

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION, et al.)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 4:03CV-00107HEA
)	
MIDAMERICA HOTELS CORPORATION,)	
d/b/a BURGER KING, et al.)	
)	
Defendants.)	

**ANSWER OF DEFENDANT NORTHWEST DEVELOPMENT COMPANY TO
PLAINTIFF EEOC'S SECOND AMENDED COMPLAINT**

COMES NOW, Northwest Development Company ("Northwest Development")
by and through its attorney, Susan Nell Rowe of The Stolar Partnership, and for its answer to the
Second Amended Complaint of Plaintiff Equal Employment Opportunity Commission
("EEOC"), states as follows:

NATURE OF ACTION

Northwest Development admits that the Second Amended Complaint (the
"Complaint") purports to be a claim under Title VII of the Civil Rights Act of 1964 and Title I of
the Civil Rights Act of 1991, admits that the complaint seeks relief on behalf of seven
employees, Plaintiff/Intervenors Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia
Hanneken, Erin Bronskill, Brandy Alexander, and an unidentified employee ("Jane Doe") and
admits that the complaint is for alleged sexual harassment. Northwest Development further
admits that Plaintiff/Intervenors were employees of a restaurant located in Peerless Park,
Missouri that Northwest Development owned and operated. Except to the extent hereinbefore

expressly admitted, Northwest Development denies each and every averment contained in the paragraph entitled “Nature of Action.”

JURISDICTION AND VENUE

1. Northwest Development admits that the Complaint purports to invoke federal question jurisdiction over this matter. Northwest Development denies each and every other averment contained in Paragraph 1 and further denies that it has any liability to Plaintiffs herein.

2. Northwest Development admits that Plaintiff/Intervenors were employees of a restaurant located in the Eastern District of Missouri that Northwest Development owned and operated. Except to the extent expressly admitted, Northwest Development denies each and every allegation contained in Paragraph 2.

PARTIES

3. Northwest Development admits that the EEOC is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment in Paragraph 3.

4. Northwest Development admits that Defendant Midamerica Hotels Corporation (“Midamerica Hotels”) is a Missouri corporation, has continuously been doing business in the State of Missouri, and has continuously employed at least 15 employees. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 4.

5. Northwest Development admits that it is a Missouri corporation, has continuously been doing business in the State of Missouri, and has continuously employed at

least 15 employees. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 5.

STATEMENT OF CLAIMS

6. Northwest Development admits that prior to the institution of this lawsuit, Brandy Alexander, Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, and Erin Bronskill were employed at a restaurant owned and operated by Northwest Development in Peerless Park, Missouri. Except to the extent herebefore expressly admitted, Northwest Development denies each and every averment of Paragraph 6. Northwest Development specifically denies that this restaurant was owned or operated by Midamerica Hotels.

7. Northwest Development admits that Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, and Brandy Alexander each filed a charge of discrimination with the Commission alleging sexual harassment by Midamerica Hotels in violation of Title VII. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 7. Further answering, Northwest Development states that “Jane Doe” has never filed a charge with the EEOC, and, as a result, a prerequisite of filing this action has not been met.

8. Northwest Development denies that it has engaged in an unlawful employment practice in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a).

8(a) Northwest Development admits that Mary Beth Souders was employed as an hourly employee of Northwest Development. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 8(a).

8(b) Northwest Development admits that Rachel Nunley was employed as an hourly employee of Northwest Development. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 8(b).

8(c) Northwest Development admits that Erin Kirk was employed as an hourly employee of Northwest Development. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 8(c).

8(d) Northwest Development admits that Natoshia Hanneken was employed as an hourly employee of Northwest Development. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 8(d).

8(e) Northwest Development admits that Erin Bronskill was employed as an hourly employee of Northwest Development. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 8(e).

8(f) Northwest Development admits that Brandy Alexander was employed as an hourly employee of Northwest Development. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 8(f).

8(g) Northwest Development admits that Jane Doe was employed as an hourly employee by Northwest Development and admits that Jane Doe is identified in the Commission's September 25, 2003 Determination of Cause sent to counsel for Midamerica Hotels. Except to the extent hereinbefore expressly admitted, Northwest Development denies each and every averment of Paragraph 8(g).

