

DOCKETED  
AUG 27 2003

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

FILED  
AUG 26 2003

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

v. )

WALSH CONSTRUCTION COMPANY OF )  
ILLINOIS, an Illinois Corporation, )

Defendant, )

----- )  
JANICE LENOIR, )

Plaintiff-Intervenor )

v. )

WALSH CONSTRUCTION COMPANY OF )  
ILLINOIS, an Illinois Corporation, )

Defendant,

Case No.: 03 C 3601

Judge: James B. Zagel

ED STATES DISTRICT COURT

AMENDED COMPLAINT OF CIVIL RIGHTS VIOLATION

Now comes the Plaintiff, Janice Lenoir, by her attorneys, Mark D. DeBofsky and Daley DeBofsky & Bryant, and complaining against the Defendant, Walsh Construction Company of Illinois, an Illinois corporation, stating:

*Nature of Action*

1. This is a claim for violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* Plaintiff alleges that she was discriminated against on account of her sex; and in particular, that the Defendant subjected her to sexual harassment defined as a violation of section 703 of the Civil Rights Act pursuant to 29 C.F.R. § 1604.11. Plaintiff also claims that Defendant failed to take prompt remedial action intended to eliminate the harassment after the

Defendant became aware of the illegal behavior; and that she was subjected to retaliation on account of her complaints of sexual harassment. Plaintiff also alleges that Defendant intentionally and deliberately subjected her to extreme and outrageous severe mental and emotional distress. Plaintiff seeks damages, inclusive of punitive damages pursuant to the Civil Rights Act of 1991, as well as recovery of her attorneys' fees and costs.

#### *Jurisdiction and Venue*

2. The court's jurisdiction derives from Title VII of the Civil Rights Act of 1964, as amended. Plaintiff has filed timely charges of discrimination with both the Equal Employment Opportunity Commission and the Illinois Department of Human Rights and exhausted administrative remedies prior to the initiation of this action. Therefore, this court has jurisdiction over the subject matter of this claim in accordance with 42 U.S.C. § 2000e-5(f)(3). Jurisdiction is also founded upon 42 U.S.C. § 12117(a) as well as 28 U.S.C. §§ 1331 and 1343(a)(4).
3. Defendant is located within this judicial district, and all of the events giving rise to the claim occurred in this judicial district. Venue is therefore proper in this judicial district in accordance with 28 U.S.C. § 1291.

#### *The Parties*

4. The Plaintiff, JANICE LENOIR ("Ms. Lenoir"), is a female. At all times relevant hereto, she was a resident of Chicago, Illinois. From December, 2000 until January, 2002, Ms. Lenoir was employed by Walsh Construction Company of Illinois or a subsidiary thereof, as a laborer.
5. Defendant, WALSH CONSTRUCTION COMPANY OF ILLINOIS, an Illinois corporation ("Walsh"), is engaged in construction work in the City of Chicago, Illinois. At all times relevant hereto, Defendant has continuously been and is now doing business in the State of Illinois and has continuously had at least fifteen (15) employees. Therefore, at all times relevant hereto,

Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of section 701(b), (g) and (h) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-(b), (g) and (h).

*Statement of Facts*

6. Ms. Lenoir was employed by Walsh or a subsidiary thereof from December of 2000 until January of 2002. Beginning on February 15, 2001 and continuing until at least October 25, 2001, on various and numerous occasions, Manuel Lemus ("Mr. Lemus"), a foreman employed by Walsh, sexually harassed Ms. Lenoir by making sexually graphic suggestions and remarks, by offensive physical contact, and by otherwise engaging in conduct that created a sexually hostile environment offensive to the Plaintiff and to any reasonable woman or person. In addition thereto, Lemus either had actual or apparent authority to determine certain terms and conditions of plaintiff's employment; and he offered to condition better terms and conditions of employment in exchange for sexual favors.

