

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	Civil Action No. 04-CV-4584
Plaintiff,)	
)	
v.)	
)	<u>FIRST AMENDED COMPLAINT</u>
)	
CACTUS-LANCASTER, LLC,)	<u>JURY TRIAL DEMAND</u>
)	
Defendant.)	

NATURE OF ACTION

The United States Equal Employment Opportunity Commission (the "Commission"), brings this action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and retaliation and to provide appropriate relief to Brenda Zankl, a class of similarly situated female employees, and Bonita Axe, who were adversely affected by such unlawful employment practices while employed by Defendant, Cactus-Lancaster, LLC. As alleged with greater particularity in paragraphs 7 and 8 below, the Commission alleges that Brenda Zankl, and a class of similarly situated female employees, were sexually harassed by the then General Manager, Neal Mease. The Commission also alleges that the sexually harassing environment was so intolerable that some class members were forced to resign their position. The Commission further alleges that Bonita Axe complained about the sexual harassment and that Defendant retaliated against her by reducing her hours, terminating her employment, and sending her a letter via certified mail threatening her that a summons would be

issued charging her with trespass if she entered the facility. As a result of Defendant's discriminatory conduct, Brenda Zankl, a class of similarly situated female employees, and Bonita Axe have suffered damages, including lost wages and emotional distress.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to § 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), and § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by § 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times mentioned herein, Defendant, Cactus-Lancaster, LLC, (the "Employer"), has continuously been doing business in the Commonwealth of Pennsylvania and the City of Lancaster, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of § 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Brenda Zankl and Bonita Axe filed charges of discrimination with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least September 2000, Defendant Employer has engaged in unlawful employment practices at its Lancaster, Pennsylvania location in violation of § 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by subjecting Brenda Zankl and a class of similarly situated female employees, to a sexually hostile work environment. The unlawful employment practices include, but are not limited to, the following:

(a) Brenda Zankl began working for Defendant Employer as a waitstaff employee in October 2001 until she resigned in April 2003. She resumed working for Defendant Employer from February 15, 2004 through May 5, 2004.

(b) Defendant Employer's then General Manager, Neal Mease, repeatedly made unwelcome and sexually suggestive innuendoes, remarks, and comments, including comments about her body parts, made requests for oral sex and innuendoes to her about oral sex, touched her buttocks, rubbed her shoulders and rubbed against her.

(c) Despite Ms. Zankl's complaints to her supervisor about Neal Mease's behavior, Defendant Employer did not take remedial action to stop the sexual harassment.

(d) Neal Mease also sexually harassed a class of similarly situated female employees, subjecting them to physical touching and inappropriate and sexually suggestive comments, remarks, and sexual requests. Some of the employees who were subjected to unwelcome sexual harassment were teenagers or under the age of 21. Employees complained about the sexual harassment. One

Supervisor wrote a letter to one of Defendant Employer's owners, Robert Katz, in about September 2002 to advise him of the harassment. One employee's mother even complained to Defendant Employer's corporate headquarters. However, Defendant Employer did not take appropriate remedial action to stop the sexual harassment.

(e) Some class members were constructively discharged as a result of the unlawful sexual harassment.

8. Since at least January 31, 2003, Defendant Employer has engaged in unlawful employment practices at its Lancaster, Pennsylvania facility in violation of Section 704(a) of Title VII, 42 U.S.C. Section 2000e-2(a)(1), by discriminating against Bonita Axe on the basis of retaliation. The unlawful employment practices include the following:

(a) In March 2001, Ms. Axe was initially hired as a waitstaff employee and was let go in February 2001. Defendant Employer rehired her as a waitstaff employee on or about October 5, 2002.

(b) During her employment, Ms. Axe observed the then General Manager, Neal Mease, inappropriately touch female employees and make offensive comments and sexual innuendoes to female employees. Employees also told Ms. Axe about, or discussed in her presence, the unwelcome touching and sexual remarks made by Mr. Mease.

