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DISTRICT OF UTAH

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

TRI-SPUR INVESTMENT COMPANY,
INC., TRI-SPUR L.L.C. and BERKLEY
CORPORATION, dba SBARRO'S
ITALIAN EATERY,
Defendants.

CRYSTLE COLLINS,

Plaintiff in Intervention,

vs.

TRI-SPUR INVESTMENT COMPANY,
INC., a.k.a. TRI-SPUR INVESTMENTS,
INC., a.k.a. TRI-SPUR INVESTMENT
COMPANY, d.b.a. SBARRO'S ITALIAN
EATERY; and TRI-SPUR INVESTMENT
L.L.C., a.k.a. TRI-SPUR INVESTMENT II
L.L.C., d.b.a. SBARRO'S ITALIAN
EATERY; and BERKLEY
CORPORATION, d.b.a. SBARRO'S
ITALIAN EATERY; and DOES I
THROUGH V, d.b.a. SBARRO'S ITALIAN
EATERY,

AMENDED COMPLAINT

Civil No. 2:00CV00774B

Judge Dee Benson
Magistrate Judge David O. Nuffer

NATURE OF THE ACTION

This is an action pursuant to Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991, 42 U.S.C. § 1981a against Tri-Spur Investment Company, Inc., Tri-Spur L.L.C. and Berkley Corporation doing business as Sbarro's Italian Eatery, seeking redress for unlawful sexual discrimination, sexual harassment and retaliation against a class of women. Plaintiff Equal Employment Opportunity Commission (the "Commission") contends that Tri-Spur Investment Company, Inc., Tri-Spur L.L.C. and Berkley Corporation doing business as Sbarro's Italian Eatery have discriminated against and continue to discriminate against women on the basis of their gender by subjecting them to unlawful sexual discrimination and sexual harassment. The Commission further contends that Tri-Spur Investment Company, Inc., Tri-Spur L.L.C. and Berkley Corporation doing business as Sbarro's Italian Eatery unlawfully retaliated against women who complained of sexual harassment.

JURISDICTION, VENUE AND PARTIES

1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to sections 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) and section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. 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 42 U.S.C. § 2000e-5(f)(1) and (3).

2. Tri-Spur Investment Company, Inc., Tri-Spur L.L.C. and Berkley Corporation

doing business as Sbarro's Italian Eatery (collectively "Tri-Spur" or "defendants") operate Italian restaurants which are located in Utah and have, at all relevant times, employed a sufficient number of employees to subject them to jurisdiction under Title VII. At all relevant times, defendants have continuously been employers engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. § 2000e(b), (g) and (h). Defendants conduct business in Utah through various names, including but not limited to Sbarro's Italian Eatery, Orange Julius and/or Dairy Queen. All of the Defendants identified above, together with Drue Bowen Corporation and Jerome Bowen Enterprises, Inc., have interrelated operations, headquartered at 116 South Center, Rexburg, Idaho, with centralized control over labor relations, common management and common financial control. Because of the integration of their management and operations, the Defendants are a single employer for purposes of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e *et seq.*

3. More than thirty days prior to the institution of this lawsuit, Crystle Collins, Cindy Harris and Christine Byrne (collectively "charging parties"), filed charges of discrimination with the Commission alleging that Defendants violated Title VII by subjecting them to sexual harassment or gender based discrimination and by retaliating against them when they complained about the sexual harassment.

STATEMENT OF CLAIMS

4. Since at least August, 1997, Tri-Spur has engaged in unlawful employment practices at its Utah locations in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), including subjecting charging parties and a class of women to a hostile work environment

due to sexual harassment and gender based harassment, failing to take immediate and appropriate action to correct the hostile work environment and terminating charging parties and a class of women when they complained about the sexual harassment.

5. During their employment by Tri-Spur, charging parties and a class of female employees were subjected to unwelcome sexual harassment. Such harassment included:

- a). Being subjected to unwelcome and inappropriate sexual comments including comments concerning sexual conquests, sexual organs and comments concerning female bodies; and,
- b). Being subjected to unwelcome and inappropriate touching.

6. Despite being told of the sexual harassment, Tri-Spur failed to take any appropriate action.

7. Since at least August, 1997, Tri-Spur has engaged in unlawful retaliatory practices against charging parties and a class of female employees at its Utah locations in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), including, but not limited to, withholding assistance to women performing their jobs, reducing the hours of individuals who complained of sexual harassment and terminating those who complained of sexual harassment.

Such retaliation included:

- a). Ordering a female manager who complained about the sexual harassment of another female employee to reduce the number of hours the female employee could work;
- b). Telling a woman who complained of sexual harassment that the "problem" of her complaints of sexual harassment had been "solved" by her termination;
- c). Ordering a female manager to terminate a female employee who had been sexually assaulted and when the manager refused to do so, terminating the complaining woman and the manager; and,
- d). Telling a woman that she was "too young" to know what

sexual harassment was.

8. Since at least August, 1997, Tri-Spur has engaged in a pattern and practice of resistance to the full employment of rights secured by Title VII. The pattern or practice is of such a nature that it is intended to deny employees the full exercise of their Title VII rights because of sex, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6.

9. The effect of the practices complained of in paragraphs four (4) through eight (8) above has been to deprive charging parties and a class of females of equal employment opportunities and otherwise adversely affected their status as employees because of their sex and in retaliation for opposing practices made unlawful by Title VII.

10. The unlawful employment practices outlined above were intentional.

11. Tri-Spur engaged in the unlawful employment practices outlined above in reckless indifference to the federally protected rights of the charging parties and a class of females.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in discrimination on the basis of sex or retaliation.
- B. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with it, from engaging in discrimination on the basis of sex or retaliation.
- C. Order Defendants to institute and carry out policies, practices, and programs

which provide equal employment opportunities for females and which eradicate the effects of their past and present unlawful employment practices.

- D. Order Defendants to make whole charging parties and a class of similarly situated females by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of their unlawful employment practices.
- E. Order Defendants to make whole charging parties and a class of similarly situated females by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above in amounts to be determined at trial.
- F. Order Defendants to make whole charging parties and a class of similarly situated females by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above including emotional pain, suffering, loss of enjoyment of life, and humiliation in amounts to be determined at trial.
- G. Order Defendants to pay punitive damages for their malicious and/or reckless disregard to the federally protected rights of the charging parties and other similarly situated females described above, in amounts to be determined at trial.
- H. Grant such further relief as the Court deems necessary and proper in the public interest.
- I. Award the Commission its costs of this action.

JURY DEMAND


The Commission respectfully requests a trial by jury on all appropriate Claims for Relief set forth in this Complaint.

DATED this 24th day of September, 2001.


Respectfully submitted,

GWENDOLYN YOUNG REAMS
Associate General Counsel

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CERTIFICATE OF SERVICE

I certify that on this 24th day of September, 2001, a copy of Plaintiff EEOC's Amended Complaint was mailed, first class postage pre-paid, to:

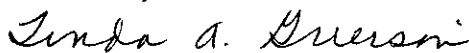
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