

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DEMOS PARNEROS,

Plaintiff and
Counterclaim Defendant,

v.

BARNES & NOBLE, INC.,

Defendant and
Counterclaim Plaintiff.

No. 1:18-cv-07834 (JGK)(GWG)

**DECLARATION OF
BRADLEY A. FEUER**

BRADLEY A. FEUER, under penalty of perjury, affirms and states as follows:

1. I am the General Counsel of Barnes & Noble, Inc. (“Barnes & Noble” or “the Company”), Defendant and Counterclaim Plaintiff in the above-captioned matter. I respectfully submit this Declaration in support of Barnes & Noble’s Memorandum of Law in Opposition to Plaintiff’s Motion to Compel.

2. On or about May 24, 2018, the Chief Financial Officer of the Company informed me that a female employee had complained to him that Plaintiff, Demos Parneros, who was the Company’s Chief Executive Officer (“CEO”) at the time, had sexually harassed her and had made her feel uncomfortable in his presence.

3. On that same day, I met with the female employee in my office to discuss her complaint of sexual harassment against Plaintiff.

4. I prepared notes documenting my meeting with the female employee so that I could render legal advice to the Company regarding its rights and obligations with respect to the alleged conduct by the CEO.

5. Given the sensitive nature of sexual harassment allegations against the CEO of the Company, and the possibility that an investigation into the allegations might lead to the involuntary “for cause” termination of the CEO, I was concerned and anticipated litigation as of the date I met with the female employee. First, I was concerned about the potential for claims being brought by the female employee against the Company and/or against the CEO. Additionally, I was concerned about the possibility of litigation by the CEO due to his contesting the basis for any possible “for cause” termination.

6. Because I anticipated possible litigation, on May 24, 2018, the same day I met with the female employee, I engaged outside litigation counsel, the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul, Weiss”), to advise the Company on potential litigation issues.

7. I led the investigation into the allegations of Plaintiff’s misconduct. Given that very serious allegations had been raised against the CEO of the Company, I decided that the investigation should be done by me and other senior executives at my direction. In addition, the female employee had specifically requested that Human Resources not be involved.

8. I did not consider this investigation a routine Human Resources investigation nor did I conduct it for business purposes. It was an investigation of the Company’s CEO, and therefore, was conducted at the highest level of the Company.

9. Shortly after meeting with the female employee on May 24, 2018, on that same day I spoke with the SVP of Corporate Communications and Public Affairs, Mary Ellen Keating, about the sexual harassment allegations and asked her to assist me in the investigation. I instructed Ms. Keating to meet with the female employee and Plaintiff. I asked Ms. Keating to provide me any notes of those meetings, as I believed such notes would enable me to provide legal advice to the Company about its potential exposure as a result of the CEO's misconduct, the possible legal claims that might be brought against the Company and/or the CEO, and the possible defenses thereto.

10. After I met with Ms. Keating, Ms. Keating and I also spoke with the Founder and Chairman of Barnes & Noble, Mr. Leonard Riggio, about the sexual harassment allegations.

11. As part of the investigation I was directing, Ms. Keating met with the female employee and Mr. Riggio on May 30, 2018 to discuss the sexual harassment allegations.

12. Mr. Riggio met with Plaintiff on June 4, 2018 to discuss the allegations as well. Ms. Keating was present for at least part of the meeting. Ms. Keating also spoke with Plaintiff later that day.

13. Ms. Keating, the female employee, and Mr. Riggio then met twice on June 5, 2018. After the second meeting, the female employee talked to Ms. Keating alone.

14. That same day, Plaintiff, Ms. Keating, and the female employee also met. Plaintiff and Ms. Keating also had a conversation alone.

15. Mr. Riggio and I consulted with Paul, Weiss from May 24, 2018 through Plaintiff's termination and beyond, sometimes individually, sometimes jointly. Ms. Keating also joined some of those consultations. We had ongoing communications about the Company's possible exposure with respect to Plaintiff's termination as well as his behavior *vis á vis* the complainant. We also sought advice concerning the Company's right to terminate Plaintiff for "Cause" under the terms of his employment contract.

16. On or about May 28, 2018, I also became aware of a complaint about Plaintiff's workplace bullying, which the Company also investigated at my direction.

