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W. Dist. of N. C.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE, NORTH CAROLINA
CIVIL ACTION 1:04 CV 006

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FILED
ASHEVILLE, N. C.

APR 15 2004
U.S. DISTRICT COURT
W. DIST. OF N. C.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Plaintiff,

and

CHRISTINA J. SCRUGGS,
Plaintiff-Intervenor,

COMPLAINT IN INTERVENTION

JURY TRIAL DEMAND

v.

RYAN'S FAMILY STEAK HOUSES,
INC.
Defendant.

Plaintiff-Intervenor Christina J. Scruggs alleges as follows:

1. This action is brought under Title VII of the Civil Rights Act of 1964 (as amended), and Title I of the Civil Rights Act of 1991, seeking legal and equitable relief from the defendant's unlawful employment practices on the basis of sex, and to make Plaintiff-Intervenor whole for losses sustained as a result of defendant's illegal practices. The Court has jurisdiction under 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345, and § 706(f)(3) of Title VII of the Civil Rights Act of 1964 (as amended), 42 U.S.C. § 2000e-5(f)(3), (hereinafter referred to as "Title VII").
2. Plaintiff Equal Employment Opportunity Commission (the "Commission") is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is authorized to bring this action by § 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(f)(1).
3. Plaintiff-Intervenor Christina J. Scruggs is an adult female citizen of the United States who currently resides in Horry County, South Carolina. Plaintiff-Intervenor is entitled to intervene as a

matter of right, pursuant to § 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all times relevant herein, defendant Ryan's Family Steakhouses, Inc., has continuously been a North Carolina Corporation doing business in North Carolina in the City of Shelby, North Carolina, and is subject to the jurisdiction of this Court. Defendant's primary place of business where the alleged unlawful employment practices occurred is located in Cleveland County, North Carolina, and within the jurisdiction of the United States District Court for the Western District of North Carolina.

5. At all relevant times, defendant Ryan's Family Steakhouse Inc., has continuously been an employer engaged in an industry affecting commerce under Section 701(b),(g),(h) of Title VII, 42 U.S.C. 2000e-(b), (g), (h). Defendant has continuously had at least 15 employees in each of 20 or more calendar weeks during each year pertinent to Plaintiff-Intervenor's claims.

6. Plaintiff-Intervenor was employed by the defendant in October of 1998. She continued in that position until she was constructively discharged in or around February of 2000 and then again in May of 2000.

7. Throughout the period of Plaintiff-Intervenor's employment, the defendant, acting through their manager and supervisor, created an unwelcome and hostile working environment by subjecting her to a series of unwelcome and unsought touching, rude and lewd comments and acts, sexually harassing, indecent and intimidating acts of misconduct, including repeated comments that were of a sexually suggestive nature, requests for sexual favors, and sexually related assault and battery against her person, as well as numerous acts of unconsensual touching of the Plaintiff-Intervenor and other sexually offensive conduct and contact.

8. The foregoing acts of the defendant, through their authorized agent and manager, include instances in 1999 when their manager/supervisor told Plaintiff-Intervenor that she needed to sit down

in his office at which time he started rubbing the Plaintiff-Intervenor's back, and then proceeded to move his hands around to the Plaintiff-Intervenor's breast and proceeded to grab her breast with his hands before the Plaintiff-Intervenor was able to break away. Furthermore, in 1999, the same manager for the defendant exposed himself to the Plaintiff-Intervenor and asked the Plaintiff-Intervenor to put a finger condom on his penis. On other occasions in 1999, the defendant's manager grabbed money from the person of the Plaintiff-Intervenor that she had collected in tips as working as a waitress for the defendant and told the Plaintiff-Intervenor that he would not return her money unless she agreed to perform oral sex on the defendant's manager.

9. On other occasions in 1999, the defendant, acting through their supervisor and manager, sexually harassed, humiliated and intimidated the Plaintiff-Intervenor as follows: by pulling her down on the manager's lap in his office and asking the Plaintiff-Intervenor to perform a "lap dance"; forcibly holding the Plaintiff-Intervenor down and unzipping her pants before she could break away; by forcibly unbuttoning her shirt and touching her in a sexual manner before she could break away; by telling Plaintiff-Intervenor that if she did not comply with requests for sexual favors then Plaintiff-Intervenor would receive unfavorable job assignments in work areas at the restaurant which would negatively impact her earnings and cause her to lose her job.

