

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.:

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ROBERT ESSELBORN,

SUMMONS

Plaintiff,

Plaintiff designates
New York County as
the place of trial.

-against-

The basis of venue
is: Defendant's
Residence, Defendant
Crosby Street Hotel,
LLC resides at:
79 Crosby Street
New York, NY 10012

CROSBY STREET HOTEL LLC and
ANTHONY PARIS, a/k/a CHEF ANTHONY PARIS,


Defendants.

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To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: NEW YORK, NEW YORK
April 2, 2014


ERIC R. BERNSTEIN, P.C.
Attorneys for Plaintiff
260 Madison Avenue, 18th Floor
New York, New York 10016
(212) 683-1530

TO: Crosby Street Hotel LLC
NYS Department of State
c/o Ct Corporation System
111 8th Avenue
NY, NY 10011

Anthony Paris a/k/a Chef Anthony Paris
Crosby Street Hotel
79 Crosby Street
NY, NY 10012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ROBERT ESSELBORN,

Index No.

Plaintiff,

-against-

COMPLAINT

CROSBY STREET HOTEL LLC and
ANTHONY PARIS a/k/a CHEF ANTHONY PARIS,

Defendants.

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Plaintiff Robert Esselborn ("Esselborn" or "plaintiff") by his attorneys Eric R. Bernstein, P.C., as and for his Complaint against the Defendants, alleges the following:

PRELIMINARY STATEMENT

1. This case is about the willful and illegal actions of defendants Crosby Street Hotel LLC (the Crosby Hotel) and Anthony Paris also known as Chef Anthony Paris (Paris) (collectively referred to as the "Defendants"). The Defendants violated federal law when it terminated plaintiff Robert Esselborn (Esselborn) for taking medical leave pursuant to the federal Family Medical Leave Act ("FMLA") codified at 29 U.S.C. 2612. Esselborn was entitled to take up to 12 weeks of protected leave to care for his wife who suffered a stroke.

2. Initially, after learning that Esselborn's wife was critically ill, Katherine Suffern (Suffern), a member of the Human Resources Department at the Crosby Hotel, asked Esselborn whether he would be requesting "voluntarily time off" to care for his wife.

3. Within approximately 80 minutes after Suffern's inquiry and prior to Esselborn responding to same, Paris terminated Esselborn in violation of law and company policy.

4. As a result of the Defendants' deliberate and willful actions, Esselborn remains unemployed, creating significant financial pressure on his family and causing him severe emotional distress.

JURISDICTION AND VENUE

5. This Court has jurisdiction of the FMLA and other causes of action pursuant 29 USC 2617(a)(2) and the CPLR.

6. Venue properly lies in the jurisdiction of this Court because the unlawful employment practices complained of herein occurred within the County of New York.

PARTIES

7. Esselborn is a 39 year old male who was employed by the Crosby Hotel in downtown Manhattan as one of its chefs at the time that he requested medical leave in December 2013.

8. Esselborn is a resident of Richmond County, New York.

9. At all relevant times, Esselborn was an employee within the meaning of the FMLA pursuant to 29 U.S.C. 2611(2)(a).

10. The Crosby Hotel is located in the SoHo neighborhood of Manhattan. There are 86 bedrooms and suites over 11 floors. The Crosby Hotel employs well over 50 employees and is an employer under Section 2611(4)(a) of the FMLA.

11. The principle place of business for the Crosby Hotel is 79 Crosby Street, New York, New York.

12. At all relevant times, Paris is a resident of New York, New York, and was Esselborn's direct supervisor.

13. Paris is an agent of the Crosby Hotel and authorized to make decisions regarding employee benefits on behalf of the Crosby Hotel.

STATEMENT OF FACTS

14. On December 26, 1996, Esselborn married his wife, Barbara. Since that time, they had two children together and resided in Staten Island, New York.

