

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED

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CLERK
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, and
GLENDA HERRING, INTERVENOR

Plaintiff,

CIVIL ACTION

NORSTAN APPAREL SHOPS, INC.

FILE NO 8:01-cv-379-T-26EAJ

Defendant,

PLAINTIFF INTERVENOR'S SECOND AMENDED COMPLAINT

COMES NOW Plaintiff Intervenor (Plaintiff, hereafter) , Glenda Herring, who amends her complaint against defendant NORSTAN APPARELL,INC. as follows:

INTRODUCTION

1. The plaintiff is a white, college educated, female who has held substantial retail managerial positions. The plaintiff was wrongfully terminated from a management position by the defendant, Norstan Apparel, Inc. a New York based apparel conglomerate, who operates retail clothing stores located in malls in Tampa, Florida, and throughout the United States called Fashion Cents.
2. Plaintiff, Glenda Herring, and her husband reported to upper management at Norstan Apparel incidents of sexual harassment that were reported to her by young employees at the retail store.

3. Management retaliated against Mrs. Herring for making the reports of sexual harassment by wrongfully terminating her employment.

JURISDICTION

4. This action is one for Intervention as of right granted by Federal Statute, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(f)(1),
5. This action asserts claims of employment discrimination under Title VII of the Civil Rights Act of 1964 and Title 1 of the Civil Rights act of 1991 and the Florida Civil Rights Act of 1992, F.S. 760.01-760.11 and F.S. 509.092.
6. The Plaintiff has complied with the conditions precedent required, and exhausted her Federal and State administrative remedies.
7. The Florida state claims in this action are brought under this Court's authority to exercise pendent jurisdiction over state law claims asserted herein.
8. The Plaintiff at the time of the action was a citizen of Hillsborough County, Florida and submits herself to the jurisdiction of this Court.
9. The plaintiff Glenda Herring at all times relevant to this matter resided in the state of Florida and submits herself to the pendent jurisdiction of this court.

STATEMENT OF CLAIMS

COUNT ONE

10. Plaintiff incorporates by reference all paragraphs asserted above as if fully asserted herein, and adopts by reference the allegations contained in E.E.O.C. v. NORSTAN APPAREL SHOPS, INC. Civil Action 8:01-cv-379-T-26EAJ previously filed with the Court by Plaintiff, E.E.O.C and by Plaintiff Intervenor.

COUNT TWO

CONSPIRACY

11. The plaintiff incorporates by reference all paragraphs asserted above as if the same were fully set out herein and in addition alleges:
12. Plaintiff alleges a conspiracy existed between local and regional Managers of Norstan. Two or more persons collaborated and acted together to intentionally misrepresent the facts surrounding the plaintiff's employment record with Norstan.
13. Under information and belief at least two Norstan managers collaborated and acted in concert to further the plan to accomplish and coerce a legal act by illegal means.
14. Alternatively, at least two Norstan managers conspired to commit an illegal act intended to harm the plaintiff.
15. The act of conspiracy against the plaintiff was done with malice and reckless indifference to the plaintiffs legal rights.
16. The conspiracy existed to coerce the plaintiff to do an act that would be detrimental to the plaintiff and beneficial to the corporation.
17. The two conspired to intimidate the plaintiff, locked the plaintiff in, and coerce the plaintiff into either resigning, and dropping all sexual harassment charges or signing false documents that exonerated the corporation of any wrong doing.

18. This was accomplished by acting together and developing plans to exert undue influence and use duress to influence the plaintiff.
19. The conspiracy was committed for the purpose of depriving the plaintiff, directly or indirectly of equal protection under the law or of equal privileges and immunities under the law.
20. The conspiracy was done for the purpose of eliciting a false statement from the plaintiff exonerating the Corporation and managers of wrongful employment practices.
21. The plaintiff suffered an injury as a result of the conspiracy.
22. The Defendant's agent was self dealing to further her own interest in intentionally or negligently formulating the conspiracy.
23. Plaintiff alleges that defendant's agent, Monica Bar, took unconscionable advantage of the plaintiff to serve her own purpose. Monica Barr wielded the disproportionate power created by her position as manager and confidant over the plaintiff to defame, defraud, imprison, fire, violate the human rights of the plaintiff employee.
24. Plaintiff alleges that two or more persons, employees and agents of Norstan Apparel, Inc., Monica Barr, Stephanie Roper and another Norstan Apparel, Inc. manager whose name is currently unknown, met together on at least two separate occasions at or around Fashion Cents a Norstan Apparel Inc. a retail store located at Tampa Bay Mall on or around May 28, 1999 and

negligently, recklessly, or intentionally agreed to act to conspire to do wrong acts.

