

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Stephanie S. Chiafos,
Plaintiff

SUMMONS

v.

Restaurant Depot, LLC, d/b/a Restaurant
Depot; Restaurant Depot Enterprises, LLC;
Jetro Cash & Carry Enterprises LLC.;
Jetro Holdings, LLC.


Defendants

File No. _____
Case Type: Employment
The Honorable _____

The State of Minnesota to the Above-Named Defendant:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the complaint.

Date: February 10, 2009


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Stephanie S. Chiafos,
Plaintiff

COMPLAINT

v.

(A Jury Trial is Demanded)

Restaurant Depot, LLC, d/b/a Restaurant
Depot; Restaurant Depot Enterprises, LLC;
Jetro Cash & Carry Enterprises LLC.;
Jetro Holdings, LLC.

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Plaintiff, for her Complaint against Defendant, states and alleges as follows:

NATURE OF THE CASE

Plaintiff brings this action against the above-named Defendants alleging violations of Title VII of the Civil Rights Act of 1964, as amended; the Minnesota Human Rights Act, Minn. Stat. §363A.01 et. seq.; negligent retention; and negligent supervision.

PARTIES

1. Plaintiff Stephanie Sue Chiafos is a 40-year-old female resident of Berlin, Wisconsin, County of Green Lake, residing at 493 Oak Street, #201, Berlin, WI 54923.
2. Upon information and belief, Defendant Restaurant Depot, LLC, d/b/a Restaurant Depot, is a Delaware limited liability company with at least thirty stores across the country.
3. Restaurant Depot, LLC has a branch in St. Paul, Minnesota, County of Ramsey, with its facility located at 1830 Como Ave., St. Paul, MN 55108.
4. Upon information and belief, Restaurant Depot, LLC is a division of Defendant Jetro Cash & Carry Enterprises, LLC.

5. Upon information and belief, Jetro Cash & Carry Enterprises, LLC is a Delaware limited liability company and a division of Jetro Holdings, LLC., a Delaware limited liability company.

FACTUAL BACKGROUND

6. Plaintiff was employed by Defendants at their Restaurant Depot facility in St. Paul from March 2006 until January 2007, with the final job title of inventory/ stock-taker.

7. From early in her employment until late November 2006, Plaintiff was subjected to unwelcome sexual harassment by her supervisor, John Ruhlessin.

8. Ruhlessin's harassment of Plaintiff included, but was not necessarily limited to: sexual comments; propositions to Plaintiff to come to his hotel room; and frequent touching of Plaintiff's shoulders, arms and face.

9. Ruhlessin's harassment of Plaintiff included repeatedly telling Plaintiff, "As long as I have a face, you will have a place to sit."

10. All of Ruhlessin's sexual harassment toward Plaintiff was unwelcome and unsolicited.

11. Upon information and belief, Ruhlessin also sexually harassed at least three other female employees of Defendant.

12. Plaintiff reported Ruhlessin's sexual harassment to her immediate supervisor, Steve Dewenter, and, upon information and belief, other female employees also reported Ruhlessin's conduct.

13. When Plaintiff reported Ruhlessin's conduct, Mr. Dewenter told Plaintiff that it was his understanding that Ruhlessin had carried out the same sexually harassing conduct at Defendants' Chicago branch, and that Ruhlessin's sexual harassment was the reason for his

transfer.

14. Despite Plaintiff's reports and other female employees' reports of Ruhlessin's sexual harassment, Ruhlessin continued to sexual harass Plaintiff and Defendants' other female employees for several months.

15. Upon information and belief, Defendants fired Ruhlessin only after one of Defendants' female employees hired an attorney for the purpose of addressing Ruhlessin's sexual harassment with Defendants.

16. From the end of October 2006 until December 5, 2006, Plaintiff was subjected to unwanted sexual harassment by another supervisor, Tommye Brown, a manager from Restaurant Depot's Chicago branch, who was filling in as acting assistant store manager in St. Paul.

17. Brown's sexual harassment of Plaintiff included but was not necessarily limited to repeated propositions for oral sex; sexually explicit comments; and unwanted sexual touching of Plaintiff's breast, whereby Brown put his hand down the front of Plaintiff's shirt, under her bra, and on her breast.

18. Brown's sexual harassment of Plaintiff also included Brown's sexually propositioning Plaintiff for oral sex on the day that John Ruhlessin was fired for sexual harassment and Brown had personally implemented the firing. In propositioning Plaintiff, Brown told Plaintiff to "blow him for lunch" because he had a bad headache from having to fire Ruhlessin.

19. All of Brown's sexual harassment and sexually assaultive conduct toward Plaintiff was unwelcome and unsolicited.

20. During the time period from the end of October 2006 until December 2006, Plaintiff reported Tommye Brown's sexual harassment on three separate occasions to Steve

Dewenter, Plaintiff's immediate supervisor.

21. Plaintiff's reports to Mr. Dewenter included reports of Brown's regular propositions to Plaintiff for oral sex and sexually explicit comments.