17. On June 18, 2018, I attended a crucial meeting with a company that expressed interest in acquiring the Company ("the Potential Acquiror") concerning the potential transaction. Also in attendance were Plaintiff, other Barnes & Noble executives, and executives from the Potential Acquiror. Discussions and negotiations between the Company and the Potential Acquiror had been ongoing since February 2018. Before the June 18, 2018 meeting, the Potential Acquiror had made clear to Plaintiff and other Company executives, including me, that it was very important for Plaintiff to provide a cogent explanation about a downward trend in the Company's sales at that meeting. Instead of providing such an explanation, Plaintiff left the Potential Acquiror's questions unanswered and engaged in a long, rambling monologue in which he painted the Company in an unduly negative and harsh light. The very next day, the Potential Acquiror withdrew its offer.

18. I was appalled and dismayed at Plaintiff's conduct during the June 18, 2018 meeting with the Potential Acquiror.

19. Against the backdrop of the investigation into Plaintiff's misconduct toward the female employee and his bullying of senior executives, I prepared notes memorializing Plaintiff's behavior at the June 18, 2018 meeting. These notes were solely focused on Plaintiff's behavior, not on the business aspects of the meeting. I created these notes in anticipation of litigation and to provide the Company with legal advice. I would not have prepared them had I not been concerned about the prospect of litigation, nor was there any business reason for me to document Plaintiff's conduct at the meeting. I thought that there may be litigation by or against Plaintiff in the near future.

20. At my request and direction, two other senior executives who attended the June 18, 2018 meeting documented their own recollections of Plaintiff's conduct at that meeting. I requested they prepare the notes in anticipation of litigation and so that I could provide the Company with legal advice concerning the risks emanating from Plaintiff's misconduct. My request was solely for legal reasons—there was no business need for the notes.

21. The notes I and others under my direction took during the interviews conducted and the meetings attended were not verbatim transcripts of what was said during those interviews and meetings. Rather, they are notes of what each of the note takers considered significant in what we were told or what we observed, taken against the lens of my concern about what the Company's exposure might be as a result of Plaintiff's conduct. In addition, my notes reflect my mental impressions of what the female employee and other employees told me and what I observed of Plaintiff's behavior during the June 18 meeting.

22. The investigative notes that I and others working under my direction took during the course of the investigation of Plaintiff's misconduct would not have been in essentially the same form as they were written had I not anticipated litigation at that point in time. Rather, I would have asked Human Resources, either orally or by cursory note, to handle the complaint and do the investigation, consulting with the Legal Department only if they thought necessary. In that case, I would either not have had any investigation notes of my own or they would have contained much less detail than the notes that I took during this investigation and I would have given any notes I took to Human Resources to keep in their complaint files.

23. The investigation notes I and others drafted during the course of the investigation of Plaintiff's misconduct were intended to be, and have been kept, confidential.

24. In late June and early July, during a time when we were consulting with outside Counsel and the Board in order to dismiss Plaintiff from the Company, I reviewed multiple draft press releases concerning Plaintiff's departure from Barnes & Noble. These draft press releases were sent to me by Ms. Keating and Andy Milevoj (Vice President of Investor Relations) for my review and legal advice with respect to Plaintiff's departure from the Company. The draft press releases were also repeatedly sent to our outside counsel concerning the wording of the announcement for their review and legal advice.

25. The draft press releases were reviewed and revised due to expected litigation, which included the possibility of claims brought against the Company by the complainant based on Plaintiff's misconduct and by the Plaintiff based on his for cause

discharge for gross misconduct. As a result, Plaintiff was not to be paid severance. After the termination, Plaintiff bitterly disputed the grounds of his termination.

26. The draft press releases were intended to be, and have been kept, confidential.

27. From May 24, 2018 onward, I had many communications with outside counsel in which I provided information to enable them to render legal advice and in which they rendered legal advice concerning Plaintiff's employment at Barnes & Noble, his misconduct, and potential grounds for Plaintiff's termination. In late June 2018, I received and reviewed drafts of a memorandum outside counsel prepared for the Barnes & Noble Board of Directors (the "Board"), in which it provided legal advice to the Board.

28. Mr. Scott Barshay of Paul, Weiss attended the June 27, 2018 Board meeting and rendered legal advice.

29. I prepared the minutes of the June 27, 2018 Board meeting after Plaintiff had been terminated. The content of the redacted portion of the meeting minutes for that meeting contain outside counsel's advice to Barnes & Noble and discussion thereof.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 31, 2019 in New York, New York.


Bradley A. Feuer