

DC-17-10121

Marissa Pittman

CAUSE NO. _____

ICHEL M. COOK,

Plaintiff,

v.

EBG, LLC d/b/a

EATZI'S MARKET & BAKERY

Defendant.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Ichel M. Cook, Plaintiff, complaining of Defendant, EBG, LLC d/b/a Eatzi's Market & Bakery, and files this her Plaintiff's Original Petition and would respectfully show unto the Court as follows:

I.

Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, discovery is intended to be conducted under Level 2.

II.

Plaintiff is a resident of the City of Dallas, County of Dallas, the State of Texas.

Defendant, EBG, LLC d/b/a EATZI'S MARKET & BAKERY is an entity authorized to do business in the State of Texas and may be served with process by serving its registered agent, to wit: Philip J. Romano, 5600 W. Lovers Lane, #116-410, Dallas, Texas 75209, U.S.A.

III.

The Court has personal jurisdiction over Defendant because Defendant is a domestic corporation of Texas during all times material to this dispute. This Court has subject matter

jurisdiction over the claims for monetary relief herein and the amount of monetary relief sought is within the jurisdictional limits of the Court.

Venue is proper in Dallas County pursuant to Section 15.002(a)(2) of the Texas Civil Practice and Remedies Code, because all or a substantial part of the events giving rise to Plaintiff's claims occurred in Dallas County.

IV.

This lawsuit is proceeding for declaratory relief, injunctive relief and other relief to secure Plaintiff's rights under the Texas Commission on Human Rights (TCHR). Specifically, Defendant violated the Texas Commission on Human Rights Act, as amended, by discriminating against Plaintiff based on her sex (Female), in violation of Chapter 21 of the Texas Labor Code. All conditions precedent to file this action have been satisfied.

The discriminatory practices and policies include, but are not limited to the following:

- a. By terminating her employment on or about November 16, 2016;
- b. By discriminating against her in the terms, conditions and privileges of her employment; and
- c. By retaliating against her in violation of the Act.

Furthermore, Defendant violated § 21.055 of the Texas Labor Code by retaliating against Plaintiff because she opposed unlawful employment practice.

V.

Factual Background

1. Plaintiff, Ichel M. Cook ("Plaintiff" or "Cook") began her employment with the Defendant as a Shift Manager in 2012. In 2015 Cook was promoted to the position of Assistant General Manager.

2. On April 7, 2016, Cook was attending a manager meeting at the front counter of Eatzi's. Phil Romano (a principal) entered Eatzi's and approached the front counter. While walking behind Ichel Cook, Phil Romano stuck his hand in Cook's gluteal cleft from behind.

3. Cook immediately turned around to see who had done the unthinkable. Upon realizing it was Romano, Cook turned away to avoid escalating the situation.

4. Phil Romano then grinned, walked several feet past Cook, turned around, and stared back at Cook. Phil Romano appeared proud of his conduct.

5. The entire incident was captured on video.

6. Following the incident, Cook reported the incident to Human Resources Director, Kristie Talbert ("Talbert"). When Cook reported the incident to Talbert, she told Cook, "What do you want me to do about it."

7. The next day CEO, Adam Romo ("Romo") met with Cook about the incident. Cook told Romo she wanted to make sure this never happened to her or anyone else and that she did not want to have to discuss the incident with Romano. Cook also told Romo she was worried about being retaliated against and subjected to harassment for reporting the incident. Romo ended the meeting by telling Cook that he would return and meet with her in a few days so they could watch the video of the incident together.

8. The next day Phil Romano confronted Cook to discuss what happened. Romano stated: "I thought you were just one of the guys and I did not think it would upset you." Romano also told her, "You were not paying attention when I walked in, so I gave you a goose."

9. On Saturday, April 9, 2016 Romo met with Cook and they watched the video of the incident together, and after watching the video, Romo stated, "There it is", and then he left.

10. Cook thereafter was subjected to retaliation. Her hours were changed and her

responsibilities were morphed so as to encourage Cook to quit. .

11. Following the incident Cook took paid administrative leave from late May 2016 until June 22, 2016.

12. While on leave Cook was requested to surrender her keys to the Eatzi's Oak Lawn Store and her access to Eatzi's email and company server were suspended.

13. Cook was then scheduled to return to work. On return, Cook was called into a room and interrogated by Eatzi's CEO (Adam Romo) and the director of HR as soon as she returned to Eatzi's on June 22, 2016.

14. Cook returned to work from her administrative leave on or about June 22, 2016. After returning to work, Romano would leer at Cook. Cook also noticed that Human Resources Director, Kristie Talbert was more frequently in the store than she had been prior to the incident and when Talbert was present she would constantly watch Cook.