25. At least two managers were present and negligently or recklessly or intentionally conspired together and breached their duty of reasonable care not to harm the plaintiff when they falsely imprisoned, defrauded, defamed and wrongfully terminated the plaintiff. Their breach proximately caused the plaintiff to suffer injury

26. Plaintiff alleges that two or more managers employed by the defendant Norstan Apparel, Inc. and acting as agents for said defendant agreed to act together in furtherance of perpetrating a conspiracy to commit torts and other wrongs against the plaintiff for the purpose of depriving the plaintiff of her of her civil rights under the United States Constitution providing equal protection of the law and equal privileges and immunities under the law under Title 42 U.S.C. section 1985(3).

27. The manager's committed acts in furtherance of the conspiracy when they agreed to tear up and did, in the presence of the plaintiff, tear up the plaintiff's own hand written employment termination statement that included the plaintiff's claims that she had notified the employer on several occasions of continuing violations of Title VII including sexual harassment and discriminatory activities in the work place by Rick Moyers, a Norstan Apparel Inc. employee.

28. Monica Barr tore up the plaintiff's own handwritten termination of employment statement and substituted a statement dictated by one of the co conspirators,

and forced the plaintiff to sign it while all three managers concurred in the action.

29. The three Norstan Apparel Inc. managers further conspired and agreed to falsely imprison the plaintiff until the plaintiff agreed to sign an employment termination report. Plaintiff alleges that two or more Norstan employees agreed and acted in furtherance of the conspiracy to act together at the same time, on or around May 28, 1999 in the same office at Fashion Cents in Tampa Bay Mall, and falsely imprisoned the plaintiff. Together they refused, and thereby tacitly agreed they would not allow the plaintiff to leave the office until she agreed under duress to sign a fraudulent employment statement dictated by Monica Barr.

30. The Norstan Managers conspired to commit fraud against the plaintiff. Two or more Norstan Managers, Monica Barr and Stephanie agreed to act , and acted in furtherance of the conspiracy when they jointly and intentionally participated at the same time, in the same office, to intentionally , negligently or recklessly, misrepresent by concealment, material facts written for the plaintiff's employment file which misrepresented the real facts of the plaintiff's employment performance.

31. The two Norstan Managers conspired to defame the plaintiff when they knowingly agreed, and did act in furtherance of that agreement, published the intentionally misrepresented facts written on the plaintiff's employee termination report. The two or more employees agreed and acted in

furtherance of the conspiracy when they placed the falsified documents into the plaintiffs employment file for others to see.

32. The conspiracy and acts in furtherance of the conspiracy caused the plaintiff damage and to suffer physical injury, including but not limited to, stomach disorder, headaches, backaches, sever weight loss, nervous tension, hysteria.

COUNT THREE

CONSTRUCTIVE FRAUD

33. The plaintiff incorporates by reference all paragraphs asserted above as if the same were fully set out herein and in addition alleges:

34. The defendant through its agent Monica Barr had a confidential relationship with the plaintiff.

35. The plaintiff alleges that the manager Monica Barr abused their confidential relationship.

36. Monica Barr acting as an agent of the defendant corporation, had a duty to deal in good faith and to deal fairly with the plaintiff. The plaintiff had trusted Monica Barr as her manager and confidant. The plaintiff confided in her supervisor and relied and trusted her when she reported embarrassing graphic sexual acts to her manager. The plaintiff assumed that the two were working as a team to avoid discriminatory practice in the work place and the plaintiff believed that the two women had a developed a trusting and confidential relationship.

