

FILED
DEC 18 2003 *CCM*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LARRY W. PROPPS, CLERK
CHARLESTON, SC

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION, and SHAKEENYA COLEY,)
SHAKETIA FORD, ANGELIA GARY, VERNATA)
GREEN, MELODY GRIMMAGE, MARKETIA)
KINZER, BEVERLY LEWIS, MICHELL E.)
LINEN and WENDY REED,)

Plaintiffs,

v.

PALMETTO RESTAURANT GROUP, LLC,)
CAROLINA RESTAURANT GROUP, INC.,)
METROLINA RESTAURANT GROUP, LLC,)
FLORIDA RESTAURANT GROUP, LLC, and)
WENDY'S INTERNATIONAL, INC.)

Defendants.)

Case No. 2-03-2577-23BG

INTERVENORS' COMPLAINT

Sex Discrimination and Harassment
Retaliation
Breach of Contract
Breach of Contract Accompanied
by Fraudulent Act
Intentional Infliction of Emotional
Distress
(Jury Trial Demanded)

INTRODUCTION

1. This is a suit by the individual plaintiffs against the defendant employers for a pattern of sex harassment, sex discrimination and retaliation during their employment at Wendy's Old Fashioned Hamburgers.

JURISDICTION AND VENUE

2. The jurisdiction of this court is invoked pursuant to 28 U.S.C. sections 1331, 1337, 1343(3), 1343(4) and 1345 conferring original jurisdiction upon this court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights, more particularly pursuant to section 2000e, *et. seq.* of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. section 2000e and Section 102 of the Civil Rights Act

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of 1991, 42 U.S.C. section 1981a. This Court has pendent jurisdiction to determine the state causes of action that arose from the same occurrences and transactions which gave rise to the federal causes.

3. The plaintiffs lived in and the unlawful employment practices were committed within the jurisdiction of the United States District Court for the District of South Carolina, Charleston Division.

PARTIES

4. Plaintiff Shakeenya Coley, a female, is a citizen of the United States and resident of Georgetown County, South Carolina.

5. Plaintiff Shaketia Ford, a female, is a citizen of the United States and resident of Sumter County, South Carolina.

6. Plaintiff Angelia Gary, a female, is a citizen of the United States and resident of Georgetown County, South Carolina.

7. Plaintiff Vernata Green, a female, is a citizen of the United States and resident of Jamaica, New York.

8. Plaintiff Melody Grimmage, a female, is a citizen of the United States and resident of Georgetown County, South Carolina.

9. Plaintiff Marketia Kinzer, a female, is a citizen of the United States and resident of Horry County, South Carolina.

10. Plaintiff Beverly Lewis, a female, is a citizen of the United States and resident of Georgetown County, South Carolina.

11. Plaintiff Michelle Linen, a female, is a citizen of the United States and resident of Williamsburg County, South Carolina.

12. Plaintiff Wendy Reed, a female, is a citizen of the United States and resident of Georgetown County, South Carolina.

13. At all relevant times, Defendant, Palmetto Restaurant Group, LLC (“PRG”), has continuously been a South Carolina corporation doing business in the State of South Carolina and the City of Georgetown, and has continuously had at least 15 employees.

14. At all relevant times, Defendant Carolina Restaurant Group, Inc. (“CRG”), has continuously been a North Carolina corporation doing business in the State of South Carolina and the City of Georgetown, and has continuously had at least 15 employees.

15. At all relevant times, Metrolina Restaurant Group, LLC, (“Metrolina”), has continuously been a North Carolina corporation doing business in the State of South Carolina and the City of Georgetown, and has continuously employed at least 15 employees.

16. At all times, Florida Restaurant Group, LLC (“FRG”), has continuously been a Florida corporation doing business in the State of South Carolina and the City of Georgetown, and has continuously employed at least 15 employees.

17. At all times, Wendy’s International, Inc. has continuously been an Ohio corporation doing business in the State of South Carolina and the City of Georgetown, and has continuously employed at least 15 employees.