10. After Plaintiff-Intervenor formally reported the sexual harassment to defendant Ryan's management, defendant's manager/supervisor retaliated against Plaintiff-Intervenor by placing her in a bear hug and grabbing her in an intimidating and sexual way.

11. The defendant Ryan's Family Steakhouse, Inc., is vicariously liable for the actions of their manager and supervisor as alleged herein. All such wrongful and unlawful acts are imputed to the defendant Ryan's. Furthermore, by retaining Boswell in a supervisory position after having actual and constructive notice of his tendency to engage in sexually offensive conduct, and by failing to

intervene to prevent further offensive behavior towards Plaintiff-Intervenor, and failing to sufficiently investigate Plaintiff-Intervenor's complaints, the defendant Ryan's has acquiesced in, approved, and/or ratified such acts of misconduct and unlawful activity, including sexual harassment and therefore the wrongful acts as described herein are imputed to defendant and defendant is liable under the doctrine of respondeat superior. Defendant had previously failed to prevent further sexual harassment of Plaintiff-Intervenor by another employee of defendant in 1999 and 2000.

12. More than 30 days prior to the institution of this lawsuit, Plaintiff-Intervenor filed a timely charge of discrimination with the Commission, alleging violations of Title VII by the defendant. All conditions precedent to the institution of this action have been fulfilled.

13. Since at least December 1998, defendant Ryan's Family Steakhouse Inc., has engaged in unlawful employment practices in its restaurant located in Shelby, North Carolina, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. 2000e-2(a)(1), as set forth herein.

14. Defendant subjected Plaintiff-Intervenor to discrimination based on her sex by subjecting her to a sexually hostile work environment. The sexual harassment included unwelcome sexual touching, comments, and advances by her supervisor/manager. Although Plaintiff-Intervenor complained about the sexual harassment, and defendant otherwise knew or should have known about the sexual harassment, defendant failed to take appropriate actions to stop it.

15. Defendant constructively discharged Plaintiff-Intervenor by maintaining the sexually hostile work environment and by failing to take appropriate action to stop the harassment. Defendant's actions have deprived Plaintiff-Intervenor of equal employment opportunities and has otherwise adversely effected her status of an employee because of her sex.

16. The unlawful employment practices complained of were intentional.

17. The unlawful employment practices complained of herein were done with malice or with

reckless indifference to the federally protected rights of Plaintiff-Intervenor.

18. As a proximate result of the defendant's actions, Plaintiff-Intervenor has been damaged, in incurring lost wages, embarrassment, humiliation, physical illness and emotional and mental distress, and other damages to be proven at trial.

19. Plaintiff-Intervenor is entitled to recover punitive damages from the defendant.

20. Defendant's actions violate Section 703(a) of Title VII, 42 U.S.C. 2000e-2(a).

WHEREFORE, Plaintiff-Intervenor prays the Court for relief:

(a) Granting a permanent injunction enjoining the defendant, their officers, agents, supervisors, and all persons in active concert or participation within, from engaging in policies or practices which discriminate against because of sex against Plaintiff-Intervenor in violation of Title VII; and

(b) Judgment requiring the defendant to make Plaintiff-Intervenor whole by providing appropriate back pay with prejudgment interest in amounts to be determined at trial, front pay, and other affirmative relief necessary to eradicate the effects of its unlawful practices, which may include but is not limited to reinstatement; and

(c) Awarding Plaintiff-Intervenor compensatory damages for all damages sustained as a result of the defendant's illegal activities, and to make Plaintiff-Intervenor whole by providing her with compensation for past and future pecuniary losses resulting from such unlawful employment practices as described herein, including medical expenses in amounts to be determined in trial; and

(d) Awarding Plaintiff-Intervenor compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of herein, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, loss of self esteem and loss of civil rights, in amounts to be determined in trial; and

- (e) Awarding Plaintiff-Intervenor punitive damages in an amount to be determined by the jury for defendant's malicious and reckless conduct; and
- (f) Taxing the costs of this action, including reasonable attorneys fees against the defendant; and
- (g) Granting such further relief that the Court deems necessary and proper.

JURY TRIAL DEMANDED

Plaintiff-Intervenor Demands Trial by Jury of
All Issues so Triable

MOREAU & MARKS, P.L.L.C.

BY: 

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has this day duly served a copy of the foregoing **Complaint in Intervention** upon said parties, by hand delivering to the United States District Court and depositing same to other parties in the United States Mail, first-class, postage prepaid, addressed as follows:

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Charlotte District
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This the 12th day of March, 2004.



W. Timothy Moreau