

physical contact, including a brutal attack that resulted in the need for emergency health care. Plaintiff/Intervenor was subjected to this treatment because of her sex. These actions against her created a hostile work environment. Furthermore, the Plaintiff/Intervenor was retaliated against for complaining about the sexual harassment. Defendant's actions violated Sections 703(a) and 704(a) of Title VII, 42 U.S.C. §§2000e-2(a) and 2000e-3(a) and the common law of North Carolina.

PARTIES

1. Plaintiff, the Equal Employment Opportunity Commission ("the Commission"), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII of the Civil Rights Act of 1964, and is expressly authorized to bring actions such as this one by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

2. Plaintiff/Intervenor is a Latina of Mexican national origin and a resident of North Carolina. She speaks Spanish as her primary language and has limited English proficiency. At all relevant times, Plaintiff-Intervenor was an employee of Tuscarora Yarns, Inc. within the meaning of 42 U.S.C. §2000e(f). The Plaintiff/Intervenor was employed by Defendant as a factory worker at Defendant's Oakboro, North Carolina plant during all times relevant to this lawsuit.

3. At all relevant times, Defendant, Tuscarora Yarns, Inc. (the "Employer") has continuously been a North Carolina corporation, doing business in the state of North Carolina and the City of Oakboro, and has continuously had a least 15 employees.

4. At all relevant times, Defendant employer has continuously been an employer engaged in an industry affecting commerce within the meaning of the Sections 701(b)(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g), and (h).

JURISDICTION AND VENUE

5. The jurisdiction of this is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

6. The Court has supplemental jurisdiction over related state law claims asserted herein pursuant to 28 U.S.C. § 1367. Supplemental jurisdiction is appropriate because Plaintiff/Intervenor's state tort law claims share a common nucleus of operative fact with Plaintiff/Intervenor's federal claims.

7. Within one hundred and eighty (180) days of the adverse and discriminatory action taken against Plaintiff/Intervenor by Defendants, Plaintiff/Intervenor filed charges of discrimination with the United States Equal Employment Opportunity Commission (EEOC).

8. Venue for this action is proper in the United States District Court for the Middle District of North Carolina at Salisbury pursuant to 28 U.S.C. § 1391(b) and (c).

CONDITIONS PRECEDENT

9. The Plaintiff/Intervenor submitted a charge of discrimination to the EEOC within 180 days of the discrimination against her. The EEOC issued a letter of determination on September 10, 2008. The parties attempted conciliation. Conciliation failed on January 28, 2009. Thus, all conditions precedent to bringing this action have been performed or occurred.

STATEMENT OF CLAIMS

10. At all relevant times, the Plaintiff/Intervenor was employed by Defendant at Defendant's plant in Oakboro, North Carolina. The Plaintiff/Intervenor performed various tasks during her employment with the company, including cleaning the production area, running machinery on a substitute basis when other employees were absent and learning to operate new machinery. She worked on the morning, afternoon and night shifts at various points during her employment.

11. Defendant engaged in unlawful employment practices at Defendant's Oakboro plant located in Oakboro, North Carolina, in violation of Section 703(a)(1) and Section 704(a) of Title VII, 42 U.S.C. 2000e-2(a)(1) and 2000e-3(a). Specifically, the Plaintiff/Intervenor was a victim of sexual harassment by the male general plant manager for Defendant, Michael Surratt (hereinafter referred to as "Surratt").

12. The Plaintiff/Intervenor was sexually harassed by Surratt during her employment, including from on or about April 2007 through December 2007. This unlawful employment practice constituted a continuing violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a).

13. Surratt sexually harassed the Plaintiff/Intervenor by propositioning her for sex, making unwelcome sexual comments to her, inappropriately touching her and by sexually assaulting Plaintiff/Intervenor. The Plaintiff/Intervenor was discriminated against because of her sex, female.

14. The sexual harassment was sufficiently severe or pervasive to alter the conditions of her employment by creating a sexually hostile, intimidating and offensive work environment.

15. The harassment was so pervasive that other co-workers and supervisors also became aware of the situation. Specifically, a supervisor by the name of Richard was on notice of the harassment and failed to take remedial action against it.

