

1999 WL 1268331

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United States District Court, D. Colorado.

Hyacinth C. WELLS, Plaintiff,

v.

LOBB & COMPANY, INC. and Edward Lobb, Defendants.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,

v.

LOBB & COMPANY, INC., LCI Maintenance Services, Inc., Colorado corporations, Defendants.
Kimberly KRAL, Plaintiff,

v.

LOBB & COMPANY, INC., a Colorado corporation, et al., Defendants.

Nos. Civ.A. 97–WM–1011, Civ.A. 97–WM–1317, Civ.A. 98–WM–279. | Dec. 1, 1999.

Opinion

AMENDED FINDINGS, CONCLUSIONS & ORDER

MILLER, J.

*1 On September 29, 1998, I granted the plaintiffs’ motions for entry of default judgment and scheduled the matter for hearing on October 25, 1999. The entry of judgment in favor of plaintiffs Kral and Wells and against defendants Lobb & Company and LCI Maintenance Services, Inc. was for hostile environment sexual harassment, *quid pro quo* sexual harassment, retaliation under Title VII, gender motivated violence in violation of the Violence Against Women Act, 42 U.S.C. § 13981(c), and outrageous conduct. The judgment in favor of the Equal Employment Opportunity Commission (EEOC) was for sexual harassment and retaliation in violation of Title VII. Prior to that time, defendants had made an offer for judgment “for compensatory Title VII and negligence damages in favor [of plaintiffs Wells and Kral] ... in the amount of \$35,000, which includes their costs and attorney fees otherwise recoverable in this action.” Plaintiffs Kral and Wells accepted the offer, and the judgment in favor of each (Case Nos. 97–WM–1011 and 98–WM–279) was entered by the clerk on May 4, 1998.

A hearing was held on October 25, 1999. The parties and other witnesses presented testimony and exhibits, and I now make my findings and conclusions and enter the following order:

Findings and Conclusion

1. The plaintiffs and other women hired by the corporate defendants have been subjected to unlawful employment practices in and around Denver, Colorado, in violation of Title VII, 42 U.S.C. § 2000.
2. These actions began with the hiring of plaintiffs Kral and Wells from their respective positions as bartender and waitress at the bar or restaurant known as Hooters which caters to male customers. Neither plaintiff had experience or education for the positions for which they were hired and were employed instead because of their sex and appearance.
3. The witness, Julia Cantarovici, who had significantly more education and experience than plaintiffs Kral and Wells, was nevertheless principally hired because of her sex and appearance.
4. Once hired, plaintiffs and Cantarovici were continually subjected to a pattern and practice of sexual harassment and intentional discriminatory treatment by reason of their sex, including, without limitation, vulgar sexual remarks and jokes,

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sexual overtures to, and sexual touching of, female employees which were unwelcome and offensive.

5. The acts were principally those of defendants Edward Lobb and Fred Winsett who were managerial employees.

6. Both defendants Lobb and Winsett acted intentionally and knowingly with regard to all of the findings contained herein.

7. In so acting, the defendants Lobb and Winsett acted within the scope of their employment.

8. The corporate defendants did not maintain an appropriate sex harassment policy.

9. Plaintiffs and other female employees complained about the improper conduct.

10. Despite the complaints of plaintiffs and other female employees, the defendants failed to take appropriate steps to remedy the sexual harassment. The plaintiffs were constructively discharged when each was ultimately compelled to resign when the defendants' illegal behavior continued unabated.

*2 11. Defendants knew or should have known of the illegality of the sexual harassment. Nevertheless, the defendants engaged in, condoned and ratified the discriminatory treatment of its female employees.

12. Defendants acted with malice and in reckless indifference to the federally protected rights of its employees and in wilful and intentional reckless disregard of the rights of those employees.

13. The facts which justify assessing punitive damages against the defendants were proved beyond a reasonable doubt.

14. The plaintiffs perform a public service in bringing the egregious behavior of the defendants to light by virtue of this action.

15. Under the circumstances of this case, I find that substantial punitive damages should be imposed upon the defendants, jointly and severally, to punish them for their conduct and to notify others that such improper conduct in the work place will not be allowed.

16. Plaintiff Wells was hired for \$40,000 per year, together with other benefits. After her constructive discharge, plaintiff Wells returned to work at Hooters as a waitress for approximately two years.

