

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION AND :
STEPHANIE HOROWITZ :
V. : CIV. NO. 3:06CV1287 (WWE)
BENNI'S, LLC, d/b/a :
BENNIGAN'S :

RECOMMENDED RULING ON MOTION FOR DEFAULT JUDGMENT

____ Plaintiff-Intervenor Stefanie Horowitz moves for the entry of a default judgment against defendant Bennis's LLC, d/b/a Bennigan's. Pursuant to Fed. R. Civ. P. 55(a), the Court entered a default against defendant on January 17, 2008, and instructed plaintiff-intervenor to file a motion for default judgment by February 15, 2008.¹

A corporate defendant, even an LLC, may not proceed in federal court unless it is represented by counsel; thus, default judgment is appropriate. Lattanzio v. COMTA, 481 F.3d 137, 140 (2d Cir. 2007). On September 10, 2007, the Court granted the motion of defendant's counsel to withdraw.² Since then defendant has been unrepresented by counsel, and new counsel has not appeared.

¹ The Court entered default judgment in favor of the Equal Employment Opportunity Commission on October 22, 2007.

² In Attorney Diette's Motion to Withdraw [Doc. #27], she states that defendant was over \$34,000 in arrears on bills for fees and expenses and had not fulfilled any promises to make partial payments. Diette's motion also indicates that she twice warned Petula Sikiotis, Defendant's General Manager and Owner, that default could be entered if it did not have counsel.

A default constitutes an admission of all well-pleaded factual allegations. Based on well-pleaded allegations establishing defendant's liability, the Court accepts "as true all of the factual allegations of the complaint, except those relating to damages." Au Bon Pain Corp. v. Artect, Inc., 653 F.2d 61, 65 (2d Cir. 1981) (citations omitted). However, conclusions of law are not deemed admitted and may only be found where supported by the evidence. Id.

As set forth in the Intervenor Complaint, the defendant has engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. §2000 e-2(a). Ms. Horowitz was subject to unlawful sexual harassment by management-level employees at Benni's, LLC, including unwanted and inappropriate touching, sexual advances, sexual comments, and other unwelcome and offensive conduct, which created a sexually hostile work environment. Plaintiff-Intervenor's affidavit details many specific instances of managers' inappropriate and offensive conduct. For example, Eli Reed, a training manager, pinched and grabbed her buttocks repeatedly. Aris Konstantinidis, a district manager, frequently kissed Ms. Horowitz and other female employees on the back of their necks while commenting on their beauty. See Horowitz Affidavit at 2. As a result of the on-going harassment, Ms. Horowitz felt that she could not return to work for Benni's, LLC. See Horowitz Affidavit at 3. Ms. Horowitz made several complaints to supervisors about the hostile work environment but no corrective action was taken. Id.

Title VII prohibits an employer from discriminating against

an employee on the basis of sex. 42 U.S.C. §2000e-2(a)(1). Sexual harassment constitutes discrimination on the basis of sex under Title VII. Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986); 29 C.F.R. §1604.11(a)(1998). A plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive working environment. Meritor Savings Bank, FSB, 477 U.S. at 66-67. A hostile work environment exists when the workplace is "permeated with discriminatory intimidation, ridicule and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment." Karibian v. Columbia University, 14 F.3d 773, 779 (2d Cir. 1993). A Title VII violation will be determined from the totality of the circumstances; "the incidents [of sexual harassment] must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive." Carrero v. New York City Housing Authority, 890 F.2d 569, 577-578 (2d Cir. 1989).

The Supreme Court has held that a constructive discharge is established when the conditions of a plaintiff's employment are so intolerable that a reasonable person would feel that resignation is a "fitting response." See Pennsylvania State Police v. Suders, 124 Sup.Ct. 2342, 2347 (2004). Since Ms. Horowitz's complaints to her supervisors about the on-going harassment were ignored, a reasonable person would feel that resignation was a "fitting response."

The Court finds that Ms. Horowitz has sufficiently pled facts showing that the workplace was permeated with

discriminatory intimidation sufficiently severe or pervasive to alter the conditions of the work environment. The facts also support the conclusion that Ms. Horowitz was constructively discharged.

The Motion for Default Judgment [Doc. #46] is GRANTED. The Court will hold a hearing to determine the amount of damages.

Any objections to this recommended ruling must be filed with the Clerk of the Court within ten (10) days of the receipt of this order. Failure to object within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Rules 72, 6(a) and 6(e) of the Federal Rules of Civil Procedure; Rule 2 of the Local Rules for United States Magistrates; Small v. Secretary of H.H.S., 892 F.2d 15 (2d Cir. 1989) (per curiam); FDIC v. Hillcrest Assoc., 66 F.3d 566, 569 (2d Cir. 1995).

ENTERED at Bridgeport this __ day of March 2008.

_____/s/_____
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE