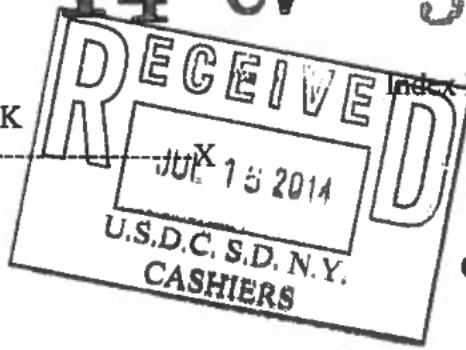


JUDGE SWAIN

14 CV 5327

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



Index No.:

VERTRELL PARKER,

Plaintiff,

COMPLAINT

-against-

WORKMEN'S CIRCLE CENTER OF THE BRONX,
INC., WORKMEN'S CIRCLE DIALYSIS CENTER,
INC., and JOPAL BRONX, LLC,

Plaintiff Demands a Trial
By Jury

Defendants.

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Plaintiff, VERTRELL PARKER, by and through her attorneys, the Arcé Law Group, P.C., hereby complains of the Defendants, upon information and belief, as follows:

INTRODUCTION

1. Plaintiff complains pursuant to Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000e et. Seq. ("Title VII"), and to remedy violations of the New York Executive Law, the Administrative Code of the City of New York, and the New York Common Law, based upon the supplemental jurisdiction of this Court pursuant to Gibb, 383 U.S. 715 (1966) and 28 U.S.C. §1367, seeking damages to redress the injuries she suffered as a result of being harassed and discriminated against by the Defendants on the basis of her sex/gender, together with sexual harassment, interference with protected rights, creating a hostile work environment, retaliation and unlawful termination.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 42 U.S.C. §2000e et. Seq.; 28 U.S.C. §1331, §1332, and §1343.
3. This action involves a Question of Federal Law.
4. Venue is proper in this district based upon the fact that Plaintiff was employed by Defendants within the Southern District of New York, and the discriminatory actions occurred within the Southern District of New York. 28 U.S.C. §1391(b).
5. On or about January 15, 2014, Plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC").
6. On or about June 5, 2014, Plaintiff received a Notice of Right to Sue letter from the EEOC.
7. This action is being brought within 90 days of said Notice of Right to Sue letter.

PARTIES

8. Plaintiff is a female resident of the State of New Jersey, County of Bergen.
9. At all times material, Defendant WORKMEN'S CIRCLE CENTER OF THE BRONX, INC., was and is a domestic not-for-profit corporation, duly existing by virtue of the laws of the State of New York.
10. At all times material, Defendant WORKMEN'S CIRCLE DIALYSIS CENTER, INC., was and is a domestic not-for-profit corporation, duly existing by virtue of the laws of the State of New York.
11. Defendant WORKMEN'S CIRCLE CENTER OF THE BRONX, INC., and Defendant WORKMEN'S CIRCLE DIALYSIS CENTER, INC., are herein also collectively referred to as Defendant "WORKMEN'S CIRCLE."

12. At all times material, Defendant JOPAL BRONX, LLC (herein also referred to as "JOPAL") was and is a domestic registered limited liability company, duly existing by virtue of the laws of the State of New York.
13. At all times material, Defendant JOPAL was the owner of Defendant WORKMEN'S CIRCLE.
14. Defendant JOPAL, Defendant WORKMEN'S CIRCLE CENTER OF THE BRONX, INC., and Defendant WORKMEN'S CIRCLE DIALYSIS CENTER, INC., are also herein collectively referred to as "Defendants."
15. At all times material, Plaintiff was an employee of Defendants.
16. At all times material, Defendants were Plaintiff's joint employers.

MATERIAL FACTS

17. On or about May 1, 2013, Plaintiff began working for Defendants as a "Certified Clinical Hemodialysis Technician."
18. Shortly after Plaintiff began her employment with Defendants, Plaintiff's male supervisor, Niketa Mclean ("Mclean"), began to sexually harass Plaintiff.
19. By way of example, when Plaintiff started, Plaintiff would have to call Mclean to get her schedule. Instead of giving Plaintiff her work schedule, Mclean would tell Plaintiff, "**Why are you calling me about the schedule? You should be calling me about other things like when are we going to go out.**"
20. In or around July 2013, Mclean began to call Plaintiff into his office under the guise of talking about her work schedule. When Plaintiff was in his office, he would **touch her buttocks** and say, "**Oh, you look so good. Turn around for me. I'll buy you whatever you want. I bet you look nice in Victoria's Secret.**"

21. When Plaintiff tried to leave Mclean's office, he would stop Plaintiff and tell her to **"Just stay."** Plaintiff told Mclean, **"This is work. Work is work. I'm not here to be with anybody."**
22. During the course of Plaintiff's employment with Defendants, on an almost daily basis, Mclean would intentionally brush against Plaintiff and make sexual noises.
23. During the course of Plaintiff's employment with Defendants, Mclean would regularly schedule Plaintiff for the closing shift so that she would have to stay late with him. On multiple occasions, as soon as Plaintiff left work for the evening, Mclean would call her cell phone. Plaintiff refused to answer.
24. Mclean also asked Plaintiff for a naked picture of herself. Mclean told Plaintiff, **"I know you look good underneath."**
25. Following his request, Mclean repeatedly, on an almost daily basis, asked Plaintiff, **"Where's my picture?"** referring to his request for a naked picture.
26. On or about September 16, 2013, Plaintiff went to Defendants' Human Resources Department ("HR") to complain of the constant sexual harassment.
27. While at Defendants' HR Department, Mclean called Plaintiff and asked her her whereabouts. Plaintiff responded that she was at HR, and Mclean said, **"If you don't get back here, it's not going to be good for you."**
28. Mclean's threat was a direct attempt to coerce, threaten and intimidate Plaintiff from exercising her protected rights.
29. On or about September 16, 2013, Plaintiff submitted an "Employee Statement" wherein she stated in relevant part, **"...I went to complain about my situation to Mathew (Administration) about my concern because I didn't feel safe talking to him Nicketa**

