

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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LUIS SANTIAGO : 3:05 CV 405 (JBA)
 :
 :
V. :
 :
OWENS-ILLINOIS, INC. AND :
CONTINENTAL AFA DISPENSING CO. :
AND CONTINENTAL DISPENSING CO. :
d/b/a CONTINENTAL SPRAYERS : DATE: MAY 8, 2006
INTERNATIONAL, INC. :
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RULING ON DEFENDANT OWENS-ILLINOIS'S MOTION TO COMPEL

On March 7, 2005, defendants Owens-Illinois, Inc. ["defendant OI"], Continental AFA Dispensing Company and Continental AFA Dispensing Company d/b/a Continental Sprayer International, Inc. [collectively "defendant Continental"] removed this action filed by plaintiff Luis Santiago in the Superior Court, Judicial District of Fairfield at Bridgeport, Connecticut on February 1, 2005. (Dkt. #1). On March 16, 2006, plaintiff filed his Amended Complaint in which plaintiff alleges race and age discrimination in violation of Connecticut General Statute §§ 46-60(a)(1) and 46a-60(a)(5) (Count One); negligent misrepresentation (Count Two); and breach of contract (Count Three) by defendants, resulting from the sale of defendant OI's manufacturing facility to defendant Continental. (Dkt. #84; see Dkts. ##49 & 82). On March 24, 2006, defendant Continental filed its Answer to plaintiff's Amended Complaint, followed six days later by defendant OI's Answer. (Dkts. ##87 & 89).

On July 14, 2005, United States District Judge Janet Bond Arterton referred this case to this Magistrate Judge for purposes of supervising discovery. (Dkts. ##31-32).¹ After

¹Familiarity with this Magistrate Judge's Rulings on Plaintiff's Motions to Compel, filed March 17, 2006 (Dkt. #85) and April 28, 2006 (Dkt. #95), is presumed.

several extensions of the discovery deadline, discovery is now scheduled to close on May 19, 2006. (Dkt. #83; see also Dkts. ##2, 34 & 77).

On March 30, 2006, defendant OI² filed the pending Motion to Compel Responses to OI's Second Demand for Production of Documents (Dkt. #88).³ On April 20, 2006, plaintiff filed his brief in opposition. (Dkt. #93).⁴ Fourteen days later, defendant OI filed its reply brief. (Dkt. #96).

For the reasons stated below, defendant OI's Motion to Compel (Dkt. #88) is denied.

I. FACTUAL BACKGROUND

On August 24, 2005, defendant served on plaintiff its First Set of Interrogatories (Dkt. #88, Exh. B), in response to which plaintiff moved for and was granted an extension of time until September 23, 2005 to respond. (See Dkts. ##36-37). On October 28, 2005, defendant moved, in part, to compel plaintiff's responses to this set of requests (see Dkt. #44), which this Magistrate Judge granted, absent plaintiff's objection, ordering plaintiff to respond to defendant's requests on or before December 19, 2005. (Dkt. #48). Defendant received plaintiff's responses on December 20, 2005. (See Dkt. #88, Exh. C). Thereafter,

²This Ruling involves defendant OI only, and not defendant Continental. Accordingly, from henceforth, this Court's reference to defendant is for defendant OI only.

³Attached to defendant OI's motion (Dkt. # 88) is an affidavit of defense counsel, sworn to March 30, 2006, to which the following six exhibits are attached: copy of plaintiff's Amended Complaint, filed March 16, 2006 (Exh. A); copy of excerpts from OI's First Set of Interrogatories and Initial Demand for Production of Documents, dated August 23, 2005 (Exh. B); copy of excerpts of plaintiff's Notice of Compliance and Responses to OI's First Set of Interrogatories, dated December 16, 2005 (Exh. C); copy of excerpts from plaintiff's deposition transcript, taken on January 24, 2006 ["Plaintiff's Depo."] (Exh. D); copy of OI's Second Demand for Production of Documents, dated February 10, 2006 (Exh. E); and copy of plaintiff's Notice of Filing Objections to Defendant's Demand for Production of Documents, dated February 13, 2006 (Exh. F). A draft of a proposed Order is also attached to defendant's motion.

⁴Plaintiff also manually filed (Dkt. #94) as Exhibit A another copy of plaintiff's Notice for Filing Objections to Defendant's Demand for Production of Documents, dated February 13, 2006.

on January 24, 2006, plaintiff was deposed. (See Dkt. #88, Exh. D). As a result of plaintiff's deposition testimony, on February 10, 2006, defendant served plaintiff with a Second Demand for Production of Documents (Dkt. #88, Exh. E), concerning plaintiff's divorce action, to which plaintiff objected on February 13, 2006. (Dkt. #88, Exh. F; Dkt. #94, Exh. A). Thereafter, on March 30, 2006, defendant filed the pending Motion to Compel on grounds that plaintiff should be compelled to respond to defendant's Second Request for Production of Documents as plaintiff's divorce proceeding is relevant to the claims and defenses in this action, in that plaintiff has alleged in his Amended Complaint that "he has lost and will continue to lose earnings and benefits, . . . [and] he has lost and will continue to suffer from humiliation and severe physical and emotional injuries and distress." (Dkt. #88, at 5-7; see Dkt. #88, Exh. A; Dkt. #84, ¶ 11).

