

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

and

JENNIE LUMBRA,

Applicant in Intervention,

v.

COUGHLIN, INC., dba McDonald's,

Defendant.

Civil Action No: 2:21-cv-00099 wks

COMPLAINT IN INTERVENTION

NATURE OF THIS ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, and Vermont State Fair Employment Practices Act, Title 21, prohibiting sexual discrimination, sexual harassment, hostile work environment, and retaliation. The claim is brought by Jennie Lumbra against Defendant Coughlin, Inc. doing business as McDonald's Restaurant.

Coughlin, Inc. is the owner and operator of ten (10) McDonald's Restaurant franchises in Vermont and New Hampshire. Jennie Lumbra was employed by Defendant at their McDonald's Restaurant located in Randolph, Vermont. From 2016 to 2019, Jennie Lumbra was subjected to repeated acts of sexual harassment by her supervisor Peter Pratt. Despite the numerous complaints

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Jennie Lumbra and other employees made to Defendant's Management about Pratt's unlawful conduct, Defendant failed to take appropriate action allowing Pratt's conduct to continue. Jennie Lumbra left McDonald's in September 2019 due to sexual harassment, hostile work environment and retaliation from reporting the misconduct.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331 and 1367. This action is authorized and instituted pursuant to Section 703(a)(1) and 704(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a)(1) and 2000e-3(a), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The supplemental jurisdiction of the Court is invoked to enforce Vermont State Fair Employment Practices Act pursuant to Title 21 V.S.A. §495 et sec, in particular, §§ 495(a)(1) and (8), 495b(b), and 495d(13).

3. The employment practices alleged to be unlawful have been committed within the jurisdiction of the United States District Court for the District of Vermont.

PARTIES

4. Plaintiff Jennie Lumbra is a resident of Randolph, Vermont.

5. Defendant Coughlin, Inc., is a Vermont Corporation, which does business in the State of Vermont and employs more than 200 employees.

6. The unlawful employment practices took place at Defendant's McDonald's in Randolph, Vermont.

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7. At all relevant times, defendant Coughlin, Inc. has continuously been an employer 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).

ADMINISTRATIVE PROCEDURES

8. Prior to the commencement of this lawsuit, and on February 10, 2020, Jennie Lumbra filed a Charge with the EEOC (“Commission”) alleging violations of Title VII (EEOC Charge No. 523-2020-00221).

9. The Commission investigated and issued a Final Letter of Determination on November 3, 2020 finding reasonable cause to believe that Defendant Coughlin, Inc. discriminated against Jennie Lumbra and a class of similarly aggrieved female and male employees on the basis of sex and that Coughlin, Inc. retaliated against Jennie Lumbra for making her complaint about the sexual harassment.

10. At that time, the Commission invited the Defendant and Jennie Lumbra to join with the Commission in informal methods of conciliation to endeavor to eliminate the unlawful employment practices and provide appropriate relief.

11. The Commission and Jennie Lumbra engaged in communications with Defendant to provide them the opportunity to remedy the discriminatory practices described in the Letter of Determination.

12. Neither the Commission nor Jennie Lumbra were able to secure from the Defendant an acceptable conciliation agreement.

13. On December 7, 2020, the EEOC issued to the Defendant a Notice of Failure of Conciliation advising them that the EEOC was unable to secure from the Defendant an acceptable conciliation agreement.

14. All conditions precedent to the institution of this lawsuit have been fulfilled.

FACTUAL BACKGROUND

15. Coughlin, Inc. owns and operates ten (10) McDonald's Restaurant franchises in Vermont and New Hampshire. The Restaurant at issue in this case is located in Randolph, Vermont.

16. Since at least 2015 and until September 2019, Defendant engaged in unlawful employment practices at its Randolph, Vermont in violation of Section 703(a)(1) of Title VII, 42 U.S.C. §§ 2000e-(a)(1) and 42 U.S.C. 2000e-3(a), and Vermont State Title 21 V.S.A. §§ 495(a)(1) and (8), 495b(b), and 495d(13) by subjecting Jennie Lumbra to sexual harassment, a hostile work environment, and retaliation (in September 2019). Specifically:

- a. Defendant employed Peter Pratt as a Second Assistant Manager at the Defendant's Randolph McDonald's.
- b. Peter Pratt worked mostly the weekend late shifts, working usually from 2:00 pm until 12:00 midnight.
- c. Jennie Lumbra was hired in approximately November 2015 and worked mostly the morning shift at the Randolph location.
- d. Jennie Lumbra requested and was granted a flexible schedule in mid-2016 as an accommodation for her disability. As a result, she often worked the night shift with Pratt.

