

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

THE BOSTON GLOBE LLC

Plaintiff,

v.

HILARY SARGENT,

Defendant.

Civil Action No.: 1884CV01606 *B*

**REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION**

The Boston Globe is investigating a claim by Hilary Sargent that she was the recipient of harassing messages by the Globe's Editor, Brian McGrory, while she was employed by the Globe. Though that investigation started with a Twitter post of a single text message exchange, Sargent now broadens the accusation, claiming that the posted message is but one "example" of "inappropriate and sexually suggestive" messages that McGrory sent her "during the time I was employed at the Globe." (Sargent Aff. ¶ 7.) All that the Globe has sought from Sargent, and all it seeks now, is to hear her side of that story. The Globe has done all of the investigation it can without her, both internally and through an outside investigator; it has interviewed McGrory multiple times, and reviewed every available document, email, and text message. For now, at least, one critical step remains: hearing from the complainant herself. Though she admits in her opposition brief that she must cooperate with the Globe's investigation, the Globe is still waiting to speak with her and to obtain any relevant information she may have. (Declaration of Claudia Henderson ¶ 3 ("Henderson Decl."))

Sargent begins by arguing that she is only obligated to cooperate about matters that arose during her employment, and that the Globe cannot show that the text messages she posted to Twitter were sent during her employment. (Opp. at 1, 7–8.) Leaving aside that that is the very first question the Globe asked her, which she refused until now to answer, and leaving aside her unambiguous suggestion on Twitter that the exchange occurred when she was an employee, she has now claimed that McGrory sent her multiple inappropriate messages during her employment. If there ever were any question about her possession of information relevant to the Globe’s investigation, that question has been answered.

Next, Sargent insists that she has been cooperating. For this, she points to two emails she sent the Globe last year, which make no mention of either McGrory or her current allegations, and she ignores her unwillingness even to answer the simple question of whether the text message she posted was sent during her employment. Before there was any discussion or prospect of litigation, the Globe reached out to her, on the same day as her tweet, to ask that one simple question: the date of the text exchange she had posted. (Compl. ¶ 19.) When Sargent called back the next day, rather than answering substantively in any way, she decided to hang up the phone. (*Id.*) She has subsequently refused—and, through two different counsel, continues to refuse—to answer that question. Instead, she chose to answer that question *for the first time* in her Opposition, 13 days after she was first asked to provide that information. That is hardly the “reasonable cooperation” her separation agreement obligates her to provide. Sargent now says that she does not know and cannot reconstruct the date. That statement alone is more cooperation than the Globe has had from her so far.

Sargent next insists that any harm to the Globe from her public accusations, and her refusal to discuss them as part of the investigation, is self-inflicted, because the Globe has

covered the controversy. As Sargent, a former editor at boston.com, surely knows, the editorial side of the Globe conducts its newsgathering independent of its business side, and the pages of the Globe are not a mouthpiece for the Human Resources Department or the General Counsel's Office. (Henderson Decl. ¶ 5.) In any case, the Globe is not alone in its coverage; days before any litigation was filed, Sargent's public claims of harassment by the Globe's most senior editor received extensive national press attention. (See Exs. 2–20 to Henderson Decl.) And it was Sargent herself, not the business side of the Globe, who leaked the draft complaint to a Globe reporter. (See Ex. 1 to Henderson Decl.) (“The former editor, Hilary Sargent, told a Globe reporter that the newspaper's lawyers have sent her a draft of a Superior Court lawsuit, which names her as a defendant.”)

More fundamentally, the harm to the Globe from Sargent's refusal to discuss her allegations arises less from press coverage than from her frustration of the Globe's ability to carry out its legal obligation to investigate claims of harassment.¹ The Globe has that obligation as a matter of law, as a matter of principle, and as a matter of responsibility to its other employees. (Henderson Decl. ¶ 4.) Money damages—which the Globe does not seek—cannot compensate for the inability to get to the truth of these claims. Sargent argues that the Globe does not need her cooperation because it can instead interview McGrory, and get the text exchanges from him. Needless to say, no harassment investigation is complete without evidence from the complainant. She may possess facts that no other witness has—her understanding of

¹ See, e.g., *Gyulakian v. Lexus of Watertown, Inc.*, 475 Mass. 290, 300 (2016) (An employer's being on notice of a sexual harassment complaint “trigger[s] an obligation to investigate and take remedial action if the complaint proves to be well founded”); *College-Town, Div. of Interco, Inc. v. Massachusetts Comm'n Against Discrimination*, 400 Mass. 156, 167 (1987) (“an employer who is notified of sexual harassment in the workplace and fails to take adequate remedial action violates G.L. c. 151B, § 4”).

her relationship with McGrory, for example²—which can only come from her. And she may well possess information—emails and text messages—that the Globe has been unable to obtain from McGrory. The sole available remedy is also a very simple one: requiring Sargent to be interviewed and to provide relevant information—the same thing the Globe, or any employer, would ask of any person claiming to have been a victim of harassment by a fellow employee.

