

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	
Plaintiff	:	CIVIL ACTION
and	:	
JAMIE MOHN,	:	No. 2:04-CV-04523-LS
Plaintiff-Intervenor,	:	JURY TRIAL DEMANDED
v.	:	
DINE INC., d/b/a SILK CITY DINER, INC.;	:	
GEORGE BARAKOS AND NICHOLAS	:	
BARAKOS	:	
Defendants.	:	

PLAINTIFF INTERVENOR’S FIRST AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

Plaintiff, Jamie Mohn, (“Mohn”) brings this action against defendants, Dine Inc., d/b/a Silk City Diner, Inc., Nicholas Barakos and George Barakos for sex discrimination, including subjecting her to a hostile work environment, and for tort claims arising under Pennsylvania common law. Ms. Mohn seeks compensatory and punitive damages and other statutory relief under federal and state laws.

II. PARTIES

1. Plaintiff, Jamie Mohn, is an individual and citizen of the Commonwealth of Pennsylvania, residing at 128 Gregg Circle, Ephrata, PA 17522.

2. Plaintiff is female.

3. Defendant, Dine Inc., d/b/a Silk City Diner, Inc., is a Pennsylvania corporation engaged in an industry affecting commerce, which regularly conducts business in the Commonwealth of Pennsylvania, and has a principal place of business located at 1640 N. Reading Road, Stevens, PA 17578.

4. Defendant George Barakos is an employee and corporate officer of Dine Inc., d/b/a Silk City Diner, Inc. at the time of the alleged conduct giving rise to the herein Complaint and was a direct supervisor of Ms. Mohn. George Barakos is a citizen of the Commonwealth of Pennsylvania with a last known business address at 1640 N. Reading Road, Stevens, PA 17578.

5. Defendant Nicholas Barakos is an employee and corporate officer of Dine Inc., d/b/a Silk City Diner, Inc. at the time of the alleged conduct giving rise to the herein Complaint and was a direct supervisor of Ms. Mohn. Nicholas Barakos is a citizen of the Commonwealth of Pennsylvania with a last known business address at 1640 N. Reading Road, Stevens, PA 17578.

6. Upon information and belief, George and Nicholas Barakos are brothers and co-owners of Dine Inc., d/b/a Silk City Diner, Inc.

7. At all times material hereto, defendants employed in excess of fifteen (15) employees.

8. At all times material hereto, defendants acted by and through their authorized agents, servants, workmen and/or employees acting within the course and scope of their employment with defendants and in furtherance of defendants' business.

III. JURISDICTION

9. The causes of action set forth in this Complaint arise under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(e), et seq. ("Title VII"), the Pennsylvania Human Relations Act, as amended, 43 P.S. §951, et seq. ("PHRA"), and Pennsylvania common law. The District Court has jurisdiction over the causes of action under Title VII pursuant to 42 U.S.C. §2000(e)-5(f) and 28 U.S.C. §1331, the PHRA pursuant to 28 U.S.C. §1367, and the Pennsylvania common law claims pursuant to 28 U.S.C §1367.

10. Venue is proper under 28 U.S.C. § 1391(b).

IV. PROCEDURAL REQUIREMENTS

11. On or about May 22, 2003, Ms. Mohn filed a Complaint of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and dual filed with the Pennsylvania Human Relations Commission ("PHRC"), alleging sex discrimination and workplace harassment against her employer Dine Inc., d/b/a Silk City Diner, Inc. and against defendants George Barakos and Nicholas Barakos.

12. On or about September 27, 2004, the EEOC filed suit in Federal Court naming Dine, Inc. d/b/a Silk City Diner, as defendant.

