

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Ft. Lauderdale Division)
Case No. 99-6009-Civ-Ferguson/Snow



BRIDGETTE M. BALBONI,

Plaintiff,

vs.

LAW OFFICES OF DAVID J. STERN, P.A.,
a Florida professional services corporation,
and DAVID J. STERN, individually,

Defendants.

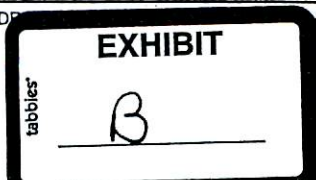
Amended Complaint

Plaintiff, Bridgette M. Balboni, sues defendants, Law Offices of David J. Stern, P.A., and David J. Stern, individually, and alleges:

Introduction

1. This is a sexual harassment and retaliation action brought by, Bridgette Balboni, a female paralegal whose lawyer boss routinely touches her and other women in an inappropriate manner (for example, grabbing them from behind and simulating intercourse) and makes inappropriate remarks (e.g., telling her that he would pay for motel rooms for several of her co-workers to go to Key West "if you'll

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sleep with me”). Subsequent to her filing a Charge of Discrimination, he has threatened her new boss in an effort to force her to abandon her claim. Balboni sues pursuant to 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. (hereinafter, “Title VII”), and the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes (hereinafter, “FCRA”). She also asserts common law claims for battery, invasion of privacy and intentional infliction of emotional distress. She seeks damages and her costs, including a reasonable attorney’s fee and litigation expenses.

Jurisdiction and Venue

2. This is an action arising under 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. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343(a)(4) and 42 U.S.C. § 1988 and 2000e-5(f)(3). The Court has jurisdiction to grant declaratory and further relief pursuant to 28 U.S.C. §§ 2201 and 2202. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear state law claims.

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3. Venue is proper in the Ft. Lauderdale Division of the Southern District of Florida pursuant to 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391(b) because the claims arose here.

The Parties

4. Bridgette M. Balboni (“Balboni”) is a female paralegal whom the Law Offices of David J. Stern, P.A., employed from 1996 to April 15, 1998. She is protected by Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act in that:

- a. She is a woman; and
- b. She participated in a proceeding pursuant to Title VII and the FCRA, i.e., she filed Charges of Discrimination with the Equal Employment Opportunity Commission and the Florida Commission on Human Relations.

5. The Law Offices of David J. Stern, P.A. (“Law Offices”) is a Florida professional services corporation doing business in Broward County, Florida, in an industry affecting commerce and employing 100 or more employees. Law Offices is and was at all material times an “employer” as envisioned by 42 U.S.C. § 2000e(b) and § 760.02(7), Fla. Stat.

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6. David J. Stern ("Stern") is a natural person who is the sole shareholder of David J. Stern, P.A., and, as such, was a supervisor of and/or had supervisory authority over Balboni. At all times material, he was an "agent" of Law Offices. Law Offices knew of, ratified and acquiesced in the behavior of David J. Stern towards Balboni, and is responsible for the tortious conduct of Stern made possible by the abuse of his supervisory authority.

Conditions Precedent

7. On or about July 7, 1998, Balboni filed Charges of Discrimination with the Equal Employment Opportunity Commission (EEOC) and the Florida Commission on Human Relations (FCHR), that stated in pertinent part:

I was employed as a paralegal by the Law Office of David J. Stern, P.A., whose principal, David J. Stern, routinely touches women in an inappropriate manner (for example, grabbing them from behind and simulating intercourse) and makes inappropriate remarks (e.g., telling me that he would pay for motel rooms for several of my co-workers to go to Key West "if you'll sleep with me"). I have experienced this behavior myself and have seen it inflicted on others, too. The working conditions were such that no reasonable person could have continued to work there. I quit April 15, 1998.

Balboni adopts these allegations as part of this Complaint.

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8. The EEOC issued Balboni a Notice of Right to Sue dated September 29, 1998, within 90 days of the receipt of which she filed this Complaint. The FCHR deferred its handling of the case to the EEOC without either conciliating it or making findings adverse to Balboni within 180 days, the lapsing of which 180 days entitles Balboni to initiate a civil action.