37. Management who held a fiduciary position of trust as plaintiff's supervisors, intentionally coerced the plaintiff by means of deception to sign false statements regarding her employment history.
38. Monica Barr wielded the disproportionate power created by her position as manager and confidant over the plaintiff to defame, defraud, imprison, fire, violate the human rights of the plaintiff employee.
39. Plaintiff who relied on the managers position of authority and trust was coerced under duress into signing statements known to her to be false accounts.
40. The plaintiff was disturbed by a threat to terminate her employment or force her resignation while held against her will in the locked managers office. Plaintiff became excessively nervous and distraught at the false accusations levied at her.
41. The plaintiff alleges unequal bargaining power and duress in the inducement and undue influence in obtaining a fraudulent employment termination report.
42. On or around May 28, 1999, the plaintiff an employee of Norstan Apparel Inc., was managing the Fashion Cents store in Tampa Florida located in Tampa Bay Mall. That afternoon the plaintiffs supervisor, Monica Barr and Monica Barr's supervisor, Jean Roper, and another female employee of Norstan, unknown to the plaintiff, arrived back at the store after having earlier met with Rick Moyers and the plaintiff regarding Rick Moyers continuing acts of sexual harassment toward the employees at the store.

managers began, for the first time since the plaintiff's employment ,to criticize the appearance of the store.

43. The three manages instructed the plaintiff to leave the retail floor and at least two managers escorted the plaintiff to a small back room office in the stock area in the rear of the store. They entered the room, and one of the managers shut the door.

44. The manager, Monica Barr informed the plaintiff that she could either resign and submit a letter of resignation, or if not, the managers would terminate her employment forthwith. The plaintiff told them they would have to terminate her. She would not resign.

45. The plaintiff alleges that the corporate defendant is vicariously liable for the acts of its employees who at all times during the facts alleged in this complaint were working the line and scope of their employment, during regular business hours, in the employers place of business and in the furtherance of the employers purpose hire people to sell its products.

46. The plaintiff, after enduring insulting, falseattacks on her job performance by the defendant's agents, while confined against her will, in a locked room, agreed, after asked to do so by Monica Barr, to write a letter stating the terms of her employment history and now termination. The plaintiff, right there in the room, in the presence of at least two Norstan Managers, Monica Barr and Stephanie Roper, wrote in her own hand, an explanation of the plaintiff's recent reports of sexual harassment toward her and other employees at that store to Norstan Management through Monica Barr.

47. The plaintiff indicated in her writing that she reported the sexual harassment on several occasions orally and in writing to management and management did nothing in response to her report. After Monica Barr and the others in the room read the plaintiff's statement, they tore her paper apart, and threw it in the trash, an overt act of concealment and fraud.

48. Monica Barr then ordered the plaintiff to write a different employee termination letter that Monica Barr, along with the other managers in the room, dictated to the plaintiff. The plaintiff was crying. The plaintiff wrote what Monica Barr dictated under duress.

49. Monica Barr informed the plaintiff at that time that the plaintiff's husband, Tom Herring, had reported Rick Moyers continuing acts of unwelcome sexual behavior to the district or regional offices of Norstan Apparel, Inc. Monica Barr threatened to sue the plaintiff's husband for slander.

50. The plaintiff feared that if she did not sign the paper Monica Barr insisted upon, Monica Barr would sue her husband.

51. The defendant corporation owed a duty of reasonable care not to negligently or recklessly cause harm its employees. The defendant corporation, by and through their agent employee supervisors named herein, breached their duty to of reasonable care to the plaintiff when they misrepresented, and concealed material facts regarding the plaintiff's employment termination.

52. Monica Barr intended for statements that she dictated and demanded the plaintiff to write on her termination report to be misrepresented as the plaintiff's own statement. The statement Monica Barr dictated and therefor

made, was intentionally false and knowingly misrepresented the truth of the circumstances surrounding the plaintiffs employment history.

53. The statement intentionally concealed the truth that the plaintiff had just begun, just a few weeks prior to this termination meeting, a steady stream of written and oral reports to Monica Barr of sexual harassment by Rick Moyers at the Fashion cents store.

54. The managers intentionally concealed and misrepresented the material facts of the nature of the plaintiffs job performance in the writing they forced the plaintiff to write and sign in that small office that afternoon.

55. The managers knew the information they forced the plaintiff to write was false and misrepresented the truth of the matter asserted.

56. The managers intentionally concealed the egregious facts surrounding their own tortuous and unconscionable acts against the plaintiff while conspiring to accomplish the wrongful termination.

57. The managers intended others to rely on the misrepresentations they made regarding the employees poor performance making false and misleading. allegations of late store openings, based on store alarm records containing misleading information known by all managers to be an unreliable indication of the managers true arrival time, and creating first time false allegations of substandard job performance, such as the store is messy and your shoes are not nice enough to wear in the store.