16. The environment was so hostile, intimidating and offensive that the Plaintiff/Intervenor was frightened and sought protection from another co-worker. She asked the co-worker to help her hide from Surratt. She also asked her co-worker to shield her from his inappropriate and unwanted sexual advances by not permitting him to get the Plaintiff/Intervenor alone, among other things.

17. On or about October 13, 2007, Mr. Surratt sexually assaulted the Plaintiff/Intervenor for the first time. On this occasion, Surratt called her to his office. Once inside, he blocked her exit. He then began to kiss her against her will and touch her body. The Plaintiff/Intervenor pleaded with him to stop, struggled to get free, and threatened to scream. Afraid that she would scream, Surratt let her go. As she left, he signaled to her that she was to keep the incident a secret.

18. Shaken and shocked, the Plaintiff/Intervenor returned to her workstation.

19. On or about October 14, 2007, the Plaintiff/Intervenor told a co-worker what Surratt did to her. Her co-worker reported the sexual harassment and sexual assault against the Plaintiff/Intervenor to the Human Resources Manager, Gustavo Venegas, on or about the next day. Afterward, the co-worker informed the Plaintiff/Intervenor that Mr. Venegas told her that she should not get involved and that it was not any of the co-worker's business.

20. The Plaintiff/Intervenor also reported this incident to Mr. Venegas on or about October 20, 2007.

21. The Plaintiff/Intervenor does not believe that any action was ever taken against Surratt to remedy the sexual harassment that was reported by her or her co-worker or to prevent further sexual harassment against her.

22. Not only did Defendant fail to take appropriate action to remedy the situation, Defendant retaliated against the Plaintiff/Intervenor suspending her and disciplining her because she complained about the sexual harassment. The Human Resources Manager, Mr. Venegas, also retaliated against the Plaintiff/Intervenor by encouraging a hostile work environment toward the Plaintiff/Intervenor. A causal connection exists between the protected activity and the adverse employment action taken by Defendant, including discipline, suspension, and maintaining a hostile work environment toward the Plaintiff/Intervenor. Finally, Defendant's action are in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).

23. The stress from the ongoing harassment and discrimination resulted in anxiety and heart palpitations. The Plaintiff/Intervenor ultimately had to go to the hospital because of these palpitations. The palpitations grew so bad that she believed that she was having a heart attack from the stress.

24. Surratt's inappropriate and unwanted sexual attention culminated in a brutal act of workplace sexual violence against the Plaintiff/Intervenor on December 29, 2007.

25. Surratt lured the Plaintiff/Intervenor into an office trailer for what she believed was a meeting with other supervisors. He then trapped her and proceeded to sexually assault her.

26. The Plaintiff/Intervenor attempted to escape. Surratt grabbed her and forcefully pulled her each time she tried to get away. At one point, while she was attempting to escape, the Plaintiff/Intervenor fell to the ground. Surratt then grabbed the Plaintiff/Intervenor's hair while she lay on the ground and began to drag her towards him.

27. The Plaintiff/Intervenor begged Surratt to stop. At one point, she believed that he was going to kill her.

28. The Plaintiff/Intervenor eventually escaped his grasp, reached the front door to the trailer, cracked the door and began to fit her body through the space that she forced open. In an attempt to keep her in the trailer, Surratt began to press the door against her body with his hand, crushing her. She continued to fight her way free. After struggling with Surratt for an unknown period of time, the Plaintiff/Intervenor was able to break free. She then fled the trailer toward the main factory building.

29. Once free from Surratt, the Plaintiff/Intervenor returned to the main factory building and collapsed near the entrance. The supervisor named Richard found her at the entrance of the factory battered and with her clothes torn.

30. The Plaintiff/Intervenor was taken to the hospital.

COUNT I

(SEXUAL HARASSMENT IN VIOLATION OF TITLE VII)

31. Plaintiffs re-allege and incorporate by reference all allegations set forth in the preceding paragraphs as if set forth herein.

32. This is a claim against the company, Tuscarora Yarns, Inc. for sexual harassment in Violation of Title VII of the Civil Rights Act, as amended.

33. Defendant Employer has engaged in unlawful employment practices at its Oakboro facility, in violation of Section 703(a)(1) and 704(a) of Title VII, 42 U.S.C. §§2000e-2(a) and 2000e-3(a).

