

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60856-CIV-MARRA/BANDSTRA

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

and

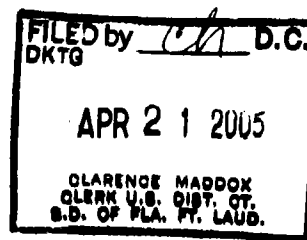
JESSICA VARELA,

Intervenor,

v.

DTG OPERATIONS, INC., d/b/a
DOLLAR RENT A CAR,

Defendant.



INTERVENORS AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

JURISDICTION AND PARTIES

1. This suit is brought and jurisdiction lies pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. Section 200e-5, et seq, and section 102 of the Civil Rights Act of 1991, 42 U.S.C. Section 1981A. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. Section 1343(a)(4). This suit is also brought pursuant to the Florida Civil Rights Act of 1992, Fla. Stat. 760 et seq., over which this Court has supplemental jurisdiction.

2. Intervenor further invokes the pendent jurisdiction of this Court to hear and decide claims arising under the state law, in that the claims arise out of the same nucleus of

operative facts and are such that they would ordinarily be expected to be tried in one judicial proceeding.

3. Intervenor, Jessica Varela, is a citizen of the United States and the State of Florida, and at all times material hereto was a resident of Broward County, Florida.

4. At all relevant times Defendant, DTG Operations, Inc., d/b/a Dollar Rent a Car, is an Oklahoma corporation, licensed to do business and doing business within the State of Florida and in the City of Fort Lauderdale.

5. At all material times, Defendant, DTG Operations, Inc. d/b/a Dollar Rent a Car, has employed fifteen (15) or greater employees for each regular working day in each of twenty (20) or more calendar weeks in the current and/or preceding calendar year, and is otherwise an "employer" within the meaning of Title VII and the Florida Civil Rights Act.

6. As a direct and proximate result of Defendant's violation of existing law, as described herein below, Intervenor has been compelled to retain the services of counsel and has thereby incurred, and will continue to incur, legal fees and costs. Intervenor is entitled to recovery of attorneys' fees and costs pursuant to 42 U.S.C. 2000e-5(k), Federal Rules of Civil Procedure 54, and Florida Statute Section 760.10(5).

CONDITIONS PRECEDENT

7. The Intervenor has filed timely administrative charges of employment discrimination and retaliation with the Equal Employment Opportunity Commission ("EEOC"). The EEOC has filed a Civil Action with the United States District Court, Southern District of Florida, Fort Lauderdale Division, wherein Intervenor has filed a Motion to Intervene. All of the

discriminatory employment practices alleged herein were committed within the jurisdiction of the Southern District of Florida, Fort Lauderdale Division.

8. Intervenor also filed her charge of employment discrimination and retaliation with the Florida Commission of Human Relations. Intervenor has complied with all conditions precedent before filing suit under the Florida Civil Rights Act in that this lawsuit was filed after this matter had been pending before the Florida Commission on Human Relations for more than 180 days. This lawsuit was further filed within four years of the discriminatory acts complained of herein.

FACTUAL BACKGROUND

9. Intervenor, Jessica Varela worked for Defendant at its Fort Lauderdale International location in Fort Lauderdale, Florida, from approximately 2001 until she was terminated on or about May 5, 2003. Intervenor, Varela's was employed and remained employed as a rental agent until her termination, and was supervised by "Lead Agent", Carlos Tobar.

10. From at least September 2002, Intervenor was continuously sexually harassed by Carlos Tobar. Specifically, Mr. Tobar would repeatedly request that Ms. Varela accompany him on vacations, despite her advising him that his requests were improper, inappropriate and unwanted. Specifically, on several occasions Mr. Tobar, requested that Ms. Varela travel with him to his native country of Ecuador, and on at least one other occasion that she travel with him to Daytona Beach, Florida.

11. Mr. Tobar repeatedly and on a daily basis made vulgar comments to, unwanted sexual advances towards, and physical contact with, Ms. Varela. On one occasion, Mr. Tobar approached Ms. Varela while she was counting her drawer, placed his hand on her upper thigh

and said "what would you do if I kissed you right now". Mr. Tobar then attempted to kiss Ms. Varela. On another occasion, Mr. Tobar grabbed Ms. Varela from behind, pressed himself tight against her and said "Oh Jessica, if you only knew how good I was". On yet another occasion, Mr. Tobar took Ms. Varela's hand and placed and held it on his genitals. On yet another occasion, Mr. Tobar offered Ms. Varela money in exchange for sexual favors. In addition to the above specified instances, Mr. Tobar would constantly and continually touch Ms. Varela in an inappropriate and unwanted sexual manner.

12. On or about April 27, 2003, while Ms. Varela was making coping of certain vacation schedule documents "Shift Bids", Mr. Tobar snatched said document from Ms. Varela, and physically pushed her to the ground. On this day, and on several prior occasions Ms. Varela complained to her supervisors that she was being sexual harassed and psychically and verbally assaulted by Mr. Tobar. She also complained that she felt her job was in jeopardy as a result of her refusal to acquiesce to Mr. Tobar's advances. However, Defendant took no remedial action against him.