58. Others negligently or recklessly relied on the false information and agreed to terminate the employment of a former star employee.

59. The acts were done during the scope of employment and in the furtherance of the employers purpose to employ personnel to sell its products for a profit.
60. The plaintiff was injured and suffered damage as a result of the defendant's acts, by and through their agents, of negligent, reckless, and intentional fraudulent concealment.

COUNT FOUR

FALSE IMPRISONMENT

61. The plaintiff incorporates by reference the above paragraphs as if the same were fully set out herein and in addition alleges:
62. Norstan managers completely confined the plaintiff when the managers compelled the plaintiff to accompany them for a personnel interrogation.
63. Three Norstan managers, two regional managers, who came into Tampa to visit the plaintiff and set her up for the interrogation, were acting in their capacity of agent of Norstan Corp. Inc.
64. Such was the procedure they adopted on behalf of the employer to either secure a resignation, or if that failed, to terminate the plaintiff's employment.
65. The three managers ordered the plaintiff to leave the sales floor, and forced the plaintiff employee to go through the back stock room and into the manager's office in the rear of the store.
66. After the plaintiff entered the office the three Norstan managers immediately locked the door, the only exit to the room.
67. The plaintiff did not want to be locked in a room with the three managers. She was very intimidated by them and became frightened.

68. The managers tried to coerce the plaintiff to resign her employment as store manager.
69. They maligned her, insulted her, and intentionally intimidated her, and reduced her to tears.
70. They indicated that after she resigned she would be free to leave the store.
71. The plaintiff was unlawfully held against her will. The three managers detained the plaintiff for an excessive time.
72. The plaintiff once asked to leave to go to the bathroom, but the managers refused to let her leave the room alone.
73. One manager accompanied the plaintiff to the restroom and waited outside until the plaintiff opened the bathroom door, then escorted the plaintiff back into the interrogation room.
74. After a lengthy time in the locked room, the managers fired the plaintiff.
75. The Norstan managers asked the plaintiff to fill out an employee termination report. The plaintiff did so.
76. When the managers read the plaintiff's report, which included her claims of a sexual harassment, they tore the report up, threw it in the trash and wrote their own version.
77. They demanded the plaintiff sign the report the managers drafted.
78. The plaintiff's release from the room was contingent upon her signing the termination documents prepared by the Norstan Managers. Immediately after the plaintiff signed the document the managers released her.

COUNT FIVE

DEFAMATION

79. The plaintiff incorporates by reference paragraphs 1-46 as if the same were fully set out herein and in addition alleges:

80. Manager Monica Barr, an agent and employee of the corporate defendant, while acting within the scope of her employment, made false and defamatory statements regarding the plaintiff's work or business practices that were published to others.

81. Publication was by written word and verbal communication.

82. The remarks were prejudicial to the plaintiff in her profession and trade.

83. Others relied upon the false statements about the plaintiff's work and acted in a manner detrimental to the plaintiff.

84. The Norstan managers had a business relationship with the plaintiff and gave notice to third parties of the dissolution of the relationship and that notice contained false and misleading information designed to impugn the reputation of the plaintiff and injuriously affected the plaintiff.

85. Such charges falsely imply that the plaintiff was unfit for the retail managers profession either by innuendo or directly.

86. The plaintiff suffered damage to her reputation and suffered mental anguish as a proximate cause of the defendant's malicious acts.

87. Such acts were done with the intent to do harm to the plaintiff, and with reckless disregard for the truth.

88. Any privilege which may have applied to some of the statements is forfeited

by the Defendants' whose motives were actuated by common law malice. *whose statements were defamatory*

89. Monica Barr, the plaintiff's supervisor and agent of the defendant corporation,

made defamatory oral statements and made defamatory written statements

which were placed in the plaintiff's employee termination report and thereby,

published to a third party, in the employees personnel file. The statement

were published to third parties, including but not limited to Norstan

supervisors Stephanie Roper, Jean Aldige and others whose names are

currently unknown.

90. The above managers made defamatory statements regarding the plaintiffs

poor job performance to other subordinate employees and co employees and

friends of the plaintiff working at Fashion Cents and by information and

belief, to others working in the Tampa Bay Mall. It is upon information and

belief that plaintiff (alleges and additional discovery will reveal) that agents of

the corporate defendant Rick Moyer and Monica Barr and other Norstan

employees made defamatory remarks about the plaintiff's ineptness to

properly perform her employment task ,prior to and subsequent to her

termination on or around May 29, 1999, to coworkers and acquaintances of

the plaintiff. Thereby the false and defamatory remarks were published to

third parties.