18. At all times, Defendants PRG, CRG, Metrolina, FRG and Wendy’s International, Inc. (referred to collectively herein as Defendant Employers) were an integrated enterprise doing business as Wendy’s Old Fashioned Hamburger Restaurant in Georgetown, South Carolina.

19. Employers have continuously been employers engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g)

and (h).

STATEMENT OF FACTS

20. Alphonso Williams was employed as an assistant manager at Wendy's Old Fashioned Hamburgers at 939 N. Fraser Street in Georgetown South Carolina. Williams was employed for approximately nine years until he was terminated in 2002. Williams was the direct supervisor of the following part and full time young female employees who worked as sandwich makers and cashiers.

21. Shakeenya S. Coley was age 16 at the time of her employment with defendants in the summer of 2001. She was touched on her breasts and buttocks by Alphonso Williams and was told he wanted to have oral sex with her. Ms. Coley told Williams to stop, but he continued his conduct. As a result of Williams' conduct, Ms. Coley was constructively discharged from her employment at Wendy's.

22. Shaketia Ford was age 16 at the time of her employment with Wendy's in the summer and fall of 2001. She was touched on her breast and buttocks by Alphonso Williams. Williams told Ms. Ford he would pay her \$300 to have sex with him. She refused and told him to stop touching her, but he continued. As a result of Williams' conduct, Ms. Ford was constructively discharged from Wendy's.

23. Angelia Gary was age 37 at the time of her employment in 2002. She was requested by Alphonso Williams to give him sex. Ms. Gary refused and she was constructively discharged from Wendy's.

24. Vernata Green was age 34 at the time of her employment in 2001. She was confronted by continuous sexual comments made by Alphonso Williams. Williams sexually touched her on her breast and buttocks. Ms. Green told him to stop, however he continued and she was

constructively discharged from Wendy's.

25. Melody Grimmage was age 17 at the time of her employment in 2000 through 2001. She was touched on her breast and body by Williams. One night after work, Williams forced her to the floor, pushed himself on top of her body and simulated a sex act. Williams also offered to pay her \$500 for oral sex. One day at work, Williams shoved a whole potato towards Ms. Grimmage's vagina. She told him to stop but he continued. As a result of this conduct, Ms. Grimmage left the Fraser Street store and transferred to another store.

26. Marketia Kinzer was age 20 at the time of her employment in 2000. She was touched on her back and buttocks by Alphonso Williams who also made lewd comments to Ms. Kinzer. Ms. Kinzer left Wendy's as a result of Williams' conduct.

27. Beverly Lewis was age 16 at the time of her employment in 2001. She was touched on her breasts, bottom and legs by Williams. He asked her to have sex and she refused and asked him to stop. Ms. Lewis quit on account of Williams' conduct.

28. Michelle Linen was age 16 at the time of her employment in 2000 and 2001. She was touched by Williams on at least two occasions when Williams pressed himself against her back and touched her breasts. He made lewd comments to her. Ms. Linen complained about Williams and was terminated shortly after her complaint.

29. Wendy Reed was age 16 at the time of her employment from 1999 through 2002. She was touched by Williams on her breasts, buttocks and genital area and he rubbed his body against hers. She told him to stop but he continued. One evening, when she fell to the ground he proceeded to lay on top of her. He made lewd comments to her and as a result of his conduct, Ms. Reed was constructively discharged from Wendy's.

30. Each of the plaintiffs found Williams' conduct offensive and unwelcome and it interfered with their work performance. Williams' conduct continued throughout the course of their employment.

31. Williams' supervisors knew or should have known about the sex harassment, yet failed to remedy or control the sex harassment and Williams' employment was continued.

32. As early as March 13, 2000, defendants had knowledge that Williams touched and brushed up against female employees, nevertheless, defendants continued to employ Williams, and therefore placed plaintiffs in danger.