9. Northwest Development denies each and every averment of Paragraph 9.

10. Northwest Development denies each and every averment of Paragraph 10.

11. Northwest Development denies each and every averment of Paragraph 11.

AFFIRMATIVE DEFENSE NUMBER ONE: Further answering, Northwest Development states that the Complaint fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE NUMBER TWO: Further answering, Northwest Development states that it is not a joint employer with Midamerica Hotels.

AFFIRMATIVE DEFENSE NUMBER THREE: Further answering, Northwest Development states that Plaintiffs have failed to exhaust their administrative remedies.

AFFIRMATIVE DEFENSE NUMBER FOUR : Further answering, Northwest Development states that Plaintiffs have failed to mitigate their damages, if any.

AFFIRMATIVE DEFENSE NUMBER FIVE: Further answering, Northwest Development states that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and that Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunities provided by Northwest Development or to avoid harm otherwise.

AFFIRMATIVE DEFENSE NUMBER SIX: Further answering, Northwest Development states that it took all actions herein in good faith and in the exercise of its legitimate business judgment.

AFFIRMATIVE DEFENSE NUMBER SEVEN: Further answering, Northwest Development states that its actions were taken and decisions made herein in good faith.

AFFIRMATIVE DEFENSE NUMBER EIGHT: Further answering, Northwest Development states that Plaintiffs' claim for punitive damages, if granted, would be grossly excessive and would violate the Due Process clause of the Fourteenth Amendment to the U.S. Constitution. Any punitive damages would be unreasonable and disproportionate to the harm suffered by Plaintiffs and to the amount of general and compensatory damages recoverable.

Northwest Development has not received fair notice that it could be subject to substantial punitive damages in this state for the conduct alleged. Northwest Development alleged conduct was not deliberate, and the damages, if any, to Plaintiffs were economic. The punitive damages sought by Plaintiffs are greatly disproportionate to any actual damages and far exceed any civil or criminal sanctions that could be imposed for similar alleged misconduct.

AFFIRMATIVE DEFENSE NUMBER NINE: Further answering, and pleading in the alternative, Northwest Development states Plaintiffs' claim for punitive damages would violate the Eighth Amendment to the U.S. Constitution and comparable provisions of the Missouri Constitution because it seeks to impose an excessive fine upon Northwest Development, is penal in nature, and seeks to punish upon vague standards. Plaintiffs' claim for punitive damages would violate the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution and comparable provisions of the Missouri Constitution because it discriminates against Northwest Development on the basis of wealth and because different amounts can be awarded against two or more defendants for the same act where those defendants differ only in material wealth.

AFFIRMATIVE DEFENSE NUMBER TEN: Further answering, Northwest Development states that Plaintiffs' claim for punitive damages violates the Due Process clause of the Fifth and Fourteenth Amendments to the U.S. Constitution because it seeks to punish Northwest Development based upon unconstitutionally vague standards.

AFFIRMATIVE DEFENSE NUMBER ELEVEN: Further answering, Northwest Development states that Plaintiffs' claim for punitive damages would violate the Fifth Amendment to the U.S. Constitution and comparable provisions of the Missouri Constitution

because it would expose Northwest Development to multiple punishments and fines for the same act or conduct.

AFFIRMATIVE DEFENSE NUMBER TWELVE: Further answering, Northwest Development states that Plaintiffs' claim for punitive damages violates the Due Process clause of the Fifth and Fourteenth Amendments to the U.S. Constitution in the absence of an order bifurcating that claim from the issue of liability.

AFFIRMATIVE DEFENSE NUMBER THIRTEEN: Further answering, Northwest Development states that any award of punitive damages in this case would violate the Separation of Powers Doctrine since this Court and the jury would be usurping the exclusive power of the legislature to define crimes and establish punishment.

AFFIRMATIVE DEFENSE NUMBER FOURTEEN: Further answering, Northwest Development states that Plaintiffs' burden of proof is to support a punitive damage recovery by clear and convincing evidence.

AFFIRMATIVE DEFENSE NUMBER FIFTEEN: This Court lacks jurisdiction over the claim of "Jane Doe" because "Jane Doe" has failed to file a charge of discrimination with the EEOC, such a charge being a jurisdictional prerequisite to the claims filed herein.

AFFIRMATIVE DEFENSE NUMBER SIXTEEN: "Jane Doe" has failed to exhaust her administrative remedies.

WHEREFORE, Defendant prays that this Court dismiss Plaintiffs' claims at Plaintiffs' costs, and award Northwest Development its attorneys' fees and costs.

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2003, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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