17. The evidence presented, Exhibit 12, indicates that plaintiff Wells' earnings in 1997 were \$10,426 meaning that she suffered a \$29,574 loss in 1997 (\$40,000—\$10,426 = \$29,574). In 1998, her actual mitigation was \$10,134 equaling a loss of \$29,866 for 1998 (\$40,000—\$10,134 = \$29,866). In 1999, the testimony is that her earnings were minimal but that she had returned to school. Voluntary cessation of work for education is not adequate mitigation without further evidence. Accordingly, I find and conclude that plaintiff Wells' back pay and front pay losses total \$59,440.

18. Wells suffered noneconomic damages, including pain and suffering, inconvenience, mental anguish, loss of enjoyment of life and other nonpecuniary losses. Pursuant to plaintiffs' suggestion, I award plaintiff Wells noneconomic damages in the amount of \$59,440.

19. Plaintiff Wells should be awarded punitive damages in the amount of \$100,000.

20. The loss of earning for Julia Cantarovici are shown on Exhibit 11 and, together with lost interest, total \$74,205.

21. No claims for future earnings are made on behalf of Cantarovici.

22. Plaintiff EEOC is entitled to compensatory damages pursuant to Title VII for the benefit of Cantarovici in the amount of \$74,205.

23. Cantarovici suffered noneconomic losses including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life and other nonpecuniary losses at least equal to her compensatory damages or \$74,205.

24. Plaintiff EEOC should be awarded punitive damages of \$100,000 for the benefit of Cantarovici.

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25. Defendant employers employed more than 14 but fewer than 101 employees in each of the 20 or more calendar weeks of the relevant calendar year.

26. In accordance with the limitations set forth in 42 U.S.C. § 1981(a)(b)(3)(A), the noneconomic and punitive damages to be awarded EEOC for the benefit of Cantarovici are limited to \$50,000.

*3 27. Plaintiff Kral does not seek economic damages.

28. Plaintiff Kral did suffer noneconomic damages, including pain and suffering, inconvenience, mental anguish, loss of enjoyment of life and other nonpecuniary losses. Under the circumstances, I find those damages equal \$60,000.

29. Plaintiff Kral is entitled to punitive damages of \$100,000.

30. The damage figures stated for plaintiffs Wells and Kral are the amount of damages that should be awarded on their non-Title VII claims.

31. With regard to the Title VII claims of plaintiffs Kral and Wells, the judgment entered upon the accepted offer of judgment precludes any further back or front pay other than the \$35,000 accepted by plaintiffs. I interpret “compensatory Title VII” damages to include only the back and front pay calculations and not the noneconomic or punitive damage recoveries. *See Medlock v. Orthobiotech, Inc.*, 164 F.3d 545 (10th Cir.1999).

32. The plaintiffs’ Title VII claims for noneconomic damages and punitive damages are likewise each limited to \$50,000 pursuant to 48 U.S.C. § 1981(a)(b)(3)(a).

33. I interpret the defendants’ offer of judgment to prohibit any recovery of costs or attorney fees which would have otherwise been recoverable “for any and all claims which have been, or may have been asserted” in plaintiffs’ complaint. Accordingly, by accepting that offer plaintiffs Wells and Kral are precluded from recovering their costs and attorney fees.

34. Appropriate injunctive relief should enter against the corporate defendants.

IT IS THEREFORE ORDERED, DECREED AND ADJUDGED AS FOLLOWS:

1. Defendant Lobb & Company, Inc. (“Lobb”) and defendant LCI Maintenance Services, Inc. (“LCI”) (collectively referred to as “Defendants”), their officers, agents, successors and other persons in active concert or participation with them, or any of them, are enjoined from engaging in any employment practice which discriminates on the basis of sex.

2. Defendants, their officers, agents, successors and other persons in active concert or participation with them, or any of them, are enjoined from engaging in reprisal or retaliation of any kind against any person because of such person’s opposition to any practice made unlawful under Title VII, because of such person’s filing a charge, testifying or participating in any manner in any investigation, proceeding or hearing under any of these statutes, because such person was identified as a witness or possible witness for the Equal Employment Opportunity Commission (“Commission”), because such person participated in any manner in this action or in the investigation giving rise to this action, or because such person is designated as an aggrieved individual under this Judgment.

