

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

UNITED STATES EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)

Plaintiff,)

and)

SHERI CALVO, VERONICA FERREK AND)
MELISSA SCARBOROUGH,)

Plaintiff/Intervenors,)

v.)

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

Defendants,)

and)

CHEVYS, INC.,)

Successor Defendant,)

and)

ROBERT EVANS,)

Third-Party Defendant.)

CIVIL ACTION NO.
99-1371-CIV-T-17A

SECOND
AMENDED 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 sex and retaliation, and to provide appropriate relief to Sheri Calvo, Veronica Ferek, Melissa Scarborough and similarly situated individuals who were adversely affected by such practices. As stated with

greater particularity in paragraph 14, the Commission alleges that Ms. Calvo, Ms. Ferek, Ms. Scarborough and similarly situated individuals were subjected to sexual harassment by Robert Evans, a management official of the Defendant corporations. The Commission further alleges that Defendants subsequently retaliated against Ms. Calvo, Ms. Ferek and Ms. Scarborough for complaining of the unlawful sexual harassment by subjecting them to adverse terms and conditions of employment, discharge and/or constructive discharge.

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 by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Rio Bravo International, Inc. has continuously been doing business in the State of Florida and the City of Clearwater, and has continuously had at least 15 employees.

5. At all relevant times, Innovative Restaurant Concepts, Inc. has continuously been

doing business in the State of Florida and the City of Clearwater, and has continuously had at least 15 employees

6. At all relevant times, Applebee's International, Inc. has continuously been doing business in the State of Florida and the City of Clearwater, and has continuously had at least 15 employees.

7. At all relevant times, Defendant Chevys, Inc., (the "Successor Employer") has been a California-based corporation doing business in the State of Florida and the City of Clearwater and has continuously had at least 15 employees.

8. At all relevant times, Defendant Chevys, Inc. has been a "successor employer" within the meaning of Title VII of the Civil Rights Act of 1964. EEOC v. MacMillan Bloedel Containers, Inc., 503 F.2d 1086 (6th Cir. 1974).

a. On or about April 1999, Chevys, Inc. purchased the business at issue in this case, the Rio Bravo Cantina restaurant located at 26200 U.S. Highway 19 North, Clearwater, Florida, 34621, from the three original corporate Defendants in this case Rio Bravo International, Inc., Innovative Restaurant Concepts, Inc. and Applebee's International, Inc.

b. Prior to the purchase, Chevys, Inc. had notice of the EEOC's claims against Rio Bravo International, Inc., Innovative Restaurant Concepts, Inc. and Applebee's International, Inc. which have been raised in this lawsuit. Specifically, Chevy's Inc. had notice that the EEOC was investigating charges of discrimination filed by Sheri Calvo, Veronica Ferek, and Melissa Scarborough, wherein each alleged sexual harassment in the form of a hostile work environment at the Rio Bravo Cantina restaurant located at 26200 U.S. Highway 19 North, Clearwater, Florida, 34621. The

charges were expressly listed as "Pending Claims and Litigation" on Schedule 5.10 of the purchase and sale agreement negotiated by Applebee's International, Inc., and Chevys, Inc.

c. As a result of the sale, the seller corporations no longer operate the business at issue in this lawsuit, no longer employ the staff and management of that business and no longer receive income from that business. As such, they are unable to fully provide the injunctive relief sought by the EEOC in this action and, depending on the amount of a judgment in favor of EEOC, if any, they may not be able to provide full monetary relief.

d. From the date of the sale to the present there has been a substantial continuing of business operations by Chevys, Inc. at the Rio Bravo Cantina restaurant at issue in this lawsuit.

e. From the date of the sale to the present, Chevys, Inc. has used the same facility that the sellers used, and has operated the restaurant under the same exact name as the sellers, i.e., "Rio Bravo Cantina."

f. After the purchase of the Rio Bravo Cantina restaurant, Chevys, Inc. used substantially the same workforce as the seller to continue operations at the restaurant, including substantially the same foodservers and hostesses, the positions of the claimants in this lawsuit.

g. After the purchase of the Rio Bravo Cantina restaurant, Chevys, Inc. continued to employ the same supervisory personnel as the sellers had employed including the restaurant's General Manager Benn Irwin and Area Director Cote Turner.

h. After the purchase of the Rio Bravo Cantina restaurant by Chevys, Inc., the same jobs existed under substantially the same working conditions. Specifically, the restaurant continued to maintain job classifications such as cook, busboy, hostess, foodserver (wait staff), assistant manager, and general manager.

i. After the purchase of the Rio Bravo Cantina restaurant, Chevys, Inc. continued to use same equipment as that used by the sellers to operate the restaurant in accordance with the sellers' historical practices. Specifically, Chevys, Inc. purchased the restaurant containing equipment used by the sellers to prepare and serve Mexican-style food and drinks.

j. After the purchase of the Rio Bravo Cantina restaurant, Chevys, Inc. maintained the restaurant as a Mexican Cantina restaurant concept and produced and served the same products as the sellers, i.e., Mexican-style food and drinks. .

