

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY, )  
COMMISSION. )**

**PLAINTIFF, )**

**v. )**

**MEDITERRANEAN PARTNERS, INC. )  
d/b/a THE YORK TAVERN. )**

**DEFENDANT. )**

**No. 06 C 5114**

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**CYNTHIA L. DALEY, )**

**Plaintiff-Intervenor, )**

**Judge John A. Nordberg**

**v. )**

**Magistrate Judge Brown**

**MEDITERRANEAN PARTNERS, INC., )  
d/b/a THE YORK TAVERN, VITO )  
MORECI and MARIANNA MOCERI, )**

**JURY TRIAL**

**Defendants. )**

**PLAINTIFF-INTERVENOR'S COMPLAINT**

Plaintiff-Intervenor, CYNTHIA L. DALEY (DALEY), by and through her attorney, Michael T. Smith, and in complaining of Defendants MEDITERRANEAN PARTNERS, INC., d/b/a THE YORK TAVERN ( hereinafter "YORK TAVERN"), VITO MOCERI (VITO) and MARIANNA MOCERI (MARIANNA), and in support thereof states as follows:

**COUNT I  
Sexual Harassment and Retaliation**

**NATURE OF ACTION**

This is an action under Title VII of the Civil Rights Act of 1964 and as amended by

inter alia, the Civil Rights Act of 1991, for the YORK TAVERN having subjected DALEY to a sexually hostile work environment despite DALEY'S repeated complaints about same, and for YORK TAVERN's discrimination against, and harassment of, DALEY based upon her sex and, further, for YORK TAVERN' retaliation against DALEY for her report of the sexual advances to executive officers of the YORK TAVERN.

### **JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked 28 U.S.C. Section 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Title VII of the Civil Rights 1964 ("Title VII"), 42 U.S.C.A. §§ 2000 (e) et seq.

2. The employment practices hereafter alleged to be unlawful were and now being committed in Northern District of Illinois.

3. DALEY is an adult person and a resident of Du Page County, State of Illinois.

4. DALEY was hired as an employee of YORK TAVERN in August of 1994.

5. At all times relevant, YORK TAVERN has been and is now an Illinois Corporation doing business in the State of Illinois and the Village of Oak Brook, Du Page County, and has continuously had and now have at least twenty-five (25) employees.

6. At all times relevant herein, YORK TAVERN has been an employer as defined by the 42 U.S.C.A §2000 et seq, in that Defendant is engaged in an industry affecting commerce and has had 25 or more employees.

7. At all times relevant, VITO MOCERI, was an owner of YORK TAVERN, and was, in that capacity, the immediate supervisor of DALEY. As owner, he had the authority and power to discharge and discipline DALEY.

8. At all times relevant MARIANNA MOCERI, was also an owner of YORK TAVERN.

9. Except where otherwise specifically alleged, DALEY was subjected to ongoing sexual harassment while employed at YORK TAVERN.

#### **STATEMENT OF CLAIMS**

10. On an ongoing basis commencing from April of 2004 through and including June of 2005, the YORK TAVERN and by its VITO created a hostile and sexually harassed atmosphere by the following acts which DALEY found unwelcome and objectionable:

- A. Unwelcome sexual advances;
- B. Requests for sexual favors;
- C. Physical contact in a sexual or provoking matter.

11. During the period of employment after April 2004 with YORK TAVERN, DALEY worked in an environment riddled with sexual harassment. The sexual harassment conduct being carried out by employees of YORK TAVERN.

12. As a result of employees of YORK TAVERN, conduct of sexual harassment, DALEY suffered a nervous condition and has been diagnosed for anxiety because of her mental condition she (DALEY) has had to seek medical attention.

13. DALEY filed a discrimination charge against YORK TAVERN with the Equal Employment Opportunity Commission (EEOC) on May 4, 2005. That charge was timely filed under 42 U.S.C.A. 2000(e).

14. On September 21, 2006, the EEOC filed a Complaint against Defendant MEDITERRANEAN PARTNERS, INC., d/b/a THE YORK TAVERN, in case No. 60 C

5114 based upon the charges by DALEY and other employees of the defendant.

**COUNT II  
HOSTILE ENVIRONMENT**

1-14. DALEY realleges paragraphs one (1) through fourteen (14) of Count I and realleges them as paragraphs one (1) through fourteen (14) of Count II.

15. Work efficiency of DALEY became impaired by the sexually provocative conduct of VITO, making it very difficult to work at YORK TAVERN.

16. DALEY, as a result of this situation, her health has been affected.

17. As a result of DALEY termination, she has lost tangible employment benefits from being subjected to a hostile work environment due to the sexual harassment by VITO and other employees of YORK TAVERN.

**COUNT III  
HOSTILE ENVIRONMENT**

1-17. DALEY realleges paragraphs one (1) through seventeen (17) of Count II and realleges them as paragraphs one (1) through seventeen (17) of Count III.