22. Plaintiff's reports to Mr. Dewenter included reports of Brown's act of forcibly putting his hand underneath Plaintiff's shirt and bra and on her breast,

23. Plaintiff's reports to Mr. Dewenter included reports of Brown's proposition to Plaintiff to "blow him for lunch" because he had a bad headache from having to fire John Ruhlessin.

24. In response to Plaintiff's multiple reports of Brown's sexual harassment and sexually assaultive conduct toward her, Mr. Dewenter told Plaintiff that Brown would be returning to Chicago soon and that Plaintiff would have to "deal with it" for the time that Brown was in St. Paul.

25. In response to Plaintiff's multiple reports of Brown's sexual harassment, Mr. Dewenter also told Plaintiff "that's just Chicago people."

26. When Mr. Dewenter failed to take any action to remedy Brown's sexual harassment, Plaintiff demanded of Brown herself that he stop his sexually harassing conduct toward her.

27. On December 5, 2006, following Plaintiff's three reports to her supervisor of Brown's sexual harassment, Brown ordered Plaintiff into an isolated area of Defendants' facility, telling Plaintiff he needed her assistance in the receiving dock area.

28. When Plaintiff obeyed Brown's directive and left the receiving office where she was working to enter Defendants' receiving dock area, Brown commenced his forcible sexual attack on Plaintiff by pushing her into the receiving dock area's bathroom.

29. Upon forcibly pushing Plaintiff into the bathroom, Brown shut and locked the door. Brown then undid his pants, pulled them down, and said to Plaintiff, "Go to it." When Plaintiff refused, Brown forcibly grabbed Plaintiff's head, pulled her down, and shoved his penis into Plaintiff's mouth. Brown pushed Plaintiff up against the wall of the bathroom and pressed her into the wall so she could not move. Brown continued forcing his penis into Plaintiff's mouth until he ejaculated.

30. Plaintiff reported Brown's sexual assault to Defendants' managers, Greg Beckers, Gerry Mangual, and Steve Dewenter, the following morning.

31. In the meeting with Defendants' managers, Mr. Dewenter told Plaintiff that he should have done something sooner in response to Plaintiff's reports of Brown's conduct toward her.

32. Following Plaintiff's report to Defendants of Brown's sexual assault, that same day Plaintiff reported the sexual assault to her doctor, who referred her to Urgent Care. Upon arriving at Urgent Care, Plaintiff was referred to the Emergency Room, and, at the Emergency Room, Plaintiff reported Brown's sexual assault to the police.

PROCEDURAL BACKGROUND

33. Plaintiff filed a Charge of Discrimination with the Minnesota Department of Human Rights (MDHR) on July 20, 2007. The MDHR cross-filed Plaintiff's charge with the Equal Employment Opportunity Commission (EEOC).

34. The MDHR dismissed Plaintiff's Charge in an Order and letter dated November 5, 2008.

35. Plaintiff appealed the MDHR finding, based on the Department's conclusion that Defendants had denied Plaintiff's reports of Brown's sexual harassment prior to Brown's sexual

assault of Plaintiff, which was contrary to Defendants' submissions to the Department.

36. Though the MDHR affirmed its dismissal, in a letter dated December 23, 2008 and Order dated December 22, 2008, the MDHR corrected its Order to conclude that Defendant Restaurant Depot's submissions to the Department indicated that Plaintiff had reported to Restaurant Depot's management that Brown had propositioned her and that Restaurant Depot had "failed to follow-up on the information and investigate the allegation..."

37. The MDHR explained in its Amended Order that Restaurant Depot's failure to investigate Plaintiff's reports was "based on its interpretation of [Plaintiff's] reaction to the situation, rather than considering the information [Plaintiff] provided."

38. Plaintiff requested a review of the MDHR's dismissal by the EEOC. The EEOC issued a determination on January 12, 2009 that it was unable to conclude that the information obtained established violations of the statutes. The EEOC did not adopt the findings of the MDHR.

COUNT ONE
(Harassment Based on Sex in Violation of Title VII
and the Minnesota Human Rights Act)

As and for her first claim against Defendants, Plaintiff realleges the allegations set forth above as if fully set forth herein and further alleges:

39. Plaintiff is a member of a protected class, in that she is female, and at all relevant times, Plaintiff was an "employee" and Defendants were "employers" under the MHRA, Minn. Stat. § 363.01 subd. 16, 17, and Title VII.

40. Defendants employed John Ruhlessin in the capacity of supervisor, and Ruhlessin used his supervisory authority over Plaintiff and other female employees of Defendants to enable him to sexually harass Plaintiff and the other female employees.

41. Defendants employed Tommye Brown in the capacity of supervisor, and Brown used his supervisory authority over Plaintiff to enable him to sexually harass Plaintiff.

42. Tommye Brown used his authority over Plaintiff as supervisor for Defendants to order Plaintiff to an isolated area of the St. Paul, MN facility so that he could sexually assault her.

43. Defendants discriminated against Plaintiff with respect to the terms and conditions of her employment, on the basis of sex, in violation of Title VII and the Minnesota Human Rights Act, Minn. Stat. 363A.08, when, throughout her employment, Defendants' supervisors subjected Plaintiff to unwelcome sexual conduct directed at her as a woman, on the basis of her sex. These actions constitute differential treatment because of sex.