34. Surratt was employed by Defendant Tuscarora Yarns, Inc. and, on information and belief, he held the position of plant manager of the yarn factory from at least 2006 to December 29, 2007.

35. In this position as plant manager, Surratt subjected [redacted] to unwelcome physical and verbal conduct of a sexual nature. This conduct was sufficiently severe and pervasive to constitute an intimidating hostile and offensive work environment.

36. Among other activities, Surratt subjected [redacted] to unwelcome and offensive remarks of a sexual and personal nature. In addition, his conduct extended to physical conduct of a sexual nature, including sexual assault.

37. The effect of the conduct complained of in paragraphs 11 through 17 and 24 through 29 above have been to deprive the Plaintiff/Intervenor of equal employment opportunities and otherwise adversely effect her status as an employee because of her sex. This unlawful conduct resulted in physical and emotional pain and suffering, embarrassment, and humiliation to the Plaintiff/Intervenor.

38. The unlawful employment practices complained of in paragraphs 11 through 17 and 24 through 29 above were intentional.

39. The unlawful employment practices complained of in paragraphs 11 through 17 and 24 through 29 above were done with malice or with reckless indifference to the federally protected rights of the Plaintiffs.

COUNT II

(UNLAWFUL RETALIATION IN VIOLATION OF TITLE VII)

40. Plaintiffs re-allege and incorporate by reference all allegations set forth in the preceding paragraphs as if set forth herein.

41. This claim against Defendant Tuscarora Yarns, Inc. is for unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a).

42. The Plaintiff was retaliated against for rejecting and/or complaining about the sexual harassment. The Plaintiff/Intervenor was disciplined, suspended and subjected to a hostile work environment by the Human Resources Manager and other employees. This treatment resulted in adverse work conditions.

43. A causal connection exists between the Plaintiff/Intervenor's protected activity of complaining about the sexual harassment.

44. Defendant's acts were in violation of Sections 703(a) and 704(a) of Title VII, 42 U.S.C. §§2000e-2(a) and 2000e-3(a)

45. The effect of the conduct complained in paragraph 22 has been to deprive the Plaintiff/Intervenor of equal employment opportunities and otherwise adversely affect her status as an employee in retaliation for her opposition to unlawful employment practices. This unlawful conduct resulted in emotional pain and suffering, embarrassment, and humiliation to the Plaintiff/Intervenor.

46. The unlawful employment practices complained of in paragraph 22 were intentional.

47. The unlawful employment practices complained of in paragraph 22 were done with malice or with reckless indifference to the federally protected rights of the Plaintiff/Intervenor.

COUNT III

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

48. Plaintiffs re-allege and incorporate by reference all allegations set forth in the preceding paragraphs as if set forth herein.

49. This claim against Defendant Tuscarora Yarns, Inc. is for negligent infliction of

mental and emotional distress.

50. Defendant Tuscarora Yarns, Inc. had a duty to protect its employees from sexual harassment and other harm.

51. Defendant Tuscarora Yarns, Inc. had information and knowledge to make it aware of the threat of harm against the Plaintiff/Intervenor.

52. Defendant failed to take appropriate measures to protect the Plaintiff/Intervenor from the tortious acts committed against her as complained of in paragraphs 11 through 17, 22, and 24 through 29.

53. It was reasonably foreseeable that the tortious acts against the Plaintiff/Intervenor would cause the plaintiff severe emotional distress and mental anguish.

54. The conduct did, in fact, result in severe emotional distress and mental anguish as indicated in paragraphs 16 through 18 and 23 through 29.

55. The severe emotional distress suffered by the Plaintiff/Intervenor was a proximate and foreseeable result of the Defendant's negligence.

COUNT IV

(NEGLIGENT RETENTION AND SUPERVISION)

56. Plaintiff re-alleges and incorporates by reference all allegations set forth in the preceding paragraphs as if set forth herein.

57. This claim is against Defendant Tuscarora Yarns, Inc. for negligent retention and supervision.

58. As alleged in paragraph 11, Surratt was Defendant's employee. As such, Defendant had the right and the responsibility to oversee Surratt's performance, to direct his activities as an

employee of the company, and to discipline him when in he violated his obligations as an employee.

59. Surratt was an incompetent employee who had a propensity to engage in sexual misconduct.

60. This incompetency resulted in the tortious acts, including workplace sexual violence, against the Plaintiff/Intervenor as complained of in paragraphs 11 through 17 and 24 through 29.

