

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff

and

CIVIL ACTION NO. **06-3429**

ASHLEY BOWERMASTER,
Plaintiff-Intervener

v.

JURY TRIAL DEMANDED

SHALIL, INC. (D/B/A DUNKIN DONUTS/
BASKIN ROBBINS LEOLA, PA); RAJA
PATEL,
Defendants

PLAINTIFF-INTERVENER'S COMPLAINT

I. PRELIMINARY STATEMENT

Plaintiff-Intervener, Ashley Bowermaster, brings this action against Defendants, SHALIL, INC. (D/B/A DUNKIN DONUTS/ BASKIN ROBBINS LEOLA, PA), and RAJA PATEL, for sexual harassment and sex discrimination, including subjecting her to a hostile work environment, and for tort claims arising under Pennsylvania Common Law. Ms. Bowermaster seeks compensatory and punitive damages, and other statutory relief under federal and state laws, Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, the Pennsylvania Human Relations Act, and the Pennsylvania Common Law.

II. PARTIES

1. Plaintiff-Intervener, Ashley Bowermaster, an individual is and was at all times relevant hereto a citizen of the United States, an individual, and a citizen of the Commonwealth of Pennsylvania, residing at 420 Dohner lane, Lancaster, Pennsylvania. She is a female.

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2. At all relevant times, Defendant, Shahil, Inc., d/b/a Dunkin Donuts/Baskin Robbins ("Shahil"), a corporation, has continuously been and is now doing business in the State of Pennsylvania at 366 West Main Street, Leola, Pennsylvania, 17540 and has continuously had at least fifteen (15) employees.

3. At all relevant times, Defendant Employer had 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).

4. Defendant, RAJA PATEL, an adult individual, was at all times material and relevant hereto an employee of Defendant, SHALIL, INC., and had supervisory responsibility over Plaintiff-Intervener. Mr. Patel's last known business address was 366 West Main Street, Leola, PA 17540.

5. Upon information and belief, Defendant, RAJA PATEL, is related by blood or marriage to the owners of Defendant, SHALIL, INC., and other management personnel at the subject business in Leola, PA 17540.

6. At all times material hereto, Defendant, SHALIL, INC., acted by and through its authorized agents, servants, workman, and/or employees, including Defendant, RAJA PATEL, who was acting within the course and scope of his and their employment with the Defendant, SHALIL, INC., and in the furtherance of Defendant's, SHALIL, INC.'s business.

III. JURISDICTION AND VENUE

7. The causes of this action arise, under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-, et seq., ("Title VII"), Section 102 of the Civil Rights Act of 1991, the Pennsylvania Human Relations Act as amended, 43 P.S. Sec. 951, et seq. (PHRA), and the Pennsylvania Common Law. The District Court has jurisdiction over causes of action under Title

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VII, pursuant to 42 U.S.C. § 2000 (e) - 5 (f) and 28 U.S.C. § 1331, the Pennsylvania Human Relations Act pursuant to 28 U.S.C. 1367, and the Pennsylvania Common Law claims pursuant to 28 U.S.C. 1367.

8. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

9. Venue is proper under 28 U.S.C. § 1391 Ch) Procedural Requirements.

IV. PROCEDURAL REQUIREMENTS

10. On or about March 18, 2005, more than thirty days prior to the institution of this lawsuit Ashley Bowermaster filed a charge with the Commission alleging violations of Title VII by Defendant Employer, and dual filed with the Pennsylvania Human Relations Commission alleging sex discrimination and workplace harassment by her employer, SHALIL. INC., and RAJA PATEL. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Following it's investigation, the EEOC determined there was cause for finding a violation of Title VII by Defendant, SHALIL, INC., and on or about August 3, 2006, filed this lawsuit, naming SHALIL, INC. (D/B/ADUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA) as Defendant. Plaintiff-Intervener, ASHLEY BOWERMASTER, filed a Motion to Intervene, to which this Complaint was appended.

12. Plaintiff-Intervener joins with Plaintiff, EEOC, in filing this Complaint, and incorporates the EEOC Complaint to the extent not inconsistent herein.

13. The amount in controversy exceeds \$75,000.00.

14. Plaintiff-Intervener, ASHLEY BOWERMASTER, has fully complied with all the administrative prerequisites for the commencement of this action.

