

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

CV-02 3149 (TCP) (ARL)

-against-

PAPILLON SALONS & CO., INC. a/k/a
PAPILLON HAIR SALON & SPA, INC.,
a/k/a PAPILLON SPAS, INC. a/k/a
PAPILLON HAIR SALON & SPA II, INC.,

Defendants.

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PAPILLON HAIR SALON & SPA, INC.,

Third-Party Plaintiff,

-against-

MARY TOLNAI and JEFFREY TRICHON

Third-Party Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
DEC 10 2004
★ BROOKLYN OFFICE ★

THIRD PARTY COMPLAINT

Defendant Third Party Plaintiff Papillon Hair Salon & Spa, Inc bring this third-party complaint against third-party defendants Mary Tolnai ("Tolnai") and Jeffrey Trichon ("Trichon") seeking indemnification, or in the alternative, contribution on a proportionate basis with regard to certain claims brought against these Papillon Hair Salon & Spa, Inc. by plaintiff.

1. Defendant third-party plaintiff Papillion Hair Salon & Spa, Inc. ("Hair Salon & Spa") is a corporation organized and existing under the laws of the State of New York with offices located at 16 Elm Street, Huntington, New York.

2. Third-party defendant Tolnai, upon information and belief, is an individual residing in the State of Florida at 79-53 N.W. 70th Avenue, Parkland, Florida 33067.

3. Third-party defendant Trichon, upon information and belief, is an individual residing in the State of New York at 25 Tioga Drive, Jericho, New York, 11753.

4. Plaintiff Equal Employment Opportunity Commission ("EEOC") has filed a complaint against all defendants on behalf of Adrienne Spellman ("Spellman"), seeking damages arising from alleged unlawful employment practices on the basis of age under Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 626(b) (the "Claim"). A copy of the complaint is attached hereto as Exhibit "A".

5. Spellman has alleged that she was employed by defendant Papillon Salons & Co., Inc. ("Salons & Co.") in or around November 2000 at which time she was improperly terminated due to her age.

6. Mary Tolnai ("Tolnai") and Jeffrey Trichon ("Trichon") were the sole shareholders of Salons & Co.

7. Hair Salon & Spa was incorporated with the New York State Department of State on December 21, 2001.

8. Hair Salon & Spa purchased the assets of Salons & Co. on August 28, 2002 pursuant to an asset purchase agreement (the "Asset Purchase Agreement").

9. Hair Salon & Spa was unaware of the existence of the Claim when it purchased the assets of Salons & Co.

10. Hair Salon & Spa did not agree to assume the liabilities of Salons & Co.

AS AND FOR A FIRST CAUSE OF ACTION

11. Third-party plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs 1 through 10 with the same force and effect as if fully set forth herein.

12. If the plaintiff should recover against defendant Hair Salon & Spa for the allegations stated herein, said damages will have been caused and brought about by reason of the wrongful actions of Salons & Co., Tolnai and Trichon.

13. The culpability of Hair Salon & Spa will only be secondary, if at all, and the culpable acts of Salons & Co., Tolnai and Trichon will have been primary. If plaintiff should recover from Hair Salon & Spa after trial, then said defendant will have been injured and seeks as a third-party plaintiff, indemnification for any and all amounts that said defendant may have to pay, or in the alternative contribution on a proportionate basis, towards any and all amounts said defendant may have to pay.

AS AND FOR A SECOND CAUSE OF ACTION

14. Third-party plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs 1 through 13 with the same force and effect as if fully set forth herein.

15. In Article 1.6 of the Asset Purchase Agreement Salons & Co. represented that "To the best of the knowledge of the Seller [Salons & Co.] there are no actions, suits, proceedings or investigations of any nature whatsoever, pending or threatened against or affecting the Seller."

16. Article 4.1 of the Asset Purchase Agreement provided that Salons & Co., and Tolnai and Trichon, personally as covenantors, agreed to indemnify and hold harmless Hair Salon & Spa from claims arising from a breach of any representations and warranties contained in the Asset Purchase Agreement, including reasonable attorney's fees.

17. The Claim constitutes an action, suit, proceeding or investigation which was pending or threatened against or affecting Salons & Co. at the time of the closing on the Asset Purchase Agreement.

18. The EEOC has alleged that they had communicated with representatives of Salons & Co. regarding Spellman's claim prior to the closing on the Asset Purchase Agreement.

19. The EEOC has alleged that service of the Summons and Complaint in this action was made upon Salons & Co. prior to the closing on the Asset Purchase Agreement.

20. Third party defendants were aware of the Claim prior to the closing on the Asset Purchase Agreement.

21. Third-party defendants have breached the representations contained in the Asset Purchase Agreement.

22. Hair Salon & Spa seeks indemnification for any and all losses, including reasonable attorney's fees, that it might sustain as a result of the third-party defendants' breach of the Asset Purchase Agreement.

WHEREFORE, defendant third-party plaintiff Papillon Hair Salon & Spa, Inc. prays for judgment over and against third-party defendants Mary Tolnai and Jeffrey Trichon, together with the costs, expenses, disbursements, and legal fees incurred in defense of this action.

Dated: New York, New York
December 8, 2004

HART & HART, LLP

By 

Avely Hart (AH-2251)

Attorneys for Defendant Papillon Hair Salons & Spa, Inc.
420 Lexington Avenue-Ste 2001
New York, New York 10170
(212) 573-6300

To:
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

New York District Office
33 Whitehall Street, 5th Floor
New York, N.Y. 10004
(212) 336-3620