General Allegations

9. Balboni was at all times material qualified for her position as a paralegal, a position that she performed satisfactorily.

10. Law Offices and Stern, through their agents, subjected Balboni to a hostile work environment because of her sex and then retaliated against her after she filed her Charges of Discrimination, including, but not limited to the incidents described in paragraph 7 above, and the following:

- a. Stern inserting his fingers into reams on pantyhoses on the legs of female employees and tearing them apart in the presence of other employees;
- b. Stern sticking his tongue in the ear of a female paralegal in the presence of other employees;

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- c. Stern grabbing female employees, including Balboni, from the rear and simulating intercourse on or near them in the presence of other employees;
- d. Stern grabbing Balboni from behind while she was on her knees reviewing files and thrusting at her to simulate intercourse in the presence of a male attorney;
- e. Stern commenting in the presence of several employees that a female employee would place her pager on “vibrator” and sit on it all day; and
- f. Stern telling Balboni, on at least two occasions, that if she slept with him he would pay for the cost of a motel room in Key West for Balboni and other employees while they were visiting clients of Law Office.

11. Balboni’s workplace became so hostile that no reasonable person would have continued to work there, prompting her to resign on April 15, 1998.

12. After Balboni filed her Charges of Discrimination, Law Offices, through Stern, retaliated against her by threatening to take her new boss “down” if Stern and Law Offices went “down” in an effort to force her to abandon her claim.

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Count I/Violation of Title VII Through Hostile Environment Discrimination

13. Plaintiff realleges and adopts the allegations of paragraphs 1, 2, 3, 4(a), 5, 6, 7, 8, 9, 10 and 11 as if fully set forth in Count I.

14. The acts of Stern, and through him, of Law Offices, as more particularly alleged above in paragraphs 1, 7, 10 and 11, violated Balboni's rights against sex discrimination, as set forth at § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).

15. The sexual harassment and adverse employment actions to which Balboni was subjected to were based upon her being female.

16. The unwelcome sexual overtures and comments personally experienced by Balboni, as well as the sexually laden atmosphere, in which female employees were touched and grabbed and subjected to simulated intercourse, were objectively offensive, severe and pervasive enough to alter the terms and conditions of Balboni's employment, and were perceived by Balboni as being such.

17. The conduct of Law Offices and its agents, proximately, directly, and foreseeably injured Balboni, including but not limited to lost wages and benefits, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

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18. The conduct of Law Offices and its agents was so willful and wanton, and in such reckless disregard of the statutory rights of Balboni, as to entitle her to an award of exemplary damages to punish Law Offices, and to deter it, and others from such conduct in the future.

19. Balboni is entitled to recover reasonable attorney's fees and litigation expenses pursuant to 42 U.S.C. § 2000e-5(k).

20. Balboni has no plain, adequate or complete remedy at law for the actions of Law Offices, which have caused, and continue to cause, irreparable harm.

WHEREFORE, Balboni prays that this Court will:

One, issue a declaratory judgment that the discrimination against Balboni by Law Offices was a violation of Balboni's rights under Title VII of the Civil Rights Act of 1964, as amended;

Two, enjoin Law Offices, and its agents, from continuing to violate Balboni's rights under Title VII;

Three, enjoin Law Offices to make Balboni whole through, inter alia, back pay and front pay;

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Four, grant Balboni judgment for damages, including punitive damages, against Law Offices;

Five, award Balboni her reasonable attorney's fees and litigation expenses against Law Offices; and

Six, provide Balboni any other relief that is appropriate.

Count II/Violation of Title VII Through Retaliation

21. Plaintiff realleges and adopts the allegations of paragraphs 1, 2, 3, 4(b), 5, 6, 7, 8, 9 and 12 as if fully set forth in Count II.

22. The actions of Stern, and through him, of Law Offices, as more particularly alleged above in paragraph 12 violated Balboni's rights against retaliation for making a charge of discrimination pursuant to Title VII, which retaliation is proscribed by § 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).

23. The conduct of Law Offices and its agents, proximately, directly, and foreseeably injured Balboni, including but not limited to lost wages and benefits, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

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24. The conduct of Law Offices and its agents was so willful and wanton, and in such reckless disregard of the statutory rights of Balboni, as to entitle her to an award of exemplary damages to punish Law Offices, and to deter it, and others from such conduct in the future.

