

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.

STIPULATION AND ORDER  
SETTLING ACTION AS TO  
THIRD-PARTY DEFENDANT  
JEFFREY TRICHON

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PAPILLON HAIR SALON & SPA, INC.,

Third-Party Plaintiff,

-against-

MARY TOLNAI and JEFFREY TRICHON

Third-Party Defendants.

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WHEREAS, plaintiff, Equal Employment Opportunity Commission ("EEOC"), on behalf of Adrienne Spellman, has commenced an action against defendant Papillon Salons & Co., Inc. ("Salons & Co."), seeking damages arising from an alleged unlawful termination, in November 2000, on the basis of age,

WHEREAS, Papillon Hair Salon & Spa, Inc. ("Hair Salon & Spa") had purchased the assets of Salons & Co. on or about August 28, 2002 pursuant to an Assct Purchase Agreement (the "Asset Purchase Agreement").

WHEREAS, Hair Salon & Spa, at the time of the purchase of the assets, was unaware of the instant claim by the EEOC or Adrienne Spellman,

WHEREAS, the EEOC alleges, inter alia, that Hair Salon & Spa is the successor entity of defendant Papillon Salons & Co.,

WHEREAS, 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."

WHEREAS, Article 4.1 of the Asset Purchase Agreement provided that Salons & Co., Mary Tolnai and Jeffrey 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.

WHEREAS, Hair Salon & Spa has commenced this third-party action against Mary Tolnai and Jeffrey Trichon alleging a breach of its representations under the Asset Purchase Agreement, seeking indemnification, and reimbursement of reasonable attorney's fees incurred in defense of this action,

WHEREAS, Hair Salon & Spa has incurred reasonable attorney's fees in the amount of \$38,910.87, to date, in defending the instant action,

WHEREAS, the EEOC herein has agreed to dismiss this action against all defendants, with prejudice, without payment or costs, upon the execution of, and compliance with, the settlement agreement executed by all parties in connection with a action commenced by Adrienne Spellman in the Supreme Court of the State of New York, County of Nassau under Index No. 26133/03 (the "State Action"),

WHEREAS, Hair Salon & Spa and Jeffrey Trichon wish to fully and finally resolve the claims of Hair Salon & Spa made in this Third-Party Complaint,

IT IS HEREBY STIPULATED, CONSENTED, AGREED AND ORDERED, by and between the Hair Salon & Spa, Jeffrey Trichon and their respective attorneys, that the third-party action is hereby settled upon the following terms and conditions:

1. Jeffrey Trichon, hereby acknowledges service of the Third-Party Summons and Complaint in this action and submits himself to the jurisdiction of this Court.

2. This Court has jurisdiction over Jeffrey Trichon and the subject matter of this action.

3. In consideration of the settlement made herein, Jeffrey Trichon agrees pay to Hair Salon & Spa, the sum of Five Thousand and 00/100 (\$5,000.00) dollars, said sum being a negotiated figure and accepted by Hair Salon & Spa as full settlement of its claim so long as same is paid in compliance with the terms hereof.

4. The \$5,000.00 shall be paid as follows: \$2,000.00 shall be paid simultaneously with the execution hereof, by certified check or bank check, made payable to "Hart & Hart LLP as Attorneys". The balance shall be paid in two (2) consecutive monthly payments each in the amount of \$1,500.00, the first payment to be made on September 15, 2005 and the second payment to be made on October 15, 2005. The payments shall made payable to "Hart & Hart LLP as Attorneys" in the form of two (2) post-dated checks, delivered simultaneously with the execution hereof and drawn on the account of Jeffrey Trichon. Notice of the deposit of the post-dated checks shall be sent to the following address: 129 FRONT ST. MANEOLA NY

5. If any check delivered in furtherance of this settlement shall fail for collection, Jeffrey Trichon shall be provided with a five (5) day prior notice to cure the default within said five (5) days. Notice of default shall be made by facsimile and email notice to Jeffrey Trichon's attorney, Eric B. Eubanks, Esq., of Perry & Campanelli, LLP at (516) 746-2611 and EBE@PERRYCAMP.COM, respectively. In the event that the default is not cured with said five (5) day period Hair Salon & Spa may enter judgment against Jeffrey Trichon, for the sum of

\$38,910.87, plus allowed interest and court costs, upon an ex parte affidavit to the Court stating the fact of the default and failure to cure, and the amount due, giving Jeffrey Trichon credit for any payments which may have been made to that date.

6. In addition to the foregoing, in the event that the EEOC shall take any actions against Hair Salon & Spa as a result of Jeffrey Trichon's default under the terms of the settlement in the State Action, resulting in further costs, expenses and attorney's fees being incurred by Hair Salon & Spa, then Hair Salon & Spa may (a) enter judgment against Jeffrey Trichon, for the sum of \$38,910.87, plus allowed interest and court costs, upon an ex parte affidavit to the Court stating the fact of the default, and the amount due, giving Jeffrey Trichon credit for any payments which may have been made to that date and (b) reserves its right to pursue a claim against Jeffrey Trichon for such further costs, expenses and attorney's fees.

7. Except as provided to the contrary elsewhere, all costs and attorney's fees incurred in this action shall be borne by their respective parties.

8. This Court retains jurisdiction of this matter as necessary to resolve disputes, if any, arising between the parties insofar as it relates to compliance with, and enforcement of, the terms of this Stipulation and Order.

9. The parties' obligation to comply with the terms hereof, and the times frames set forth herein shall, TIME BEING OF THE ESSENCE, begin at the time of the execution of this Stipulation and Order by counsel for the parties regardless of the date that same is Ordered by this Court.

10. Either party shall be entitled to its expenses, and any and all reasonable attorney's fees incurred, in enforcing the terms of the Stipulation and Order.

SO ORDERED, this \_\_\_ day of August, 2005.

HON. THOMAS C. PLATT  
United States District Judge

CONSENTED AND AGREED TO:

HART & HART LLP

By 

Jeffrey C. Ruderman (JR-7812)  
Attorneys for Defendant, Third-Party Plaintiff  
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PERRY & CAMPANELLI, LLP

By  

~~Eric B. Eubanks, Esq. (EB-~~ ) *ANDREW J. CAMPANELLI AC-4014*  
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JEFFREY TRICHON

Dated: 8/30/05