15. Also after returning to work Cook was approached by a few regular customers who asked where she had been and informed her that Eatzi's staff members had informed them that Cook no longer worked there.

16. On June 26, 2016 Cook filed suit against Phil Romano in Dallas County Court at Law No. 2. Romano assaulted her when he intentionally and inappropriately stuck his hand up her gluteal cleft.

17. While Cook was in attendance of a Leadership Meetings on July 5, 2016 Romo asked Cook for her cell phone..

18. At the July 19, 2016 Leadership Meeting, Cook left her cell phone in the car while she attended the meeting. Prior to the meeting an employee of the Defendant told Cook, she would not be permitted to attend the meeting unless Cook provided them with her cell phone.

Cook was told her cell phone “was her admission ticket to the meeting.” Cook was also the only attendee that was asked to stay in the room, while the rest of the attendees went to another room and met for over an hour while Cook was excluded.

19. In August of 2016 Cook was informed by Defendant’s CEO, Adam Romo that he no longer wanted Cook to attend the Leadership Meetings. Cook had attended every Leadership Meeting since September of 2015 when she was promoted to Assistant Manager.

20. Following Cook’s report of sexual harassment by Romano the Defendant removed some of her responsibilities and duties. The Defendant also changed Cook’s schedule and assigned her to work shifts that the Defendant knew would conflict with Plaintiff’s ability to care for her son.

21. In February of 2016, prior to Cook making her complaint of sex harassment, Adam Romo and General Manager, Barry Partos advised Cook she would be promoted to the Position of General Manager of the Defendant’s Oak Lawn Store in January of 2017. However, in July of 2016 Brent Baker, a male was promoted to the position of General Manager of the Defendant’s Oak Lawn Store.

22. Cook filed her Charge of Discrimination with the Texas Workforce Commission on October 4, 2016 alleging the Defendant discriminated against her based on her sex and retaliated against her for complaints of sexual harassment. Cook noted on her Charge of Discrimination that the discrimination was ongoing.

23. Cook was terminated by Defendant effective November 16, 2016.

VI.

Causes of Action

Sex Discrimination

The Plaintiff easily meets this burden, she is a member of the protected class (female); Plaintiff was clearly qualified for her job, she had worked for the Defendant for four (4) years and had over ten (10) years of management experience in the restaurant industry; and Plaintiff suffered an adverse action when she was terminated as of November 16, 2016. Plaintiff was replaced by a male and her male comparators are treated more favorably.

Retaliation

Title 21.055 of the Texas Labor Code provides:

Sec. 21.055. RETALIATION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under this chapter:

- (1) opposes a discriminatory practice;
- (2) makes or files a charge;
- (3) files a complaint; or
- (4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Plaintiff also engaged in a protected activity when she filed her Charge of Discrimination on October 4, 2016 and she suffered an adverse action when she was terminated less than two months after opposing the unlawful employment practice; and she is protected by statute.

VII.

Plaintiff has no plain, adequate, or complete remedy at law to correct the practices described herein, and this suit for injunctive relief is her only means for securing adequate relief.

Plaintiff is now suffering and will continue to suffer irreparable injury from Defendant's policies, practices, customs and usage set forth herein.

VIII.

Plaintiff is entitled to recover the earnings and benefits lost in the past from the date of termination up until the present.

Plaintiff is entitled to recover the earnings and benefits that in reasonable probability will be lost in the future.

Defendant's conduct toward Plaintiff caused her emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and/or other nonpecuniary losses, for which Plaintiff seeks compensatory damages.

Plaintiff's harm was a result of the Defendant's actual malice, *e.g.*, ill will, spite, evil motive, or purpose to injure another, thus Plaintiff seeks exemplary damages.

The amount of damages which Plaintiff seeks herein exceeds the jurisdictional minimum of this Court. Plaintiff seeks non-monetary relief and monetary relief which at this time exceeds \$100,000 but less than \$750,000.

IX.

All conditions precedent to the filing of this action have been fulfilled.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear herein, and, on hearing hereof, the Court grant the following:

1. An injunction pursuant to § 21.258(a)(1) of the Texas Labor Code;
2. Reinstatement to Plaintiff's former position of employment;
3. Lost earnings and employee benefits in the past;
4. Lost earnings and employee benefits that in reasonable probability will be lost in the future;

5. Compensatory damages (which may include future pecuniary loss, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses);
6. Exemplary damages;
7. Monetary relief and non-monetary prescriptive relief;
8. Costs and prejudgment interest, which may include a reasonable attorney's fee; and
9. Such other and further relief, both legal and equitable, to which Plaintiff may be justly entitled.

Respectfully submitted,

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