25. Balboni is entitled to recover reasonable attorney's fees and litigation expenses pursuant to 42 U.S.C. § 2000e-5(k).

26. Balboni has no plain, adequate or complete remedy at law for the actions of Law Offices, which have caused, and continue to cause, irreparable harm.

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One, issue a declaratory judgment that the discrimination against Balboni by Law Offices was a violation of Balboni's rights under Title VII of the Civil Rights Act of 1964, as amended;

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Three, enjoin Law Offices to make Balboni whole through, inter alia, back pay and front pay;

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Four, grant Balboni judgment for damages, including punitive damages, against Law Offices;

Five, award Balboni her reasonable attorney's fees and litigation expenses against Law Offices; and

Six, provide Balboni any other relief that is appropriate.

Count III/Invasion of Privacy

27. Balboni realleges and adopts, as if fully set forth in Count III, the allegations of paragraphs 1, 2, 3, 5, 6, 7, 9, 10(c) and 10(d).

28. The conduct more particularly alleged at paragraphs 1, 10(c) and 10(d) constituted the unwelcome invasion of Balboni's privacy, i.e., an invasion of Balboni's physical solitude.

29. The conduct of Law Offices, by and through its agent, Stern, proximately, directly, and foreseeably injured Balboni, including but not limited to lost wages and benefits, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

WHEREFORE, Balboni prays that this Court will:

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One, grant Balboni judgment for damages against Stern and Law Offices, jointly and severally;

Two, award Balboni her litigation expenses against Stern and Law Offices, jointly and severally; and

Three, provide Balboni any other relief that is appropriate.

Count IV/Intentional Infliction of Emotional Distress

30. Balboni realleges and adopts, as if fully set forth in Count IV, the allegations of paragraphs 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12.

31. The actions of Law Offices and Stern, as more particularly alleged in paragraphs 1, 10, 11 and 12:

a. constituted the deliberate or reckless infliction of mental suffering;

b. constituted outrageous conduct; and

c. caused Balboni to suffer severe emotional distress and physical injuries resulting from that distress.

32. The conduct of Law Offices, by and through its agent, Stern, proximately, directly, and foreseeably injured Balboni, including but not limited to

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lost wages and benefits, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

WHEREFORE, Balboni prays that this Court will:

One, grant Balboni judgment for damages against Stern and Law Offices, jointly and severally;

Two, award Balboni her litigation expenses against Stern and Law Offices, jointly and severally; and

Three, provide Balboni any other relief that is appropriate.

Count V/Battery

33. Balboni realleges and adopts, as if fully set forth in Count V, the allegations of paragraphs 1, 2, 3, 5, 6, 7, 10(c) and 10(d).

34. The incidents more particularly described in paragraphs 1, 10(c) and 10(d) constitute actual and intentional touching of Balboni against her will and battery upon Balboni.

35. The conduct of Law Offices, by and through its agent, Stern, proximately, directly, and foreseeably injured Balboni, including but not limited to

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lost wages and benefits, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

WHEREFORE, Balboni prays that this Court will:

One, grant Balboni judgment for damages against Stern and Law Offices, jointly and severally;

Two, award Balboni her litigation expenses against Stern and Law Offices, jointly and severally; and

Three, provide Balboni any other relief that is appropriate.

Count VI/Violation of FCRA Through Hostile Environment Discrimination

36. Plaintiff realleges and adopts the allegations of paragraphs 1, 2, 3, 4(a), 5, 6, 7, 8, 9, 10 and 11 as if fully set forth in Count VI.

37. The acts of Stern, and through him, of Law Offices, as more particularly alleged above in paragraphs 1, 7, 10 and 11, violated Balboni's rights against sex discrimination, as set forth at § 760.10(1)(a), Florida Statutes (1997).

38. The sexual harassment and adverse employment actions to which Balboni was subjected to were based upon her being female.

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39. The unwelcome sexual overtures and comments personally experienced by Balboni, as well as the sexually laden atmosphere, in which female employees were touched and grabbed and subjected to simulated intercourse, were objectively offensive, severe and pervasive enough to alter the terms and conditions of Balboni's employment, and were perceived by Balboni as being such.