15. Esselborn worked at the Crosby Hotel as a night cook until he was unlawfully terminated on December 23, 2013.

16. During his last twelve months of his employment, Esselborn worked in excess of 1250 hours.

17. On Sunday, December 15, 2013, Esselborn's wife, Barbara, unexpectedly became extremely ill. Esselborn called an ambulance and she was rushed to the nearest Emergency Room. She was immediately triaged and transferred to the Intensive Care Unit. Her doctors recognized chronic organ failure. As a result, they sedated her, inserted breathing tubes and kidney draining apparatus which permitted Barbara to maintain basic life support features. At which point, the doctors began running a myriad of medical tests on her.

18. Over the next 48 hours, the doctors had discovered that her vital organs were shutting down and that her lungs and throat were infected. Her blood became septic, causing shock and a building up of fluid in her brain resulting in a stroke.

19. The doctors then informed Esselborn and his two children that Barbara (their wife and mother, respectively) suffered a stroke, was paralyzed and near brain dead.

20. The Esselborn family was in a total state of shock and turmoil.

21. Esselborn and his wife's 17th wedding anniversary was the next day, one of their children's birthday was the following week along with Christmas (which they celebrate).

22. As a result of the medical trauma to his wife, Esselborn needed time with his family. He needed to care for his wife and children. He also needed to make critical decisions about how to medically care for his wife and what her wishes would be under the circumstances.

23. Esselborn immediately called his supervisor, Paris, on or about December 15th and informed him that he will need to take leave from his employment at the Crosby Hotel to address his wife's medical condition and care for her and their children.

24. On or about December 16, 2013, the doctors informed Esselborn that he needed to make a decision about leaving his wife Barbara on life support. The doctor explained that Barbara was brain dead.

25. Esselborn and his family decided to take his wife off of life support but not until after their child's birthday on December 23rd.

26. On December 19, 2013, Paris emailed Esselborn (who was on leave at the time), copied Suffern on the email and stated "Just checking in. I understand you will need some time. When you have the time, can you please update me with your return date? I have still not received a confirmed return date."

27. Less than twenty-four hours later, on Friday, December 20, 2013, Esselborn responded to Paris' email as follows "Chef Anthony, Tried calling you earlier but you were not around, my status is still the same. I can not tell you exact date. My plan[] of action would have to wait until next year Jan 1, 2014 and reassess my situation."

28. Upon information and belief, Paris purposely failed to inform Suffern that Esselborn was on medical leave. As a result, on the following Monday (December 23, 2013) morning, Suffern emailed Esselborn as follows: "You have been absent from work without notification/follow up with Chef or our Night Managers to date. I need to know by 4p[m] today if you are requesting voluntary time off to deal with whatever situation you may be facing or if you have decided not to return. Not hearing back from you, I will be under the impression you have abandoned your position. Please acknowledge this email."

29. Unbeknownst to Suffern, Esselborn had already informed Paris four days earlier that he was taking medical leave to care for his wife. Paris willfully failed to inform Suffern of same in an effort to retaliate against Esselborn for exercising his federally protected right. In fact, Suffern copied Paris on her December 23rd email to Esselborn but Paris, even then,

intentionally failed to inform Suffern that Esselborn had previously notified him that he was taking medical leave. Nevertheless, Suffern properly offered Esselborn voluntary time off under the FMLA.

30. That same day, within 80 minutes of discovering that Suffern had offered FMLA leave to Esselborn and knowing that Esselborn had already informed him four days earlier that he was taking medical leave, Paris wrote "Please disregard [Suffern's] email today. I appreciate your situation and value you as an employee, that's why we have waited. But at this time we cannot wait until January 1, 2014 for you to reassess your situation. We will take this email (below) as your resignation letter. Please call to make arrangements to return your key FOB and to retrieve your items from the locker."

31. After receiving the emails from both Paris and Suffern, Esselborn prior to 4pm that same day (December 23rd), responded that "I received two conflicting emails today regarding my position after I previously informed you that I would not be able to further determine my status until January 1, 2014. The situation with my wife's health is critical at this time as I explained over the phone and under the Family Medical Leave Act, I believe I am entitled to take this time to

be with her and my family without repercussions from my employer. I will investigate this further, but please accept this as my notification to you that I am exercising that right."

32. Nine minutes later, based upon her instructions from Paris, Suffern wrongfully and improperly informed Esselborn that he was ineligible for FMLA leave and was terminated.