61. These tortious acts committed by Surratt against the Plaintiff/Intervenor resulted in physical and mental injury as complained of in paragraphs 16 through 18 and 23 through 29.

62. Prior to the tortious acts committed by Surratt, Defendant knew or had reason to know of the Surratt's incompetency as alleged in paragraphs 15, 19, and 20.

63. Defendant failed to take any action remedy the tortious acts committed by Surratt or to prevent further tortious acts by him.

64. The severe emotional distress suffered by the Plaintiff/Intervenor was a proximate and foreseeable result of the Defendant's negligence.

COUNT V

(ASSAULT)

65. Plaintiffs re-allege and incorporate by reference all allegations set forth in the preceding paragraphs as if set forth herein.

66. This claim against Defendant Tuscarora Yarns, Inc. is for assault.

67. The Plaintiff/Intervenor was the victim of assault as detailed by paragraphs 11 through 17 and 24 through 29 by Surratt.

68. The Plaintiff/Intervenor suffered threats of imminent offensive contact with her body by Surratt as detailed by paragraphs 11 through 17 and 24 through 29.

69. Surratt committed overt acts with force and violence to do immediate physical injury to the Plaintiff/Intervenor's person.

70. Surratt caused the Plaintiff/Intervenor to fear immediate bodily injury and his acts did, in fact, result in injury to the Plaintiff/Intervenor's person.

71. Defendant had knowledge of the material facts and circumstances relative to the wrongful acts, as detailed in paragraphs 15, 19 and 20.

72. Defendant ratified Surratt's actions by permitting it to continue and by failing to take appropriate corrective and remedial measures to protect Plaintiff from further tortious acts by Surratt, as illustrated in paragraphs 15, 19, 20 and 22.

73. The tortious acts complained of in paragraphs 11 through 17 and 24 through 29 were done with malice, with reckless or wanton disregard the Plaintiff/Intervenor's rights.

COUNT VI

(BATTERY)

74. Plaintiffs re-allege and incorporate by reference all allegations set forth in the preceding paragraphs as if set forth herein.

75. This claim against Defendant Tuscarora Yarns, Inc. is for battery.

76. The Plaintiff/Intervenor was the victim of offensive touching of her person by Surratt without her consent as detailed by paragraphs 11 through 17 and 24 through 29.

77. The offensive and violent touching by Surratt against the Plaintiff/Intervenor resulted in harm to her.

78. Defendant had knowledge of all material facts and circumstances relative to the wrongful acts, as detailed in paragraphs 15, 19, and 2.

79. Defendant had the right to and the obligation control the manner in which Surratt conducted his job, within the scope of his employment, in furtherance of his Tuscarora's business, and as a means or method of performing his job duties as detailed by paragraph 11.

80. Defendant ratified Surratt's actions by failing to take appropriate corrective and remedial measures to protect Plaintiff from further tortious acts by Surratt, as illustrated in paragraphs 15, 19, 20 and 22.

81. The tortious acts complained of in paragraphs 11 through 17 and 24 through 29 were done with malice, with reckless or wanton disregard the Plaintiff/Intervenor's rights.

JURY TRIAL DEMAND

The Plaintiff/Intervenor requests a jury trial on all questions of fact raised by its Complaint.

PRAYER FOR RELIEF FOR COUNTS I THROUGH VI

WHEREFORE, with respect to Counts I, II, III, IV, V and VI set forth above,

respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in sexual harassment or retaliation and any other employment practice which discriminates on the basis of sex and retaliation.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for victims of sexual harassment and

retaliation, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices and tortious acts described above, in amounts to be determined at trial.

D. Order Defendant Employer to make whole by providing punitive damages for its malicious, reckless and wanton conduct described above, in amounts to be determined at trial.

E. Grant such further relief as the Court deems necessary and proper in the public interest.

F. Award all attorney's fees and costs incurred in this matter.

This the 21st day of May, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May, 2009 I electronically filed the foregoing with the Court by using the CM/ECF system, which will send a notice of electronic filing to Lynette A. Barnes (E-mail: Lynette.barnes@eeoc.gov), and Tina Burnside (E-mail: Tina.burnside@eeoc.gov), counsel for Plaintiff.

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