

Filing # 122002455 E-Filed 02/24/2021 02:53:13 PM

**IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
(Civil Division)**

TY CALLOWAY
Plaintiff,

v.

Case No.: _____

Jury Requested

MIZNER COUNTRY CLUB, INC.
Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff TY CALLOWAY (hereinafter "Plaintiff"), by and through his undersigned counsel, and files this, his Complaint against Defendant, MIZNER COUNTRY CLUB (hereinafter "Defendant"), and says:

PARTIES

1. Plaintiff, Ty Calloway, is an African American woman.
2. Defendant, Mizner Country Club, is a corporation operating in Florida.

JURISDICTION AND VENUE

3. The alleged unlawful acts of Defendant giving rise to this action were committed in Palm Beach County, Florida, within the jurisdiction of Palm Beach County, Florida
4. At all times material hereto, the Plaintiff, TY CALLOWAY, was and is a resident of FLORIDA.
5. At all times material hereto, the Defendant, MIZNER COUNTRY CLUB, was and is a corporation operating in FLORIDA.
6. The factual allegations occurred in Florida.

ADMINISTRATIVE TOLLING

7. On September 9, 2020, Plaintiff filed a charge of discrimination and retaliation with the Florida Commission on Human Relations.
8. Plaintiff's claims under the Human Rights Act have been tolled during the pendency of her charge with the FCHR.

GENERAL ALLGATIONS

9. Plaintiff, who is an African American woman, is a member of classes protected against discrimination by the FCRA.
10. At all times material hereto, Defendant was an employer within the meaning of the FCRA. As their employer for purposes of the FCRA, Defendant was prohibited from discriminating against Plaintiff on the basis of gender with respect to the compensation, terms, conditions, or privileges of her employment.
11. At all times material hereto, Defendant was a person within the meaning of the FCRA, Fla. stat. § 760.02(6), employing fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.
12. Defendant was an employer within the meaning the FCRA, Fla stat. § 760.02(7).
13. At all times material hereto, Marc Hoffman ("Hoffman") and Mario Paz ("Paz") were employees and/or agents of the Defendant. Hoffman and Paz had the authority to hire, fire, promote, demote, transfer, and/or discipline employees, along with the authority to recommend such action. Further, Hoffman and Paz were acting within the course and scope of their employment and/or agency when they committed the acts alleged herein.

FACTUAL ALLEGATIONS

14. Plaintiff was hired as a Bartender for Defendant for approximately one year, beginning on September 1, 2019.
15. Throughout her employment with Defendant, Plaintiff consistently performed her duties at a satisfactory level, often going above and beyond her regular responsibilities when opportunities to assist departments and increase employee morale presented themselves.
16. In or around November of 2019, Plaintiff was sexually assaulted by a Bar Leader, Jason Pochette (“Pochette”), who is a Caucasian male. Pochette slid his fingers through Plaintiff’s legs and touched her vagina in a ‘card swipe’ motion. Plaintiff recoiled and told Pochette to stop.
17. Following this incident, Pochette began to strategically corner Plaintiff in places where he knew to not have surveillance cameras. Further, he hinted to Plaintiff that his leadership made him superior to discipline.
18. On more than one occasion, Plaintiff told Pochette that his conduct was highly inappropriate.
19. After Pochette subjected Plaintiff to unwanted sexual advances for the third time, Plaintiff reported Pochette’s behavior to Human Resources.
20. Defendant failed to conduct a thorough investigation and took Pochette’s denial at face value. Consequently, Plaintiff was ultimately forced to work alongside and behind the bar with her harasser.
21. In or around January of 2020, during a morning meeting, Plaintiff’s manager, Hoffman, who is a Caucasian male, stated that he would “lynch someone” if his staff’s

performance did not improve. Hoffman's staff was predominantly composed of black employees.

22. Plaintiff had attempted to approach Hoffman regarding this statement; however, her attempts were rebuffed.

23. Although other employees had witnessed Hoffman make this statement, they ultimately refused to complain in fear of retaliation.