91. Plaintiff alleges, by information and belief, that defendant corporation made

defamatory untrue statements to subsequent employer Dillard's Department

store and prospective employers that plaintiff employee was terminated due to tardiness, keeping a messy store, and poor work performance.

92. Plaintiff alleges that the statement is false, and intentionally misleading, made with the improper purpose of concealing the defendants retaliatory motives and wrongful termination.

93. Plaintiff alleges the defendant owed a duty of reasonable care to the plaintiff not to publish false information about the plaintiff, the defendant negligently, recklessly or intentionally breached their duty and as a proximate cause plaintiff suffered injury to her reputation as it relates to her profession and is actionable per se.

94. The defendant's defamatory statements made by and through their agents, in the scope of their employment caused injury to the plaintiff.

95. Plaintiff alleges the defendant is vicariously liable for the acts of their agents.

96. Defendants false statement was made with malice, and intentional misrepresentation of the facts surrounding the plaintiffs employment and reasons for her wrongful employment termination.

97. A defamatory publication was made by agents of the defendant in connection with performance of duties and responsibilities of the plaintiffs job performance and is actionable per se and there is a presumption of damage.

98. Alternatively plaintiff claims special damages proximately resulted from the defamation including injury to reputation, personal humiliation and mental anguish.

- 88. Any privilege which may have applied is forfeited by the Defendant's defamatory statements whose motives were actuated by common law malice.**
- 89. Monica Barr, the plaintiff's supervisor and agent of the defendant corporation, made defamatory oral statements and made defamatory written statements which were placed in the plaintiff's employee termination report and thereby, published to a third party, in the employees personnel file. The statement were published to third parties, including but not limited to Norstan supervisors Stephanie Roper, Jean Aldige and others whose names are currently unknown.**
- 90. The above managers made defamatory statements regarding the plaintiffs poor job performance to other subordinate employees and co employees and friends of the plaintiff working at Fashion Cents and by information and belief, to others working in the Tampa Bay Mall. It is upon information and belief that plaintiff (alleges and additional discovery will reveal) that agents of the corporate defendant Rick Moyer and Monica Barr and other Norstan employees made defamatory remarks about the plaintiff's ineptness to properly perform her employment task ,prior to and subsequent to her termination on or around May 29, 1999, to coworkers and acquaintances of the plaintiff. Thereby the false and defamatory remarks were published to third parties.**
- 91. Plaintiff alleges, by information and belief, that defendant corporation made defamatory untrue statements to subsequent employer Dillard's Department**

COUNT SIX

NEGLIGENT HIRING AND TRAINING

99. The plaintiff incorporates by reference each and every paragraph above as if the same were fully set out herein and in addition alleges:

100. The defendant, a large national apparel company, had an implied and express duty to provide its employees a work place free of discriminatory employment practice.

101. Defendant's duty requires hiring qualified and properly trained supervisor's to uphold the state, and federal employment and civil rights laws. Defendant negligently breached that duty to hire and train qualified employees.

102. Defendant's management training program is inadequate.

103. Hiring of former bar tenders without adequate training to manage minor sales clerks is a breach of that duty of care that a reasonable person would expect.

104. The defendant's negligent hiring and training caused injury to the plaintiff who seeks relief as a result of the breach of duty.

105. Plaintiff alleges the Employer is liable under Florida law independent of a claim under respondeat superior, for the willful torts of his employee, committed against third person, if he knew or should have known the employee was a threat to others.

104. Plaintiff alleges that the defendant owed a reasonable, if not a special duty of care, to the plaintiff and other employees to hire suitable supervisors to manage young female employees who are not the age of majority.

