

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CLARENCE H. HURLEY
CLERK U.S. DIST. CT.
S.D. OF FLA. - WPB

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, and CARRIE SABZALIAN,

Case No.: 99-9077-01 CV-HURLEY
Magistrate Judge: Lynch

Plaintiffs,

v.

ATLANTIS GOLF CLUB, INC.,

**COMPLAINT AND DEMAND
FOR TRIAL BY JURY**

Defendant.

_____ /

NATURE OF THE ACTION

1. Plaintiff, CARRIE SABZALIAN ("Ms. Sabzalian"), by her undersigned attorney, sues Defendant ATLANTIS GOLF CLUB, INC. ("Atlantis" or "Defendant") for compensatory damages for violations of her civil rights occurring during her employment relationship with Atlantis. Ms. Sabzalian sues Atlantis under Title VII of the Civil Rights Act of 1964 and 1991, as amended, 42 U.S.C. Section 2000e *et seq.* ("Title VII"), and the Florida Civil Rights Act of 1992, Section 760.01 *et seq.*, Florida Statutes ("FCRA"). Ms. Sabzalian also seeks a remedy for the Defendant's negligent retention and supervision of the supervisor alleged to have sexually harassed her.

2. Ms. Sabzalian was caused to work in a hostile work environment because of her sex, female, and was retaliated against by being discharged from her employment for complaining to Defendant about her sexual harassment.

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JURISDICTION AND VENUE

3. This Court's jurisdiction is founded upon the provisions of 28 U.S.C. §§ 451, 1331, 1337, and 1343. This action arises under 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1981a.

4. This Court has supplemental jurisdiction over Ms. Sabzalian's state law claims pursuant to 28 U.S.C. § 1367.

5. Venue of this action is proper in the Southern District of Florida because all of the unlawful acts complained of herein occurred in Palm Beach County, Florida.

PARTIES

6. Plaintiff, the Equal Employment Opportunity Commission (the "Commission") is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 760(f)(1) and (3) of Title VII, 42 U.S.C. Sections 2000e-5(f)(1) and (3).

7. Plaintiff, Ms. Sabzalian is a natural person residing in Palm Beach County, Florida. At all times material hereto, Ms. Sabzalian was employed by Defendant Atlantis Golf Club, Inc.

8. At all times material hereto, Defendant Atlantis Golf Club, Inc. was a Florida corporation, continuously doing business in the State of Florida and the City of Atlantis. At all times material hereto, Defendant continuously has had at least 15 employees.

9. At all times material hereto, Defendant Atlantis Golf Club, continuously has been an employer engaged in an industry effecting commerce within the meaning of Title VII and the Florida Civil Rights Act. *See* 42 U.S.C. § 2003 *et seq.* and Section 760.02 (7), Florida Statutes. At all times material hereto, Defendant Atlantis Golf Club, Inc. was, and still is, an employer.

GENERAL ALLEGATIONS

10. Ms. Sabzalian was employed by Defendant Atlantis Golf Club, Inc. from approximately October of 1996 until in or about September of 1998.

11. At all times material hereto, Ms. Sabzalian was qualified for her position, served competently, and performed up to her employer's legitimate standards.

12. At no time during the aforementioned period of her employment with Defendant, did Ms. Sabzalian ever receive a written warning or written discipline by Atlantis with regard to the performance of her functions.

13. Commencing in or about September 1997 Ms. Sabzalian was repeatedly subjected to discrimination because of her sex by Defendant's supervisory employee, Walle Bergsma.

14. Ms. Sabzalian's supervisor, the aforementioned Mr. Bergsma made her the object of his physical, verbal, and written conduct of a sexual nature while both of them were in the Defendant's workplace.

15. During the period of Ms. Sabzalian's employment with Atlantis, Mr. Bergsma frequently grabbed at her, kissed her about her hands and face, attempted to kiss her, stalked her at work, stalked her at home, broke into her automobile, took and caused damage to her personal property, and disclosed to her coworkers his unrequited affection for her.

16. Ms. Sabzalian made it known to Mr. Bergsma that his conduct was unwelcome, offensive to her, and was interfering with her ability to perform her job.

17. Ms. Sabzalian made it known to Atlantis management and administrative personnel superior to her, that Mr. Bergsma's conduct was unwelcome, offensive to her, and was interfering with her ability to perform her job.

18. Apart from the actual notice to Defendant that Ms. Sabzalian provided by her complaints, as aforementioned, Atlantis management and administrative personnel were on constructive notice of her sexual harassment by her supervisor Bergsma.

19. Defendant Atlantis Golf Club, Inc. failed to take appropriate remedial measures to relieve Ms. Sabzalian of her sexual harassment in its workplace.

20. After providing to Defendant a written complaint of what she reasonably believed to be sexual harassment, Ms. Sabzalian summarily was discharged from her employment.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. Ms. Sabzalian timely filed Charges of Discrimination with the Equal Employment Opportunity Commission, and with the Florida Commission on Human Relations alleging violations by her employer of Title VII and the Florida Civil Rights Act, respectively.

