Nude Pics Fair Game In Titan Capital Sexual Harassment Row

By **Pete Brush**

Law360, New York (January 23, 2014, 5:59 PM ET) -- A New York state appeals court on Thursday rejected broad discovery by Titan Capital Group LLC into the online profiles of two former receptionists suing the company for sexual harassment, and allowed lewd images to be placed into evidence on behalf of the plaintiffs.

A CD containing naked pictures of the wife of Titan Capital principal Russell Abrams, which plaintiffs Danielle Pecile and Cristina Culicea claim they were tricked into viewing by Abrams, was properly before the court, the Appellate Division's First Department ruled, upholding New York Supreme Court Judge Eileen A. Rakower on that score.

"The motion court properly directed the exchange of the CD containing those alleged photographs, since they are material and necessary to the prosecution of this action," the panel said, adding that "we direct that the CD not be disseminated to anyone unconnected to the litigation."

But, while the First Department rejected as overbroad the defendants' bid to look at "plaintiffs' entire cellphone and text message records, educational histories post-high school and complete employment files," it did modify the trial court's holding to permit the defendants' limited discovery of plaintiffs' wage and job title history as well as Culicea's educational history.

"Defendants' demands for plaintiffs' employment histories should be granted to the limited extent of providing plaintiffs' past wage histories and names of positions held, since plaintiffs have only placed their work histories at issue in the context of their financial worth as employees," the court held.

Information about Culicea's law school enrollment dates also could be disclosed since her resignation letter from the hedge fund "placed her academic status in issue," according to the First Department.

The plaintiffs will not, however, have to provide access to their social media sites or to any information about the details of what court papers characterize as a youthful offense.

As to the websites, the defendants "have failed to offer any proper basis for the disclosure, relying only on vague and generalized assertions that the information might contradict or conflict with plaintiffs' claims of emotional distress," the First Department said. As to information about a youthful offense, the First Department said it was not relevant.

"We view this as a victory in discovery, not only for us but for other workers who are engaged in litigation with their former employers," Wigdor LLP partner David E. Gottlieb, an attorney for the plaintiffs, said. "They used a common tactic of trying to engage in intrusive

discovery and the court rejected that."

The plaintiffs claim they were routinely subjected to a hostile and degrading work environment.

"[Abrams] forced Ms. Pecile to view nude pictures of his wife, Sandra Abrams, in the same manner he had previously perfected with Ms. Culicea," the suit said. "[Abrams] gave Ms. Pecile two CDs and told her that she had to develop photographs from the CDs at the photo kiosk at a nearby pharmacy."

The plaintiffs also initially targeted Epstein Becker Green in the suit, claiming it "improperly used the judicial system both herein, and in the past, as a means to retaliate against true victims of sexual harassment by asserting baseless and frivolous 'preemptive' actions against them."

But in June 2011, Judge Rakower threw out their claims against the law firm, finding them "insufficient to form a cause of action."

The plaintiffs are represented by David E. Gottlieb of Wigdor LLP.

Titan Capital is represented by Christopher A. Seacord of Gordon & Rees LLP.

The case is Pecile et al. v. Titan Capital et al., case number 11544N, in the Supreme Court of the State of New York, Appellate Division, First Department.

--Editing by Andrew Park.