

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
EDWARD BARTON HUBBUCH,

Plaintiff,

-against-

SUMMONS

NYP HOLDINGS, INC. d/b/a NEW YORK POST,

Defendant.

-----X

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on Plaintiff’s attorneys within 20 days after the service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Plaintiff designates New York County as the place of trial. The basis of venue is Defendants’ principal place of business.

Defendant’s Address:

Plaintiff’s Attorneys:

NYP Holdings Inc. d/b/a New York Post
1211 Avenue of the Americas
New York, NY 10036

Law Offices of Scott A. Lucas
250 Park Avenue
20th Floor
New York, NY 10177
(212) 983-6000

NOTICE: This action is to recover the damages and such other relief as may be appropriate based on the violations alleged in the annexed Verified Complaint.

Upon your failure to appear, judgment will be taken against you at an inquest for damages and such other relief as may be appropriate.

Dated: New York, New York
February 7, 2017

Law Offices of Scott A. Lucas
250 Park Avenue
20th Floor
New York, New York 10177
(212) 983-6000
Attorneys for Plaintiff Edward Barton Hubbuch



By _____
Scott A. Lucas

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
EDWARD BARTON HUBBUCH,

Plaintiff,

-against-

**VERIFIED
COMPLAINT**

NYP HOLDINGS, INC. d/b/a NEW YORK POST,

Defendant.

-----X

Plaintiff Edward Barton Hubbuch, also known as Bart Hubbuch (“Plaintiff”), by his attorneys, the Law Offices of Scott A. Lucas, alleges as follows for his Verified Complaint against NYP Holdings Inc. d/b/a New York Post (“the Post”):

Introduction

1. The case is about a well-respected sportswriter and long-time Post employee who was fired for sending a tweet—*on his own time, from his own computer, and from his own home*—about his negative personal views concerning Donald Trump’s Presidency. The tweet read “12/7/41. 9/11/01. 1/20/17.”

2. Firing Plaintiff for expressing his personal views off-premises and on his own time was a blatant violation of New York Labor Law § 201-d, which provides, in pertinent part,

Unless otherwise provided by law, it shall be unlawful for any employer ... to discharge from employment ... an individual ... because of: *** (c) an individual's legal recreational activities outside work hours, off of the employer's premises and without use of the employer's equipment or other property.

See Cavanaugh v. Doherty, 243 A.D.2d 92, 100 (3d Dep't 1998) (“[H]aving alleged that she was terminated as a result of a discussion during recreational activities outside of the workplace in which her political affiliations became an issue, she has also stated a cause of action for a violation of Labor Law § 201-d.”).

Summary of Case

3. Not known for its sensitivity, the Post regularly exploits tragedy, violence and death to sell news. It also pushes the bounds of what is considered appropriate news coverage.

4. Alluding to the Post's free-wheeling non-conformist style of journalism, Plaintiff's first supervisor, Col Allan, publicly declared in 2007 that “*We like being pirates.*”

5. In keeping with its tabloid style, the Post has sensationalized the actual or perceived faults of democratically elected leaders by running covers showing them dressed up like tyrants responsible for murder, torture and repression (e.g., President Obama dressed like Cuban dictator Fidel Castro, and

Mayor de Blasio dressed up like Communist dictator Mao Zedong, history's worst mass murderer).

6. Despite its exploitation of tragedy to sell newspapers and its shift to tabloid journalism, the Post, in firing Plaintiff, suggested that Plaintiff's *off-duty* tweet expressing his *personal* opinion about President Trump—which was based on Plaintiff's concern for the country's well-being and national security, and not by any desire to make money—somehow constituted misconduct warranting termination.

7. The Post could not have genuinely viewed Plaintiff's anti-Trump tweet as “misconduct.” This is so for eight reasons.

8. First, Plaintiff's personal belief about President Trump was expressed as part of his tweeting hobby outside of work, on his own time, under his own name, in his own home, from his own Twitter feed, and without the use of any of the Post's equipment or other property.