13. Ms. Varela was sent home on that day, and on or about May 7, 2005, was officially terminated by Defendant. Defendant's reasons for its actions concerning Plaintiff's discharge were pretextual and an attempt to conceal Plaintiff's true retaliatory motive.

COUNT I
UNLAWFUL SEXUAL HARRASMENT AND RETALIATION IN
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF
1964, AS AMENDED II 1991 42 U.S.C. 200E ET. SEQ.

14. Intervenor, Jessica Varela repeats and realleges each and every allegation set forth in Paragraphs 1 through 13 as if full set forth herein again at length.

15. Since at least September 2002, Defendant Employer engaged in unlawful employment practices at its Fort Lauderdale location in violation of Sections 703(e) and Section 704(a) of Title VII, 42 U.S.C. Section 2000-2 (a) and Section 2000e-3(a) in that

a. Jessica Varela was subjected to sexual harassment by her direct supervisor in the form of 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. Defendant retaliated against Jessica Varela for complaining of the unlawful sexual harassment by discharging her from her position.

16. The effect of the conduct complained of herein in paragraphs 10, 11, 12 13 and 15 above has been to deprive Intervenor, Jessica Varela 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.

17. The unlawful conduct of Defendant described above was done with oppression and malice; with a reckless and conscious disregard for Plaintiff's rights; and with intent, design and purpose of injuring Intervenor, Jessica Varela. Defendant through its officers, managing agents and/or supervisors, authorized, condoned, and/or ratified the unlawful conduct in that Defendant, knew or should have known of these and prior complaints of sexual harassment by other female employees relating to Carlos Tobar and failed to take any disciplinary or remedial action against Carlos Tobar. By reason thereof, Intervenor is entitled to punitive or exemplary damages from Defendant in a sum according to proof to be presented at trial.

18. Defendant's unlawful acts of discrimination and retaliation were intentional and done with malice or reckless indifference to Plaintiff's rights protected under Federal and state law.

19. As a direct and proximate result of Defendant's violation of existing law, as described herein, Intervenor has been compelled to retain the services of counsel and has thereby incurred, and will continue to incur, legal fees and costs. Intervenor is entitled to recovery of attorney's fees and costs pursuant to 42 U.S.C. 2000e-5(K) and Federal Rule of Civil Procedure 54, and Florida Statute Section 760.10(5).

WHEREFORE, Intervenor demands a trial by jury, and relief in the form of back pay, front pay, compensatory damages, lost benefits, emotional distress, punitive damages, attorney's fees and costs with prejudgment interest thereon, injunctive relief, and any such relief that Intervenor may be entitled to under the law or in equity.

COUNT II
UNLAWFUL SEXUAL HARASSMENT AND RETALIATION VIOLATION
OF THE FLORIDA CIVIL RIGHTS ACT OF 1992, FLA. STAT. 760 ET SEQ.

20. Intervenor, Jessica Varela repeats and realleges each and every allegation set forth in Paragraphs 1 through 13 as if full set forth herein again at length.

21. Since at least September 2002, Defendant Employer engaged in unlawful employment practices at its Fort Lauderdale, Florida location in violation of the Florida Civil Rights Act of 1992, Fla. Stat. 760 et. seq. in that:

- a. Jessica Varela was subjected to sexual harassment by her direct supervisor in the form of 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. Defendant retaliated against Jessica Varela for complaining of the unlawful sexual harassment by discharging her from her position.

22. The effect of the conduct complained of herein in paragraphs 10, 11, 12, 13 and 21 above has been to deprive Intervenor, Jessica Varela 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.

23. The unlawful conduct of Defendant described above was done with oppression and malice; with a reckless and conscious disregard for Plaintiff's rights; and with intent, design and purpose of injuring Intervenor, Jessica Varela. Defendant through its officers, managing agents and/or supervisors, authorized, condoned, and/or ratified the unlawful conduct in that Defendant, knew or should have known of these and prior complaints of sexual harassment by other female employees relating to Carlos Tobar and failed to take any disciplinary or remedial action against Carlos Tobar. By reason thereof, Intervenor is entitled to punitive or exemplary damages from Defendant in a sum according to proof to be presented at trial.

24. Defendant's unlawful acts of discrimination and retaliation were intentional and done with malice or reckless indifference to Plaintiff's rights protected under state law.

25. As a direct and proximate result of Defendant's violation of existing law, as described herein, Intervenor has been compelled to retain the services of counsel and has thereby incurred, and will continue to incur, legal fees and costs. Intervenor is entitled to recovery of

attorney's fees and costs pursuant to Federal Rule of Civil Procedure 54, and Florida Statute Section 760.10(5).