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V. FACTUAL ALLEGATIONS

15. As articulated with greater particularity below, Ashley Bowermaster, a counter and cash register worker, and a class of female employees were subjected to sexual harassment by male supervisors, and co-workers, beginning in August 2004. The Plaintiff-Intervener alleges that despite numerous complaints by these women, Defendants failed to undertake any effective remedial action to stop the offensive and discriminatory conduct. Plaintiff-Intervener was subjected to a hostile work environment.

16. As a result of the sexual harassment, Ashley Bowermaster, as well as other female employees were forced to resign from their employment and were constructively discharged from their positions as counter and cash register employees. Ashley Bowermaster, and a class of female employees suffered severe emotional distress and damages as a result of the illegal conduct of the Defendants.

17. Since at least September-October, 2004, Defendant Employer has engaged in unlawful employment practices at its Leola, Pennsylvania facility, in violation of section 703(a)(1) of Title VII, the Civil Rights Act, the Pennsylvania Human Relations Act and the Pennsylvania Common Law, by subjecting Plaintiff-Intervener, ASHLEY BOWERMASTER, and a class of female employees to continuing disparate, discriminating, and harassing treatment creating a sexually hostile and abusive work environment. The unlawful employment practices include, but are not limited to, the following:

a. Ashley Bowermaster, then age 16, started working for Defendant as a counter and cash register employee on or about September 1, 2004. Her duties included operating the register, cleaning the store, preparing food and stocking supplies. She worked approximately

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twenty (20) hours per week because she was a full-time high school student. At all relevant times, Ms. Bowermaster's performance was satisfactory.

b. From the beginning of her employment, Ms. Bowermaster was subjected to egregious sexual harassment by Defendant employee Raja Patel. He would constantly smile and wink at her in a sexually inappropriate manner. He would also grabbed and touched her body against her wishes. Once, using the ruse of shoving waste paper in her pants pocket, he fondled her buttocks. Another incident occurred in October 2004, when Ms. Bowermaster came to the store to show some of her co-workers the dress outfit she was planning to wear for her high school's homecoming, which was scheduled that night. While at the store, she put her hands on the counter, and Raja Patel unexpectedly grabbed her arms and tried to pull Ms. Bowermaster over the counter to him. She was terrified what Mr. Patel would do to her if he successfully pulled her over the counter. She pulled as hard as she possibly could and was able to eventually break away from his clutches. While Ms. Bowermaster looked in disbelief at Raja Patel, he simply smiled at her.

c. Ms. Bowermaster later learned that other females, some of whom were minors, were also being sexually harassed by Defendant employees, including but not limited to, managers Chintan Patel and Praful Patel. Fed up by the disgusting and insulting behavior they were being subjected to, Ms. Bowermaster and some of these women complained to managers such as Chintan Patel and Praful Patel that they wanted the sexual harassment to stop. However, the male managers laughed at them and completely disregarded their Complaints.

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d. In addition, a class of female employees of which Plaintiff-Intervener was a member were also subjected to egregious sexual harassment while working for Defendant. The harassment included, but was not limited to, unwelcome sexual advances, inappropriate sexual comments, uninvited sexually explicit language and remarks, and unwelcome egregious physical touching and contact, on a regular and on-going basis.

e. Managers such as Chintan Patel, Praful Patel and Pranav Patel, as well as other male employees, sexually harassed the class of female employees on almost each and every occasion that they worked. For example, Chintan Patel, after promising to drive home a female employee, pushed down her driver's seat, got on top of her, ran his hand up her shirt and started kissing on her neck. The young female employee resisted, but he held her down with his arms. She finally was able to get away from him and call her mother to come get her.

f. The class members consistently objected to each sexually inappropriate comment and advance made by these male managers and employees by asking the supervisors to stop the behavior. Moreover, the female employees begged other supervisors, such as Harry Patel, to put an end to the sexual harassment. However, Defendant failed to take effective corrective action to stop what was happening and the harassment continued.

g. Defendant Employer, Shalil, Inc., knew or should have known about the harassment, but failed to take prompt and effective remedial measures to correct the hostile work environment committed against Ashley Bowermaster and a class of female employees.

18. Because of the circumstances set forth above, and Defendant, SHALIL, INC.'s, failure to remedy and stop the sexual harassment, the work environment became so intolerable that Plaintiff-Intervener was constructively discharged in October 2004. Plaintiff-Intervener, ASHLEY

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BOWERMASTER, did not go back to work because she was afraid these incidents would continue to happen.

19. Defendants failed to prevent, address, or remedy the improper, discriminatory actions referred to herein, and further failed to take corrective measures to make the workplace free of discriminatory and harassing conduct.

20. As a direct and proximate result of the improper, discriminatory, and harassing conduct of Defendants, Ashley Bowermaster has in the past incurred, and may in the future incur, a loss of earnings and/or earning capacity, loss of benefits, attorney fees, pain and suffering, embarrassment, humiliation, mental anguish, and loss of life's pleasures, the full extent of which are not known at this time.

21. Defendants engaged in discriminatory conduct with malice and reckless indifference to Ashley Bowermaster's right to be free from such discrimination. The conduct of Defendants, as set forth herein, was outrageous under the circumstances, and warrants the imposition of punitive damages.

COUNT I

Title VII

22. Plaintiff-Intervener, ASHLEY BOWERMASTER, incorporates herein by reference paragraphs 1 through 21 above, as set forth herein in their entirety.

23. Defendants, by their discriminatory actions against Ashley Bowermaster, have violated Title VII.

24. Said violations were intentional.

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25. Said violations were conducted with malice and reckless indifference to Ashley Bowermaster's right to be free from such discrimination. The conduct of Defendants, as set forth herein, was outrageous under the circumstances, and warrants the imposition of punitive damages.

26. As a direct and proximate result of Defendants' violation of Title VII, Ashley Bowermaster has sustained the injuries, damages, and losses set forth herein.

27. Plaintiff-Intervener, ASHLEY BOWERMASTER, is now suffering, and will continue to suffer irreparable injury and monetary damages as a result of Defendants' discriminatory conduct unless and until this Court grants the relief requested herein.

COUNT II

Pennsylvania Human Relations Act

28. Plaintiff-Intervener, ASHLEY BOWERMASTER, incorporates herein by reference paragraphs 1 through 27 above as if set forth herein in their entirety.

29. Defendant, SHALIL, INC. (D/B/A DUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA), violated the PHRA by its discriminatory actions against Ashley Bowermaster.

30. Defendant, RAJA PATEL, is individually liable for his act under provisions of the PHRA as a result of his discriminatory conduct directed toward Ashley Bowermaster.

31. Defendant, SHALIL, INC. (D/B/A DUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA), is liable for the act of its employee, Raja Patel, who had supervisory responsibility over Plaintiff-Intervener, ASHLEY BOWERMASTER.

32. Said violations were intentional.

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33. As a direct and proximate result of Defendants' violation of the PHRA, Ashley Bowermaster has sustained the injuries, damages, and losses set forth herein.

34. Plaintiff-Intervener, ASHLEY BOWERMASTER, is now suffering, and will continue to suffer irreparable injury and monetary damages as a result of Defendants' discriminatory, and retaliatory acts unless and until this Court grants the relief requested herein.

COUNT III

Intentional Infliction of Emotional Distress

35. Plaintiff-Intervener, ASHLEY BOWERMASTER, re-alleges and reincorporates by reference all allegations contained in paragraphs 1 through 34 as if set forth herein in their entirety.

36. By the conduct outlined above, Defendant, SHALIL, INC. (D/B/A DUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA), through its duly authorized agent, Raja Patel, intentionally inflicted emotional distress on Ashley Bowermaster.

37. Defendants' conduct, as outlined above, was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.

38. Defendants engaged in such conduct with malice and reckless indifference to the rights of Ashley Bowermaster.

39. As relief for Defendants' unlawful conduct, Ashley Bowermaster is entitled to recover, in amounts to be proved at trial, compensatory damages for pain and suffering, past and future; for mental anguish and humiliation, past and future; for loss of enjoyment of life's pleasure, past and future.

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40. As further relief for the unlawful conduct, Ashley Bowermaster is entitled to recover, in amounts to be proved at trial, punitive damages.

41. As further relief for Defendants' unlawful conduct, Ashley Bowermaster is entitled to recover, in amounts to be proved at trial, all other legal and equitable relief recoverable under state tort law, including, but not limited to, attorney fees, expert witness fees, the costs of this action, and pre and post-judgment interest.

COUNT IV

Assault and Battery

42. Plaintiff-Intervener, ASHLEY BOWERMASTER, re-alleges and reincorporates by reference all allegations contained in paragraphs 1 through 41 as if set forth herein in their entirety.

43. The physical touching of the body of the Plaintiff-Intervener, ASHLEY BOWERMASTER, by Defendant, RAJA PATEL constituted battery.

44. Plaintiff-Intervener, ASHLEY BOWERMASTER, did not desire this touching to occur.

45. The conduct of the Defendant, RAJA PATEL, set forth above was intended to cause harmful or offensive contact with the body of the Plaintiff-Intervener, and that the Defendant, RAJA PATEL, intended to put the Plaintiff-Intervener in reasonable and immediate fear of a harmful or offensive contact with her body.

