

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	§	
COMMISSION	§	
	§	
Plaintiff	§	
	§	
and	§	
	§	
JANETTE ENGLAND	§	
	§	
Plaintiff-Intervenor	§	
	§	
v.	§	CIVIL ACTION NO. 9:05CV193
	§	
HORSETRADERS, INC. d/b/a	§	JUDGE CLARK
BULLFROGS RESTAURANT	§	
	§	
Defendant	§	
	§	
and	§	
	§	
RICKY MILLER	§	
	§	
Defendant	§	

PLAINTIFF-INTERVENOR’S ORIGINAL COMPLAINT

NOW COMES Plaintiff-Intervenor Janette England, Plaintiff-Intervenor herein, complaining of Horsetraders, Inc. d/b/a Bullfrogs Restaurant and Ricky Miller, Defendants herein, and for cause of action submits the following:

I

Jurisdiction and Venue

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343(a)(4); 28 U.S.C. § 1337; and 42 U.S.C. § 20003–5(f). This is a suit in equity and at law authorized and instituted pursuant to

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* and 42 U.S.C. § 1981(a) and it seeks declaratory relief pursuant to 28 U.S.C. §§ 2201, 2202.

2. Plaintiff-Intervenor England additionally brings supplemental state law claims over which this Court has jurisdiction pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 in that the unlawful employment practices and state law violations, alleged below, were and are being committed within the State of Texas and the Eastern District of Texas. Defendants are subject to service in the Eastern District of Texas, Lufkin Division.

II

Parties

4. Plaintiff-Intervenor England is a female citizen of the United States and resident of Nacogdoches County, Texas. Plaintiff-Intervenor England has been subjected to unlawful employment practices committed in the State of Texas, Eastern District, Lufkin Division, as well as state court violations of assault and battery and the intentional infliction of emotional distress.

5. Defendant Horsetraders, Inc. d/b/a Bullfrogs Restaurant is a company doing business in the Eastern District of Texas, Lufkin Division. Defendant Horsetraders, Inc. maintains and administers records relevant to its employment practices within said district and division. Defendant is an employer within the meaning of 42 U.S.C. § 2000e, *et seq.*, in that the defendant is engaged in an industry affecting commerce and employs at least fifteen (15) persons. Defendant Horsetraders, Inc. may be served through its registered agent for service of process, Richard A. Miller, 1507 North Street, Nacogdoches, TX 75961.

6. Defendant Ricky Miller is an owner of Defendant Horsetraders, Inc., d/b/a Bullfrogs Restaurant and a resident of Nacogdoches County, Texas. Defendant Miller may be served at his place of business, Bullfrogs Restaurant, 1507 North Street, Nacogdoches, TX 75961.

III

Federal Cause of Action¹

7. This is a proceeding for a declaratory judgment, injunctive relief, compensatory and punitive damages, and other relief to secure the rights of Plaintiff-Intervenor England under 42 U.S.C. §§ 2000e, *et seq.* and 42 U.S.C. § 1981(a). It is brought to prevent defendant from maintaining a policy, practice, custom or usage of discriminating against Plaintiff-Intervenor England and others with regard to terms, conditions and privileges of employment, and to compensate her and others for sexual harassment, sex discrimination, retaliation and constructive discharge.

8. Plaintiff-Intervenor England worked for Bullfrogs and its owner, Ricky Miller, for approximately a year and a half until she was constructively discharged on or about March 16, 2005.

9. During the year and a half that Plaintiff-Intervenor England worked for Defendant Horsetraders, Inc., Defendant Owner Miller frequently touched her in an inappropriate manner. For example, he constantly grabbed at her, touched her breasts, cornered her, pulled down her panties, etc. He also made unwanted sexual comments.

10. Plaintiff-Intervenor England always told Defendant Owner Miller to stop, but he never quit for very long. Plaintiff-Intervenor England is aware of no one else in the company to whom she could complain.

¹Plaintiff-Intervenor England's federal cause of action is brought solely against her former employer, Defendant Horsetraders, Inc. d/b/a Bullfrogs Restaurant.

11. On or about June 17, 2004, approximately two weeks after Plaintiff-Intervenor England turned 18, Defendant Owner Miller bought her drinks, took her off to the side, shoved her down, held her down, got on top of her and began feeling her up and kissing her. Defendant Owner Miller attempted to rape Plaintiff-Intervenor England. Plaintiff-Intervenor England does not know exactly how, but she eventually was able to push Defendant Owner Miller off of her.

12. Defendant Owner Miller continued to make sexist/sexual comments to Plaintiff-Intervenor England (such as asking her to give him a blow job) and grabbing her in a sexual manner throughout the period of time that she worked for him.