18. After filing her complaint with the EEOC as stated above VITO and MARIANNA of YORK TAVERN abusive conduct as a means of retaliating against her for the filing of said charges.

19. Further, VITO and MARIANNA openly made disparaging remarks against her to other employees of YORK TAVERN due to her complaint against the conduct of VITO made to the EEOC.

20. DALEY was wrongfully accused by MARIANNA of misconduct without any due process hearing or presentment of evidence against her.

21. Further, job efficiency of DALEY became impaired by the illicit conduct of VITO and MARIANNA, making it very difficult to work at YORK TAVERN.

22. DALEY, as a result of this situation, her health has been affected.

23. On March 31, 2006, based upon the retaliation and wrongful conduct of VITO and MARIANNA, DALEY filed an Amended Title VII Civil Rights Discrimination charge against YORK TAVERN, with the Equal Employment Opportunity Commission (EEOC) No. 440-2006-02723.

#### **COUNT IV RETALIATION**

1-23. DALEY realleges paragraphs one (1) through twenty-three (23) of Count III and realleges them as paragraphs one (1) through twenty-three (23) of Count IV.

24. DALEY after continuing to oppose the sexual advances of VITO, DALEY suffered reduced earnings, which she believes was a direct retaliation against her for not “giving into VITO’s demands.”

25. On May 4, 2005, based upon the retaliation by her and wrongful conduct of the owner of YORK TAVERN, DALEY filed a Title VII Civil Rights Discrimination charge against YORK TAVERN with the Equal Employment Opportunity Commission (EEOC). That charge was timely filed under 42 U.S.C.A. 2000(e).

26. As a result of retaliation and sex discrimination against DALEY, she has lost tangible employment benefits from the YORK TAVERN.

27. DALEY has no adequate remedy at law to secure relief for the loss of wages.

#### **COUNT V RETALIATION**

1-28. DALEY realleges paragraphs one (1) through twenty-eight (28) of Count IV and

realleges them as paragraphs one (1) through twenty-eight (28) of Count V.

29. DALEY was terminated, constructively discharged and/or not allowed to return to employment on February 2, 2006, as a direct retaliation of the charges brought by her with the EEOC on May 4, 2005.

30. On March 28, 2006, based upon the retaliation by her and wrongful conduct of owners of YORK TAVERN, DALEY filed an Amended Title VII Civil Rights Discrimination charge against YORK TAVERN with the Equal Employment Opportunity Commission (EEOC). That charge was timely filed under 42 U.S.C.A. 2000(e).

31. As a result of retaliation and sex discrimination against DALEY, she has lost tangible employment benefits from the YORK TAVERN.

32. DALEY has no adequate remedy at law to secure relief for the loss of employment opportunity. If this court does not enter an order for YORK TAVERN to accommodate DALEY by reinstating her to the job DALEY was qualified for, DALEY will be irreparably injured.

**COUNT VI  
DISCRIMINATION BASED UPON DISABLITIES**

**NATURE OF ACTION**

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to make whole DALEY. Defendant, YORK TAVERN discriminated against DALEY, a qualified individual with a disability, because of her then disability.

**JURISDICTION AND VENUE**

Jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. & & 451, 1331, 1337,

1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.A. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C.A. § § 2000e-5 (f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C.A. § 1981(A).

33-38. DALEY realleges paragraphs one (1) through six (6) of Count I and realleges them as paragraphs thirty-three (33) through thirty-eight (38) of Count VI.

39. Plaintiff, DALEY is "disabled" as defined by ADA 42 U.S.C.A. § 12102 (2), in that she has a record of or is regarded as having a physical and psychological impairment that substantially limits one or more of her major life activities.

#### **STATEMENT OF CLAIMS**

40. Despite YORK TAVERN listing itself as an equal employment company and having a company policy against Discrimination to the disabled, YORK TAVERN intentionally discriminated against DALEY because of DALEY's disability by refusing to provide minimal accommodation required by her, and by YORK TAVERN's policy and practice of not accommodating, on many occasions, the physical and psychological needs of DALEY.

41. In the alternative, the action of YORK TAVERN done pursuant to a policy or practice that has a discriminatory effect on DALEY as a disabled person in the following manner: that unless an individual is 100% "normal" physically, she or he has no right to any employment.

42. DALEY is a "qualified individual with a disability" within the meaning of 42 U.S.C.A. § 12111(8) because she can, with reasonable accommodations, perform the

essential functions of the job that she held in the employ of the YORK TAVERN.