22. All conditions precedent to the institution of this action have been fulfilled.

COUNT I HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT IN VIOLATION OF TITLE VII

23. Ms. Sabzalian repeats and realleges each and every allegation contained in paragraphs 1 through 22 as if fully set forth herein.

24. Defendant Atlantis discriminated against Ms. Sabzalian because of her sex, female, in violation of Title VII, by creating, tolerating and fostering a sexually hostile and abusive work environment.

25. The aforementioned unwelcome sexual harassment was sufficiently severe and pervasive to affect the terms and conditions of her employment, and to create an intimidating, hostile, and offensive work environment in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).

26. The effect of the actions complained of as aforementioned has been to deprive Ms. Sabzalian of equal employment opportunities, and otherwise to adversely affect her status as an employee because of her sex.

27. The unlawful employment actions complained of were intentional.

28. The unlawful employment actions were done with malicious or reckless indifference to Ms. Sabzalian's federally protected rights.

29. As a direct and proximate result of Defendant Atlantis' unlawful employment practices, Ms. Sabzalian was emotionally harmed, suffered, and will continue to suffer, a loss of wages and other employment benefits, a loss of earning capacity, damages to her professional reputation, a loss of dignity, a loss of the enjoyment of life, embarrassment, humiliation, and other forms of mental anguish and distress.

WHEREFORE, Ms. Sabzalian requests this Court issue an order against Atlantis Golf Club, Inc. awarding her compensatory damages, lost back pay, front pay, punitive damages, attorneys fees and costs, together with such other relief as this Court deems just and proper.

COUNT II
HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT
IN VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT

30. Ms. Sabzalian repeats and realleges each and every allegation contained in paragraphs 1 through 22 as if fully set forth herein.

31. Defendant Atlantis discriminated against Ms. Sabzalian because of her sex, female, in violation of the FCRA, by creating, tolerating and fostering a sexually hostile and abusive work environment.

32. The aforementioned unwelcome sexual harassment was sufficiently severe and pervasive to affect the terms and conditions of her employment, and to create an intimidating, hostile, and offensive work environment in violation of the FCRA, Section 760.10, Florida Statutes.

33. The effect of the unlawful employment practices complained of as aforementioned has been to deny Ms. Sabzalian her individual rights and privileges, to deprive her of personal dignity, and otherwise to adversely affect her status as an employee because of her sex.

34. The unlawful employment practices complained of were intentional.

35. The Defendant's unlawful employment practices were done with malice or reckless indifference to Ms. Sabzalian's freedom from discrimination within the State of Florida.

36. As a direct and proximate result of Defendant Atlantis' unlawful employment practices, Ms. Sabzalian was emotionally harmed, suffered, and will continue to suffer, a loss of wages and other employment benefits, a loss of earning capacity, damages to her professional reputation, a loss of dignity, a loss of the enjoyment of life, embarrassment, humiliation, and other forms of mental anguish and distress.

WHEREFORE, Ms. Sabzalian requests this Court issue an order against Defendant Atlantis Golf Club, Inc. awarding her compensatory damages, lost back pay, front pay, punitive damages, attorneys fees and costs, together with such other relief as this Court deems just and proper.

COUNT III
RETALIATION IN VIOLATION OF TITLE VII

37. Ms. Sabzalian repeats and realleges each and every allegation contained in paragraphs 1 through 22 as if fully set forth herein.

38. Ms. Sabzalian engaged in protected activity and opposition conduct with regard to the sexual harassment she suffered, as aforementioned, by complaining to Atlantis management and administrative personnel verbally, and by filing a written complaint report with Defendant regarding the circumstances of Mr. Bergsma's conduct.

39. Ms. Sabzalian suffered adverse employment action by being discharged from employment by Defendant after her aforementioned complaints.

40. A causal connection exists between Ms. Sabzalian's protected activity and opposition conduct, and her subsequent discharge from employment by Atlantis.

41. The aforementioned adverse employment action by Atlantis subsequent to Ms. Sabzalian's complaints was intentional, because of her protected activity and opposition conduct.

42. The aforementioned adverse employment action by Atlantis was done with malice or reckless indifference to the federally protected rights of Ms. Sabzalian.

43. As a direct and proximate result of Atlantis' unlawful employment practices, Ms. Sabzalian suffered a loss of earning capacity, damages to her professional reputation, a loss of dignity, a loss of enjoyment of life, embarrassment, humiliation, and other forms of mental anguish and distress.

WHEREFORE, Ms. Sabzalian requests this Court issue an order against Atlantis Golf Club, Inc. awarding her compensatory damages, lost back pay, front pay, attorney's fees and costs, together with such other relief as this Court deems just and proper.

COUNT IV
RETALIATION IN VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT

44. Ms. Sabzalian repeats and realleges each and every allegation contained in paragraphs 1 through 22 as if fully set forth herein.

45. Ms. Sabzalian opposed unlawful employment practices at Atlantis by complaining to Atlantis management and administrative personnel verbally, and by filing a written complaint report with Defendant regarding the circumstances of Mr. Bergsma's conduct.