- e. Defendant paid Jennie Lumbra \$9.15 per hour when she started. On her last day, four years later, she was paid \$10.78 per hour.
- f. Jennie Lumbra performed many of the Crew Member job duties including making burritos, working the line that created burgers, fish sandwiches, and French fries. She cleaned dishes, the grill, the floor, roof vents, and took out the trash. Jennie Lumbra's co-workers appreciated her work. She performed day-end clean-up chores efficiently, effectively, and in a timely manner.
- g. Pratt had the authority to control when Jennie Lumbra would and would not work.
- h. It should be noted that Pratt is physically much larger than Jennie Lumbra.
- i. Soon after Jennie Lumbra began working with Pratt, he began subjecting her to sexual contact and a hostile work environment. This included but was not limited to.
 - i. Within the first three months of working the second shift at the Randolph McDonald's, Pratt grabbed Jennie Lumbra from behind touching her buttocks and vagina.
 - ii. Jennie Lumbra reported this to Pratt's Randolph Restaurant General Manager Janet Roth;
 - iii. Roth told Jennie Lumbra that Peter Pratt admitted grabbing her from behind, and that he could apologize. Jennie

Lumbra then asked how an apology would effectively stop this behavior.

- iv. Pratt's conduct did not change.
- v. Throughout 2016, 2017, 2018 and 2019, Peter Pratt continuously engaged in sexually offensive conduct including: touching female workers on the breasts and buttocks; touching minor male employees on the genitals; bragging about his penis and its function; describing the days of the week in sexual terms ("It's Ball Smacking Tuesday," or "Weaner Wacky Wednesday"). This conduct was directed at Jennie Lumbra and other employees.
- vi. Evidence of Pratt's sexually offensive conduct is preserved on Coughlin, Inc.'s video footage.
- vii. Defendant's Managers were aware of Pratt's unlawful conduct but did not take appropriate steps to end it.
- viii. One Randolph Manager (Mary Emerson) was heard to simply say, "Well, that's disgusting," when she witnessed Pratt's unlawful conduct.
- ix. Repeatedly, sometimes on a weekly basis, Pratt hovered over Jennie Lumbra, ran his fingers under her chin, and commented upon her lack of feminine appearance. He did this in the presence of other workers. He laughed as he did

this. While doing this, he told Jennie Lumbra, “I can do whatever I want to you, whenever I want, and there is nothing you can do about it.” On one occasion, when Pratt touched her chin, Jennie Lumbra elbowed Pratt in the stomach so hard that he fell to the floor on one knee. Pratt disciplined Jennie Lumbra by sending her home.

- x. In 2017, Pratt hit Jennie Lumbra in the face as she was going to clock-in. Jennie Lumbra reported this assault to Janet Roth. Roth told Jennie Lumbra that Pratt admitted it and that she (Roth) told Pratt not to touch Jennie Lumbra anymore.
- xi. Within weeks, Pratt hit Jennie Lumbra in the face again as she was going to clock-in. Jennie Lumbra, again, reported this assault to Roth. This time Pratt denied hitting her, and Roth told Jennie Lumbra that there was nothing that could be done about it.
- xii. On or about August 25, 2019, Pratt grabbed Jennie Lumbra’s buttocks and genital area from behind.
- xiii. A few days later, an employee who joined in Peter Pratt’s chants of “Wacky Weaner Wednesday” smashed pickles in Jennie Lumbra’s hair. This employee also threw a sponge at her, which contained grill cleaning acid compound.

- xiv. Jennie Lumbra was distraught and contacted her mother-in-law telling her that she did not feel safe going to work. Her mother-in-law called Defendant's Human Resources Manager Mary Brown.
- xv. On or about September 8, 2019, Mary Brown and Emily McCollough (another human resources official) met with Jennie Lumbra. They told Jennie Lumbra that (1) she could no longer be on a flexible schedule, (2) she could not have her "friend" (mother-in-law Janet Lumbra) speak on her behalf anymore, and (3) she had to wear a cap or a visor, which prior to her complaint had not been enforced.
- xvi. As a condition of her returning to work, Coughlin, Inc. Human Resources required her to sign a paper that said Jennie Lumbra felt safe in her workplace.
- xvii. Defendant had accommodated Jennie Lumbra for several years with a flexible schedule due to her disability.
- xviii. On or about September 9, 2019, Jennie Lumbra was working the late shift at the Randolph McDonald's. Pratt's mother, Bonnie Davis, was working this shift. While taking out the garbage at the end of the shift, Jennie Lumbra propped the rear door open as she and others often did. Pratt's mother reprimanded Jennie Lumbra claiming this "violated store

policy.” This upset Jennie Lumbra and she went up front to call her husband. Second Assistant Manager Stephanie Hightower began yelling at Jennie Lumbra and told her, “You’re done!”

xix. Jennie Lumbra did not feel safe returning to work for Coughlin, Inc. after this retaliation.