7. Beginning February 15, 2001, the following occurred:

a) On February 15, 2001, Mr. Lemus initiated conversation with plaintiff about his wife, stating that he did not have a good sex life with his wife, and asking Ms. Lenoir if she had any sexual problems with her boyfriend. When Ms. Lenoir explained that she and her boyfriend did not have sexual problems, Mr. Lemus remarked, "I wish I had met you before I met my wife."

b) The next day, Mr. Lemus approached the Plaintiff and asked if she was ready to take care of him.

c) On February 26, 2001, Mr. Lemus approached the Plaintiff who was sitting in the office writing out reports and proceeded to rub his penis on her shoulder (the "first physical contact").

d) On March 2, 2001, Mr. Lemus called Ms. Lenoir in her home at approximately 7:30 p.m. and asked if he could come over to have sex. Ms. Lenoir said "no" and hung up the phone. Mr. Lemus proceeded to call back twice (the "March 2<sup>nd</sup> phone incidents").

e) On September 24, 2001, when Ms. Lenoir returned from evening classes to her car parked on the work site after work hours, she found Mr. Lemus waiting by the car. She immediately entered her vehicle and left without speaking to him (the "September 24<sup>th</sup> car incident").

f) On October 23, 2001, Mr. Lemus hit Ms. Lenoir's buttocks from behind (the "second physical contact"). A co-worker, Jerome Johnson, told Ms. Lenoir that Mr. Lemus was "swinging" at her buttocks all the time.

g) On October 24, 2001, Mr. Lemus showed Ms. Lenoir a rubber condom and told her to "come on" (the "October 24<sup>th</sup> condom incident").

8. Mr. Lemus' comments and actions were not solicited or invited by Ms. Lenoir, were not welcome, and were of a physically and emotionally offensive nature.

9. When Mr. Lemus made comments or advances of a sexual nature to Ms. Lenoir, she demanded that he cease; and when Mr. Lemus did not cease his conduct, Ms. Lenoir complained of Mr. Lemus' conduct to her supervisors. In particular, the following occurred:

a) On March 5, 2001, after the March 2<sup>nd</sup> phone incident, Ms. Lenoir reported Mr. Lemus' actions to Xavier Watkins, the assistant superintendent. The following day, Michael

Coghlin, the superintendent, approached Ms. Lenoir and assured her that such harassment would not happen again.

b) On September 25, 2001, after the September 24<sup>th</sup> car incident, Ms. Lenoir again reported Mr. Lemus' actions to Watkins. However, there was no response to her complaints.

c) On October 25, 2001, following the October 24<sup>th</sup> condom incident, Ms. Lenoir reported Mr. Lemus' behavior to Xavier, after which, Mr. Lemus told the Plaintiff, "You told Xavier, you know people don't like me and they are trying to get rid of me. You know they are going to get rid of me and you."

10. During this period, Ms. Lenoir was subject to other harassment and retaliation from another employee of Walsh in relation to her reporting of Mr. Lemus' inappropriate behavior. On September 3, 2001, John D. (last name unknown) approached Ms. Lenoir and stated, "I always told them that you was a worthless piece of shit."

11. When Ms. Lenoir's supervisors failed to take adequate action to prevent Mr. Lemus' further harassment, on November 14, 2001, Ms. Lenoir filed a charge of discrimination based on sexual harassment with the Equal Employment Opportunity Commission.

12. As a direct and proximate result of the foregoing, Ms. Lenoir suffered severe emotional distress, and she has been unable to work on account of her condition since approximately January 2002.

#### **Count I: Sexual Harassment/Title VII**

13. Plaintiff re-alleges paragraphs 1 through 12 of the general allegations as of Count I of this complaint, and by that reference incorporates those allegations herein.

14. The foregoing conduct by Walsh constitutes discrimination against the Plaintiff in the terms and conditions of her employment on account of her sex in violation of Title VII of the Civil

Rights Act of 1964. In addition thereto, defendant's refusal to remediate the actions of Lemus and others was malicious and/or reckless in its disregard for plaintiff's civil rights.