13. Ms. Mohn has fully complied with all the administrative prerequisites for the commencement of this action.

V. FACTUAL ALLEGATIONS

14. Ms. Mohn was employed by Dine Inc., d/b/a Silk City Diner, Inc. as a waitress.

15. Ms. Mohn commenced her employment in or about April, 2002.
16. Defendant George Barakos was an employee and corporate officer of Defendant Dine Inc., d/b/a Silk City Diner, Inc.
17. Defendant George Barakos had direct supervisory responsibilities over Ms. Mohn.
18. Defendant Nicholas Barakos was an employee and corporate officer of Defendant Dine Inc., d/b/a Silk City Diner, Inc.
19. Defendant Nicholas Barakos had direct supervisory responsibilities over Ms. Mohn.
20. During her employment, Ms. Mohn was subjected to continuing disparate, discriminatory, and harassing treatment and a hostile work environment by defendants both generally, as set forth herein and, inter alia, in the following particular respects:
 - (a) Defendant George Barakos touched Plaintiff on a number of occasions, even though she repeatedly asked him to stop. For instance, George Barakos, on more than one occasion, rubbed her inner thighs, her waist, and her ear. Additionally, he attempted to kiss her on a few occasions.
 - (b) George Barakos also made numerous inappropriate and sexually-charged comments to Plaintiff:
 - (i) George Barakos informed Ms. Mohn that he bought handcuffs because he was thinking of her and he stated that he hoped he would have the opportunity to use them on her;
 - (ii) When Ms. Mohn was leaving work to go out with some co-workers, George Barakos asked her to return to the diner late that evening where he would be waiting for her;
 - (iii) George Barakos once attempted to barge in on Ms. Mohn while she was changing in the bathroom. When he entered, Ms. Mohn was

already dressed. George Barakos stated that he was sorry he was late because he would have "...liked to have helped [Ms. Mohn] out";

- (iv) The day after Ms. Mohn dined with a friend at Silk City, George Barakos said to her "[y]ou looked so hot...I wish I could have taken you and your big-breasted friend out so I could have some fun";
- (v) On another occasion, when Ms. Mohn walked to the car to retrieve her asthma inhaler, George Barakos followed her to the door and stated that he could give her mouth-to-mouth and stick his tongue down her throat to clear any obstructive airways; and
- (vi) George Barakos also made explicit comments about her body, including her lips and buttocks. For instance, as she would walk by him, George Barakos would say "look at that ass." He also once told Ms. Mohn that she "...has such a nice butt. Hispanic women and Greek women are the best to have."
- (vii) Additionally, he would say that Ms. Mohn has "nice, juicy lips" or that he "...would love to kiss those juicy lips."

21. Although Dine, Inc., failed to provide Plaintiff with any sexual harassment training or materials, she reported George Barakos' comments and unwanted touching to her immediate supervisor.

22. Additionally, she asked George Barakos to stop his behavior. However, Dine, Inc., neither investigated nor remedied the matter. Rather, George Barakos and Nicholas Barakos charted a course of retaliatory conduct --- including assignment to less profitable dining areas and discipline for alleged violations of suspect work rules.

23. Because of this retaliatory conduct and Dine, Inc.'s failure to remedy and stop the sexual harassment, the work environment became so intolerable that Plaintiff was constructively discharged in November 2002.

24. Throughout Ms. Mohn's employment, defendants engaged in a pattern and practice of sexual harassment and discrimination in defendants' workplace and failed to discourage, investigate, document or take proper action to remedy and eradicate the sexual harassment and discrimination in its workplace, both generally, as set forth herein and, inter alia, in the following particular respect: upon information and belief, defendant Dine Inc., d/b/a Silk City Diner, Inc. was aware of defendant George Barakos' harassing and discriminatory treatment of Ms. Mohn. Defendant Dine Inc., d/b/a Silk City Diner, Inc.'s agents failed to investigate or remedy defendant George Barakos' conduct.

25. Defendants failed to prevent, address or remedy the improper, discriminatory actions referred to herein and further failed to take corrective measures to make the workplace free of discriminatory and harassing conduct.

26. As a direct and proximate result of the improper, discriminatory and harassing conduct of defendants, Ms. Mohn has in the past incurred, and may in the future incur, a loss of earnings and/or earning capacity, loss of benefits, attorney fees, pain and suffering, embarrassment, humiliation, mental anguish and loss of life's pleasures, the full extent of which are not known at this time.

27. Defendants engaged in discriminatory conduct with malice and reckless indifference to Ms. Mohn's right to be free from such discrimination. The conduct of defendants, as set forth herein, was outrageous under the circumstances and warrants the imposition of punitive damages.

COUNT I

Title VII

28. Ms. Mohn incorporates herein by reference paragraphs 1 through 27 above as if set forth herein in their entirety.

29. Defendant Dine Inc., by its discriminatory and retaliatory actions against Ms. Mohn, has violated Title VII.

30. Said violations were intentional.

31. Said violations were conducted with malice and reckless indifference to Ms. Mohn's right to be free from such discrimination. The conduct of defendant Dine, Inc., as set forth herein, was outrageous under the circumstances and warrants the imposition of punitive damages.