24. Plaintiff reported Hoffman's statement to Human Resources, however after making this report, Plaintiff never heard back from Human Resources.

25. In or around February of 2020, Plaintiff met with Hoffman and Paz, another manager, to discuss her performance. In this meeting, Hoffman and Paz asserted that her performance was unsatisfactory, despite Plaintiff never being reprimanded, written or otherwise, for any of the behaviors noted in her performance review.

26. Following this, a few weeks later, Defendant notified Plaintiff that her position would be eliminated due to the COVID-19 pandemic, effective immediately.

27. A few weeks after this, Plaintiff received a text message from Defendant stating they were looking to "hire more talented staff".

28. Upon information and belief, Defendant did hire additional staff in positions Plaintiff was qualified for.

COUNT I: DISPARATE TREATMENT UNDER FCRA

Race Discrimination

29. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 to 28 above, as if fully set forth herein.

30. During her employment, Plaintiff possessed the skills and background necessary to perform the duties of their position. As such, Plaintiff was qualified for the position.
31. Plaintiff was terminated from her employment with Defendant due to unsatisfactory performance reviews, despite Plaintiff not being reprimanded for any unsatisfactory performance prior to her review.
32. Other staff members had taken the same actions that resulted in Plaintiff's unsatisfactory performance review; however, Plaintiff was the only employee to be terminated as a result of these actions.
33. During her employment, Defendant, through its employee and/or agent Hoffman, treated Plaintiff differently and less favorably from similarly situated employees who were of a different race. The disparate treatment of Plaintiff included, but was not limited to, the following: termination of Plaintiff's employment despite not terminating the employment of similarly situated employees who were of a difference race.
34. The discriminatory actions of Defendant against Plaintiff, when considered individually or collectively, constitute an adverse employment action for purposes of the FCRA. More specifically, the actions constitute an ultimate employment decision, altered the compensation, terms, conditions, or privileges of Plaintiff's employment, and/or adversely affected Plaintiff's status an employee. As such, the disparate treatment constitutes an adverse employment action within the meaning of the FCRA.
35. The adverse employment actions were taken because of Plaintiff's race. More specifically, Plaintiff's race played a motivating factor in the adverse employment actions.

36. In. subjecting Plaintiff to adverse employment action on the basis of race. Defendant intentionally discriminated against Plaintiff with respect to the compensation, terms, conditions, or privileges of her candidacy for employment.
37. As a proximate result of the aforementioned intentional discriminatory acts of Defendant, through its employees and/or agents, Plaintiff has suffered damages, including, but not limited to, the following: lost wages, income, and employment benefits; emotional pain, suffering, mental anguish, loss of enjoyment of life, and dignitary injury; and costs, including attorney's fees, in pursuing redress for the deprivation of her civil rights.
38. By and through acts alleged, Defendant intentionally discriminated against Plaintiff because of race with respect to the compensation, terms, conditions, or privileges of her employment.
39. This claim for disparate treatment on the basis of race is asserted against Defendant pursuant to the FCRA, Fla. stat. §§ 760.01 et seq.
40. As a proximate result of the aforementioned intentional discriminatory acts of Defendant, through its employees and/or agents, Plaintiff has suffered damages as alleged more specifically in paragraph 35.
41. The aforementioned intentional discriminatory acts of Defendant, through its employees and/or agents, give rise to a cause of action under FCRA. In particular, the FCRA forbids discrimination against any employee on the basis of race with respect to the compensation, terms, conditions, or privileges of employment.
42. Defendant's actions have exposed it to liability under Title VII and the Florida Civil Rights Act (FCRA) of 1992 for discrimination.

43. Defendant is liable for the actions of its managers and supervisors.

COUNT II: RETALIATION UNDER FCRA

44. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 to 28 above, as if fully set forth herein.

45. The FCRA prohibits employers, such as Defendant, from taking adverse employment action against employees in retaliation for their engagement in statutorily protected activities under Title VII of the FCRA.

