

WJ

U.S. DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
NOV 27 2002

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK _____ x
:
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, :
Plaintiff, :
ELIAS MENDOZA, :
Plaintiff-Intervenor, :
v. :
ZAPPALA FARMS, LLC and JAMES ZAPPALA, :
Defendants. :
_____ x

Civ. No. 02-CV-1220
(NPM) (GJD)

COMPLAINT IN INTERVENTION

Preliminary Statement

1. Plaintiff-Intervenor Elias Mendoza, a migrant farmworker, intervenes in this action, which was previously filed by the Equal Employment Opportunity Commission (“EEOC”).
2. Mr. Mendoza – who has a severed hand – was discriminated against and retaliated against in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (the “ADA”) and the New York Human Rights Law by Defendants Zappala Farms, LLC and James Zappala.
3. In addition, Defendants violated the terms of their working arrangement with Mr. Mendoza in violation of the Migrant and Seasonal Agricultural Worker Protection Act (“AWPA”).

4. Specifically, Mr. Mendoza was fired from his employment with Defendants when he refused to accept a reduction in his hourly wage rate. Mr. Mendoza was singled out for this reduction because of his disability; non-disabled workers were not required to accept such a reduction in salary in order to keep their jobs.

Jurisdiction and Venue

5. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, and 1343; 29 U.S.C. § 1854(a); 42 U.S.C. § 12117(a); and 42 U.S.C. § 1981(a).
6. The Court has jurisdiction over Mr. Mendoza's pendant state law claim under 28 U.S.C. § 1367 (supplemental jurisdiction). Mr. Mendoza's state law claim involves the same transactions and occurrences as his federal claims.
7. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and 29 U.S.C. §1854(a).
8. The unlawful employment practices which form the basis of this action occurred within the Northern District of New York.

Parties

9. At all relevant times, Plaintiff-Intervenor Elias Mendoza was a migrant agricultural worker who worked for Defendants at their farm in Oswego County, New York.
10. Mr. Mendoza has a severed right hand.
11. At all relevant times, Mr. Mendoza was disabled and/or was perceived as disabled

within the meaning of the ADA.

12. At all relevant times, Mr. Mendoza was disabled within the meaning of the New York Human Rights Law.
13. At all relevant times, Mr. Mendoza was migrant agricultural worker within the meaning of the AWPA.
14. At all relevant times, Defendant Zappala Farms, LLC (“Zappala Farms”) has continuously been a private entity doing business in the State of New York and has continuously employed at least fifteen employees.
15. At all relevant times, Defendant Zappala Farms has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5) and Section 101(7) of the ADA, 42 U.S.C. § 12111(7).
16. At all relevant times, Defendant James Zappala was a member of Zappala Farms.
17. At all relevant times, James Zappala and Zappala Farms were joint employers of Mr. Mendoza.
18. At all relevant times, Defendants were employers of Mr. Mendoza within the meaning of the AWPA, 29 U.S.C. § 1802(2).
19. At all relevant times, Defendants employed Mr. Mendoza within the meaning of the AWPA, 29 U.S.C. § 1802(5).

Factual Allegations

20. More than thirty days prior to the institution of this lawsuit, Mr. Mendoza filed a charge

with the EEOC alleging violations of Title I of the ADA by Zappala Farms.

21. Mr. Mendoza has satisfied all conditions precedent to intervention in this action.
22. Since at least June 11, 2001, Defendants have engaged in unlawful employment practices in violation of Sections 102 and 503 of the ADA, 42 U.S.C. §§ 12112 and 12203.
23. In April of 2001, Mr. Mendoza entered into a working arrangement with Defendants for the period of April 9, 2001 through October 10, 2001.
24. This working arrangement provided that Mr. Mendoza would earn \$7.00 per hour.
25. On or about June 11, 2001, Defendants decreased Mr. Mendoza's rate of pay to \$5.15.
26. Mr. Mendoza's pay was decreased because of his severed hand.
27. Mr. Mendoza was told that if he refused to sign a new "work agreement" reflecting his decrease in pay, his employment with Defendants would be terminated.
28. When Mr. Mendoza refused to sign the new "work agreement," his employment with Defendants was in fact terminated.
29. The effect of the practices complained of above have been to deprive Mr. Mendoza of equal employment opportunities and otherwise to affect adversely his status as an employee because of his disability or perceived disability.
30. In decreasing the pay of Mr. Mendoza and firing him, Defendants also failed to comply with their working arrangement with Mr. Mendoza, in violation of 29 U.S.C. § 1822(c).