9. At all relevant times Rio Bravo International, Inc. 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).

10. At all relevant times Innovative Restaurant Concepts, Inc. 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).

11. At all relevant times, Applebee's International, Inc. 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).

12. At all relevant times, Chevys, Inc. 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

13. More than thirty days prior to the institution of this lawsuit, Sheri Calvo, Veronica Ferek and Melissa Scarborough each filed a charge with the Commission alleging violations of Title VII by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

14. Since at least February of 1996, Defendant Employer engaged in unlawful employment practices at its Clearwater, Florida location in violation of Section 703(a) and Section 704(a) of Title VII, 42 U.S.C. §2000e-2(a) and §2000e-3(a).

- a. Sheri Calvo was subjected to sexual harassment by Assistant Manager Robert Evans 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. Defendants failed to take prompt corrective action when they knew or should have known of the sexual harassment.
- b. Defendants retaliated against Sheri Calvo for complaining of the unlawful sexual harassment by subjecting her to adverse terms and conditions of employment, including unfavorable work schedules and job assignments, and subsequently discharging her from her position.
- c. Veronica Ferek was subjected to sexual harassment by Assistant Manager Robert Evans 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. Defendants failed to take prompt corrective action when they knew or should have known of the sexual harassment.

- d. Defendants retaliated against Veronica Ferek for complaining of the unlawful sexual harassment by forcing her to resign her position.
- e. Melissa Scarborough was subjected to sexual harassment by Assistant Manager Robert Evans 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. Defendants failed to take prompt corrective action when they knew or should have known of the sexual harassment.
- f. Defendants retaliated against Melissa Scarborough for complaining of the unlawful sexual harassment by discharging her from her position.
- g. Other similarly situated female employees of the Defendants were subjected to sexual harassment by Assistant Manager Robert Evans 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. Defendants failed to take prompt corrective action when they knew or should have known of the sexual harassment.

15. The effect of the conduct complained of in paragraph 14 above has been to deprive Sheri Calvo, Veronica Ferek, Melissa Scarborough and other similarly situated females of equal employment opportunities and otherwise adversely affect their status as employees

because of their sex and/or in retaliation for their opposition to unlawful employment practices..

16. The unlawful employment practices complained of in paragraph 14 above were intentional.

17. The unlawful employment practices complained of in paragraph 14 above were done with malice or with reckless indifference to the federally protected rights of Sheri Calvo, Veronica Ferek, Melissa Scarborough and other similarly situated individuals.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in sexual harassment and any other employment practice which discriminates on the basis of sex and/or opposition to an unlawful employment practice.

B. Order Defendants, to institute and carry out policies, practices, and programs which provide equal employment opportunities for females, and which eradicate the effects of its past unlawful employment practices.

C. Order Defendants to make whole Sheri Calvo, Veronica Ferek, Melissa Scarborough and other similarly situated individuals by providing 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, including but not limited to reinstatement and rightful place promotion or front pay.

D. Order Defendants to make whole Sheri Calvo, Veronica Ferek, Melissa Scarborough and other similarly situated individuals by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in

paragraph 14 above, including out of pocket losses in amounts to be determined at trial.

E. Order Defendants to make whole Sheri Calvo, Veronica Ferek, Melissa Scarborough and other similarly situated individuals by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 14 above, including emotional pain, suffering, inconvenience, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendants to pay Sheri Calvo, Veronica Ferek, Melissa Scarborough and other similarly situated individuals punitive damages for its malicious and reckless conduct described in paragraph 14 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.

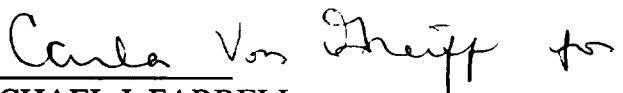
JURY TRIAL DEMAND

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

NICHOLAS M. INZEO
Acting Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

DELNER FRANKLIN-THOMAS
Regional Attorney


MICHAEL J. FARRELL
Supervisory Trial Attorney
FL Bar No. 0053228

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

**Miami District Office
Two South Biscayne Boulevard
One Biscayne Tower
Miami, Florida 33131
Phone - (305) 530-6004
Facsimile - (305) 536-4494**