

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAROLINE OHMER, SHIRLENE JACKSON, and
CATHERINE GARCIA-BOU

Plaintiff,

-against-

ARCHIE COMIC PUBLICATIONS, INC.,
JONATHAN GOLDWATER, WILLIAM MOOAR,
MICHAEL PELLERITO, VICTOR GORELICK, and
SAMUEL LEVITIN

Defendants,

COMPLAINT

Civil Action No.

Plaintiffs by and through their attorneys, Hacker Murphy, LLP, as and for a Complaint against the defendants, set forth the following:

JURISDICTION

1. This is an employment discrimination and wrongful discharge complaint seeking damages, punitive damages, attorneys' fees and costs to redress the deprivation of plaintiffs' statutory and contractual rights by the defendants.

2. This action is brought pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII").

3. Jurisdiction of the Court is invoked under 28 U.S.C. §§1331 and 1343.

4. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over plaintiffs' claims under the New York State Human Rights Law and common law.

VENUE

5. Pursuant to 28 U.S.C. §1391, venue properly lies in the United States District Court for the Southern District of New York, as this is the district where, upon information and belief, all the defendants reside and where the events complained of occurred.

PARTIES

6. Plaintiff Caroline Ohmer is a female that resides in Westchester County, State of New York.

7. Plaintiff Shirlene Jackson is a female that resides in New York County, State of New York.

8. Plaintiff Catherine Garcia-Bou is female that resides in Westchester County, State of New York.

9. Upon information and belief, Defendant Archie Comic Publications, Inc. (the "Company") is a domestic business corporation with its principal place of business located in Westchester County, State of New York.

10. Upon information and belief, the individual defendants are all males and all reside in the State of New York.

BACKGROUND

11. Plaintiffs are all former employees of the Company. Each plaintiff was subjected to gender discrimination and sexual harassment by defendants.

12. The Plaintiffs were targeted and retaliated against because they spoke out against gender discrimination in the workplace and because they supported and were associated with Nancy Seiberkleit, the Co-CEO and 50% owner of Archie's who was herself the target of unlawful discrimination, abuse, and retaliation.

13. The individual defendants are executives of the Company and are individually liable for the State law causes of action based upon their supervisory positions and as aiders and abettors.

14. Plaintiffs' claims arise out of the same discriminatory policies and practices by defendants and therefore joinder of the claims are appropriate as the claims arise out of the same nucleus of operative facts.

THE MALE DOMINATED CULTURE AT THE COMPANY

15. Archie Comics is a male dominated and male run workplace that disrespects females.

16. The male dominated workplace is run by defendants Jonathan Goldwater, William Mooar, Michael Pellerito, Victor Gorelick, and Samuel Levitin, who will be collectively referred to as the "Male Executives."

17. The Male Executives have repeatedly used bullying and intimidation tactics to send a message to everyone who works there that the men are in charge and should never be challenged.

18. The Plaintiffs have been subjected to disparate treatment because of their gender.

19. The Plaintiffs have been subjected to a hostile work environment because of their gender.

20. The Plaintiffs have been subjected to Retaliation for speaking out against the manner in which Respondents have treated females in the workplace.

21. Finally, the Plaintiffs have been subjected to disparate treatment, a hostile work environment, and retaliation because of their association and support of Co-CEO Nancy

Silberkleit, a woman who has been repeatedly subjected to a pattern of abuse, ridicule, and intimidation based upon her gender by the Male Executives.

22. Jonathan Goldwater is Co-CEO of Archie Comics. Mr. Goldwater is charged with gender discrimination and harassment based upon his decision to subject the Plaintiffs to different terms and conditions of employment based upon their gender and their support of Nancy Seiberkleit. Mr. Goldwater is also responsible for the abusive behavior of other Male Executives as he was aware that the abuse was going on and he fully supported and condoned the bullying tactics.

