

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

02 APR - 9 4:22  
CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

and )

SHERI CALVO, VERONICA FERREK and )  
MELISSA SCARBOROUGH, )

Intervenor Plaintiffs, )

v. )

Case No. 99-1371-CIV-T-17A

CHEVY'S, INC., )

Defendant, )

and )

RIO BRAVO INTERNATIONAL, INC. and )  
INNOVATIVE RESTAURANT CONCEPTS )  
INC. and APPLEBEE'S INTERNATIONAL, )  
INC. d/b/a RIO BRAVO CANTINA, )

Defendants/Third -Party Plaintiffs, )

ROBERT EVANS, )

Third-Party Defendant. )

THIRD-PARTY COMPLAINT AGAINST ROBERT EVANS

Defendants/Third-Party Plaintiffs Rio Bravo International, Inc., Innovative Restaurant Concepts, Inc., and Applebee's International, Inc. ("Third-Party Plaintiffs"), by and through their

258

undersigned counsel, and pursuant to Rule 14(a), Fed.R.Civ.P., hereby file this Third-Party Complaint Against Robert Evans (“Evans”).

**JURISDICTION AND VENUE**

1. Evans is a citizen of the State of Florida, residing within the Middle District of Florida and thus is subject to the personal jurisdiction of this Court.

2. Applebee’s International, Inc. is a Delaware corporation.

3. Rio Bravo International, Inc. is a Kansas corporation.

4. Innovative Restaurant Concepts, Inc. is a Georgia Corporation.

5. This is an action for monetary damages in excess of \$75,000. The Court thus has original jurisdiction under 28 U.S.C. § 1332.

6. The Court also has jurisdiction under 28 U.S.C. § 1367 in that the claims raised herein are so related to the claims raised in the Equal Employment Opportunity Commission’s (“EEOC”) and the Intervenor Plaintiffs’ Complaints that they form part of the same case or controversy.

7. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

**GENERAL ALLEGATIONS**

8. All conditions precedent to bringing this action have occurred.

9. On or about July 1994, Evans began his employment at the Rio Bravo Cantina in Clearwater, Florida as a bartender.

10. On or about October 1996, Evans entered into the Manager in Training program at the South Tampa Rio Bravo Cantina.

11. On or about January 1997, Evans completed the Manager in Training program and was transferred back to the Clearwater Rio Bravo Cantina as an assistant manager.

12. On or about March 13, 1998, Evans was terminated from his employment at the Clearwater Rio Bravo Cantina.

13. Mr. Evans was terminated after allegations of acting improperly towards female crewmembers were raised against him, which allegations were investigated Evans' employer, Innovative Restaurant Concepts, Inc.

14. On or about April 19, 1998, Sheri Calvo, Veronica Ferek, and Melissa Scarborough ("Intervenors") filed charges of sexual harassment with the Equal Employment Opportunity Commission ("EEOC") against the Third-Party Plaintiffs.

15. Subsequently, on or about July 6, 1999 the EEOC filed this action against the Third-Party Plaintiffs, claiming, *inter alia*, that Evans sexually harassed the Intervenors as well as numerous unidentified "similarly situated" female crewmembers. [See Docket, Complaint, Jury Trial Demand, Injunctive Relief Sought, ¶11.g.]

16. The EEOC claims that the Third-Party Plaintiffs have violated Title VII and is seeking extensive monetary damages as well as injunctive relief against the Defendants.

17. On or about July 15, 1999, the Intervenors served their Motion to Intervene. The motion was granted on November 5, 1999.

18. The Intervenors claim that the Third-Party Plaintiffs have violated Title VII and the Florida Civil Rights Act and are seeking extensive monetary damages. Their complaint is also based on alleged verbal and physical sexual harassment by Evans.

19. The Third-Party Plaintiffs in this action are potentially subject to significant monetary damages as a result of Evans' alleged behavior.