43. The discriminatory action of YORK TAVERN as set forth above has caused DALEY to suffer losses of earnings, and as a further proximate result of YORK TAVERN's unlawful and intentional discriminatory actions against DALEY, as alleged above, DALEY has been harmed in that DALEY has suffered in her position, her work environment has become impaired and her work performance has been impaired. As a further proximate result of YORK TAVERN's unlawful and intentional discriminatory actions against DALEY, as alleged above, DALEY has been harmed in that DALEY has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and emotional distress. As a result of such discrimination and consequent harm, DALEY has suffered such damages in an amount according to proof.

44. DALEY has no adequate remedy at law to secure relief. If this court does not enter an order for YORK TAVERN to accommodate DALEY, DALEY will be irreparably injured.

45. DALEY filed a discrimination charge against YORK TAVERN with the Equal Employment Opportunity (EEO). That charge was timely filed, under the ADA, 42 U.S.C.A. § 12117(a), which incorporates the procedures set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. A. § 2000e-5(e).

WHEREFORE, DALEY prays for judgment as follows:

A. For back pay, with prejudgment interest, from the date of discriminatory actions as set forth above, but not more than two years prior to filing of EEOC charge by DALEY under Title VII, to the date of judgment herein;

B. For front pay and/or future lost earnings, for the period from the date of judgment;

- C. For compensatory damages in an amount of \$300,000.00;
- D. For punitive damages in an amount not less than \$300,000.00;
- E. For injunctive relief, including but not limited to relief required to make DALEY whole for the losses caused by the violations of YORK TAVERN;
- F. For costs of suit, including reasonable attorney's fees and expert fees, pursuant to set forth in Title VII of the Civil Rights Act of 1964.
- G. For such other and further relief as the court deems proper.

## **COUNT VII**

### **PENDANT JURISDICTION INTENTIONA INFLICTION OF EMOTIONAL DISTRESS**

#### **Nature of Action**

This is an action under the Illinois law, which involves the some of the same factual basis of DALEY's discrimination claims of while employed by YORK TAVERN by acts and conduct of VITO MOCERI and MARIANNA MOCERI of YORK TAVERN.

#### **JURISDICTION**

This comes under the pendent jurisdiction of the Court since it involves the some of same operative facts and parties as set forth in DALEY's Discrimination claims.

1. DALEY is an adult person and a resident of DuPage County, State of Illinois.
2. DALEY was an employee of YORK TAVERN from August 1994 until February 2006.
3. At all times relevant, YORK TAVERN has been, and is, a corporation organized under the laws the State of Illinois, County of DuPage.
4. Defendant, VITO MOCERI (VITO) was during the revelant times, owner of YORK TAVERN along with Defendant, MARIANNA MOCERI.

5. On an on going basis after filing her EEOC complaint in May of 2005, was intimidated to witt:

a) by threats from VITO that do one gets money from him which was perceived by DALEY as a direct reference and indirect threat from the charges she file with the EEOC ;

b) by Marla Kramer informing DALEY when DALEY told of problems with air conditioning at YORK TAVERN, “what do you expect him (VITO) to do after what you are doing to him from charges filed with the EEOC.” Again a direct reference and indirect threat.

c) by being accused by VITO and MARIANNA of stealing from YORK TAVERN without just cause so as to create fear and intimidation in DALEY;

d) by VITO threatened to come over to DALEY’s residence with a gun;

e) being informed that VITO wanted to KILL her;

f) Marla Kramer and Dianna Shin, at the direction of VITO and MARIANNA, intimidate and make derogatory remarks. Further, admitted to DALEY that she (Kramer) would lie to protect the MOCERI’s from charges of discrimination;

g) under the direction of VITO and/or MARIANNA, Kramer knowing of DALEY being under mental stress, would send upsetting emails to DALEY, Kramer knowing this would hurt DALEY emotionally and distress her;

h) last mangers of YORK TAVERN informed DALEY that the goal and plan of VITO and MARIANNA, were to “make things so tough” that employees would quit.

6. The conduct of VITO, MARINNA and other employees, was never encouraged by DALEY or caused by DALEY.

7. As a result of the conduct of VITO, MARIANNA and other employees, DALEY has suffered a nervous condition and been diagnosed with anxiety.

8. The conduct of VITO, MARIANNA, and Kramer to DALEY caused DALEY to suffer extreme emotional distress and the conduct would be outrageous and repulsive to the reasonable person.

Wherefore, DALEY requests that this court enter judgment against VITO MOCERI and MARIANNA MOCERI as follows:

- A) Find the conduct of VITO MOCERI and MARIANNA MOCERI, to be outrageous and repulsive;
- B) Award actual damages in excess of \$100,000.00;
- C) To provide for punitive damages based upon the conduct of VITO MOCERI and MARIANNA MOCERI;
- D) Award reasonable attorney fees and costs associated with this claim and;
- E) Any other relief this court finds fair and just.

CYNTHIA L. DALEY,

BY: /s/Michael T. Smith  
Michael T. Smith  
Attorney for Plaintiff

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