23. William Mooar is CFO of Archie Comics. Mr. Mooar is charged with gender discrimination and harassment based upon his decision to subject the Plaintiffs to different terms and conditions of employment based upon their gender and their support of Nancy Seiberkleit. Mr. Mooar is also responsible for the abusive behavior of other Male Executives as he was aware that the abuse was going on and he fully supported and condoned the bullying tactics.

24. Michael Pellerito is Co- President of Archie Comics. Mr. Pellerito is charged with gender discrimination and harassment based upon his decision to subject the Plaintiffs to different terms and conditions of employment based upon their gender and their support of Nancy Seiberkleit. Mr. Pellerito is also responsible for the abusive behavior of other Male Executives as he was aware that the abuse was going on and he fully supported and condoned the bullying tactics.

25. Victor Gorelick is Co-President of Archie Comics. Mr. Gorelick is charged with gender discrimination and harassment based upon his decision to subject the Plaintiffs to different terms and conditions of employment based upon their gender and their support of Nancy Seiberkleit. Mr. Gorelick is also responsible for the abusive behavior of other Male

Executives as he was aware that the abuse was going on and he fully supported and condoned the bullying tactics.

26. Samuel Levitin is a court appointed trustee that was given the task to mediate problems between Mr. Goldwater and Ms. Seiberkleit. Rather than being an impartial neutral, Mr. Levitin became a trusted ally and confidant of Mr. Goldwater. Mr. Levitin is charged with gender discrimination and harassment based upon his decision to subject the Plaintiffs to different terms and conditions of employment based upon their gender and their support of Nancy Seiberkleit. Mr. Levitin is also responsible for the abusive behavior of other Male Executives as he was aware that the abuse was going on and he fully supported and condoned the bullying tactics.

27. The Male Executives routinely demeaned and undermined Nancy Seiberkleit (the Co-CEO) by referring to her as a school teacher who is not ready for the business world. Several of the male executives made comments such as "Nancy should be spending her time shopping" or "Nancy should be out buying shoes" or "I'm sure Nancy was a great Art teacher but this is a complex business" or "Nancy slept her way into the job as CEO." These repeated comments evidence the discriminatory animus that these men have: i.e., they do not believe a strong educated women like Nancy Seiberkleit has any business or right to be in "their world" i.e., in business.

28. Rather, these male executives conveyed a clear discriminatory message: women should be school teachers or should stay out of the workplace altogether.

29. When Nancy Seiberkleit heard comments like these she would inform the male executives that the comments were offensive and not acceptable

30. Upon information and belief, the Male Executives made up allegations that Nancy Seiberkleit was herself guilty of sexual harassment. Nancy Seiberkleit flatly denied these allegations and has consistently maintained that she was the one being harassed and abused.

31. Nancy Seiberkleit has publicly spoke out concerning the bullying and abuse she has suffered at Archie Comics. For example, in January 2012, she announced an anti -bullying comic book that she was introducing. When asked why anti-bullying message was so important, Nancy Seiberkleit stated that: "I thought it was a good idea to do a book about bullying, because I'm right here in the midst of it myself," and "I'm the one being harassed and abused here."

32. On a number of occasions the Plaintiffs heard demeaning and gender based comments directed at Nancy Seiberkleit, and, the Plaintiffs likewise complained that the comments were offensive and not acceptable.

33. On a number of occasions Nancy Seiberkleit asked the male executives to call a meeting of all staff and explain that all staff need to respect Nancy Seiberkleit as she is Co-CEO of the business. The male executives refused this request and instead continue to send the message that it was okay to be disrespectful to Nancy Seiberkleit.

34. Nancy Seiberkleit was not permitted to speak to the male executives even when they were in the same room. Instead, she was required to speak to a moderator, who would then speak to the executives.

35. The male executives instructed staff not to speak to Nancy Seiberkleit and not to perform any work for her. Most of the employees would not even make eye contact with Nancy Seiberkleit, even though she was the Co-CEO.

36. Nancy Seiberkleit hired her own employees so she could accomplish many of her tasks and goals as Co-CEO.

37. Cathy Garcia Bou started work at Archie Comics in June 2012. Ms. Garcia-Bou was hired by Ms. Seiberkleit to be her confidential assistant.