105. The plaintiff alleges the employers had a duty to properly investigate the background and character of its managers who would be direct supervisors of young female employees who in fact were not the age of majority.
106. The defendant owed a duty to hire persons suitable for managing innocent young girls, girls still in high school. The defendant breached that duty when it hired Rick Moyers.
107. The defendant knew or should have known that Rick Moyers former employment experience was not as a supervisor of young women in a retail store but, as a bar tender.
108. The defendant breached its duty to evaluate the suitability of Rick Moyers as a supervisor of minority age females based upon lack of actual employment experience in any similar job.
109. Plaintiff alleges that the defendant breached the duty of reasonable care to hire a suitable manager for retail work around young women including the plaintiff and as a proximate and foreseeable cause of the defendant breach the plaintiff suffered physical injury causing damage.
110. The plaintiff as a result of the defendant's negligent hiring suffered the torts of false imprisonment, defamation, fraud.
111. The plaintiff suffered damaging physical injury, including but not limited to, severe headaches, physical tremors, and serious weight loss as a proximate cause of the torts committed against her.

COUNT SEVEN

NEGLIGENT SUPERVISION

112. The plaintiff incorporates by reference paragraphs 1-62 as if the same were fully set out herein and in addition alleges:

113. Defendant had a duty to properly supervise its employees to prevent discriminatory employment practices.

114. Defendant failed to supervise its managers and supervisors in the proper handling of employment discrimination complaints.

115. As a result of defendant's negligence the plaintiff suffered damage and seeks relief.

116. Defendant had a duty to take prompt and effective remedial action to eliminate discriminatory employment practices.

117. Defendant failed to take effective remedial action to eliminate the discriminatory employment practices against the plaintiff or the coworkers who were minors working under the supervision of the plaintiff.

118. As a result the plaintiff was injured and seeks relief from this Court.

119. A cause of action for negligent retention and supervision exist under Florida law Casey v. Wal Mart Stores Inc. 8 F. Supp.2d 1330, affirmed 190 F. 3d 541. Plaintiff alleges the Employer is liable under Florida law independent of a claim under respondeat superior, for the willful torts of his employee, committed against third person if he knew or should have known the employee was a threat to others.

120. Employer, by and through his agents, had actual or constructive knowledge of sexual harassment at Fashion Cents. Plaintiff reported the unwelcome activity to Monica Barr , her supervisor, orally and in writing.

121. Rick Moyers, openly during the course of his employment and while working for the defendant selling clothes at the Tampa Bay Mall uttered frequent sexual references to the young ladies working there.

122. The defendant acted negligently by not properly training or supervising managers Monica Barr and Stephanie Roper, regarding proper handling of employment discrimination, proper actions for terminating and supervising employees.

123. Plaintiff received complaints from the employees at the store that Rick Moyers was touching them, and they did not like it; and the plaintiff reported the complaints to Monica Barr, her supervisor, agent of the defendant employer.

124. The defendant has a duty to supervise its employees and prevent unwanted touching . The defendant breached its duty of care and negligently supervised its employees.

125. Rick Moyers, Monica Barr, Stephanie Roper, and Jean Aldrige negligently failed to supervise employees, and acted with reckless disregard for the sensitivity and rights of the minor children who worked with Rick Moyers and the plaintiff.

126. As a result of the defendant's breach of its duty of care, the plaintiff suffered damage and physical injury.

COUNT EIGHT

NEGLIGENT RETENTION

127. The plaintiff incorporates by reference paragraphs 1-69 as if the same were fully set out herein and in addition alleges:

128. Employer had a duty to keep the work place in compliance with Federal and State law.

129. The employer however, failed in that duty when it continued the employment of Rick Moyers and Monica Barr after Monica Barr ignored several complaints concerning the inappropriate sexual touching and comments from her manager trainee Ricardo Moyers.

130. The known harasser, Ricardo Moyers, was not reprimanded for sexual harassment, but promoted to a full managers position.

131. A cause of action for negligent retention and supervision exist under Florida law, Casey v. Wal Mart Stores INC. 8 F. Supp.2d 1330 affirmed 190 F. 3d 541.

132. Under Florida law a claim for negligent hiring or retention allows for recovery against employer for acts of employee committed outside the scope and course of employment when an employer has somehow been responsible for bringing third person into contact with an employee, whom employer knows or should have known is predisposed to committing wrong under circumstance that create opportunity or enticement to commit such wrong. Gillis v. Sports Authority, Inc., 123 F. Supp. 2d 611.

133. Negligent retention occurred under Florida law when during the course of Rick Moyers' employment, the employer had actual or constructive notice from several employees and was therefore aware that minor female employees and the plaintiff were experiencing problems with employee Rick Moyers of an unwelcome and offensive sexual nature that indicated his unfitness for supervising young girls.