The ludicrous notion that the Globe has filed this lawsuit “to chill Ms. Sargent from further speaking out,” Opp. at 2, turns that goal on its head: the Globe wants to hear more from Sargent, not less. That has been so from the beginning. The very purpose of the requested injunction is to *require* her to provide the information about the McGrory allegations that she has *refused* to provide. The Globe did not file this action preemptively, to the extent that matters. It first tried to obtain her cooperation with a simple telephone call, asking whether the exchange she posted had occurred during her employment. (Compl. ¶ 19.) She hung up rather than answer that question. (*Id.*) The Globe next heard from her attorney, who made clear that she would not cooperate. Even then, the Globe did not file suit; it sent her lawyer a draft complaint, in the hope that litigation could be avoided and her cooperation obtained voluntarily, as she had promised to do in her Separation Agreement. (*See* Ex. 1 to Henderson Decl.) Only after these efforts had all been tried and failed did the Globe reluctantly bring this action. And it did so solely to be sure that it had the best possible information about these allegations, so as to make the best possible decisions about its employees.

² *See, e.g., Trinh v. Gentle Communications, LLC*, 71 Mass. App. Ct. 368, 377 (Mass. App. 2008) (“At least some inquiry into the plaintiff’s workplace behavior was relevant to the investigation, as determining whether the conduct at issue was unwelcome is a key component of a claim under the sexual harassment statute.”); *Beaupre v. Cliff Smith Associates*, 50 Mass. App. Ct. 480, 488 (Mass. App. 2000) (describing proof that alleged sexual conduct was unwelcome as a key element of a harassment claim).

The harm to the Globe from the frustration of its investigation far outweighs the harm claimed by Sargent. She claims that cooperation would be a burden because she does not have the technical ability or resources to retrieve the messages in question. That is another fact that the Globe would have welcomed knowing before this action was filed, but that Sargent did not see fit to share. The Globe has not insisted that Sargent undertake any expensive or difficult measures to retrieve messages, because she did not tell the Globe about these difficulties, and there is no request now that she shoulder the expense of retaining a vendor, as she mentions in her affidavit (Sargent Aff. ¶ 9). Similarly, Sargent has not suffered any harm to her First Amendment rights, *see* Opp. at 11–12; she remains free to say publicly whatever she chooses. The Globe has never suggested otherwise. The Globe merely wants her to supplement whatever public statements she chooses to make with reasonable cooperation with the Globe’s investigation. She claims a right “to speak against McGrory” that the Globe would “destroy,” *id.* at 11, but of course giving an interview to the Globe’s investigator does nothing whatsoever to prevent her from speaking in any other forum. Again: the Globe wants to hear the details of her allegations, not to silence her.

CONCLUSION

The Globe’s motion for a preliminary injunction should be granted and an order issued compelling her specific performance with the cooperation clause of her Separation Agreement.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record by electronic mail, this 6th day of June, 2018.



Mark W. Batten

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HILARY SARGENT,

Defendant.

Civil Action No.: 1884CV0616

DECLARATION OF CLAUDIA HENDERSON

I, Claudia Henderson, hereby state as follows:

1. I am employed as the Chief Human Resources Officer of Boston Globe Media Partners, LLC, an entity for which The Boston Globe LLC (the "Globe") is a wholly-owned subsidiary. I have been employed in this capacity since March 5, 2018. I make this affidavit based on my personal knowledge.

2. Since first learning of the matter raised by Hilary Sargent on May 20, 2018, the Globe has moved as quickly as possible to investigate. This investigation has included interviewing Brian McGrory, reviewing emails and text messages in McGrory's possession, and hiring outside counsel to do the same.

3. While the Globe has made substantial progress on its investigation, it has still as of yet been unable to either speak with Sargent or obtain relevant information she might have in her possession.

4. I have been a human resources professional for 17 years. In my experience, when conducting an investigation, it is crucial to hear directly from the allegedly aggrieved employee so as to understand his or her perspective and therefore be able to fully investigate his or her concerns.

5. From the date that Sargent first tweeted on May 20, 2018, the Globe has abided by the customary separation between the newsroom and the business side of the company regarding newsgathering. This separation is standard in the media industry, and the Globe has scrupulously adhered to it in this situation. Contrary to the assertion now made by Sargent that the Globe is "propagating" this story, the newsroom was provided with no information for publication from the business side apart from (i) confirmation by Globe General Counsel Dan Krockmalnic that no complaint had been filed as of the date of publication of the article as reported in Paragraph 6 below, and (ii) the public statements made by Globe representative Jane Bowman in response to questions submitted by the newsroom to the business side.

6. Attached hereto as Exhibit 1 is a true and accurate copy of an article published in the Globe on May 24, 2018 titled "Globe Investigating Allegation Top Editor Sent Inappropriate Text."

7. Attached hereto as Exhibits 2-20 are true and accurate copies of articles published by various news outlets between May 20, 2018 and the date this action commenced on May 24, 2018.

Signed under the pains and penalties of perjury this 6th day of June, 2018.



Claudia Henderson