33. Several plaintiffs complained to their supervisors and to Williams' supervisors about the sex harassment:

- a. Plaintiff Shakeenya Coley's mother contacted the manager at Wendy's, and filed a complaint against Williams with Alex Boatman;
- b. Plaintiff Shaketia Ford complained to Manager Jenny Streiffert about Williams' conduct, and her father reported Williams conduct to the Atlanta offices of Wendy's International, Inc.;
- c. Plaintiff Melody Grimmage complained about Williams conduct to Assistant Manager Wanda Reed, who relayed Grimmage's complaint to Head Manager, Jenny Streiffert;
- d. Plaintiff Beverly Lewis informed a manager, Timothy, of another Wendy's store, of Williams conduct;

34. Defendants made no investigation into plaintiffs' complaints or the investigation made was inadequate and failed to remedy and control the harassment.

35. Shaketia Ford's father, Jackie Ford, utilized the Wendy's International, Inc. complaint number and lodged a complaint against Williams. Wendy's International, Inc. advised it would investigate, remedy and correct the problem, but failed to do so.

36. Plaintiff Grimmage complained to a Wendy's supervisor, and was constructively discharged after her complaint.

37. More than thirty days prior to the installation of this lawsuit, Michelle Linen, Beverly Lewis, Shakeenya Coley, Melody Grimmage and Shaketia Ford, filed charges with the EEOC alleging violations of Title VII by Defendant Employers. All conditions precedent to the institution of this lawsuit have been fulfilled.

38. Plaintiffs Angelia Gary, Vernata Green, Marketia Kinzer and Wendy Reed are members of the similarly situated class, each of these plaintiffs were sexually harassed by their supervisor and the allegations in paragraphs 21 through 36 above, in the EEOC charge filed relate back and concern these plaintiffs.

39. The defendants maintained and promulgated express and implied representations in their policies and procedures governing employment at Wendy's Old Fashioned Hamburgers, including but not limited to a prohibition against sex harassment, sex discrimination and retaliation. (Handbook provisions attached as Exhibit A).

40. Defendants knew the above representations were false and intentionally refused to comply with their express and implied promises, promises which were material, and representations upon which plaintiffs relied and had a right to rely, to their detriment, causing them injury.

41. The Wendy's policies and procedures prohibiting sex harassment failed to prevent, control and remedy the sex harassment.

42. Defendants intentionally failed to comply with their implied and express policies and practices prohibiting sex harassment, discrimination and retaliation in violation of defendants' obligation to do so.

43. The unlawful employment practices complained of in paragraphs 21 through 36 above were intentional.

44. Defendants had prior knowledge of the sex harassment and refused to take any action to prohibit the illegal conduct.

45. The unlawful employment practices complained of in paragraphs 21 through 36 above were done with malice or with reckless indifference to the federally protected rights of the plaintiffs.

46. Each of the plaintiffs were constructively discharged from their employment with Wendy's Old Fashioned Hamburger Restaurant in Georgetown, South Carolina because of the illegal conduct of the defendants.

47. Plaintiffs Michelle Linen and Melody Grimmage were retaliated against for having complained of the sexual harassment and were either discharged or constructively discharged because of the sex harassment and/or retaliation.

48. After their employment ended, plaintiffs were confronted at the Fraser Street restaurant, their schools and elsewhere by Alphonso Williams, while he was employed at Wendy's, thereby causing them to fear for their safety and well-being.

FOR A FIRST FEDERAL CAUSE OF ACTION
(Sex Discrimination and Harassment)
(All Plaintiffs)

49. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 48 above, as if set forth herein.

50. By the acts and practices alleged above, and by other and related acts and practices, defendants have deprived all plaintiffs of the equal employment opportunities guaranteed by law, by discriminating against them by subjecting them to less favorable terms and conditions of employment,

depriving them of employment opportunities and discharging or constructively discharging them because of their sex; all in violation of Title VII, 42 U.S.C. section 2000e, *et.seq.* and as amended by the Civil Rights Act of 1991.

FOR A SECOND FEDERAL CAUSE OF ACTION
(Retaliation Against Michelle Linen and Melody Grimmage)

51. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 50 above, as if set forth herein.

52. By the acts and practices alleged above, and by other and related acts and practices, defendants retaliated against plaintiffs Linen and Grimmage when they opposed practices made unlawful by the Act in violation of Title VII, 42 U.S.C. section 2000e-3 and the Civil Rights Act of 1991.