134. The defendant, a private employer has a duty, by and through its agents, supervisors, and Human Resources Department, who hire retain or supervise employees, to manage employees whose negligence or intentional acts in positions of employment can foreseeably cause injuries to third parties. Battista v. Cannon, 934 F. Supp. 400.

135. The defendant breached that duty when, after having notice of misconduct, it negligently failed to take further action. The defendant did not conduct a proper and meaningful or effective investigation, of the complaints, and did not discharge the perpetrator nor reassign personnel.

136. As a result of the breach of duty to investigate or take proper remedial action, the plaintiff suffered foreseeable damage. She properly reported the misconduct, to her supervisor, and her regional manager, as a result of defendant's breach of its duty, plaintiff suffered damage. She was falsely imprisoned, defamed, defrauded, harassed, maligned, denigrated by those who took the plaintiff's report.

137. Plaintiff suffered physical injury as a proximate cause of the defendant's breach of duty.

COUNT NINE

ASSAULT AND BATTERY

138. Plaintiff incorporates by reference all paragraphs asserted above as if fully set out herein and further alleges:

139. Defendant by and through its agent, employee Rick Moyer intentionally touched the plaintiff in an offensive manner. Moyers without permission began massaging the plaintiff 's body while she was on the sales floor.

140. The plaintiff told him not to touch her or anyone else in the store. The plaintiff did not know if this behavior rose to a claim of sexual harassment, but she did know that the touching was offensive.

141. Plaintiff was placed in fear of further harmful or offensive touching as a result of the intentional act by Rick Moyers on the plaintiff and the touching of other women employees in the store that the plaintiff knew of.

142. Plaintiff, was offended by the touching , and as a result of the intentional act and as a proximate cause of the defendant's act the plaintiff suffered harm to her personal dignity, became nervous and agitated about going to work, was plagued by anxiety, suffered head aches, and physical tremors, suffered from nervous stomach problems while at work.

FIRST CLAIM FOR RELIEF

143. Plaintiff demands judgment for damages against the defendant and thereby request the Court:

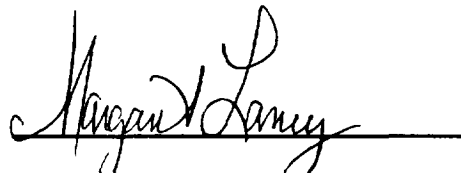
- a. declare the Defendants actions were discriminatory and retaliatory, violated Title VII of the Civil Rights Act of 1964 as amended,

- b. declare that the Defendant violated Florida Civil Right Act of 1992 and other laws of the state of Florida.
- c. order defendant to pay the Plaintiff damages in an amount to be proven in this action to compensate plaintiff for harm suffered in accordance with the time table that would have operated but for the retaliation and violations of applicable law to present day; order damages to include, interest, and include, but not be limited to , lost wages, lost opportunity, lost retirement benefits, lost vacation benefits, lost medical expenses, severe emotional distress, damage to reputation, physical pain and suffering and other damages available for willful and intentional misconduct.
- d. Grant such other legal and equitable relief as the Court deems appropriate.
- e. Maintain jurisdiction over this matter until all remedial action has been taken by defendant.
- f. Order defendant to pay a reasonable attorney's fee, and cost for this action and for expenses at the administrative level.

DEMAND FOR JURY TRIAL

PLAINTIFF demands a TRIAL BY JURY.

Date September 14, 2001



Laney Law Firm, L.L.C.
Margaret Laney Attorney for Plaintiff

Atlanta, Georgia 30305

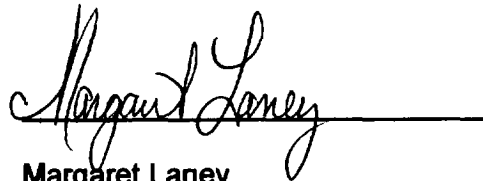
1-888-222-1991

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Amended Complaint has been served by regular mail on September 14, 2001 to the following:

Kristine Kennedy, Esq..
Jackson Lewis Schnitzler
390 N. Orange Avenue, Suite 1285
Orlando, Florida 32801

Pamela Pride Chavez, Esq.
Miami EEOC
One Biscayne Tower
2 South Blvd., Suite 2700
Miami, Florida 33131

A handwritten signature in cursive script, reading "Margaret Laney", is written over a horizontal line.

