

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

FT. MYERS DIVISION

FILED

11/29/04

5:04 PM

Date

Time

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

CLERK, U. S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

Plaintiff,

Case No:

Initials

2:04-cv-484-FtM-29-DNF

AMANDA ROENIGK,

Intervenor,

v.

JURY TRIAL DEMANDED
INJUNCTIVE RELIEF SOUGHT

RT TAMPA FRANCHISE, L.P.
a/k/a RT TAMPA FRANCHISE, LTD.
d/b/a RUBY TUESDAY,

Defendant,

COMPLAINT OF INTERVENOR PLAINTIFF AMANDA ROENIGK

COMES NOW the Intervenor Plaintiff, AMANDA ROENIGK, (hereinafter "Plaintiff" or "ROENIGK"), by and through her attorney of record, and sues Defendant, RT Tampa Franchise, L.P. d/b/a Ruby Tuesday (hereinafter "Defendant" or "RUBY TUESDAY"), and alleges as follows:

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 and The Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes, to correct unlawful employment practices on the basis of sex and retaliation, and to

provide appropriate relief to AMANDA ROENIGK ("Ms. ROENIGK") who was adversely affected by such practices. As stated with greater particularity in paragraph 9, Ms. ROENIGK was subjected to sexual harassment by the assistant manager of Defendant. The Defendant subsequently retaliated against Ms. ROENIGK for complaining of the unlawful sexual harassment by terminating her employment with Defendant. This complaint also states a claim against Defendant for Negligent Hiring, Supervision and Retention.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A. This court has supplemental jurisdiction over Plaintiff's state law claims brought pursuant to the Florida Civil Rights Act, Chapter 760, Florida Statutes and the Florida common law claim of Negligent Hiring, Supervision and Retention

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Middle District of Florida, Ft. Myers Division.

PARTIES

3. 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.

4. Intervenor Plaintiff AMANDA ROENIGK is a resident of the State of Florida residing in Lee County, Florida.

5. At all relevant times, RT Tampa Franchise, L.P. d/b/a Ruby Tuesday, a Delaware Corporation, has continuously been doing business in the State of Florida and in the City of Fort Myers, and has continuously had at least 15 employees.

6. At all relevant times, RT Tampa Franchise, L.P. d/b/a Ruby Tuesday has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e(b), (g) and (h).

CONDITIONS PRECEDENT

7. All conditions precedent to bringing this action have been performed or have occurred.

COUNT I
(SEXUAL HARASSMENT IN VIOLATION OF TITLE VII)

8. This is a claim against Defendant Ruby Tuesday for sexual harassment in violation of Title VII of the Civil Rights Act of 1964, as amended.

9. Since at least March 2002, Defendant Employer engaged in unlawful employment practices at its Fort Myers, Florida location in violation of Section 703(a) and Section 704(a) of Title VII, 42 U.S.C. §2000e-2(a) and §2000e-3(a). These practices included, but were not limited to the following:

- a. Permitting Ms. ROENIGK, its employee, to be subjected to unwelcome physical and verbal conduct of a sexual nature, which was sufficiently severe and pervasive to constitute an intimidating, hostile,

and offensive work environment.

- b. The assistant manager, who was Ms. ROENIGK's immediate Supervisor, subjected Ms. ROENIGK to repeated sexual harassment.
- c. Ms. ROENIGK repeatedly complained about the sexual harassment to the general manager, Gail Wilcox and assistant manager Kim Paciello, who failed to take any action to correct the harassment. Defendant failed to take appropriate corrective action in response to Ms. ROENIGK's complaints of the unlawful sexual harassment.
- d. Further, Defendant retaliated against Ms. ROENIGK for complaining of the unlawful sexual harassment by constructively discharging her

10. The effect of the conduct complained of in paragraph 9 a-d above has been to deprive Ms. ROENIGK of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex and/or in retaliation for her opposition to unlawful employment practices.

11. The unlawful employment practices complained of in paragraph 9 a-d above were intentional.

12. The unlawful employment practices complained of in paragraph 9 a-d above were done with malice or with reckless indifference to the federally protected rights of Ms. ROENIGK.

COUNT II
(UNLAWFUL RETALIATION IN VIOLATION OF TITLE VII)

13. This is a claim against Defendant Ruby Tuesday for unlawful retaliation in

violation of Title VII of the Civil Rights Act of 1964, as amended.

14. Plaintiff ROENIGK re-alleges paragraphs 9 a-d above.

15. The effect of the conduct complained of in paragraph 9 a-d above has been to deprive Ms. ROENIGK of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex and/or in retaliation for her opposition to unlawful employment practices.

16. The unlawful employment practices complained of in paragraph 9 a-d above were intentional.

17. The unlawful employment practices complained of in paragraph 9 a-d above were done with malice or with reckless indifference to the federally protected rights of Ms. ROENIGK.

COUNT III
(SEXUAL HARASSMENT IN VIOLATION OF THE FLORIDA CIVIL
RIGHTS ACT, CHAPTER 760, FLORIDA STATUTES)

18. This is a claim against Defendant Ruby Tuesday for sexual harassment in violation of The Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes.

19. At all relevant times, Defendant Ruby Tuesday was an “employer” and Plaintiff ROENIGK an “employee” within the meaning of the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes. At all relevant times, Defendant employed fifteen (15) or more employees.

20. Plaintiff ROENIGK re-alleges paragraphs 9 a-d above.

21. The effect of the conduct complained of in paragraph 9 a-d above has been to deprive Ms. ROENIGK of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex and/or in retaliation for her opposition to unlawful employment practices.

22. The unlawful employment practices complained of in paragraph 9 a-d above were intentional.

23. The unlawful employment practices complained of in paragraph 9 a-d above were done with malice or with reckless indifference to the federally protected rights of Ms. ROENIGK.

COUNT IV
(UNLAWFUL RETALIATION IN VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT, CHAPTER 760, FLORIDA STATUTES)

24. This is a claim against Defendant Ruby Tuesday for unlawful retaliation in violation of The Florida Civil Rights Act, Chapter 760, Florida Statutes.

25. At all relevant times, Defendant Ruby Tuesday was an “employer” and Plaintiff ROENIGK an “employee” within the meaning of the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes. At all relevant times, Defendant employed fifteen (15) or more employees.

26. Plaintiff ROENIGK re-alleges paragraphs 9 a-d above.

27. The effect of the conduct complained of in paragraph 9 a-d above has been to deprive Ms. ROENIGK of equal employment opportunities and otherwise adversely affect

her status as an employee because of her sex and/or in retaliation for her opposition to unlawful employment practices.

28. The unlawful employment practices complained of in paragraph 9 a-d above were intentional.

29. The unlawful employment practices complained of in paragraph 9 a-d above were done with malice or with reckless indifference to the federally protected rights of Ms. ROENIGK.

PRAYER FOR RELIEF FOR COUNTS I-IV

Wherefore, with respect to Counts I-IV set forth above, Plaintiff ROENIGK respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with Defendant, from engaging in sexual harassment or any other employment practice which discriminates on the basis of sex and/or opposition to an unlawful employment practice.

B. Order Defendant, to institute and carry out policies, practices, and programs which provide equal employment opportunities for females, and which eradicate the effects of its past unlawful employment practices.

C. Order Defendant to make whole AMANDA ROENIGK by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement and/or front pay.

D. Order Defendant to make whole AMANDA ROENIGK by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 9 a-d above, including out of pocket losses in amounts to be determined at trial.

E. Order Defendant to make whole AMANDA ROENIGK by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 9 a-d above, including emotional pain, suffering, inconvenience, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendant to pay AMANDA ROENIGK punitive damages for its malicious and reckless conduct described in paragraph 9 a-d above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award AMANDA ROENIGK all attorney's fees and costs incurred in this matter.

COUNT V
(NEGLIGENT HIRING, SUPERVISION AND RETENTION UNDER
FLORIDA COMMON LAW)

30. This is a claim against Defendant for Negligent Hiring, Supervision and Retention under Florida Common Law.

31. Defendant breached its duty to hire, supervise and retain their employees in a manner to prevent and stop actions constituting sexual harassment, assault and battery

under Federal and Florida law.

32. Defendant knew or should have known of, or failed to make sufficient inquiry regarding, the maintenance of a sexually hostile working environment at Ruby Tuesday.

33. Defendant negligently trained and negligently supervised their managers, assistant managers and employees and that said Defendant failed to afford its managers, assistant managers and employees sufficient formal/informal service training so as to appreciate, carry out and enforce Defendant's, alleged own anti-sexual harassment and retaliation policy.

34. Defendant negligently retained a member of management after Defendant knew or should have known that said member of management was violating Defendant's anti-sexual harassment and retaliation policy.

35. As a direct and proximate result of the foregoing failures of Defendant to hire, supervise and retain their staff, Plaintiff has suffered mental anguish, emotional distress, expense, loss of employment and wages, embarrassment and loss of enjoyment of life.

36. That Corporate Defendant's conduct so demonstrates a reckless indifference to the rights of Plaintiff as to constitute an act of intentional harm warranting the award of punitive damages.

WHEREFORE, Plaintiff respectfully demands that this Court enter judgment against Defendant in favor of Ms. Roenigk pursuant to Florida common law, and that the

following relief be awarded to Ms. Roenigk:

- A. Order Defendant to pay Ms. Roenigk compensatory damages;
- B. Order Defendant to pay Ms. Roenigk punitive damages;
- C. Grant such further relief as the Court deems necessary and proper.
- D. Award Ms. Roenigk all costs incurred in this matter.

JURY TRIAL DEMAND

Intervenor Plaintiff requests a jury trial on all questions of fact raised by the complaint.

Respectfully Submitted,

By: 

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