40. The conduct of Law Offices and its agents, proximately, directly, and foreseeably injured Balboni, including but not limited to lost wages and benefits, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

41. The conduct of Law Offices and its agents was so willful and wanton, and in such reckless disregard of the statutory rights of Balboni, as to entitle her to an award of exemplary damages to punish Law Offices, and to deter it, and others from such conduct in the future.

42. Balboni is entitled to recover reasonable attorney's fees and litigation expenses pursuant to § 760.11(5), Fla. Stat. (1997).

43. Balboni has no plain, adequate or complete remedy at law for the actions of Law Offices, which have caused, and continue to cause, irreparable harm.

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WHEREFORE, Balboni prays that this Court will:

One, issue a declaratory judgment that the discrimination against Balboni by Law Offices was a violation of Balboni's rights under the Florida Civil Rights Act;

Two, enjoin Law Offices, and its agents, from continuing to violate Balboni's rights under the FCRA;

Three, enjoin Law Offices to make Balboni whole through, inter alia, back pay and front pay;

Four, grant Balboni judgment for damages, including punitive damages, against Law Offices;

Five, award Balboni her reasonable attorney's fees and litigation expenses against Law Offices; and

Six, provide Balboni any other relief that is appropriate.

Count VII/Violation of FCRA Through Retaliation

44. Plaintiff realleges and adopts the allegations of paragraphs 1, 2, 3, 4(b), 5, 6, 7, 8, 9 and 12 as if fully set forth in Count VII.

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45. The actions of Stern, and through him, of Law Offices, as more particularly alleged above in paragraph 12 violated Balboni's rights against retaliation for making a charge of discrimination pursuant to the FCRA, which retaliation is proscribed by § 760.10(7), Fla. Stat. (1997).

46. The conduct of Law Offices and its agents, proximately, directly, and foreseeably injured Balboni, including but not limited to lost wages and benefits, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

47. The conduct of Law Offices and its agents was so willful and wanton, and in such reckless disregard of the statutory rights of Balboni, as to entitle her to an award of exemplary damages to punish Law Offices, and to deter it, and others from such conduct in the future.

48. Balboni is entitled to recover reasonable attorney's fees and litigation expenses pursuant to § 760.11(5), Fla. Stat. (1997).

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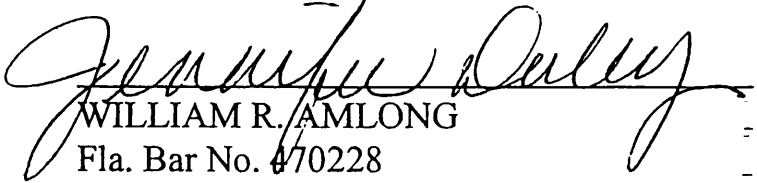
Six, provide Balboni any other relief that is appropriate.

Demand for Jury Trial

Plaintiff, Bridgette M. Balboni, demands trial by jury on all issues so triable.

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Respectfully submitted,



WILLIAM R. AMLONG

Fla. Bar No. 470228

JENNIFER DALEY

Fla. Bar No. 856436

AMLONG & AMLONG, P.A.

Attorneys for Plaintiff

Second Floor

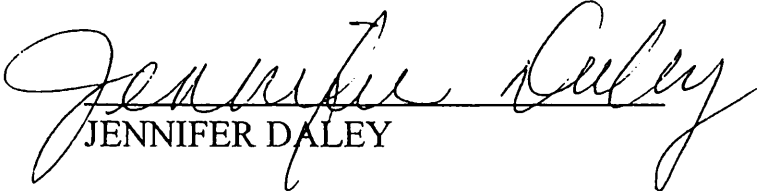
500 Northeast Fourth Street

Fort Lauderdale, Florida 33301

(954) 462-1983

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 6th day of July, 1999, to Elizabeth du Fresne, Esq., Lisa Askowitz, Esq., Edwin Torres, Esq., Steel Hector & Davis, LLP, 200 Biscayne Blvd.,



JENNIFER DALEY

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