and the argument on the motion, that the parties had tried to resolve the underlying issues, but reached an impasse. Likewise the court rejects plaintiff's argument that all objections were waived by defendants.

Defendants claim that they do not possess any records or information concerning the ethnicity of individuals stopped or detained by store security. Notwithstanding this claim, which would render most of the request moot, it is not stated in the original response to the 9/19/11 D & I, which is not sworn to by any defendant, with or without knowledge. While the statement is made in a supplemental response, served only after this motion was brought, the supplemental response is not sworn to by anyone with knowledge. On this motion, only the attorney makes such a statement.

Defendants also argue that because this case does not involve false arrest or racial profiling, any such information would be irrelevant.

Defendants further claim that any records they retain regarding the names and addresses of other people who were detained by security would be invasive of those persons' privacy.

Defendants contention, that this case does not involve false arrest, is just wrong. The first cause of action in the complaint clearly seeks redress based on a claim of false arrest. So too, the court rejects the claim that racial profiling is not an issue in this case. While the issue is not expressly plead, information regarding whether defendants engage in a practice of racial profiling in connection with detaining persons in their stores who are under suspicion of shoplifting is relevant to the legality of the particular detention of plaintiff. Moreover, such information would be peculiarly within defendants' own knowledge. A request for information regarding a pattern or practice, that is otherwise limited as to time, nature and geography, is appropriate. See: Neuschatz v. Societe Generale, 176 AD2d 134 (1st dept. 1981).

While the court finds that plaintiff would be entitled to information regarding complaints of racial profiling and other ethnic information maintained by defendants regarding the persons stopped under suspicion of shop lifting at their stores, the names and addresses of all persons actually stopped is not sufficiently limited in scope as to be discoverable.

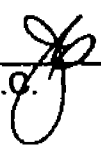
Defendants' claim, that is has no documents indicating the racial identity of the persons stopped would, if true, render this whole discussion moot. However, on this motion, defendant has not established the absence of such documents. Accordingly, the defendants shall search again for the requested records and, thereafter, produce for deposition a person with knowledge about the defendants' record keeping practices. In this way, plaintiff can inquire and obtain sworn statements about defendants' record keeping practices and procedures in connection with security stops made at their stores. Such witness shall also bring to the deposition for production each and every

blank form or document used to record any and all information regarding stops made by security personnel for the six months preceding plaintiff's stop. Such witness shall be produced within Thirty (30) Days following the date of this order. If the deposition yields any further basis, plaintiff may renew this motion. Accordingly, the motion is granted only to the extent indicated herein.

Other than this deposition, it appears that discovery has been completed. This matter is set down for a trial certification conference on **May 10, 2012 at 9:30 a.m.** The Note of Issue is due May 11, 2012. No further notices will be sent. Any requested relief not otherwise granted herein is denied. This constitutes the decision and order of the court.

Dated: New York, NY
March 19, 2012

SO ORDERED:



J.G. J.S.C.

FILED
MAR 20 2012
NEW YORK
COUNTY CLERK'S OFFICE