46. The Plaintiff-Intervener was justifiably put in reasonable and immediate fear that if she continued to be employed by Defendant, SHALIL, INC. (D/B/A DUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA), that the harmful or offensive contact from Defendant, RAJA PATEL, would continue.

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47. Defendant, SHALIL, INC. (D/B/A DUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA), knew or should have known of this behavior on the part of Defendant, RAJA PATEL, and took no action to correct the situation.

48. In as much as the Defendant, RAJA PATEL, was an employee of Defendant, SHALIL, INC. (D/B/A DUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA), and was acting within the scope of his employment with Shalil, Inc., and having supervisory responsibilities over the Plaintiff-Intervener, Ashley Bowermaster, Defendant, SHALIL, INC. (D/B/A DUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA), is also liable for the assault and battery perpetrated by the Defendant, Raja Patel, upon the person of the Plaintiff-Intervener, ASHLEY BOWERMASTER.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervener, ASHLEY BOWERMASTER, respectfully requests that this Court Enter Judgement against the Defendants:

- A. Declaring the acts and practices complained of herein to be in violation of Title VII;
- B. Declaring the acts and practices complained of herein to be in violation of the PHRA;
- C. Declaring the acts and practices complained of herein to be in violation of Pennsylvania Common Law including, the intentional infliction of emotional distress; and assault and battery;
- D. Enjoining and restraining permanently the allegations alleged herein;
- E. Directing Defendants to take such affirmative actions as are necessary to assure that the effects of the unlawful employment practices complained of herein are eliminated;

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F. Order Defendants to make whole Ashley Bowermaster by awarding 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.

G. Order Defendants to make whole Ashley Bowermaster by awarding compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including but not limited to out-of-pocket losses in amounts to be determined at trial.

H. Order Defendants to make whole Ashley Bowermaster by awarding compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of above, including pain and suffering, humiliation, embarrassment, and loss of life's pleasures, in amounts to be determined at trial.

I. Awarding Plaintiff-Intervener compensatory damages for extreme emotional upset, mental anguish, humiliation, loss of life's pleasures and pain and suffering;

J. Order Defendants to pay Plaintiff-Intervener, ASHLEY BOWERMASTER, compensatory damages for the assault and battery she suffered.

K. Order Defendant, SHALIL, INC. (D/B/A DUNKIN DONUTS/BASKIN ROBBINS LEOLA, PA), and Defendant, RAJA PATEL, to pay Ashley Bowermaster punitive damages for the malicious and reckless conduct described above, in amounts to be determined at trial.

L. Awarding Plaintiff-Intervener such other damages as are appropriate under Title VII, the Pennsylvania Human Relations Act, and the Pennsylvania Common Law
Grant such further relief as the Court deems necessary and proper in the public interest.

M. Award Plaintiff-Intervener, ASHLEY BOWERMASTER, attorney fees and costs of this action.

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

Respectfully Submitted,

Dated: September 18, 2006

SKO6910

Scott K. Oberholtzer, Esquire

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Lancaster, PA 17602

(717) 397-4194

I.D. No. 23698

Attorney for Plaintiff-Intervener Ashley Bowermaster

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY
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Defendants

CERTIFICATE OF SERVICE

TO THE CLERK OF COURT:

The undersigned hereby certifies that I have caused a true and correct copy of the foregoing INTERVENER COMPLAINT to be served via first class mail, postage prepaid, to the following person(s) on the date indicated below:

Shalil, Inc. (D/B/A Dunkin
Donuts/Baskin Robbins Leola, PA)
366 West Main Street
Leola, PA 17540

Raja Patel
Shalil, Inc.
366 West Main Street
Leola, PA 17540

Woody Anglade - Trial Attorney
Judith A. O'Boyle - Sup. Trial Atty.
Jacqueline McNair - Reg. Attorney
U.S. EEOC
Philadelphia District Office
The Bourse Building
21 South Fifth Street - Suite 400
Philadelphia, PA 19106

James L. Lee - Deputy General Counsel
Gwendolyn Young Reams - Associate General Counsel
U.S. Equal Employment Opportunity Commission
1801 L. Street, NW
Washington, DC 20507

The foregoing document has also been filed electronically by providing the Office of the Clerk with copy of this document in PDF format, and will be available for viewing and downloading on the ECF System.

Dated: September 18, 2006

Respectfully Submitted,

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