38. Almost immediately Ms. Garcia-Bou witnessed the abusive manner in which the male executives treated Nancy Seiberkleit.

39. Ms. Garcia-Bou also saw how other staff members ignored Nancy Seiberkleit, and, would not even make eye contact with her. Ms. Garcia-Bou asked Sam Levitin why such insubordination was tolerated. Mr. Levitin did not answer the question and took no action to stop the behavior.

40. The Male Executives refused to directly communicate with Ms. Seiberkleit. Instead, they made Ms. Garcia-Bou, while standing right next to Ms. Seiberkleit, repeat everything the Male Executives would say, and then, after Ms. Seiberkleit would respond, Ms. Garcia-Bou would then need to repeat her comments to the Male Executives, despite the fact that all parties were in the same room standing next to each other. This behavior was humiliating for both Ms. Garcia-Bou as well as Ms. Seiberkleit and was a childish way for the Male Executives to exert their power over these women.

41. Ms. Garcia-Bou repeatedly spoke out concerning the inappropriate manner in which Ms. Seiberkleit was treated at Archie's.

42. Over time the Male Executives and staff at Archie's began treating Ms. Garcia-Bou in the same demeaning manner that they treated Nancy Seiberkleit.

43. Upon information and belief, the Male Executives did not like the fact that Ms. Garcia-Bou was "defending" Nancy Seiberkleit, and therefore retaliated against her.

44. Although many of her coworkers and bosses would not speak to Ms. Garcia-Bou unless she went to them numerous times to get assistance with simple matters, she was

constantly being watched and subjected to constant questioning as to the type of work she was performing.

45. Further, Ms. Garcia-Bou was not allowed to obtain the most basic of supplies from the warehouse, while all other employees freely took what they needed from the warehouse whenever they needed it.

46. Upon information and belief, the Male Executives intentionally targeted Ms. Garcia-Bou, and, wanted to make her life miserable at work so she would quit and Nancy Seiberkleit would be left without an assistant.

47. In January 2013, Ms. Garcia-Bou finally quit as she could no longer tolerate the hostile work environment. Based upon the circumstances surrounding her resignation, plaintiff Garcia-Bou claims that she was constructively discharged.

48. Shirlene Jackson was hired in August 2012. Shirlene Jackson was hired by Nancy Seiberkleit to help expand the brand image of Archie's, with a focus on increasing interest in Archie Comics in schools.

49. Ms. Jackson was hired to work two days per week with the eventual goal to move to one day per week.

50. Ms. Jackson was appreciative that Nancy Seiberkleit had hired her and therefore was supportive of Nancy Seiberkleit.

51. In January 2013, the Male Executives targeted Ms. Jackson because she defended Ms. Seiberkleit and was therefore associated with her.

52. At first the Male Executives asked a lot of questions about the work Ms. Jackson was performing.

53. In addition to the heightened supervision, simple requests, such as a request to obtain a few comic books to show to children when she attended functions at a school, were no longer granted.

54. Upon information and belief, the Male Executives intentionally attempted to make Ms. Jackson's job difficult so that she would quit and Nancy Seiberkleit would therefore not be able to accomplish many of the tasks and Projects she wanted to perform.

55. The Male Executives waited until Nancy Seiberkleit was out of the Country to make their big move: In a series of Memorandums and threatening conversations (between February 1st and February 11th 2013) , the Male Executives unilaterally demanded that Ms. Jackson come to work, 5 days per week, from 9 a.m. to 5 p.m. It was also demanded that Ms. Jackson sign in and out of work, each day.

56. In addition, Ms. Jackson would need to keep a list of every single task that she was assigned to perform and worked on during each day.

57. When Ms. Jackson informed the Male Executives that she had a contract with Archie's, the Male Executives informed her that Nancy Seiberkleit does not matter and does not have the power to hire employees.

