

Murray v. Ridersshare, Inc.

United States District Court for the Middle District of Florida, Orlando Division

May 12, 2023, Decided; May 12, 2023, Filed

Case No: 6:22-cv-2329-PGB-DCI

Reporter

2023 U.S. Dist. LEXIS 83388 *; 2023 WL 5966453

ADAM MURRAY, Plaintiff, v. RIDERSSHARE, INC., Defendant.

Alternative, Motion to Bifurcate Discovery (Doc. 27), and

4. Plaintiff's Response in Opposition (Doc. 28).

Counsel: [*1] For Adam Murray, individually and on behalf of all others similarly situated, Plaintiff: Avi Robert Kaufman, LEAD ATTORNEY, Kaufman P.A., Coral Gables, FL USA; Rachel Elizabeth Kaufman, Kaufman P.A., Miami, FL USA.

Upon due consideration, Defendant's Motion to Temporary Stay or, in the Alternative, Motion to Bifurcate Discovery and the related Renewed Motion for Protective Order are denied.

For Ridersshare, Inc., Defendant: Beth-Ann E. Krimsky, LEAD ATTORNEY, Greenspoon Marder, PA - Corporate, Ft Lauderdale, FL USA; Jamey Robert Campellone, Greenspoon Marder, PA, Fort Lauderdale, FL USA; Lawren Adrian Zann, Greenspoon Marder LLP, Fort Lauderdale, FL USA.

I. DISCUSSION [*2]

Defendant moves for the Court to stay the litigation because a bill is pending in the Florida Legislature which, if passed, would modify the FTSA to prohibit telephonic sales calls that use an automated telephone dialing system ("**ATDS**"). (Doc. 20, pp. 2-3). The proposed bill defines an ATDS as "equipment using a random or sequential number generator that stores or produces telephone numbers and dials the stored or produced telephone numbers." (*Id.* at p. 3). Defendant argues that the bill, if passed, will apply retroactively to July 1, 2021, including to any proceeding pending or commenced on or after that date. (*Id.*). Defendant contends the calls at issue do not satisfy the definition of an ATDS in the proposed bill. (*Id.* at p. 4). Alternatively, Defendant moves for the Court to bifurcate discovery into two phases: discovery on the merits and class discovery. (*Id.* at p. 5).

Judges: PAUL G. BYRON, UNITED STATES DISTRICT JUDGE.

Opinion by: PAUL G. BYRON

Opinion

ORDER

This cause is before the Court on the following:

1. Defendant's Motion to Temporary Stay or in the Alternative, Motion to Bifurcate Discovery (Doc. 20), and Notice of Supplemental Authority (Doc. 24);
2. Plaintiff's Response in Opposition (Doc. 22);
3. Defendant's Renewed Motion for Protective Order Staying Discovery Pending Ruling on Motion to Temporary Stay or in the

Plaintiff responds that the bill does not contain unequivocal language that the Legislature intends the amendment to apply retroactively.¹ (Doc. 22, p.

¹ Defendant's Notice of Supplemental Authority, consisting of an amendment to the proposed bill, makes clear that Florida Legislature intends the amendment of the FTSA to apply retroactively. But the

2). And even if the bill is meant to apply retroactively, such retroactive application would impair a vested right and thus would ultimately be considered unconstitutional. [*3] (*Id.*); See [Winter Haven v. Allen, 541 So.2d 128, 131 \(Fla. 2d DCA 1989\)](#).² Plaintiff argues that regardless of the constitutionality of retroactive application of the pending bill, its passage is not dispositive to the FTSA claims. The Court agrees with Plaintiff that Defendant has failed to demonstrate good cause to stay the litigation pending the potential passage of the 2023 Florida House Bill No. 761.³ And so the Defendant's motion to stay is denied.

As for bifurcation of discovery, the Court is routinely faced with requests to bifurcate discovery in class action litigation into discovery on the merits followed by class member discovery. The Court routinely denies such requests because of the potential for discovery to overlap both issues. The

fact that the Legislature intends the amendment to have retroactive effect merely raises the thornier question; that is, whether an amendment that retroactively impairs a substantive right, if vested, survives constitutional challenge.

²The Supreme Court of Florida has adopted a two-prong analysis for determining when a *substantive* statutory amendment should be retroactively applied:

Two interrelated inquiries arise when determining whether statutes should be retroactively applied. The first inquiry is one of statutory construction: whether there is clear evidence of legislative intent to apply the statute retroactively. See [Hassen v. State Farm Mut. Auto. Ins., 674 So.2d 106, 108 \(Fla. 1996\)](#); see also [Landgraf v. USI Film Prods., 511 U.S. 244, 280, 114 S. Ct. 1483, 128 L. Ed. 2d 229 \(1994\)](#). If the legislation clearly expresses an intent that it applies retroactively, then the second inquiry is whether retroactive application is constitutionally permissible. See [State Farm Mut. Auto. Ins. v. Laforet, 658 So.2d 55, 61 \(Fla. 1995\)](#).

Retroactive application of a civil statute ordinarily transgresses constitutional limitations on legislative power "if the statute impairs vested rights, creates new obligations, or imposes new penalties." See [State Farm Mut. Auto. Ins. Co. v. Laforet, 658 So.2d 55, 61 \(Fla. 1995\)](#). Even assuming the bill is passed, its constitutionality is in serious doubt.

³Plaintiff also argues the passage of House Bill No. 761 is not dispositive to the merits of the case. The Court need not address these points, since the Court finds the pendency of a bill is insufficient grounds to support a stay.

Court is not inclined to make an exception here. Accordingly, [*4] Defendant's Motion to Bifurcate is denied.

Having denied Defendant's Motion to Stay or Bifurcate, Defendant's Renewed Motion seeking the same relieve, including a protective order relative to discover, is denied.

II. CONCLUSION

For these reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Temporary Stay, or Bifurcate Discovery (Doc. 20) is **DENIED**, and
2. Defendant's Renewed Motion for Protective Order Staying Discovery Pending Ruling on the Motion to Temporary Stay, or Bifurcate Discovery (Doc. 27) is **DENIED**.

DONE AND ORDERED in Orlando, Florida on May 12, 2023.

/s/ Paul G. Byron

PAUL G. BYRON

UNITED STATES DISTRICT JUDGE

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