RECORD KEEPING AND REPORTING PROVISIONS

3. Defendants shall maintain all records concerning their implementation of this Judgment. The Commission shall have the right to interview any personnel employed by Defendants for the purpose of determining Defendants’ compliance with the terms of this Judgment.

*4 4. Defendants shall bear the costs in conjunction with the maintenance of records, preparation of any report, access or copying of records, or interviews of employees.

5. Every six (6) months for the next five (5) years following the date of this Judgment, each Defendant shall provide a report to the Commission. Each of the ten (10) reports shall be due within thirty (30) days following the

end of the respective six month period.

6. Each report shall provide the following information regarding that Defendant's enforcement of its sexual harassment policy:

- a. The name, address and telephone number of each person making a complaint of sexual harassment, the date of the complaint, and the name of the individual(s) who allegedly engaged in the discriminatory conduct;
- b. The method of response to and resolution of any sexual harassment complaints; and
- c. A copy of all documents memorializing or referring to the complaint, investigation, and/or resolution thereof.

POSTING OF NOTICE

7. Within fifteen (15) days of the entry of this Judgment, each Defendant shall post and keep posted for the five (5) year period following the entry of this Judgment, in a conspicuous place in each of its facilities where notices to employees and applicants for employment are customarily kept or posted, the Notice attached as Attachment A to this Judgment. Each Defendant shall certify to the Commission, in writing, within twenty (20) days of entry of this Judgment that the Notice has been properly posted.

SEXUAL HARASSMENT POLICY

8. Each Defendant shall adopt and maintain a policy proscribing workplace sexual harassment by all employees and proscribing retaliation against any employee who complains about sexual harassment or who files a charge of discrimination regarding sexual harassment ("Sexual Harassment Policy"). This Sexual Harassment Policy shall contain all the elements shown in the sample sexual harassment and retaliation policy attached hereto as Attachment B. Each Defendant shall post and keep posted for the five (5) year period following entry of this Judgment, in a conspicuous place in each of its facilities, where notices to employees and applicants for employment are customarily kept or posted, a copy of the Sexual Harassment Policy. For the duration of the five (5) year period following the entry of this Judgment, each Defendant shall give each employee his or her own copy of the Sexual Harassment Policy. Within thirty (30) days of the entry of this Judgment, each Defendant shall forward a copy of its Sexual Harassment Policy to the Commission and a letter indicating that the Sexual Harassment Policy has been posted and distributed.

REFERENCE

9. Each Defendant is ordered that if requested to respond to inquiries or requests for references concerning aggrieved individuals Julia Cantarovici, Kimberly Kral, or Hyacinth Wells, from prospective employers or other persons authorized to seek personnel information concerning any of these aggrieved individuals, it will provide only that individuals' dates of employment, the title of the position she held, and the starting and ending salaries she received. Neither Defendant shall make mention of this action or Judgment to any such prospective employer or other person.

TRAINING

*5 10. For the five (5) year period following the entry of this Judgment, each Defendant shall conduct annual training for all its employees on what constitutes sexual harassment, such as unwelcome sexual advances, inappropriate touching, sexual remarks, request for sexual favors, and other verbal or physical conduct of a sexual nature. Training will include employee notification of the Defendant's policy and procedures for registering complaints of sexual harassment. Each Defendant's training shall also counsel employees on the penalties of engaging in such behavior and

each training shall include coverage of the Defendant's non-retaliation policy.

11. Each Defendant shall provide training that shall be conducted by an outside consultant and, the first such session will take place within ninety (90) days after entry of this Judgment. Each of the subsequent four (4) training sessions shall take place on or about the first anniversary of the initial training session.

12. Each Defendant will notify the Commission at least thirty (30) days in advance of the training session of the date, time and location of the training session.

13. Each seminar training session shall be no less than four (4) hours of instruction. All management personnel shall both register for and attend the seminar training session. The registry of attendance shall be retained by the Defendants for the entirety of the five (5) year period following entry of this Judgment.

14. The Commission, at its discretion, may designate one or more Commission representatives to attend any of the seminar-training sessions described above, and the representative(s) shall have the right to attend and fully observe all of the sessions.