13. Plaintiff-Intervenor England continued to work off and on for Defendant Owner Miller because she needed the money. On or about March 16, 2005, however, she quit because she was tired of putting up with him. Defendant Owner Miller's conduct toward Plaintiff-Intervenor England during her tenure amounted to constructive discharge, as no reasonable person could be expected to put up with Defendant Owner Miller's conduct.

14. Plaintiff-Intervenor England later heard that Defendant Owner Miller bragged to others about drugging her drink when he tried to rape her.

15. Within 300 days of the acts of which Plaintiff-Intervenor England complains, she filed a written charge of discrimination with the Equal Employment Opportunity Commission. Thereafter, the Commission investigated Plaintiff-Intervenor England's charges and concluded that there was reasonable cause to believe that violations of Title VII had occurred. Suit was thereafter filed by the EEOC and Plaintiff-Intervenor England has sought to intervene on a prompt basis. All conditions precedent to the filing of this action have been fulfilled.

16. As a result of Defendants' unlawful conduct, Plaintiff-Intervenor England has suffered loss of enjoyment of life, severe emotional distress, lost back pay (including fringe benefits) and lost front pay (including fringe benefits) for which she seeks compensatory and punitive damages.

17. Defendant Horsetrader Inc.'s actions complained of above were taken with malice or with a conscious disregard for Plaintiff-Intervenor England's federally protected rights, making an award of punitive damages appropriate.

IV

State Law Claims²

18. Defendant Owner Miller's acts and omissions, set forth above, constitute the state law torts of assault and battery.

19. Defendant Owner Miller's acts and omissions, set forth above, were intentional and/or reckless, extreme and outrageous, and caused Plaintiff-Intervenor England severe emotional distress. As a result, Defendant Owner Miller is liable for the state law tort of intentional infliction of emotional distress.

20. Defendant Owner Miller's conduct, complained of above, including actions and omissions, proximately caused Plaintiff-Intervenor England to suffer mental, emotional and psychological damages, as well as lost compensation.

21. All of Defendant Owner Miller's wrongful acts and omissions, as set out above, were wanton, malicious, and done in conscious disregard of and with deliberate indifference to the rights and needs of Plaintiff-Intervenor England, rendering appropriate the award of punitive damages.

²Plaintiff-Intervenor England's state law causes of action are brought solely against Defendant Owner Miller.

V

Request for Relief

22. ACCORDINGLY, Plaintiff-Intevornor England respectfully requests that this Court advance this case on the docket and grant the following relief:

- a. Grant Plaintiff-Intervenor England a declaratory judgment, declaring Defendant Horsetraders, Inc.'s past practices herein complained of to have violated Plaintiff-Intervenor England's rights in violation of Title VII, 42 U.S.C. § 2000e, *et seq.* and 42 U.S.C. § 1981(a);
- b. Grant Plaintiff-Intervenor England a declaratory judgment declaring that Defendant Owner Miller has violated Plaintiff-Intervenor England's rights to be free from assault, battery and the intentional infliction of emotional distress;
- c. Enter judgment against Defendants in favor of Plaintiff-Intervenor England for full compensatory damages;
- d. Enter judgment against Defendant Horsetraders, Inc. and in favor of Plaintiff-Intervenor England for equitable relief, including back pay, reinstatement, and/or front pay, including fringe benefits;
- e. Enter judgment against Defendant Horsetraders, Inc. and in favor of Plaintiff-Intervenor England for an amount of punitive damages sufficient to punish and deter Defendant Horsetraders, Inc. from discrimination, harassment and/or retaliation against Plaintiff-Intervenor England and/or others;

- f. Enter judgment against Defendant Owner Miller and in favor of Plaintiff-Intervenor England for an amount of punitive damages sufficient to punish and deter Defendant Owner Miller from violating the rights of Plaintiff-Intervenor England and/or others;
- g. Grant Plaintiff-Intervenor England a trial by jury; and
- h. Grant Plaintiff-Intervenor England any and all additional relief to which she appears to be entitled, including a reasonable attorney fee, costs herein expended, pre-judgment interest, and post-judgment interest as provided by law.

Respectfully Submitted,

/s/ Alex A. Castetter

Alex A. Castetter
Attorney for Plaintiff-Intervenor England
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CERTIFICATE OF SERVICE

I hereby certify that I have served counsel in this case with a true and correct copy of the foregoing Plaintiff-Intervenor's Original Complaint by sending same electronically to:

Suzanne M. Anderson
Equal Employment Opportunity Commission
Dallas District Office
207 South Houston, 3rd Floor
Dallas, TX 75202

David J. Guillory
510 Ochiltree St.
Nacogdoches, TX 75961

on this the 2nd day of December, 2005.

/s/ Alex A. Castetter
Alex A. Castetter