44. Defendants discriminated against Plaintiff with respect to the terms and conditions of her employment, on the basis of sex, in violation of Title VII and the Minnesota Human Rights Act, Minn. Stat. 363A.08, when, based on her sex, Plaintiff was sexually assaulted by Brown when he forcibly put his hand underneath Plaintiff shirt and bra and forcibly touched Plaintiff's breast.

45. Defendants discriminated against Plaintiff with respect to the terms and conditions of her employment, on the basis of sex, in violation of Title VII and the Minnesota Human Rights Act, Minn. Stat. 363A.08, when, based on her sex, Plaintiff was sexually assaulted by Brown when Brown committed forced oral sexual penetration upon Plaintiff.

46. The conduct of Defendants toward Plaintiff throughout her employment was hostile, oppressive, severe, pervasive, abusive and intimidating, and constituted unlawful discrimination against Plaintiff on the basis of sex and in violation of Title VII and the Minnesota Human Rights Act.

47. Defendants failed to maintain adequate measures to prevent sexual harassment.

48. Defendants failed to take prompt, appropriate remedial action in response to the actual and constructive notice of sexual harassment, with the result that the misconduct continued and escalated.

49. Defendants' violation of Title VII and the Minnesota Human Rights Act was willful and deliberate, and/or with reckless indifference to the provisions of said laws.

50. Defendants are responsible and liable as employers for their actions, for the actions of their management in sexually harassing and sexually assaulting Plaintiff, and for the actions of their management in ignoring, condoning and contributing to the discrimination against Plaintiff.

51. As a direct and proximate cause of Defendants' discrimination toward Plaintiff throughout her employment, Plaintiff has suffered loss of wages and physical, mental, and emotional anguish, including, but not limited to, humiliation, anxiety, depression, loss of morale and self esteem, physical sickness, and pain and suffering, in excess of \$50,000.00. Plaintiff is entitled to her costs, disbursements and attorney fees herein.

COUNT TWO
(Negligent Supervision)

As and for her next claim against Defendants, Plaintiff realleges the allegations set forth above as if fully set forth herein and further alleges:

52. Defendants knew or should have known that their supervisor Tommye Brown was engaging in discriminatory actions toward Plaintiff that included sexually assaultive conduct.

53. Defendants had a duty to Plaintiff to properly supervise, train, and discipline Brown to prevent him from sexually harassing Plaintiff and Defendants' other female employees.

54. Defendants failed to exercise ordinary care in training, supervising, and disciplining Brown so as to prevent him from causing foreseeable harm to Plaintiff and Defendants' other female employees.

55. As a direct and proximate result of Defendants' failure to properly supervise, train, and discipline Brown, Plaintiff has suffered injuries and damages herein as set-forth above.

COUNT THREE
(Negligent Retention)

As and for her next claim against Defendants, Plaintiff realleges the allegations set forth above as if fully set forth herein and further alleges:

56. Defendants had a duty to Plaintiff to allow her to work in a safe workplace that did not subject her to sexual harassment and to physical and personal danger.

57. Defendants had a duty to Plaintiff retain only competent, qualified and responsible supervisors who would allow Plaintiff to work in a safe environment free from sexual harassment and sexual assault.

58. Plaintiff's reports of Brown's sexual harassment and sexually assaultive conduct made Defendants aware of problems with Brown that demonstrated and indicated his unfitness.

59. Plaintiff's reports put Defendants on notice of the threat that Tommy Brown posed to Plaintiff. Brown's sexually explicit comments, sexual propositions, and exploitation of the firing of another sexual harasser as an opportunity to continue to proposition Plaintiff for oral sex underscored Brown's danger to Plaintiff and to Defendants' other female employees.

60. Defendants failed to exercise ordinary care by retaining Brown, knowing of his unfitness and the threat he posed to Plaintiff and Defendants' other female employees.

61. As a direct and proximate result of Defendants' negligent retention of Brown, Plaintiff has suffered injuries and damages herein as set-forth above.

PRAYER FOR RELIEF


WHEREFORE, plaintiff requests damages as follows:

- A. A judgment against Defendants in an amount in excess of \$50,000, together with interest, costs and disbursements.
- B. Damages for Plaintiff's mental anguish and suffering.
- C. Plaintiff's attorney fees herein as allowed by Title VII and the Minnesota Human Rights Act.
- D. Such other relief as provided by law and that the court deems just and equitable under the circumstances.

Plaintiff hereby gives Defendants notice that she intends to move the court for leave to amend her complaint to add a claim for punitive damages.

PLAINTIFF DEMANDS A JURY TRIAL.

Date: February 10, 2009


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Acknowledgment: Pursuant to Minn. Stat. § 549.211, Subd. 1, the undersigned acknowledges that sanctions may be imposed against the attorneys, law firms, and parties responsible for violation of Minn. Stat. § 549.211, subd. 2.

Date: February 10, 2009


Pamela M. Spera (Att. Reg. #0275220)