31. Both Defendants exercised control over the work performed by Mr. Mendoza
32. Both Defendants had the power to establish, and did establish, the terms of Mr. Mendoza's employment.
33. Both Defendants determined the salary to be paid to Mr. Mendoza.
34. Both Defendants had the power to hire and fire Mr. Mendoza.
35. Defendants undertook all of the actions and omissions alleged above either directly or through their agents who were authorized to undertake such actions and omissions.
36. During the course of his employment, Mr. Mendoza worked on crops which were produced for movement in interstate commerce or for incorporation as an ingredient in products which could be anticipated to move in interstate commerce.

Causes of Action

I. American with Disabilities Act Claim

37. Plaintiff-Intervenor realleges and incorporates by reference the allegations set forth in paragraphs 1 through 36 as if set forth fully here.
38. The unlawful employment practices complained of above were intentional.
39. The unlawful employment practices complained of above were done with malice and/or reckless disregard for Mr. Mendoza's federally-protected rights, in violation of 42 U.S.C. § 12101 et seq.
40. The effect of the practices complained of above has been to inflict emotional pain, suffering, emotional distress, indignity, inconvenience, loss of enjoyment of life, loss of

self-esteem, and humiliation upon Mr. Mendoza.

II. Migrant and Seasonal Agricultural Worker Protection Act Claim

41. Plaintiff-Intervenor realleges and incorporates by reference the allegations set forth in paragraphs 1 through 40 as if set forth fully here.
42. Defendants violated Mr. Mendoza's rights under the AWPA by failing to comply with the terms of the working arrangement, as required by 29 U.S.C. § 1822(c).
43. As a result of this violation of the AWPA, Mr. Mendoza has suffered damages.
44. For this violation of the AWPA, Mr. Mendoza is entitled to recover the greater of his actual damages or up to \$500 in statutory damages, in accordance with 29 § U.S.C. 1854.

III. New York Human Rights Law Claim

45. Plaintiff-Intervenor realleges and incorporates by reference the allegations set forth in paragraphs 1 through 44 as if set forth fully here.
46. By engaging in the foregoing unlawful and discriminatory acts, the Defendants are liable to Mr. Mendoza for damages and related relief under the New York Human Rights Law, New York Exec. Law § 290 et seq.
47. Plaintiff-Intervenor demands a trial by jury.

WHEREFORE, the Plaintiff-Intervenor request that this Court enter an Order:

- i. Assuming jurisdiction over this action;
- ii. Declaring that Defendant violated the ADA, the New York Human Rights Law, and the AWPAs;
- iii. Enjoining Defendants from further violations of the ADA, the New York Human Rights Law, and the AWPAs;
- iv. Ordering Defendants to make Mr. Mendoza whole by providing any affirmative relief necessary to eradicate the effects of Defendants' unlawful practices;
- v. Granting judgment to Mr. Mendoza for his past and future non-pecuniary losses resulting from Defendants' conduct complained of above, including pain and suffering, emotional distress, indignity, inconvenience, loss of enjoyment of life, loss of self-esteem, and humiliation;
- vi. Granting judgment to Mr. Mendoza under the AWPAs for his actual damages or up to \$500 in statutory damages, in accordance with 29 U.S.C. § 1854;
- vii. Ordering Defendants to pay Mr. Mendoza punitive damages for Defendants' malicious and reckless conduct;
- viii. Awarding the Mr. Mendoza prejudgment and postjudgment interest as allowed by law;
- ix. Awarding Farmworker Legal Services of New York, Inc. its costs and


reasonable attorneys' fees in this action; and

- x. Granting such and other further relief as this Court finds just.

Dated: New Paltz, New York
November 22, 2002

Respectfully Submitted,

FARMWORKER LEGAL SERVICES OF
NEW YORK, INC.

By: 

Patricia C. Kakalec (N.D.N.Y. # 509731)

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