58. Ms. Jackson defended Ms. Seiberkleit, stating that she is the Co-CEO and deserves the respect of all employees and executives at Archie's. Ms. Jackson was told that Nancy Seiberkleit is not the boss-she is a school teacher, and that if Ms. Jackson wanted to work for Archie's she needed to follow the rules.

59. Ms. Jackson contacted Nancy Seiberkleit and informed her that she felt very uncomfortable with the threatening behavior and bullying by the Male Executives.

60. Nancy Seiberkleit assured her that her job was safe and that the matter would be addressed when she returned from her business trip. Nancy Seiberkleit told Ms. Jackson not to listen to the Male Executives as she had the power under her Employment Agreement to hire personnel and that the other Male Executives could not interfere with her rights as Co-CEO.

61. Ms. Jackson was fired on February 11, 2013 for alleged "insubordination."

62. Even after her termination the Male Executives continue to retaliate against Ms. Jackson, as they falsely stated to unemployment that Shirlene Jackson was not an employee (even though her wage statements clearly showed that Archie's took out taxes from her paycheck).

63. Caroline Ohmer was hired to be Nancy Seiberkleit's confidential assistant in January 2013. Pursuant to her contract, her working hours were 9:30 a.m. to 4:30 p.m. and she was to report solely to Nancy Seiberkleit.

64. Almost immediately Ms. Ohmer witnessed the abusive manner in which the male executives treated Nancy Seiberkleit.

65. Ms. Ohmer also saw how other staff members ignored Nancy Seiberkleit, and, would not even make eye contact with her. Ms. Ohmer defended Nancy Seiberkleit and many times spoke out about the manner she was treated and disrespected.

66. Over time the male executives and staff at Archie's began treating Ms. Ohmer in the same demeaning manner that they treated Nancy Seiberkleit.

67. Upon information and belief, the Male Executives did not like the fact that Ms. Ohmer was "defending" Nancy Seiberkleit, and therefore retaliated against her.

68. Although many of her coworkers and bosses would not speak to Ms. Ohmer, she was constantly being watched and subjected to constant questioning as to the type of work she

was performing. Further, simple requests, for example, to obtain an envelope to mail out a letter, were denied.

69. Upon information and belief, the male executives intentionally targeted Ms. Ohmer, and, wanted to make her life miserable at work so she would quit and Nancy Seiberkleit would be left without an assistant.

70. The Male Executives waited until Nancy Seiberkleit was out of the Country to make their big move: In a series of Memorandums and threatening conversations (between February 1st and February 11th 2013) the Male Executives unilaterally demanded that Ms. Ohmer come to work, 5 days per week, from 9 a.m. to 5 p.m. It was also demanded that Ms. Ohmer sign in and out of work, each day.

71. In addition, Ms. Ohmer would need to keep a list of every single task that she was assigned to perform and worked on during each day.

72. Ms. Ohmer contacted Nancy Seiberkleit and informed her that she felt very uncomfortable with the threatening behavior and bullying by the Male Executives.

73. Nancy Seiberkleit assured her that her job was safe and that the matter would be addressed when she returned from her business trip. Nancy Seiberkleit told Ms. Ohmer not to listen to the Male Executives as she had the power under her Employment Agreement to hire personnel and that the other Male Executives could not interfere with her rights as Co-CEO.

74. Ms. Ohmer was fired on February 11, 2013 for alleged "insubordination."

75. Upon information and belief Caroline Ohmer and Shirlene Jackson were the only employees at Archie's who were required to sign in and out each day, and, were the only employees that were required to keep a detailed list of every task they performed.

76. Upon information and belief, Nancy Seiberkleit hired another confidential assistant since February 11, 2013, who has likewise already quit because she could not take the abusive work environment.

77. Among the management at Archie's, Nancy Seiberkleit was the only female, and, she was the only one disrespected on a daily basis.

78. The Male Executives certainly treated men in the workplace much different than women. If you were a women, you could either choose: (a) to be a servant of the male masters, in which you would be protected (such as Mr. Goldwater's confidential assistant who was not subjected to the abuse or heightened supervision directed toward the Plaintiffs); or, (b) speak up about the mistreatment in the workplace, in which case you were immediately targeted and abused for daring to speak out.