FOR A THIRD CAUSE OF ACTION BY WAY OF STATE CAUSE OF ACTION
(Breach of Contract)
(All Plaintiffs)

53. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 52 above, as if set forth herein.

54. Plaintiffs' employment with Wendy's was governed by express and implied policies and procedures prohibiting sex harassment, discrimination and retaliation.

55. Defendants failed to comply with their obligations to comply with their express and implied policies and procedures, thereby breaching their contract with plaintiffs.

56. As a result of the breach of contract, plaintiffs lost their employment, wages and benefits and are entitled contract damages.

FOR A FOURTH CAUSE OF ACTION BY WAY OF STATE CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)
(All Plaintiffs)

57. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 56 above, as if set forth herein.

58. The acts and omissions of the defendants, in violation of their express and implied policies and procedures to prohibit sex harassment and retaliation, while knowingly allowing sex harassment and retaliation; constitutes breach of contract accompanied by fraudulent act.

59. As a direct and proximate result of the breach of contract accompanied by fraudulent act, the plaintiffs suffered injury, entitling them to compensatory and punitive damages from the individual defendants jointly and severally.

FOR A FIFTH CAUSE OF ACTION BY WAY OF STATE CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
(All Plaintiffs)

60. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 59 above, as if set forth herein.

61. Defendants' conduct, including intentionally denying the plaintiffs' employment opportunities and subjecting them to the harasser subsequent to their employment, was outside the bounds of all decent behavior. As a result of the extreme and outrageous conduct of the defendant, plaintiffs have suffered severe emotional distress and humiliation, to the point of physical injury.

62. The intentional conduct of the defendants was substantially certain to result in severe emotional distress to plaintiffs, and was the proximate cause of plaintiffs' injuries, causing actual damages and entitling the plaintiffs to punitive damages in an amount to be proved at trial.

FOR A SIXTH CAUSE OF ACTION BY WAY OF STATE CAUSE OF ACTION

(Negligence)

(Against Wendy's International, Inc.)

(For Shaketia Ford, Angelia Gary, Vernata Green, Melody Grimmage, Beverly Lewis)

63. Plaintiffs allege and incorporate by reference Paragraphs 1 through 62 above, as if set forth herein.

64. Defendant Wendy's International, Inc. advertised a complaint procedure and undertook an obligation to remedy and correct harmful conduct in restaurants bearing its name.

65. Through its acts and omissions, Defendant Wendy's International, Inc. negligently performed its duties under the above obligation.

66. As a result of Wendy's International, Inc.'s negligence, plaintiffs suffered harm entitling them to damages, actual and punitive, in an amount to be proved at trial.

WHEREFORE, plaintiffs respectfully pray that this Court enter judgment for them against defendants as follows:

- a. For a declaration that plaintiffs were treated and terminated illegally for sexual harassment and discrimination in violation of Title VII, for equitable relief including back pay and benefits with prejudgment interest, reinstatement, or alternatively, front pay and benefits, compensatory and punitive damages, attorneys fees and costs;
- b. For a declaration that plaintiffs Linen and Grimmage were retaliated against in violation of Title VII, for equitable relief, including back pay and benefits with prejudgment interest, reinstatement, or alternatively, front pay and benefits, compensatory and punitive damages, attorneys fees and costs;
- c. For contract (actual) damages with prejudgment interest for breach of contract for all plaintiffs;
- d. For actual damages with prejudgment interest and punitive damages for breach of contract accompanied by fraudulent act for all plaintiffs;
- e. For actual and punitive damages for intentional infliction of emotional distress for all plaintiffs;

- f. For actual and punitive damages for negligence against Wendy's International, Inc. for plaintiffs; Shaketia Ford, Angelia Gary, Vernata Green, Melody Grimmage and Beverly Lewis against Wendy's International, Inc.;
- g. For such other and further relief as to this Court appears just and proper.

Respectfully submitted,

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Charleston, South Carolina
Dated: December 10, 2003