II. DISCUSSION

The Federal Rules of Civil Procedure provide for liberal discovery, such that discovery extends to, "any matter not privileged, that is relevant to the claim or defense of any party. . . ." FED. R. CIV. P. 26(b)(1); see Maresco v. Evans Chemetics, Div. of W.R. Grace & Co., 964 F.2d 106, 114 (2d Cir. 1992). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." FED. R. CIV. P. 26(b)(1).

In Demand No. 1 of defendant's Second Demand for Production of Documents, defendant seeks "[a]ny and all documents relating to [plaintiff's] divorce proceedings," including financial affidavits, the Separation Agreement, the Judgment of Dissolution of Marriage, and the Judgment File. (Dkt. #88, Exh. E, at 7). Plaintiff objects to such request on grounds that the documents are not reasonably calculated to lead to the discovery of

admissible evidence, and the request is overly broad and burdensome and "not related to the issues raised in the instant action including the [p]laintiff's wrongful discharge from employment on the basis of race and age and for [plaintiff's claim of] negligent misrepresentation." (Dkt. #88, Exh. F; Dkt. #94, Exh. A).

According to defendant, the documents relating to plaintiff's divorce proceeding are relevant in order for defendant to defend itself against plaintiff's allegation of emotional distress in his Amended Complaint and plaintiff's claim that defendant improperly refused to change the beneficiary designation on his pension. (Dkt. #88, at 5-6; Dkt. #96, at 2-3). Plaintiff counters that his claims against defendant arise from plaintiff's alleged wrongful discharge, not from any claim that defendant failed to change a beneficiary designation on his pension. (Dkt. #93, at 3). Moreover, according to plaintiff, plaintiff has not put his "medical condition" into issue and the financial affidavits, the Separation Agreement, Judgment of Dissolution of Marriage and the divorce Judgment File have nothing to do with plaintiff's emotional distress claim which arises from plaintiff's wrongful discharge. (Id. at 4).

As stated above, plaintiff alleges in his Amended Complaint that he

has lost and will continue to lose earnings and benefits, his earning capacity has been substantially impaired, he has lost and will continue to suffer from humiliation and severe physical and emotional injuries and distress, he has and will continue to incur litigation expenses and attorney's fees and the quality of his life has been substantially diminished, all to his loss and detriment.

(Dkt. #84, ¶ 11). During his deposition, plaintiff testified that he was given thirty days notice of his termination and he could "remember specifically not being able to make important decisions" right after his termination, and as a result, plaintiff made "bad decisions . . . because [he] was under such stress[,] " including the decision to include his "ex-wife on

the pension." (Plaintiff's Depo. at 21, 78, 132). Plaintiff also testified that at the time of his termination he was "legally" still married. (Plaintiff's Depo. at 161). However, plaintiff vacillated in his testimony between averring that he was divorced when he made the final pension calculation, and that he made his pension election before he got divorced, though plaintiff admitted that his final benefit calculation includes his wife as his beneficiary. (Plaintiff's Depo. at 161-62). Plaintiff further testified that after his divorce was final, his "ex-wife had signed forms that she had no right to the part of the pension" and his attorney asked defendant to make the changes to his pension election but defendant refused. (Plaintiff's Depo. at 159).

Despite the content of plaintiff's deposition testimony, plaintiff has not asserted a claim against defendant arising from defendant's alleged failure to change the beneficiary named in plaintiff's pension documents. Accordingly, discovery of plaintiff's divorce documents on grounds that such information is relevant for defendant to defend itself against plaintiff's claim that defendant improperly refused to change the beneficiary designation on his pension (see Dkt. #88, at 5-6), is improper as no such legal claim has been asserted in plaintiff's Amended Complaint. Moreover, regardless of whether plaintiff has put his medical condition at issue in this case through his assertion of a claim for emotional distress, the documents defendant seeks, namely, the financial affidavits, the Separation Agreement, the Judgment of Dissolution of Marriage, and the Judgment File from plaintiff's divorce proceeding are not reasonably calculated to reveal evidence of emotional distress as such documents will not evidence plaintiff's mental state at the time of the divorce, but will rather reveal details not related to plaintiff's claims. In addition, these specific documents are a matter of public record at the Superior Court, and in all likelihood,

copies can be obtained by defense counsel. (See also Plaintiff's Depo. at 160-63).

III. CONCLUSION

Accordingly, for the reasons stated above, defendant's Motion to Compel (Dkt. #88) is denied.⁵

This is not a Recommended Ruling but a Ruling on discovery, the standard of review of which is specified in 28 U.S.C. § 636; FED. R. CIV. P. 6(a), 6(e) & 72; and Rule 72.2 of the Local Rules for United States Magistrate Judges. As such, it is an order of the Court unless reversed or modified by the District Judge upon timely made objection.

See 28 U.S.C. § 636(b)(**written objections to ruling must be filed within ten days after service of same**); FED. R. CIV. P. 6(a), 6(e) & 72; Rule 72.2 of the Local Rules for United States Magistrate Judges, United States District Court for the District of Connecticut; Small v. Secretary, H&HS, 892 F.2d. 15, 16 (2d Cir. 1989)(**failure to file timely objection to Magistrate Judge's recommended ruling may preclude further appeal to Second Circuit**).

Dated at New Haven, Connecticut, this 8th day of May, 2006.

_____/s/_____
Joan Glazer Margolis
United States Magistrate Judge

⁵As offered in this Court's previous discovery rulings (see Dkt. #85, at 6, n.8 & Dkt. #95, at 8, n.5), if either counsel believes that a settlement conference would be productive, he or she should contact Chambers.