17. Jennie Lumbra is not the only employee who complained about Peter Pratt’s unlawful behavior.

18. Employee complaints to Defendant’s management did not end Pratt’s sexual and other inappropriate behavior.

19. The lack of concern, action, or improvement about the sexual behavior discouraged employees from complaining.

20. By failing to take appropriate action, Defendant allowed Pratt to exercise abusive power and take advantage of Jennie Lumbra.

21. The sanctity of Jennie Lumbra’s person, her optimism and cheerfulness, and the satisfaction she felt from being in the workforce were taken from her.

22. Fear, sadness, humiliation, self-doubt, panic, and isolation were caused by the illegal conduct.

23. These emotions caused excessive crying, sleep loss, stress and weight gain.

24. Defendant’s sexual harassment, the failure of management to take effective steps to stop the harassment, and the subsequent retaliation were done with malice and reckless indifference to Jennie Lumbra’s civil rights.

FIRST CLAIM FOR RELIEF
Sexual Discrimination
Violation of 42 U.S.C. § 2000e, et seq

25. Plaintiff realleges and incorporates by reference the foregoing allegations, as if fully set forth herein.

26. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a)(1) and 2000e-3(a), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a were in full force and effect and binding upon the Defendant.

27. Peter Pratt's unrelenting, pervasive, and severe sexual conduct created a hostile work environment for Jennie Lumbra and others working at Defendant's McDonald's.

28. Title VII prohibits a workplace that is permeated with severe and sexually discriminatory touching, intimidation, ridicule, and insult. *Howley v. Town of Stratford*, 217 F.3d 141, 153-54 (2d Cir. 2000); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993); *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 64-67 (1986).

29. Defendant Coughlin, Inc. is responsible for Pratt's sexual assaults and other inappropriate conduct because he was a supervisor in control of when and if Jennie Lumbra worked, her discipline, and her work duties.

30. Defendant Coughlin, Inc. is also responsible for Pratt's conduct and the hostile environment that it created because the managers above Pratt were negligent in failing to take prompt and appropriate actions to correct Peter Pratt's conduct. *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 758-9 (1998) (an employer can be liable where its own negligence is a cause of the harassment); *Perry v. Ethan Allen, Inc.*, 115 F.3d 143, 149 (2d Cir. 1997) (quoting *Karibian v. Columbia Univ.*, 14 F.3d 773, 780 (2d Cir. 1994); the *Ellerth* Court expressly noted that

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Restatement Section 219(2)(b) holds employers liable “when the [employee’s] tort is attributable to the employer’s own negligence. Thus, although a[n employee’s] sexual harassment is outside the scope of employment . . . , an employer can be liable, nonetheless, where its own negligence is a cause of the harassment[, . . . i.e.,] if it knew or should have known about the conduct and failed to stop it.” *Id.* at 758-759

31. Defendant knew or should have known of the abusive conduct because Jennie Lumbra and other employees repeatedly complained about it to Pratt’s managers.

32. Defendant knew about the abusive conduct because at least one of Defendant’s other supervisors saw and heard the abusive conduct first-hand.

33. Defendant should have taken appropriate action to stop the abusive conduct.

34. Failing to take prompt and appropriate action to stop the abusive conduct allowed it to continue and cause more harm.

35. Jennie Lumbra suffered tangible adverse employment consequences (Jennie Lumbra’s flexible schedule was taken away) as a result of Pratt’s conduct. *Fairbrother v. Morrison*, 412 F.3d 39, 53 (2d Cir. 2005) (an employer is automatically liable and not entitled to any affirmative defense when the employee was subjected to a tangible employment action).

36. As a direct and proximate result of Coughlin, Inc.’s violations of Title VII, Jennie Lumbra suffered sexual and physical assaults, mental anguish and emotional distress, and economic loss.

