

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STEPHEN N. PARSONS,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv1509 (PCD)
	:
UNITED PARCEL SERVICE, INC., <i>et al.</i> ,	:
Defendants.	:

RULING ON MOTION FOR CONTINUANCE

Plaintiff moves pursuant to FED. R. CIV. P. 56(f) for a continuance to take the deposition of Assistant State’s Attorney John Davenport in support of his opposition to defendants’ motion for summary judgment. For the reasons set forth herein, the motion is **granted**.

I. BACKGROUND

Plaintiff filed a twelve-count complaint against defendants, his former employer and supervisors, for, *inter alia*, violation of the Age Discrimination in Employment Act of 1996 (“ADEA”), 29 U.S.C. §§ 621 *et seq.*, Connecticut's Fair Employment Practices Act, CONN. GEN. STAT. ANN. § 46a-60(a)(1) and malicious prosecution. Defendants’ motion for summary judgment included the affidavit of State’s Attorney Davenport, who prosecuted the case against plaintiff for theft of a ring while he was employed by defendants. State’s Attorney Davenport had provided an affidavit in support of defendants’ motion for summary judgment on a separate complaint by plaintiffs.¹ Davenport had not been identified by defendants in their response to interrogatories as a person having knowledge of the facts supporting the answer or defenses in the present case. Plaintiff alleges that he previously was

¹ Plaintiff filed a previous complaint, *Parsons v. Watertown, et al.* (3:00cv1519), against the town of Watertown and members of its police force. Judge Squatrito dismissed the case on February 13, 2002.

unaware that Davenport met with defendants' employees and conducted his own investigation before deciding to prosecute plaintiff.

II. DISCUSSION

Plaintiff argues that further discovery is appropriate in light of State's Attorney Davenport's affidavit provided in support of defendants' motion for summary judgment. Defendants respond that plaintiff knew of State's Attorney Davenport involvement from a prior suit, thus their failure to identify him in interrogatories does not require further discovery.

A. Standard of Review

A party requesting further discovery pursuant to FED. R. CIV. P. 56(f) must file an affidavit detailing (1) particular facts sought and the manner in which they are to be obtained, (2) how those facts would establish a genuine issue of material fact, (3) efforts undertaken to obtain those facts and (4) why the efforts were unsuccessful. *Hudson River Sloop Clearwater, Inc. v. Dep't of Navy*, 891 F.2d 414, 422 (2d Cir. 1989). The movant must establish that the material sought is germane to the defense and is neither cumulative nor speculative. *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1138 (2d Cir. 1994). A motion accompanied by a proper affidavit need not be granted if the request is premised on speculation of what may be discovered. *Id.*

B. Analysis

A continuance for purposes of deposing State's Attorney Davenport is justified under the circumstances. Plaintiff alleges that defendants have submitted his affidavit seeking summary judgment on the malicious prosecution claim. Defendants are not liable for malicious prosecution if they did not initiate the criminal prosecution, *see McHale v. W.B.S. Corp.*, 187 Conn. 444, 447, 446 A.2d 815

(1982), thus an affidavit manifesting that the prosecutor had a more significant role than anticipated is relevant to a determination of defendants' liability. Considering the content of the affidavit, plaintiff's inquiry into the affiant's role in the prosecution is germane to such a determination. *See Paddington Partners*, 34 F.3d at 1138. The motion for a continuance is granted

III. CONCLUSION

Plaintiff's motion for continuance (Doc. 37) is **granted**. Plaintiff is granted a continuance until March 18, 2002 for purposes of deposing Assistant State's Attorney John Davenport. Plaintiff may then serve a supplement to his motion in opposition to defendants' motion for summary judgment on defendants by March 22, 2002, which will then file their opposition and any reply thereto by March 29, 2002.

SO ORDERED.

Dated at New Haven, Connecticut, January __, 2002.

Peter C. Dorsey
United States District Judge