20. The Rio Bravo Cantina had an established policy against sexual and other forms of harassment.

21. Evans was aware of the policies.

**COUNT I - BREACH OF FIDUCIARY DUTY**

22. The Third-Party Plaintiffs re-allege paragraphs 8-21 above.

23. As a managerial employee of the Rio Bravo Cantina, Evans owed a fiduciary duty to act in the Third Party Plaintiffs' best interests.

24. In the event some or all of the allegations raised by the EEOC and/or Intervenors against Evans are proven, such actions would constitute a breach of Evans' duty to the Third-Party Plaintiffs, because Evans would be found to have been promoting his own self-interest, at the expense of the Third Party Plaintiffs, in contravention to stated policies against harassment, while still employed at the restaurant.

25. As a result of any such breach of duty by Evans, the Third-Party Plaintiffs may suffer significant damages.

26. In the event the allegations against Evans are proven, Evans' breach of his duty to the Third-Party Plaintiffs would be the direct cause of any harm suffered by the Third-Party Plaintiffs.

**WHEREFORE** the Third-Party Plaintiffs respectfully request that this Court enter judgment for damages against Evans, including such amounts as may be awarded to EEOC and the Intervenors against the Third-Party Plaintiffs, should the Third-Party Plaintiffs be found liable to the EEOC and/or Intervenors.

**COUNT II - BREACH OF IMPLIED EMPLOYMENT CONTRACT**

27. The Third-Party Plaintiffs re-allege paragraphs 8-21 above.

28. As a member of management at the Clearwater Rio Bravo, Evans had an implied employment contract with the Third-Party Plaintiffs.

29. This implied employment contract required Evans to perform his duties in a manner consistent with the Third-Party Plaintiffs' policy, including the policy prohibiting sexual harassment.

30. In the event that some or all of the allegations raised by the EEOC and/or Intervenors against Evans are proven, such actions would constitute a breach of Evans' implied employment contract with the Third-Party Plaintiffs.

31. The Third-Party Plaintiffs may suffer damages to the extent that the EEOC and/or the Intervenors are awarded relief against the Third-Party Plaintiffs.

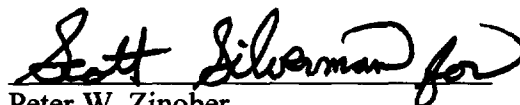
32. In the event the allegations against Evans are proven, Evans' breach of his implied employment contract would be the direct cause of any harm suffered by the Third-Party Plaintiffs.

**WHEREFORE** the Third-Party Plaintiffs respectfully request that this Court Order Evans to make whole the Third-Party Plaintiffs should they be found liable to the EEOC and/or the Intervenors.

**JURY TRIAL DEMAND**

The Third-Party Plaintiffs request a jury trial in this matter.

Respectfully submitted,



Peter W. Zinober  
Florida Bar No. 121750



Scott T. Silverman  
Florida Bar No.0021709  
ZINOBER & McCREA, P.A.  
201 E. Kennedy Blvd., Suite 800  
Tampa, FL 33602  
(813) 224-9004 Telephone  
(813) 223-4881 Facsimile  
Attorneys for Defendants/  
Third-Party Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by regular U.S. Mail this 9<sup>th</sup> day of April 2002 on Michael J. Farrell, Esq., Equal Employment Opportunity Commission, Miami District Office, Two South Biscayne Boulevard, One Biscayne Tower, Suite 2700 Miami, Florida 33131, Christopher D. Gray, Esq., Florin, Roebig, Walker, Huddlestun & Rogers, P.A., 777 Alderman Road, Palm Harbor, Florida 34683, Kevin Zwetsch, Esq., Fowler, White, Boggs, Banker, P.A., 501 E. Kennedy Blvd.. Suite 1700, Tampa, Florida 33602 and Mark Rodriguez, Esq., 110 Magnolia St. South, Suite 230, Tampa, Florida 33606.



Attorney