SECOND CLAIM FOR RELIEF

Retaliation

Violation of Title VII, 42 U.S.C. §2000e-3(a)

37. Plaintiff realleges and incorporates by reference the foregoing allegations, as if fully set forth herein.

38. Title VII prohibits retaliation against an employee because she engaged in protected activity. An employee who reports conduct that is prohibited under Title VII engages in protected activity.

39. Jennie Lumbra is protected from retaliation when she or others report sexual harassment and discrimination caused by Peter Pratt.

40. After she reported Pratt's sexual misconduct, Defendant's Human Resources Manager, Mary Brown, took material and adverse employment action against Jennie Lumbra by taking away the reasonable accommodation of a flexible schedule.

41. Defendant's in-restaurant supervisors retaliated against Jennie Lumbra by accusing her of violating policies that were not enforced when she propped a door open to assist in garbage removal and by yelling at her telling her that she was "Done."

42. Defendant is responsible for this retaliation due to their negligence. *Davis v. NYS Dept. of Corrections Attica Correctional Facility*, 110 F. Supp. 3d 458, 462 (2015); *Vasquez v Express Ambulance Service, Inc.*, 835 F.3d 267 (2016) (we hold that an employee's retaliatory intent may be imputed to an employer where, as here, the employer's own negligence gives effect to the employee's illegal conduct and causes the victim to suffer an adverse employment decision).

43. As a direct and proximate result of Defendant's unlawful retaliation, Jennie Lumbra suffered continued fear of workplace, mental anguish, and emotional distress, further deterioration of well-being, and economic loss.

THIRD CLAIM FOR RELIEF

Sexual Harassment and Hostile Work Environment

Violation of Vermont Title 21 V.S.A. §495 et sec

44. Plaintiff realleges and incorporates by reference the foregoing allegations, as if fully set forth herein.

45. Vermont State Laws 21 V.S.A. §§ 495(a)(1), 495b(b), and 495d(13) prohibit sex discrimination and a hostile work environment.

46. Peter Pratt's actions and Coughlin, Inc.'s failure to appropriately act in response to complaints about his actions subjected Jennie Lumbra to sexual harassment and a hostile work environment at the Randolph McDonald's.

47. As a direct and proximate result of Coughlin, Inc.'s violations of Vermont State Law, Jennie Lumbra suffered sexual and physical assault, mental anguish, emotional distress, a deterioration of well-being, and economic loss.

FOURTH CLAIM FOR RELIEF

Retaliation

Violation of Vermont Title 21 V.S.A. §495(a)(8)

48. Plaintiff realleges and incorporates by reference the foregoing allegations, as if fully set forth herein.

49. Vermont State law forbids an employer from retaliating against an employee who opposes any act or practice prohibited by Chapter 5, Employment Practices Act, 21 V.S.A. § 495(a)(8).

50. Jennie Lumbra engaged in protected activity when she opposed Pratt's sexual assault by reporting it to the Randolph McDonald's supervisors.

51. Coughlin, Inc. took material and adverse employment action against Jennie Lumbra by taking away her flexible schedule accommodation.

52. Defendant's supervisors retaliated against her by accusing her of violating policies that were not enforced when she propped a door open to assist in garbage removal and by yelling at her telling her that she was "Done."

53. As a direct and proximate result of Coughlin, Inc.'s unlawful retaliation in violation of Vermont State Law, Jennie Lumbra suffered sexual and physical assault, mental anguish, emotional distress, a deterioration of well-being, and economic loss.

JURY TRIAL

Plaintiff requests a trial by a jury of her peers.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests relief as follows:

- a. A declaration that Defendant's actions and practices as alleged herein are unlawful;
- b. An order requiring Coughlin, Inc. to make Jennie Lumbra whole by providing fair and reasonable compensation for sexual and physical assaults, emotional stress, mental anguish, deterioration of well-being, and economic loss;
- c. An order requiring Coughlin, Inc. to pay exemplary damages for malicious and reckless indifference and disregard of Jennie Lumbra's Civil Rights and to deter similar wrongdoing pursuant to 42 U.S.C. 1981a(b) and 495b(b);
- d. For interest on damages, including pre- and post-judgment interest;
- e. For attorneys' fees and costs, including expert fees pursuant to 42 U.S.C. §2000e-5(k), and 21 V.S.A. 495b(b); and

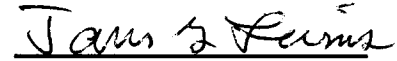
f. Such other relief as the court deems just and proper.

DATED: April 2 / , 2021

Respectfully submitted,

JENNIE LUMBRA

By her counsel,



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