33. Barbara died the following day in the hospital as a result of her stroke.

FIRST CAUSE OF ACTION

Interference/Retaliation under the FMLA against Defendants

34. Esselborn repeats and realleges each and every allegation above as if set forth in full herein.

35. Defendants are employers within the meaning of the FMLA.

36. Esselborn is an employee within the meaning of the FMLA and eligible for up to 12 weeks of unpaid medical leave to care for his wife and children.

37. Defendants interfered with Esselborn's right to take federally protected leave of absence under the FMLA.

38. As a result of the Defendants' illegal actions, Esselborn has suffered economic damages.

SECOND CAUSE OF ACTION

Intentional Infliction of Emotional Distress against Defendants

39. Esselborn repeats and realleges each and every allegation above as if set forth in full herein.

40. Paris, while acting within the scope of his employment at the Crosby Hotel, acted extreme and outrageous against Esselborn.

41. In addition to any federal right to take leave, Esselborn, upon information and belief, had a right to take leave from his employment pursuant to his employer's policies and handbook.

42. Paris intentionally disregarded Esselborn's rights and the company's policies in an effort to intentionally cause severe emotional distress to Esselborn while his wife was dying in the hospital.

43. Paris intentionally failed to inform Suffern of the Human Resources Department that Esselborn had previously informed him four days earlier that he was taking leave to care of his wife.

44. Although Suffern was unaware of Esselborn's circumstances because she was intentionally kept in the dark by Paris, she nevertheless offered Esselborn voluntary time off

under company policy and the employee handbook.

45. Upon learning that Suffern offered Esselborn time off under company policy, Paris instructed her to revoke that option and terminate Esselborn.

46. Paris' conduct was intentional, outrageous and extreme.

47. Despite company policy and a decision by the Human Resources Department to give Esselborn time off, Paris impermissibly inserted himself to terminate Esselborn based on malice.

48. As a result of Paris' actions, Esselborn suffered severe emotional and economic injuries.

THIRD CAUSE OF ACTION

Breach of Company Policy/Employee Handbook against Defendants

49. Esselborn repeats and realleges each and every allegation above as if set forth in full herein.

50. Pursuant to company policy and the employee handbook, Esselborn had the right to take time off from work.

51. Paris, acting within the scope of his employment, intentionally disregarded company policy and the employee handbook and terminated Esselborn in retaliation for exercising his rights under same.

52. Although Suffern of the Human Resources Department properly permitted Esselborn time off under company policy, Paris unlawfully usurped that decision and terminated Esselborn.

53. As a result of Paris' actions, Esselborn suffered severe emotional and economic injuries.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. On the First Cause of Action, a money judgment (a) directing Defendants to pay Plaintiff actual damages and otherwise make Plaintiff whole for all the earnings that Plaintiff would have received but-for Defendants' discriminatory treatment including, without limitation, lost compensation including lost wages and benefits and front pay; (b) directing Defendants to pay Plaintiff compensatory damages, including damages for emotional distress, pain and suffering, and humiliation because of Defendants' wrongful termination of Plaintiff; (c) directing Defendants to pay Plaintiff liquidated damages pursuant to the FMLA, Section 2617(a)(1)(A)(iii), in the amount of double his actual damages; (d) directing Defendants to pay Plaintiff punitive damages for his injuries suffered as a result of Defendants' wrongful termination of Plaintiff and their interference with his leave; and (e) directing Defendants


to pay Plaintiff the costs of this action together with expert witness fees and reasonable attorneys' fees.

2. On the Second and Third Causes of Action, a money judgment (a) directing Defendants to pay Plaintiff compensatory damages, economic damages, including damages for emotional distress, pain and suffering, and humiliation because of Defendants' actions; (b) directing Defendants to pay Plaintiff punitive damages for his injuries suffered as a result of Defendants' actions; and (c) directing Defendants to pay Plaintiff the costs of this action together with expert witness fees and reasonable attorneys' fees.

3. On all causes of action, such other and further relief that this Court deems just and proper.

Dated: April 2, 2014

ERIC R. BERNSTEIN, P.C.

By: 
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Attorneys for Plaintiff

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SUMMONS AND COMPLAINT

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