26. Defendants discrimination, harassment and retaliation against Intervenor, Jessica Varela, caused, continues to cause, and will cause Intervenor to suffer substantial damages for lost wages, other pecuniary losses, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

WHEREFORE, Intervenor demands a trial by jury, and relief in the form of back pay, front pay, compensatory damages, lost benefits, emotional distress, punitive damages, attorney's fees and costs with prejudgment interest thereon, injunctive relief, and any such relief that Intervenor may be entitled to under the law or in equity.

COUNT III
NEGLIGENT HIRING, RETENTION AND SUPERVISION

27. Intervenor, Jessica Varela repeats and realleges each and every allegation set forth in Paragraphs 1 through 13 as if full set forth herein again at length.

28. From at least September 2002, Intervenor, Jessica Varela was subjected to sexual harassment by her supervisor, Carlos Tobar in the form of unwelcome physical and verbal conduct of a sexual nature. In addition, in April of 2003, Ms. Varela was the victim of a physical battery at the hands of the Defendant's employee, Carlos Tobar. All of the above described physical and verbal assault, both of a sexual and non-sexual nature took place while in the scope of Mr. Tobar's employment with Defendant.

29. At the time the employee was hired by Defendant and during the course of his employment, Defendant's employee, Carlos Tobar had a history of committing serious and

violent offenses, including, but not limited to Burglary, Aggravated Battery, Battery, Fighting, Resisting Arrest and Domestic Violence. In addition, it is believed that Mr. Tobar had prior incidents of sexual harassment at his former employment, prior to being hired by Defendant.

30. At the time, Mr. Tobar was hired by Defendant, Defendant knew or should have known by virtue of a simple background check that he had a history of committing the above offenses, which in most instances resulted in documented criminal record, as well as his prior history of sexual harassment.

31. In addition, during the course of his employment, and prior to some or all of the incidents of physical and sexual abuse against Intervenor, Jessica Varela, other female employees had made sexual harassment claims against Mr. Tobar, of which Defendant was aware.

32. Notwithstanding, the prior complaints of sexual harassment against Carlos Tobar, Defendant took no remedial action whatsoever.

33. Defendant has a duty to its employees, including Intervenor, Jessica Varela, to protect them from sexual harassment and physical harm to their persons, at the hands of their fellow employees.

34. In view of the relationship of trust between Defendant and its employees, including Intervenor, Jessica Varela, Defendant was reckless and grossly negligent in screening, hiring, retaining, and supervising Mr. Tobar.

35. As a proximate result of the acts and omissions of Defendant, Intervenor, Jessica Varela has suffered physical injuries, pain and suffering, mental anguish and emotional distress, and economic damages.

36. By reason of the fact that Defendant knew or should have known that Defendant's employee, Carlos Tobar had a history of committing violent offenses, including domestic violence and aggravated battery against women, and a history of sexual harassment, and that Defendant nevertheless willfully, intentionally, and with wanton disregard of the consequences continued such employee in its employ, thereby subjecting Intervenor to Mr. Tobar's violent and sexually harassing behavior, Plaintiff is entitled to recover punitive damages.

WHEREFORE, Intervenor, Jessica Varela request judgment against Defendant for punitive and compensatory damages, cost of suit, and for such other further relief as it just and proper.

COUNT IV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

37. Intervenor, Jessica Varela repeats and realleges each and every allegation set forth in Paragraphs 1 through 13 as if full set forth herein again at length.

38. The cumulative sexual harassment, set forth in paragraphs 10,11 and 12 herein above, including but not limited to repeated groping, unwanted kissing, offensive touching, physical attack and repeated verbal licentiousness, were extreme and outrageous conduct.

39 Further, the cumulative sexual harassment, set forth in paragraphs 10,11 and 12 herein above, including but not limited to repeated groping, unwanted kissing, offensive touching, physical attack and repeated verbal licentiousness , was deliberate, reckless and intended to inflict mental suffering upon Intervenor, Jessica Varela.

40. The cumulative sexual harassment, set forth in paragraphs 10,11 and 12 herein above, including but not limited to repeated groping, unwanted kissing, offensive touching,

physical attack and repeated verbal licentiousness, did cause severe mental suffering upon Intervenor, Jessica Varela.

41. At all material times, Carlos Tobar, was acting within the scope and employment of Defendant, DTG Operations, Inc., and Defendant DTG Operations, Inc., was aware of Tobar's propensities to sexually harass female employees but did little or nothing to stop his outrageous behavior. As such, DTG Operations Inc., is vicariously liable for the intentional conduct of its employee.

WHEREFORE, Intervenor demands a trial by jury, and relief in the form of back pay, front pay, compensatory damages, lost benefits, emotional distress, punitive damages, attorney's fees and costs with prejudgment interest thereon, injunctive relief, and any such relief that Intervenor may be entitled to under the law or in equity.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail on this 31st day of March 2005, to: See attached Service List.

Respectfully Submitted,

Darren J. Rousso, P.A.
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