9. Second, though not elegantly stated, Plaintiff's tweet was rooted in concerns expressed by the Post's founder, Alexander Hamilton, who warned that “*of those men who have overturned the liberties of republics the greatest number have begun their career, by paying an obsequious court to the people; commencing Demagogues, and ending Tyrants.*” Federalist No. 1.

10. Third, the concern expressed in Plaintiff's tweet has been expressed in starker terms by mainstream publications. *See, e.g.*, the December 9, 2015 cover of the Daily News comparing Trump to the Holocaust and depicting him beheading the Statue of Liberty (<http://www.nydailynews.com/news/new-york-daily-news-front-pages-presidential-electiongallery1.2512941?pmSlide=1.2474178>).

11. Fourth, the concern underlying Plaintiff's tweet is a nonpartisan concern shared by many of the Nation's top national security experts. *See, e.g.*, the August 2016 letter from 50 of the Nation's most senior Republican national security officials concluding that Trump "*would be the most reckless President in American history*" and "*would put at risk our country's national security and well-being.*" (<https://assets.documentcloud.org/documents/3007589/Nationalsecurityletter.pdf>).

12. Fifth, on several occasions throughout his employment Plaintiff asked his high-ranking supervisor if the Post had a written social media policy, and was never told that any such policy existed.

13. Sixth, the Post impliedly represented that Plaintiff would not be fired if he apologized for the tweet, and he did apologize.

14. Seventh, Post readers don't need, demand, or expect "safe spaces," or to be sheltered from controversial views.

15. Eighth, the Post's editorial content reflects a core belief that people shouldn't be fired for expressing a view that doesn't sit well with higher-ups.

16. For example, when NYU put untenured professor Michael Rectenwald on paid leave after he called Halloween restrictions "*totalitarian*" costume surveillance and referred to an NYU "diversity" group as a PC "*Gestapo*," the Post didn't condemn him for invoking the horrors of Nazi Germany. Instead, it ran an editorial supporting him.

17. Likewise, when ESPN fired baseball legend Curt Schilling and apparently removed him from a documentary for sending controversial tweets, the Post's Editorial Board wrote that it was "petty and childish" for ESPN to fire him, and that removing him from the documentary was "*full[y] Stalinist*," thus likening ESPN's conduct to that of history's second worst mass murderer.

18. The only real differences between the Post's comparing ESPN's treatment of Schilling to the evils of Stalin and Plaintiff's comparing Trump's becoming President to Pearl Harbor and 9/11 are that:

- (a) Unlike the Post's ESPN-Stalin comparison, Plaintiff's personal belief about Trump was expressed as part of his tweeting hobby outside of work, on his own time, under his own name, in his own home, from his own Twitter feed, and without the use of any of the Post's equipment or other property.
- (b) Whereas the Post never apologized for its ESPN-Stalin comparison, Plaintiff promptly apologized for his off-duty Trump-Pearl Harbor/9/11 comparison.

- (c) Whereas the Post presumably congratulated its Editorial Board for its ESPN-Stalin comparison, it fired Plaintiff for his off-duty Trump-Pearl Harbor/9/11 comparison.
- (d) Whereas the Post's ESPN-Stalin comparison concerned the fairness of a sports channel's decisions, Plaintiff's tweet concerned a situation with far-reaching and potentially dire consequences, namely, the character and fitness of the person in charge of the Executive branch, the military, and the U.S. nuclear arsenal.

**The decision to fire Plaintiff
was also tainted by a conflict of interest**

19. Rupert Murdoch is the Post's Chairman, and controls the Post through his family's controlling interest in the Post's parent company.

20. The Post is highly prized by Murdoch, and Murdoch is actively involved in setting its daily direction.

21. However, upon information and belief, the Post runs at a substantial operating loss (over \$100 million per year).

22. Upon information and belief, the Post does not exist to generate a profit; instead, it is operated in a manner designed to serve the ends of Murdoch and his other business interests, such as 21st Century Fox.

23. Upon information and belief, in the words of Murdoch biographer Michael Wolff, the Post has been "Murdoch's money-losing personal instrument for all manner of trouble-making, political power-brokering, and punishment and reward."

24. Trump is an avid reader of the Post and often expresses contempt for writers who criticize him.

25. As President, Trump can serve Murdoch and 21st Century Fox's interest in blocking the AT&T-Time Warner merger. And he can just as easily harm that interest.

26. That gives Murdoch a strong incentive to please Trump and to avoid upsetting him.

27. Consistent with that strong incentive, the Post's coverage of Trump shifted in favor of Trump in the closing days of the Republican primary, when Trump's primary victory was all but guaranteed. Likewise, the Post's coverage of Trump has been more positive and less negative since Trump won the general election.

28. Following the Post's favorable shift in coverage of Trump, Trump, upon information and belief based on reports in the Financial Times and other reputable news sources, asked Murdoch to recommend candidates to run the Federal Communications Commission, which regulates the media industry and can scrutinize the AT&T-Time Warner merger.

29. Considering Murdoch's conflicting interests and the Post's tabloid journalism and exploitation of tragedy to sell news, the decision to fire Plaintiff for his anti-Trump tweet can only rationally be explained as having been influenced by

Murdoch's interest in pleasing Trump and not upsetting him, now that Trump has the power to either directly benefit or harm Murdoch and 21st Century Fox.

30. While the firing of Plaintiff for his off-duty anti-Trump tweet violated Labor Law § 201-d in any event, and betrayed the Post's core belief that people should not be punished for expressing unwelcome personal views on their own time, Murdoch's conflicting interest in pleasing Trump and not upsetting him casts even more doubt on the Post's purported belief that Plaintiff's personal off-duty tweet somehow constituted misconduct warranting termination.

The Parties, Jurisdiction & Venue

31. Plaintiff Edward Barton Hubbuch is an individual residing in Kings County, New York.

32. NYP Holdings, Inc. d/b/a the New York Post (the "Post") is a corporation located at 1211 Avenue of the Americas in Manhattan.

33. This Court has subject matter jurisdiction under CPLR § 301, *et seq.*

34. Venue is proper in New York County under, *inter alia*, CPLR §§ 503(a) and 509 based on the Post's principal place of business.

Facts

35. The Complaint's preceding allegations are incorporated by reference.

Plaintiff was a well-respected employee with a very good work record at the Post

36. Plaintiff was employed by the Post as a sportswriter and occasional sports columnist for more than nine years, from October 13, 2007 to January 27, 2017, when the Post unexpectedly terminated his employment.

37. For the last seven years of his employment, Plaintiff was an NFL beat writer and occasional columnist on NFL matters.

38. Throughout his 9+ years of employment with the Post, Plaintiff did his job well and received very good performance reviews and merit pay increases each year.

Plaintiff's social media hobby

39. One of Plaintiff's favorite personal hobbies is using social media to build social relations.

40. Plaintiff does so by writing his thoughts about myriad personal, cultural and socio-political topics in tersely-worded statements or "tweets," and transmitting them to his "followers" (people who have expressed an interest in what Plaintiff has to say) on Twitter, a social media platform used by Plaintiff to

build social relations with other people who share similar personal, cultural and socio-political interests.

41. Plaintiff is an avid “tweeter” who has composed thousands of “tweets”.

42. Plaintiff’s “tweeting” hobby helped relieve the stress of working for a newspaper with many views Plaintiff strongly disagrees with.

43. The Post’s writers and columnists were not required or expected to maintain social media accounts.

44. In the 2½ months between Trump’s election and inauguration, Plaintiff did not initiate and send any tweets, and the Post never indicated that he was expected to do so.

45. On several occasions during his employment, Plaintiff asked his supervisor, Chris Shaw, the Post’s Executive Sports Editor, if the Post had a written policy that applied to Plaintiff’s use of social media, and each time he did, Shaw declined to identify any such policy.

**Plaintiff is fired for expressing his concerns
about President Trump on his own time**

46. Plaintiff was and is deeply troubled by the election of Donald Trump.

47. On January 20, 2017, Plaintiff, using his own personal computer during non-work hours on his day off, composed and sent the following “tweet” from his home using his own Twitter feed: “12/7/41. 9/11/01. 1/20/17.”