79. For example, although Nancy Seiberkleit owns 50% of the Company and even though she is a co-CEO, she is treated like a second class citizen.

80. The fact that Nancy Seiberkleit felt threatened, bullied and intimidated is evidenced by the fact that, one day at the office (in a highly publicized ordeal), she brought a 6 foot 2 inch tall, 240 pound former NFL player around the office.

81. Mr. Goldwater claims that this action was a "show of force" by Ms. Seiberkleit. Based upon Mr. Goldwater's own interpretation of this event, it is obvious that Ms. Seiberkleit felt threatened.

82. Respectfully, if Ms. Seiberkleit and the Plaintiffs to this proceeding were males, 6 foot 2 and 240 pounds, then Respondents would not attempt to bully, intimidate and harass them either.

83. Based upon the foregoing it is respectfully submitted that the Male Executives in charge of Archie Comics bullied, harassed, and intimidated the Plaintiffs because of gender, and because of their association with Nancy Seiberkleit.

84. The Plaintiffs were intimidated and bullied and were subjected to disparate treatment because of their gender and association with Nancy Seiberkleit. They were ostracized and humiliated and have suffered emotional distress and economic losses as a result of the discriminatory actions by the Male Executives.

85. The Company is vicariously liable for the actions of its supervisors. The Company is also liable for the actions of its supervisors and employees because it condoned, accepted and approved the actions of its supervisors and employees by: (a) failing to provide an effective complaint procedure; (b) by failing to properly train and educate its supervisors and employees concerning discrimination, harassment and retaliation; (c) by refusing to undertake a prompt and thorough investigation; (d) by failing to take effective remedial and corrective action; (e) by treating plaintiffs as though they were the ones that did something wrong; (f) by refusing to apologize to plaintiffs or otherwise send a message that the offensive behavior would not be tolerated and is unacceptable in the workplace; and, (g) by retaliating against plaintiffs.

86. Plaintiffs timely filed a claim with the New York State Division of Human Rights in April 2013(cross-filed with the EEOC).

87. Plaintiffs asked for and received an administrative convenience dismissal to pursue their remedies in Federal Court.

88. This action is timely filed within 90 days of receipt of the right to sue notice.

FIRST CAUSE OF ACTION

(Title VII discrimination, hostile work environment and retaliation against the Company)

89. Plaintiffs repeat and incorporate by reference all allegations in all preceding paragraphs.

90. By the acts and practices described above, defendants discriminated against plaintiffs in the terms and conditions of their employment on the basis of gender, by allowing and condoning a hostile work environment to be created, and by refusing to take prompt remedial action to stop the harassment.

91. Plaintiffs have been subjected to Disparate Treatment, Discrimination, and Retaliation for speaking out against the manner in which females were treated in the workplace.

92. Based upon the foregoing, the Company is hereby charged with violation of the Title VII of the Civil Rights Act of 1964.

93. Plaintiffs respectfully request an award of damages to compensate them for the emotional harm, embarrassment, and humiliation they have suffered and will continue to suffer.

94. Plaintiffs also respectfully requests an award of damages to compensate them for lost wages and benefits they have lost and will continue to lose.

95. Plaintiffs request an award of attorneys' fees, costs and disbursements.

96. Finally, plaintiffs request an award of punitive damages because the discrimination, harassment, and retaliation outlined above were malicious and/or reckless acts.

SECOND CAUSE OF ACTION

(Section 296 of the New York State Human Rights Law against all defendants)

97. Plaintiffs repeat and incorporate by reference all allegations in all preceding paragraphs.

98. By the acts and practices described above, defendants discriminated against plaintiffs in the terms and conditions of their employment on the basis of gender, by allowing and condoning a hostile work environment to be created, and by refusing to take prompt remedial action to stop the harassment.

99. Plaintiffs have been subjected to Disparate Treatment, Discrimination, and Retaliation for speaking out against the manner in which females were treated in the workplace.