46. As an employee of Defendant, Plaintiff was protected against retaliatory adverse employment action for engaging in statutorily protected activity under the FCRA. More specifically, Plaintiff was protected against retaliatory adverse employment action for opposing any practice of Defendant made an unlawful employment practice by the FCRA. Further, Plaintiff was protected against retaliation in employment decisions for opposing racial discrimination in the workplace.

47. Plaintiff engaged in protected activity by reporting incidents of sexual harassment and racial discrimination to Defendant's Human Resources.

48. In opposing the discriminatory behavior, Plaintiff had a good faith, reasonable belief that she had been or was being subjected to unlawful discrimination on the basis of race. As such, Plaintiff engaged in statutorily protected activity wherein the meaning of the FCRA.

49. In response to Plaintiff's statutorily protected activity, Defendant, through its employees and/or agents, adopted a pattern of subjecting Plaintiff to a series of retaliatory adverse employment actions, including, but not limited to, the following: termination of Plaintiff's employment.

50. These reprisals were a materially adverse employment action in that such actions, whether considered individually or collectively, constituted an ultimate employment decision, altered the terms, conditions or privileges of Plaintiff's employment, and/or adversely affected Plaintiff's status as an employee. Further, the retaliatory acts were reasonably likely to deter employees from engaging in protected activity. As such, the retaliatory acts constitute adverse employment actions for the purposes of the FCRA.

51. The retaliatory harassing acts when considered collectively were sufficiently severe and/or pervasive to materially alter the conditions of Plaintiff's employment and create a hostile working environment. In working a materially adverse change in the terms and conditions of Plaintiff's employment, the retaliatory harassment constitutes an adverse employment action for purposes of the FCRA.

COUNT III: SEXUAL HARASSMENT

Hostile Work Environment

52. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 to 28 above, as if fully set forth herein.

53. During her employment, Defendant, through its employee and/or agent Pochette, subjected Plaintiff to unwanted sexual advances and sexual remarks sufficiently severe and pervasive to alter the conditions of Plaintiff's employment and to create an abusive and hostile work environment.

54. Plaintiff was subjected to bothersome attentions and sexual remarks by Pochette on three (3) occasions. These bothersome actions and sexual remarks included: Pochette making unwanted physical advances on Plaintiff despite being told to stop; Pochette making unwanted sexual remarks and Pochette cornering Plaintiff in non-surveilled areas of their workplace.

55. The conduct Pochette subjected Plaintiff to was physically threatening and humiliating.
56. Pochette's statements to Plaintiff in which he implied that his leadership would exempt him from disciplinary action unreasonably interfered with Plaintiff's job performance.
57. Despite Plaintiff's complaint to Defendant of Pochette's conduct, Defendant failed to conduct a proper investigation or take any disciplinary actions against Pochette.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Honorable Court:

58. Declare that Defendant's actions violated Plaintiff's rights under the Florida Civil Rights Act to be free from unlawful discrimination;
59. Award Plaintiff compensatory damages for lost wages, pain and suffering, loss of health insurance coverage in an amount to be determined by the jury by trial in excess of \$30,000.00;
60. Award Plaintiff full back pay and benefits;
61. Award Plaintiff punitive damages;
62. Award Plaintiff reasonable attorney's fees and the costs of this action;
63. Award Plaintiff pre- and post-judgment interest as may be permitted by law; and
64. Award Plaintiff any other and further relief that the court considers proper.

JURY REQUESTED

Plaintiff demands a trial by jury on all issues in this case so triable.

Dated: February 24, 2021

Respectfully submitted,

/s/ Reshad Favors

Reshad Favors, Esq.
Burns Sheppard Favors, PLLC

1875 Connecticut Ave, NW 10th Floor
Washington, DC 20009 (202)
508-8249
reshad@bsflegal.com

Counsel for Plaintiff

NOT A CERTIFIED COPY