WHEREFORE, Plaintiff prays for judgment in her favor and against the Defendant and also requests the following relief:

(a) That the Plaintiff be made whole as to all salary, benefits, and seniority status that she would have earned but for the civil rights violation committed against her by Defendant;

(b) That Defendant clear from Plaintiff's personnel records all references to the filing of a charge of discrimination as well as this action, and the subsequent disposition thereof;

(c) That Defendant cease and desist from discriminating on the basis of sex in its employment practices;

(d) That Defendant be ordered to pay to Plaintiff a reasonable sum that will compensate her for her physical and emotional injuries suffered as a result of Defendant's conduct;

(e) That the Defendant be ordered to pay to Plaintiff punitive damages in the maximum sum allowable under the Civil Rights Act of 1991;

(f) That Plaintiff receive such further relief as may be necessary to make Plaintiff whole, and in addition thereto that Plaintiff recover her costs and attorneys' fees in accordance with 42 U.S.C. § 2000e-5(k).

#### **Count II: Retaliation**

15. Plaintiff re-alleges paragraphs 1 through 12 of the general allegations as of Count II of this complaint, and by that reference incorporates those allegations herein.

16. The foregoing conduct by Walsh, through its agents and employees, constitutes a retaliation by the Defendant which has denied her opportunities for employment on the basis of her having complained of discrimination, in violation of Title VII of the Civil Rights Act of 1964.

WHEREFORE, Plaintiff prays for judgment in her favor and against the Defendant and also requests the following relief:

(a) That the Plaintiff be made whole as to all salary, benefits, and seniority status that she would have earned but for the civil rights violation committed against her by Defendant;

(b) That Defendant clear from Plaintiff's personnel records all references to the filing of a charge of discrimination as well as this action, and the subsequent disposition thereof;

(c) That Defendant ceases and desists from discriminating on the basis of sex in its employment practices;

(d) That Defendant be ordered to pay to Plaintiff a reasonable sum that will compensate her for her physical and emotional injuries suffered as a result of Defendant's conduct;

(e) That the Defendant be ordered to pay to Plaintiff punitive damages in the maximum sum allowable under the Civil Rights Act of 1991;

(f) That Plaintiff receive such further relief as may be necessary to make Plaintiff whole, and in addition thereto that Plaintiff recover her costs and attorneys' fees in accordance with 42 U.S.C. § 2000e-5(k).

**Count III: Intentional Infliction of Emotional Distress**

17. Plaintiff re-alleges paragraphs 1 through 12 of the general allegations as of Count III of this complaint, and by that reference incorporates those allegations herein.

***Additional Jurisdictional Allegation***

18. In addition to the basis of the Court's jurisdiction as set forth above, this Court has supplemental jurisdiction over this claim pursuant to 28 U.S.C. §1367 since the allegations relating to Count III arise out of the same course of conduct as described in Counts I and II.

***Claim for Relief***

19. The foregoing described pervasive and repeated conduct on the part of the Defendant, through its agents and employees, was committed intentionally and deliberately and was extreme and outrageous.


20. The foregoing described conduct by the Defendant was conduct which the Defendant either knew or should have known was likely to cause emotional distress to the Plaintiff; and such conduct was calculated by the Defendant to inflict severe emotional distress and to cause fear and intimidation in the Plaintiff.

21. As a direct and proximate result of the foregoing, Plaintiff suffered severe mental shock, fright and anxiety.

WHEREFORE, Plaintiff prays for an award of damages sufficient to compensate her for the severe emotional distress inflicted by Defendant; and in addition thereto, Plaintiff prays for an award of punitive damages in an amount sufficient to punish the Defendant and to deter it from committing such acts again in the future, as well as any and all other relief to which the Plaintiff may be entitled.

*Jury Demand*

Plaintiff demands trial by jury.

  
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One of the attorneys for plaintiff

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