100. Based upon the foregoing, all defendants are charged with violation of the New York State Human Rights Law.

101. Defendants are jointly and individually liable as Employers under the law and because the individual defendants aided and abetted the discrimination, hostile work environment, and retaliation that plaintiff suffered.

102. Plaintiffs respectfully request an award of damages to compensate them for the emotional harm, embarrassment, and humiliation they have suffered and will continue to suffer.

103. Plaintiffs also respectfully requests an award of damages to compensate them for lost wages and benefits they have lost and will continue to lose.

104. Plaintiff also requests an award of costs and disbursements.

THIRD CAUSE OF ACTION
(Breach of Contract against the Company)

105. Plaintiffs repeat and incorporate by reference all allegations in all preceding paragraphs.

106. Plaintiffs negotiated the terms of their employment with co-CEO Nancy Silberkleit, who has actual and apparent authority to bind the Company.

107. Nancy Silberkleit hired plaintiffs with the express promise that they would be hired for at least one year, and, that they could only be fired for cause.

108. Plaintiffs reasonably relied upon the representations made by the Company when accepting employment.

109. The Company discharged plaintiffs without good cause.

110. The termination of plaintiffs' employment directly violated the agreements entered into between the Company and plaintiffs.

111. As a result of the Company's willful discharge of plaintiffs in breach of their employment contracts, plaintiffs have incurred damages.

112. Plaintiffs have been unable, despite reasonable efforts, to find comparable employment.

113. Plaintiffs seek an award for past and future lost income, including all applicable fringe benefits.

114. Plaintiffs also seek the costs of this action and their reasonable attorneys' fees to the fullest extent permitted by law.

FOURTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress against all defendants)

115. Plaintiffs repeat and incorporate by reference all allegations in all preceding paragraphs.

116. The conduct set forth above constitutes intentional or recklessly extreme and outrageous conduct.

117. The extreme conduct caused extraordinary distress and suffering to plaintiffs.

118. As a result of the foregoing malicious and egregious conduct, plaintiffs have suffered severe emotional distress, and have incurred damages thereby.

119. The Company is vicariously liable for the actions of its supervisors who were acting in the scope of their employment.

120. The Company is also liable because it has condoned and accepted the abuse and outrageous conduct directed at plaintiffs and intentionally or recklessly decided to ignore the abuse.

121. Based upon the foregoing, plaintiffs have suffered emotional distress damages.

122. In addition, because defendants' actions were performed with malice and without justification or excuse, plaintiffs seek punitive damages.

FIFTH CAUSE OF ACTION

(New York Wage and Hour Claim against Company)

123. Plaintiffs repeat and incorporate by reference all allegations in all preceding paragraphs.

124. The Company failed to provide plaintiffs with the required written notices under the New York State Wage Theft Protection Act. Specifically, the Act requires new hires to be provided with a written notice stating in pertinent part: the employee's rate or rates of pay, including the employee's overtime rate of pay (for all non-exempt employees); the basis for the employee's rate of pay (for example, by the hour, shift, day, week, salary, or commission); the statutory exemption that applies, if any; any allowances claimed as part of the minimum wage (e.g., tips, meals, etc.); the regular pay day designated by the employer; the employer's name, including any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address, if different; the employer's telephone number.

125. This same notice must be provided to all existing employees each year no later than February 1st and if the employer makes any changes to the information contained in the notice and such changes are not reflected in the employee's payroll statements, the employer must give the employee written notice of the change at least seven (7) days before the change becomes effective.

126. Plaintiffs seek statutory penalties of \$2500.00 for defendant's failure to provide legally compliant written statements pursuant to New York Labor Law 195.1.

127. Plaintiff seeks recovery of attorneys' fees, disbursements and costs, to be paid by defendant, as provided by New York Labor Law § 198.

WHEREFORE, plaintiffs demand judgment against the defendants as set forth above, together with the costs and disbursements of this action, and for such other and further relief as to the Court seems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury in this action.

Dated: February 12, 2014

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