**Margaret Laney
Laney Law Firm, LLC**

PLAINTIFF INTERVENOR'S EXHIBIT A IS ATTACHED HERETO AS REFERRED TO
IN COUNT ONE OF PLAINTIFF INTERVENOR'S SECOND AMENDED COMPLAINT
file # 8:01-cv-379-T-26EAJ

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

**NORSTAN APPAREL SHOPS, INC.
d/b/a FASHION CENTS**

Defendant.

CIVIL ACTION NO.

8:01-CV-379-T-26 EAJ

COMPLAINT

JURY TRIAL DEMANDED

INJUNCTIVE RELIEF SOUGHT

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 to correct unlawful employment practices on the basis of retaliation, and to provide appropriate relief to Glennda Herring who was adversely affected by such practices. As stated with greater particularity in paragraph 7, the Commission alleges that the Defendant Employer retaliated against Mrs. Herring, when she complained to management about the sexual harassment of certain females on her job, by terminating her employment with Norstan Apparel Shops, Inc., d/b/a Fashion Cents.

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 Section 706(f)(1) and (3) of 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.

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, Tampa 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, and is expressly authorized to bring this action pursuant to Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Norstan Apparel Shops, Inc., d/b/a Fashion Cents ("Defendant"), has continuously been doing business in the State of Florida in the City of Tampa, and has continuously maintained at least 15 employees.

5. At all relevant times Defendant 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).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Glenda Herring filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least May of 1999, Defendant Employer engaged in unlawful employment practices at its Tampa, Florida location in violation of Section 704(a) of Title VII, 42 U.S.C. §2000e-3(a).

- a. On March 9, 1999, Defendant hired Glenda Herring as Store Manager for Defendant's Fashion Cents store at Tampa Bay Center.
- b. On or about May 5, 1999, Defendant hired Ricardo Moyers as a Store

Manager for Fashion Cents and placed Mr. Moyers at the Tampa Bay Center store to train under Glennnda Herring.

- c. Immediately following Mr. Moyers' employment at the Fashion Cents store at Tampa Bay Center, certain female employees at the store complained to Glennnda Herring that Mr. Moyers was engaging in unwelcome conduct of a sexual nature which made the female employees feel uncomfortable about working at Fashion Cents.
- d. Ms. Herring reasonably believed Mr. Moyers' conduct to be unlawful sexual harassment and thereby opposed such conduct by complaining to Defendant's District Manager, Monica Barr.
- e. On May 27, 1999, after complaining to District Manager, Monica Barr, about Mr. Moyers' sexual harassment of certain female employees at the Fashion Cents store, Glennnda Herring was discharged from her employment.

8. The effect of the conduct complained of in paragraph 7 above, has been to deprive Glennnda Herring of equal employment opportunities and to otherwise adversely affect her status as an employee because of her good faith opposition to what she reasonably believed to be an unlawful employment practice.

9. The unlawful employment practices complained of in paragraph 7 above were intentional.

10. The unlawful employment practices complained of in paragraph 7 above were committed with malice and/or with reckless indifference to the federally protected rights of Glennnda Herring.

PRAYER FOR RELIEF

Wherefore, the Commission 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 the Defendant, from engaging in any employment practice which discriminates on the basis of an employee's opposition to an unlawful employment practice.

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

C. Order Defendant to make whole Glenna Herring by providing her with appropriate back pay including prejudgment interest, in amounts to be determined at trial, and afford any other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices, including but not limited to reinstatement of Glenna Herring and rightful place promotion and/or front pay.

D. Order Defendant to make whole Glenna Herring by providing her with compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, including but not limited to out of pocket losses in amounts to be determined at trial.

E. Order Defendant to make whole Glenna Herring by providing her with compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including but not limited to emotional pain, suffering, inconvenience, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendant to pay Glenna Herring punitive damages for the malicious and reckless conduct described in paragraph 7 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 the Commission its costs of this action. ,

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

GWENDOLYN YOUNG REAMS
Associate General Counsel

DELNER FRANKLIN-THOMAS
Regional Attorney

MICHAEL J. FARRELL
Supervisory Trial Attorney



PAMELA PRIDE-CHAVIES
Senior Trial Attorney
FL Bar No. 0497010
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
MIAMI DISTRICT OFFICE
One Biscayne Tower
2 South Biscayne Boulevard, Suite 2700
Miami, Florida 33131
Tel. (305) 530-6008
Fax (305) 536-4494