32. As a direct and proximate result of defendant Dine, Inc.'s violation of Title VII, Ms. Mohn has sustained the injuries, damages and losses set forth herein.

33. Ms. Mohn is now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendant Dine Inc.'s discriminatory conduct unless and until this Court grants the relief requested herein.

COUNT II

Pennsylvania Human Relations Act

34. Ms. Mohn incorporates herein by reference paragraphs 1 through 33 above as if set forth herein in their entirety.

35. Defendant Dine Inc., d/b/a Silk City Diner, Inc. violated the PHRA by its discriminatory actions against Ms. Mohn.

36. Defendant George Barakos is individually liable under the aider and abettor provisions of the PHRA as a result of his discriminatory conduct directed towards Ms. Mohn.

37. Defendant Nicholas Barakos is individually liable under the aider and abettor provisions of the PHRA as a result of his discriminatory conduct directed towards Ms. Mohn.

38. Said violations were intentional.

39. As a direct and proximate result of defendants' violation of the PHRA, Ms. Mohn has sustained the injuries, damages and losses set forth herein.

40. Ms. Mohn is now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendants' discriminatory and retaliatory acts unless and until this Court grants the relief requested herein.

COUNT III

Intentional Infliction of Emotional Distress

41. Ms. Mohn realleges and reincorporates by reference all allegations contained in Paragraphs 1 through 40 herein.

42. By the conduct outlined in the Statement of Facts above, defendant Dine Inc., d/b/a Silk City Diner, Inc., through its duly authorized agents, George Barakos and Nicholas Barakos intentionally inflicted emotional distress on Ms. Mohn.

43. Defendants' conduct, as outlined in the Statement of Facts above, was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.

44. Defendants engaged in such conduct with malice or reckless indifference to the rights of Ms. Mohn.

45. As relief for defendants' unlawful conduct, Ms. Mohn is entitled to recover, in amounts to be proved at trial, compensatory damages for pain and suffering, past and future; for mental anguish and humiliation, past and future; for psychological injury, past and future; for loss of enjoyment of life's pleasures, past and future.

46. As further relief for the unlawful conduct of defendants, Ms. Mohn is entitled to recover, in amounts to be proved at trial, punitive damages.

47. As further relief for defendants' unlawful conduct, Ms. Mohn is entitled to recover, in amounts to be proved at trial, all other legal and equitable relief recoverable under state tort law, including, but not limited to, attorney's fees, expert witness fees, the costs of this action, and pre- and post-judgment interest.

RELIEF

WHEREFORE, Ms. Mohn respectfully requests that this Court enter a judgment against defendants:

- (a) declaring the acts and practices complained of herein to be in violation of Title VII;

- (b) declaring the acts and practices complained of herein to be in violation of the PHRA;
- (c) declaring the acts and practices complained of herein to be in violation of Pennsylvania common law including, the intentional infliction of emotional distress;
- (d) enjoining and restraining permanently the allegations alleged herein;
- (e) enjoining defendants from harassing or engaging in acts of reprisal or retaliation against plaintiff from seeking her statutory rights not to be discriminated against on the basis of sex and from otherwise interfering with the rights of plaintiff;
- (f) directing defendants to take such affirmative actions as are necessary to assure that the effects of the unlawful employment practices complained of herein are eliminated;
- (g) awarding compensatory damages to plaintiff to make plaintiff whole for all lost earnings, past and future, which plaintiff has suffered and will continue to suffer as a result of defendants' improper, discriminatory treatment, including, but not limited to, past and future lost wages, lost earnings capacity and pension and other lost benefits;
- (h) awarding compensatory damages for extreme emotional upset, mental anguish, humiliation, loss of life's pleasures and pain and suffering;

- (i) awarding punitive damages;
- (j) awarding plaintiff costs of this action, together with reasonable attorney's fees;
- (k) awarding plaintiff such other damages as are appropriate under Title VII, the PHRA and Pennsylvania common law; and,
- (l) granting such other and further relief as the Court deems appropriate.

Respectfully Submitted,

GALFAND BERGER, LLP

By:

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