APOLOGY

15. Within thirty (30) days of the entry of this Judgment, each Defendant shall deliver to Plaintiff EEOC, a letter of apology to each of the aggrieved individuals, specifically Julia Cantarovici, Kimberly Kral and Hyacinth Wells. Each letter shall be printed on Defendant's letterhead and signed by the Defendant's Chief Executive Officer, President, or Owner.

NOTICE

16. Any notice, report, or communication to the Commission as required under the provisions of this Judgment shall be sent by certified mail, postage prepaid, as follows:

**Regional Attorney Denver District Office Equal Employment Opportunity Commission 303 E. 17th Avenue, Suite 510
Denver, CO 80203**

17. This Court shall retain jurisdiction of this cause for purposes of compliance with this Judgment and entry of such further orders or modifications as may be necessary or appropriate to effectuate equal employment opportunities for employees.

18. Judgment shall enter in favor of the Equal Employment Opportunity Commission and against Defendants Lobb & Company, Inc. and LCI Maintenance Services, Inc. for compensatory damages under Title VII in the amount of \$74,205 for the benefit of Julia Cantarovici.

19. Judgment shall enter in the favor of the Equal Employment Opportunity Commission on behalf of Julia Cantarovici and against the same defendants for compensatory and punitive damages in the amount of \$50,000 pursuant to 42 U.S.C. § 1981(a), for a total of \$124,205.00 damages awarded for the benefit of Julia Cantarovici.

*6 20. Judgment shall enter in favor of the plaintiff Hyacinth C. Wells and against Lobb & Company, Inc. and LCI Maintenance Services Inc. in the amount of \$59,440 for economic damages, \$59,440 for noneconomic damages and \$100,000 in punitive damages for total damages of \$218,880 for her claims for violence against women and outrageous conduct.

21. Judgment shall enter in favor of the plaintiff Kimberly Kral and against Lobb & Company, Inc. and LCI Maintenance Services Inc. in the amount of \$60,000 for noneconomic damages and \$100,000 in punitive damages

for total damages of \$160,000 for her claims of violence against women and outrageous conduct.

22. Plaintiff Wells shall credit any payment received from the defendants for her May 4, 1998 judgment against the amounts awarded her for economic damages.

23. Plaintiff Equal Employment Opportunity Commission shall have its costs pursuant to Rule 54(b).

Attachment A

NOTICE

The following notice is being posted pursuant to the terms of a Judgment entered by the United States District Court, District of Colorado, against defendants Lobb & Company, Inc. and LCI Maintenance Services, Inc., Civil Action No. 97-WM-1317.

Pursuant to Title VII of the Civil Rights Act of 1964, as amended, it is unlawful for an employer to subject an employee to acts of harassment based upon the employee's sex, race, color, religion, or national origin, or to permit or encourage a work environment in which such conduct occurs. Further, it is unlawful for any employer to retaliate against an employee because he or she has opposed discriminatory employment practices, including sexual harassment, because he or she has filed a charge of discrimination with any municipal, state or federal equal employment opportunity agency, or because he or she has participated in an investigation of a charge of discrimination.

The term "sexual harassment" includes: A) any unwelcome sexual advance; B) requests for sexual favors; C) conduct that demeans or intimidates an employee or group of employees because of their gender, including jokes, name calling, labels, or stories; and D) other verbal or physical conduct of a sexual nature if *either*:

- 1) Submission to such conduct is made explicitly or implicitly a term or condition of employment—i.e., Your employment depends on "going along" with harassing conduct, or "giving in" to sexual demands; OR,
- 2) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

Lobb & Company, Inc. ("Lobb") and LCI Maintenance Services, Inc. ("LCI") respect the right of its employees to work in an environment that is free from sexual harassment. Accordingly, it is the policy of Lobb and LCI to prohibit the types of harassment described above. All persons, including supervisors and managers, who are responsible for such conduct shall be disciplined.

***7** Employees who believe that they have been subjected to sexually harassing conduct may complain to anyone in management and/or to _____, Human Resources Manager. Within ten calendar days of the complaint, management officials will conduct a full investigation, which will include a thorough interview with the complaining employee, the alleged harasser, and any witnesses, as appropriate. Upon conclusion of the investigation, the investigating managerial official will report back to the complaining employee, and take any appropriate action against the offending party. Employees may also complain by contacting the Equal Employment Opportunity Commission by telephone at (303) 866-1300 or 1-800-669-4000, or by mail at 303 E. 17th Ave., Suite 510, Denver, CO 80203.