46. Ms. Sabzalian suffered adverse employment action discrimination by being discharged from employment by Defendant after her aforementioned complaints.

47. A causal connection exists between Ms. Sabzalian's opposition to unlawful employment practices and her subsequent discharge from employment by Atlantis.

48. The aforementioned adverse employment action by Atlantis subsequent to Ms. Sabzalian's complaints was intentional because of her opposition to unlawful employment practices.

49. As a direct and proximate result of Atlantis' unlawful employment practices, Ms. Sabzalian was emotionally harmed, suffered, and will continue to suffer, loss of wages and other employment benefits, a loss of earning capacity, damages to her professional reputation, a loss of dignity, a loss of enjoyment of life, embarrassment, humiliation, and other forms of mental anguish and distress.

WHEREFORE, Ms. Sabzalian requests this Court issue an order against Atlantis Golf Club, Inc. awarding her compensatory damages, lost back pay, front pay, punitive damages, attorneys fees and costs, together with such other relief as this Court deems just and proper.

COUNT V
NEGLIGENT RETENTION AND SUPERVISION

50. Ms. Sabzalian repeats and realleges each and every allegation contained in paragraphs 1 through 19 as if fully set forth herein.

51. Defendant had a duty to train, supervise and evaluate Mr. Bergsma while he was employed by, and acting with the authority of, Atlantis Golf Club, Inc.

52. The Defendant had a duty to retain only competent, qualified, and safe employees.

53. Pursuant to the Atlantis Golf Club, Inc. Employee Policy Handbook in force at the time Ms. Sabzalian was sexually harassed by Mr. Bergsma, the Defendant had a duty to ensure Ms. Sabzalian was safe from the criminal and indecent conduct and sexual harassment committed against her as described above.

54. Upon information and belief, Atlantis had received numerous reports concerning Mr. Bergsma's aggressive demeanor and attitude as an employee.

55. Despite notice of Mr. Bergsma's inappropriate, threatening, assaultive and offensive conduct, Defendant failed to adequately train, supervise and evaluate Mr. Bergsma while he was employed by, and acting with the authority of, Atlantis Golf Club, Inc.

56. Defendant had a duty to protect Ms. Sabzalian from the harm occasioned by Mr. Bergsma's repeated unwelcome offensive and physical conduct against her person.

57. Defendant breached its duty to protect Ms. Sabzalian from the harm occasioned by Mr. Bergsma's repeated unwelcome offensive and physical conduct against her person.

58. Mr. Bergsma's repeated unwelcome offensive and physical conduct, aforementioned, constituted assaults and batteries against Ms. Sabzalian.

59. Defendant's breach of its duties to Ms. Sabzalian in retaining an incompetent, unfit, offensive and dangerous employee, was the proximate cause of the harm she suffered by Mr. Bergsma's assaults and batteries.

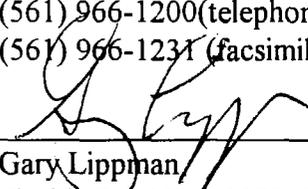
60. Atlantis' actions and omissions were willful and wanton behavior, with complete and gross disregard for Ms. Sabzalian's safety and well-being.

61. As a result of the Defendant's failure to adequately train, supervise and evaluate Mr. Bergsma, and to prevent him from causing harm to Ms. Sabzalian, she suffered fear of immediate bodily harm, unlawful applications of force to her person, offensive touching, pain, lost wages and other employment benefits, a loss of earning capacity, damages to her professional reputation, a loss of dignity, a loss of the enjoyment of life, embarrassment, humiliation, and other forms of mental anguish and distress.

WHEREFORE, Ms. Sabzalian requests this Court issue an order against Atlantis Golf Club, Inc., awarding her compensatory damages for past, present and future medical expenses, pain and suffering, lost income, impairment of earning capacity, loss of dignity, loss of the enjoyment of life, embarrassment, humiliation and other forms of mental anguish and distress, punitive damages, attorneys' fees and costs, prejudgment interest, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,
MIERZWA & ASSOCIATES, P.A.
Attorneys for Plaintiff
3900 Woodlake Blvd., Suite 212
Lake Worth, FL 33463-3045
(561) 966-1200 (telephone)
(561) 966-1231 (facsimile)

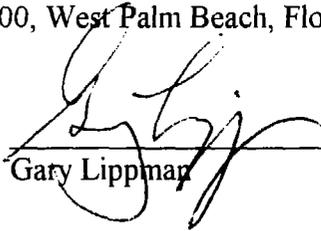
By:



Gary Lippman
Florida Bar No.: 0079121

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail this 26th day of May, 2000, addressed as follows: Lauren Greenbaum, Trial Attorney, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Miami District Office, Two South Biscayne Boulevard, One Biscayne Tower, Miami, Florida 33131; Ellen S. Malasky, Esquire, Foley & Lardner, 777 South Flagler Drive, Suite 200, West Palm Beach, Florida 33401.



Gary Lippman