48. About 15-20 minutes later, Plaintiff’s supervisor (Chris Shaw) called Plaintiff and told him, in words or substance, “What are you doing? You live in New York City. There are people even in here that want me to fire you. You’re going to take that down right now and apologize or I will fire you.”

49. Plaintiff said “OK, I will,” and Shaw hung up.

50. Plaintiff immediately deleted the tweet.

51. Plaintiff then posted the following apology: “My sincere apologies for comparing this day to 9/11. It was insensitive and wrong, and I shouldn’t have done it.”

52. About 10-30 minutes later, Plaintiff, without further prodding, tweeted another apology stating, “I have deeply held beliefs and feelings, and I let emotion get the best of me today. Again, my apologies to anyone I offended.”

53. The Post never stated or suggested that the apologies Plaintiff tweeted were insufficient.

54. During the week after the tweet Plaintiff carried out his normal work assignments without disruption. On January 27, 2017, one week after the tweet was sent, Plaintiff received his Super Bowl assignments for the following week.

55. Nevertheless, on January 27, 2017 at approximately 12:30 pm, Plaintiff's supervisor, Chris Shaw, called Plaintiff with the Post's Senior Director of HR (Melinda Goldman) on the line.

56. During that call, Shaw tried to compare Plaintiff's personal anti-Trump tweet to the Post's prior disapproval of a few of Plaintiff's responses to sports-related tweets sent over the course of Plaintiff's 9+ years of employment with the Post. Specifically, Shaw told Plaintiff in an apologetic tone, in words or substance, "We've talked to you about your tweeting before. This tweet was insensitive and outrageous, and therefore we are terminating you immediately."

57. Senior Director of HR Melinda Goldman added, in an apologetic tone, in words or substance, "I'm sorry this happened."

58. By unlawfully firing Plaintiff for his lawful off-duty recreational activity, the Post has taken away Plaintiff's ability to help support his family.

First Cause of Action

Violation of Labor Law § 201-d

59. The Complaint's preceding allegations are incorporated herein by reference.

60. Social media platforms help to create, maintain and develop social relationships.

61. Plaintiff's off-duty hobby of writing about matters of personal, cultural and socio-political interest and then sharing his personal writings with his Twitter "followers" was a lawful leisure-time activity for which Plaintiff received no compensation and which is generally engaged in for recreational purposes.

62. Labor Law § 201-d affords "protection [to employees'] social relationships" outside the context of employees who are dating, *State v. Wal-Mart Stores, Inc.*, 207 A.D.2d 150, 152 (3d Dep't 1995), and bars employers from firing employees due to their political views expressed on their own time outside of the workplace. *Cavanaugh v. Doherty, supra*, 243 A.D.2d 92, 100 (3d Dep't 1998).

63. Firing Plaintiff for his off-duty anti-Trump tweet represents a blatant violation of Labor Law § 201-d.

Plaintiff's Remedies

64. As a remedy for the Post's unlawful conduct, Plaintiff seeks all available damages, including lost wages and compensatory damages.

65. In addition, if a request for equitable relief does not preclude Plaintiff from a jury trial on the issue of liability and damages, then Plaintiff also requests appropriate equitable relief, including, but not necessarily limited to, reinstatement.

WHEREFORE, as a result of the foregoing, Plaintiff respectfully requests judgment in an amount to be determined at trial, together with such other and further relief as may be appropriate.

Dated: New York, New York
February 7, 2017

Law Offices of Scott A. Lucas
250 Park Avenue
20th Floor
New York, New York 10177
(212) 983-6000
Attorneys for Plaintiff Edward Barton Hubbuch



By _____
Scott A. Lucas

Plaintiff's Verification

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

Edward Barton Hubbuch, being duly sworn, deposes and says:

I am the Plaintiff in this action. I have read the foregoing Complaint and am familiar with the contents thereof. The same are true to my knowledge, and, to the extent pleaded on information and belief, are believed to be true.

Edward Barton Hubbuch

Sworn to before me on
February 7, 2017

Notary Public

SCOTT LUCAS
Notary Public, State of New York
No. 02LU5049081
Qualified in Kings County
Commission Expires September 5 2017