In compliance with federal law, no official at Lobb or LCI will retaliate against an employee who complains about sexually harassing conduct or who participates in a sexual harassment investigation *either*: 1) through the internal complaint procedure described above; or 2) through any municipal, state, or federal equal employment opportunity agency investigation. If you believe that Lobb or LCI officials have retaliated against you for complaining about sexual harassing conduct or for participating in any internal, local, state, or federal investigation about sexual harassment, please contact the Equal Employment Opportunity Commission, Denver District Office, immediately at (303) 866-1300 or 1-800-669-4000.

This Notice shall remain posted for five years from the date indicated below.

Attachment B

SEXUAL HARASSMENT and ANTI-RETALIATION POLICY

Pursuant to Title VII of the Civil Rights Act of 1964, as amended, it is unlawful for an employer to subject an employee to acts of harassment based upon the employee's sex, race, color, religion, or national origin, or to permit or encourage a work environment in which such conduct occurs. Further, it is unlawful for any employer to retaliate against an employee because he or she has opposed discriminatory employment practices, including sexual harassment, because he or she has filed a charge of discrimination with any municipal, state or federal equal employment opportunity agency, or because he or she has participated in an investigation of a charge of discrimination.

The term "sexual harassment" includes: A) any unwelcome sexual advance; B) requests for sexual favors; C) conduct that demeans or intimidates an employee or group of employees because of their gender, including jokes, name calling, labels, or stories; and D) other verbal or physical conduct of a sexual nature if *either*:

- 1) Submission to such conduct is made explicitly or implicitly a term or condition of employment—i.e., Your employment depends on "going along" with harassing conduct, or "giving in" to sexual demands; OR,
- 2) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

***8** It is the policy of Lobb & Company, Inc. to prohibit the types of harassment described above. All persons, including supervisors and managers, who are responsible for such conduct shall be disciplined.

Employees who believe that they have been subjected to sexually harassing conduct may complain to anyone in management and/or to _____ who can be reached at _____. Within ten calendar days of the complaint, management officials will conduct a full investigation, which will include a thorough interview with the complaining employee, the alleged harasser, and any witnesses, as appropriate. Upon conclusion of the investigation, the investigating managerial official will report back to the complaining employee, and take any appropriate action against the offending party. Employees may also complain by contacting the Equal Employment Opportunity Commission by telephone at (303) 866-1300 or 1-800-669-4000, or by mail at 303 E. 17th Ave., Suite 510, Denver, CO 80203.

Lobb & Company, Inc. respects the right of its employees to work in an environment that is free from sexual harassment. In compliance with federal law, no official at Lobb & Company, Inc. will retaliate against an employee who complains about sexually harassing conduct or who participates in a sexual harassment investigation *either*: 1) through the internal complaint procedure described above; or 2) through any municipal, state, or federal equal employment opportunity agency investigation.

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- 1) Submission to such conduct is made explicitly or implicitly a term or condition of employment—i.e., Your employment depends on "going along" with harassing conduct, or "giving in" to sexual demands; OR,

- 2) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

It is the policy of LCI Maintenance Services, Inc. ("LCI") to prohibit the types of harassment described above. All persons, including supervisors and managers, who are responsible for such conduct shall be disciplined.

***9** Employees who believe that they have been subjected to sexually harassing conduct may complain to anyone in management and/or to _____ who can be reached at _____. Within ten calendar days of the complaint, management officials will conduct a full investigation, which will include a thorough interview with the complaining employee, the alleged harasser, and any witnesses, as appropriate. Upon conclusion of the investigation, the investigating managerial official will report back to the complaining employee, and take any appropriate action against the offending party. Employees may also complain by contacting the Equal Employment Opportunity Commission by telephone at (303) 866-1300 or 1-800-669-4000, or by mail at 303 E. 17th Ave., Suite 510, Denver, CO 80203.

LCI respects the right of its employees to work in an environment that is free from sexual harassment. In compliance with federal law, no official at LCI will retaliate against an employee who complains about sexually harassing conduct or who participates in a sexual harassment investigation *either*: 1) through the internal complaint procedure described above; or 2) through any municipal, state, or federal equal employment opportunity agency investigation.