

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

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, et al.

Plaintiffs,

v.

MIDAMERICA HOTELS CORPORATION,
d/b/a BURGER KING, et al.

Defendant.

Cause No. 4:03CV-00107HEA

**ANSWER OF DEFENDANT MIDAMERICA HOTELS CORPORATION
TO PLAINTIFFS' SECOND AMENDED COMPLAINT IN INTERVENTION**

COMES NOW Midamerica Hotels Corporation ("Midamerica Hotels") by and through its attorney, Susan Nell Rowe of The Stolar Partnership, and for its answer to the Plaintiffs' Second Amended Complaint in Intervention, states as follows:

COUNT I – TITLE VII

Jurisdiction and Venue

1. Midamerica Hotels admits that the complaint purports to be a claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, as amended at 42 U.S.C. §1981a (1991), and that the Complaint purports to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1343(a)(4) and 28 U.S.C. §1331.

2. Midamerica Hotels admits that Plaintiffs/Intervenors ("Plaintiffs") were employed by Northwest Development Company ("Northwest") at a restaurant located in the Eastern District of Missouri. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 2.

Parties

3. Midamerica Hotels admits the averments of Paragraph 3.

4. Midamerica Hotels admits that it is a Missouri corporation in good standing and at all times relevant to this matter has continuously transacted business in the state of Missouri. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 4. Further answering Midamerica Hotels specifically denies that it is a joint employer or single employer with Northwest Development.

5. Midamerica Hotels admits that Northwest Development is a Missouri corporation in good standing and at all times relevant to this matter has continuously transacted business in the State of Missouri, including the ownership and operation of a Burger King restaurant in or near Peerless Park, Missouri.

6. Midamerica Hotels admits that at all times relevant to this matter, Northwest Development employed Plaintiffs Brandy Alexander, Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, and Breanna Johnson at a restaurant in or near Peerless Park, Missouri. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 6.

7. Midamerica Hotels admits that it has continuously employed at least 15 employees. Midamerica Hotels denies that it is Plaintiffs' employer and further denies that it is an employer engaged in an industry affecting commerce within the meaning of Title VII, 42 U.S.C. §§2000e(b). Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 7.

Administrative Procedures

8. Midamerica Hotels admits that all Plaintiffs, other than Breanna Johnson, filed charges of sexual harassment in violation of Title VII with the Equal Employment Opportunity

Commission (“EEOC”) and the Missouri Commission on Human Rights (“MCHR”). Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 8. Midamerica Hotels expressly denies that Plaintiff Breanna Johnson filed a charge of discrimination with either the EEOC or the MCHR.

9. Midamerica Hotels admits the averments of Paragraph 9.

10. Midamerica Hotels admits that after finding probable cause and attempting conciliation with respect to the charges of all Plaintiffs, other than Breanna Johnson, the EEOC initiated litigation on behalf of all Plaintiffs. The Missouri Commission on Human Rights (“MCHR”) issued a Notice of Right to Sue to all Plaintiffs, other than Breanna Johnson, on May 16, 2003. Plaintiffs’ First Amended Complaint in Intervention was filed on April 28, 2003, prior to the time Plaintiffs received a Notice of Right to Sue from the MCHR and Plaintiffs’ Second Amended Complaint in Intervention was filed more than ninety (90) days after the time the Plaintiffs received the Notice of Right to Sue from the MCHR. Subsequent to the filing of this lawsuit, the EEOC purportedly reopened the charge of Plaintiff Alexander and found probable cause to believe that Plaintiff Johnson had been subjected to sexual harassment and requested conciliation of Johnson’s alleged claims. Except to the extent herein expressly admitted, Defendants deny each and averment of Paragraph 10.

Factual Allegations

11. Midamerica Hotels denies that it has engaged in unlawful employment practices in violation of Title VII, 42 U.S.C. §2000e-2(a) and the Missouri Human Rights Act, R.S.Mo. §213.055.

a. Midamerica Hotels admits that Plaintiff/Intervenor Brandy Alexander was an hourly employee of Northwest Development. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 11(a).

b. Midamerica Hotels admits that Plaintiff Mary Beth Souders was an hourly employee of Northwest Development. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 11(b).

c. Midamerica Hotels admits that Plaintiff Rachel Nunley was an hourly employee of Northwest Development. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 11(c).

d. Midamerica Hotels admits that Plaintiff Erin Kirk was an hourly employee of Northwest Development. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 11(d).

e. Midamerica Hotels admits that Plaintiff Natoshia Hanneken was an hourly employee of Northwest Development. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 11(e).

f. Midamerica Hotels admits that Plaintiff Erin Bronskill was an hourly employee of Northwest Development. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 11(f).

g. Midamerica Hotels admits that Plaintiff Breanna Johnson was an hourly employee of Northwest Development. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 11(g).

12. Midamerica Hotels denies each and every allegation contained in Paragraph 12.

13. Midamerica Hotels denies each and every allegation contained in Paragraph 13.

14. Midamerica Hotels denies each and every allegation contained in Paragraph 14.

15. Midamerica Hotels denies each and every allegation contained in Paragraph 15.

16. Midamerica Hotels denies each and every allegation contained in Paragraph 16.

AFFIRMATIVE DEFENSE NUMBER ONE: Further answering, Midamerica Hotels states that Count I fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE NUMBER TWO: Further answering, Midamerica Hotels states that it is not and has never been the employer of any of the Plaintiffs, and further states that the Plaintiffs were employed by Northwest Development.