(c) On or about January 31, 2003, Ms. Axe went to Mr. Mease's office and told him that she knew that he had made inappropriate sexual remarks and sexual requests to female employees and that she was reporting his behavior as violating Defendant Employer's policy against sexual harassment. By the end of the meeting, Ms. Axe believed that Mr. Mease would stop sexually harassing female employees. Mr. Mease told her that he would place her on the work schedule for

the following week.

(d) February 11, 2003 was the last day Ms. Axe was scheduled to work. For a period of at least five weeks thereafter, Ms. Axe called Mr. Mease weekly to ask if she would be scheduled to work that week. Mr. Mease claimed that he did not have any available work but advised her to call the following week. Defendant Employer reduced Ms. Axe's hours in retaliation for her complaint about the sexual harassment of female employees at the restaurant.

(e) On March 24, 2003, Defendant Employer terminated Ms. Axe's employment in retaliation for engaging in protected activity when she opposed employment practices that she believed to be discriminatory under Title VII. Defendant Employer claimed that Ms. Axe was terminated for a purported lack of work. However, Defendant Employer hired numerous individuals as waitstaff after Ms. Axe's termination in March 2003 and hired additional employees in other capacities, such as Hostess and in the bakery.

(f) On April 4, 2003, Ms. Axe received by certified mail a letter from the General Manager, Neal Mease, advising her that her presence at the restaurant:

...is not desired and is hereby prohibited. Your mere appearance at this location will cause a summons to be issued, charging you with a violation of Section 3505(b)(i) - Defiant Trespass, of Chapter 35 of the Pennsylvania Crimes Code 1104(3), which provides for punishment of up to one year imprisonment. Be assured that should you ignore this notice, a summons will be issued.

A copy of this letter is being retained for use as evidence at any future legal proceeding.

The letter indicated that a copy had been sent to a local police department. Defendant Employer sent Ms. Axe this letter in retaliation for her complaint about the sexual harassment.

9. The effect of the practices complained of in paragraphs 7(a) through (e) above has

been to deprive Brenda Zankl and a class of similarly situated female employees of equal employment opportunities and otherwise affect adversely their status as employees because of their sex.

10. The effect of the practices complained of in paragraphs 8(a) through (f) above has been to deprive Bonita Axe of equal employment opportunities and otherwise affect her status as an employee because she engaged in protected activity under Title VII.

11. The unlawful employment practices complained of in paragraphs 7(a) through (e) and 8(a) through (f) above were intentional.

12. The unlawful employment practices complained of in paragraphs 7(a) through (e) and 8(a) through (f) above were done with malice or with reckless indifference to the federally protected rights of Brenda Zankl, a class of similarly situated female employees, and Bonita Axe.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in sexual harassment, from retaliating against an employee by reducing an employee's hours, from retaliating against an employee by terminating her employment, and any other employment practice which discriminates on the bases of sex and/or retaliation.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for women which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Bonita Axe, and class members who were constructively discharged, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, reinstatement or front pay in lieu thereof, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Employer to make whole Brenda Zankl, a class of similarly situated female employees, and Bonita Axe by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 7(a) through (e) and 8(a) through (f) above, in amounts to be determined at trial.

E. Order Defendant Employer to make whole Brenda Zankl, a class of similarly situated female employees, and Bonita Axe by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs 7(a) through (e) and 8(a) through (f) above, including emotional pain, suffering, depression, anxiety, inconvenience, loss of

enjoyment of life and humiliation, in amounts to be determined at trial.

F. Order Defendant Employer to pay Brenda Zankl, a class of similarly situated female employees, and Bonita Axe punitive damages for its malicious and reckless conduct described in paragraphs 7(a) through (e) and 8(a) through (f) above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

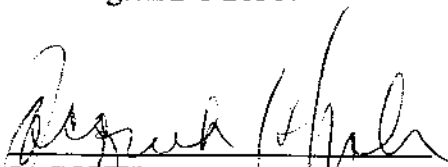
Respectfully submitted,

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