AFFIRMATIVE DEFENSE NUMBER THREE: Further answering, Midamerica Hotels denies that it was a joint employer or a single employer with Northwest Development.

AFFIRMATIVE DEFENSE NUMBER FOUR: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that Plaintiffs have failed to exhaust their administrative remedies

AFFIRMATIVE DEFENSE NUMBER FIVE: Further answering, and pleading in the alternative in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states that Plaintiffs have failed to mitigate their damages, if any.

AFFIRMATIVE DEFENSE NUMBER SIX: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states that Midamerica Hotels 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 Midamerica Hotels or to avoid harm otherwise.

AFFIRMATIVE DEFENSE NUMBER SEVEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states that it took all actions herein in good faith and in the exercise of its legitimate business judgment.

AFFIRMATIVE DEFENSE NUMBER EIGHT: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states that its actions were taken and decisions made herein in good faith.

AFFIRMATIVE DEFENSE NUMBER NINE: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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. Midamerica Hotels has not received fair notice that it could be subject to substantial punitive damages in this state for the conduct alleged. Midamerica Hotels 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 TEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels 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 Midamerica Hotels, 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 Midamerica Hotels 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 ELEVEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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 Midamerica Hotels based upon unconstitutionally vague standards.

AFFIRMATIVE DEFENSE NUMBER TWELVE: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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 Midamerica Hotels to multiple punishments and fines for the same act or conduct.

AFFIRMATIVE DEFENSE NUMBER THIRTEEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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 FOURTEEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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 FIFTEEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs,

Midamerica Hotels states that Plaintiffs' burden of proof is to support a punitive damage recovery by clear and convincing evidence.

WHEREFORE, having fully answered Count I, Midamerica Hotels prays that Count I be dismissed and that Midamerica be awarded its attorneys' fees and costs.

COUNT II – MISSOURI HUMAN RIGHTS ACT

JURISDICTION, VENUE AND PARTIES

17. Midamerica Hotels admits that the complaint purports to be a claim under the Missouri Human Rights Act, R.S.Mo. §213.010 *et. seq*, as amended (1986)(“MHRA”).

18. Midamerica Hotels admits that the Complaint purports to invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. §1367. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 18.

19. Midamerica Hotels admits that Plaintiffs were employed by Northwest Development at a restaurant located in St. Louis County, State of Missouri. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 19.

20. Midamerica Hotels admits that it is a Missouri corporation in good standing, and that Northwest Development is a Missouri corporation in good standing. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 20.

21. Midamerica Hotels admits that it has continuously employed at least six employees. Midamerica Hotels Admits Northwest Development has employed at least six employees. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 21.

Factual Allegations

22. Midamerica Hotels re-alleges and incorporates by reference as if fully set forth herein in its answer to Paragraphs 3, 8, 10, and 11(a) through (g) of Count I.

23. Midamerica Hotels denies each and every allegation contained in Paragraph 23.

24. Midamerica Hotels denies each and every allegation contained in Paragraph 24.

25. Midamerica Hotels denies each and every allegation contained in Paragraph 25.

26. Midamerica Hotels denies each and every allegation contained in Paragraph 26.

27. Midamerica Hotels denies each and every allegation contained in Paragraph 27.

AFFIRMATIVE DEFENSE NUMBER ONE: Further answering, Midamerica Hotels states that Count II fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE NUMBER TWO: Further answering, Midamerica Hotels states that it was never a joint employer with Northwest Development.

AFFIRMATIVE DEFENSE NUMBER THREE: Further answering, Midamerica Hotels states that it is not and has never been the employer of any of the Plaintiffs, and further states that the Plaintiffs were employed by Northwest Development.

AFFIRMATIVE DEFENSE NUMBER FOUR: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that Plaintiffs have failed to exhaust their administrative remedies.

AFFIRMATIVE DEFENSE NUMBER FIVE: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states that Plaintiffs have failed to mitigate their damages, if any.

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AFFIRMATIVE DEFENSE NUMBER SEVEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states that it took all actions herein in good faith and in the exercise of its legitimate business judgment.

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AFFIRMATIVE DEFENSE NUMBER NINE: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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. Midamerica Hotels has not received fair notice that it could be subject to substantial punitive damages in this state for the conduct alleged. Midamerica Hotels 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 TEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels 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 Midamerica Hotels, 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 Midamerica Hotels 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 ELEVEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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 Midamerica Hotels based upon unconstitutionally vague standards.

AFFIRMATIVE DEFENSE NUMBER TWELVE: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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 Midamerica Hotels to multiple punishments and fines for the same act or conduct.

AFFIRMATIVE DEFENSE NUMBER THIRTEEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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 FOURTEEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states 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 FIFTEEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be an employer of Plaintiffs, Midamerica Hotels states Plaintiffs' burden of proof is to support a punitive damage recovery by clear and convincing evidence.

WHEREFORE, having fully answered Count II, Midamerica Hotels prays that Count II be dismissed and that Midamerica Hotels be awarded its attorneys' fees and costs.

COUNT III

Midamerica Hotels makes no response to the averments of Count III because Count III seeks no relief from Midamerica Hotels.

THE STOLAR PARTNERSHIP

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 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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