(RN) Nurse manager has had several incidents where he has tried to talk to me, asked me out on dates, and touched me where I refused and the attitude has began against me. At this point I feel that my job is being threatened by inappropriate behavior/other employers.”

30. On or about September 16, 2013, following Plaintiff's complaint, Matthew Varghese, “Vice President of Operations,” told Plaintiff that Defendants would pay her for the day, but that she should go home because he did not want her going back to the floor where she had been sexually harassed. Mr. Varghese said he would call Plaintiff when it was safe for her to return to work.
31. On or about September 17, 2013, Mr. Varghese called Plaintiff and told her that Defendants were going to open an investigation and that Plaintiff could come back to work the following week.
32. On or about September 20, 2013, Plaintiff received a call from an individual who worked with Mr. Varghese, who told Plaintiff that an investigation had been performed and no evidence was found. The individual also told Plaintiff that **“At this time, we no longer need your services.”**
33. On or about September 20, 2013, Defendants terminated Plaintiff.
34. On or about September 20, 2013, Defendants terminated Plaintiff because she complained of Defendants' unlawful actions.
35. On or about September 20, 2013, Defendants terminated Plaintiff because she opposed Mclean's sexual advances.
36. Defendants would not have harassed Plaintiff but for her sex/gender.

37. As a result of Defendants' actions, Plaintiff felt and continues to feel extremely humiliated, degraded, violated, embarrassed and emotionally distressed.
38. As a result of Defendants' discriminatory and intolerable treatment of Plaintiff, she suffered severe emotional distress and physical ailments.
39. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer the loss of income, the loss of a salary, bonuses, benefits and other compensation which such employment entails, and Plaintiff has also suffered future pecuniary losses and emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.
40. As Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands Punitive Damages as against all Defendants, jointly and severally.

**AS A FIRST CAUSE OF ACTION
UNDER TITLE VII
DISCRIMINATION**

41. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
42. This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., as amended, for relief based upon the unlawful employment practices of the above-named Defendants. Plaintiff complains of Defendants' violation of Title VII's prohibition against discrimination in employment based, in whole or in part, upon an employee's sex.
43. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-2 provides that:
 - (a) It shall be an unlawful employment practice for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

44. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e et seq., by discriminating against Plaintiff because of her sex/gender, together with sexual harassment and creating a hostile work environment.

**AS A SECOND CAUSE OF ACTION
UNDER TITLE VII
RETALIATION**

45. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
46. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a) provides that it shall be unlawful employment practice for an employer:

“(1) to . . . discriminate against any of his employees . . . because [s]he has opposed any practice made an unlawful employment practice by this subchapter, or because [s]he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”

47. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e et seq. by discharging, retaliating, and otherwise discriminating against Plaintiff with respect to the terms, conditions or privileges of employment because of her opposition to the unlawful employment practices of Defendants.

**AS A THIRD CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
DISCRIMINATION**

48. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
49. The Administrative Code of City of NY §8-107 [1] provides that “It shall be an unlawful discriminatory practice: (a) For an employer or an employee or agent thereof, because of the actual or perceived gender. . . of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.”
50. Defendants engaged in an unlawful discriminatory practice by discriminating against the Plaintiff because of her gender, together with sexual harassment, creating a hostile work environment and wrongful termination.

**AS A FOURTH CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
RETALIATION**

51. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
52. New York City Administrative Code Title §8-107(7) provides that:
- “It shall be unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter...”
53. Defendants engaged in unlawful and retaliatory discriminatory practices by retaliating and otherwise discriminating against Plaintiff because of Plaintiff’s opposition to the unlawful

employment practices of her employer, as set forth, including, but not limited to terminating Plaintiff's employment.

**AS A FIFTH CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
INTERFERENCE WITH PROTECTED RIGHTS**

54. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
55. New York City Administrative Code Title §8-107(19) Interference with Protected Rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.
56. Defendants violated the section cited herein as set forth.

**AS A SIXTH CAUSE OF ACTION
UNDER STATE LAW
DISCRIMINATION**

57. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
58. Executive Law §296 provides that "1. It shall be an unlawful discriminatory practice: (a) For an employer or licensing agency, because of an individual's . . . sex... to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

59. Defendants engaged in an unlawful discriminatory practice by discriminating against the Plaintiff because of her sex, together with sexual harassment, creating a hostile work environment and wrongful termination.

60. Plaintiff hereby makes a claim against Defendants under all of the applicable paragraphs of Executive Law §296.

**AS A SEVENTH CAUSE OF ACTION
UNDER STATE LAW
RETALIATION**

61. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

62. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory practice:

“For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because [s]he has opposed any practices forbidden under this article.”

63. Defendants engaged in unlawful and retaliatory discriminatory practices by retaliating, and otherwise discriminating against Plaintiff because of Plaintiff's opposition to the unlawful employment practices of her employer, as set forth, including, but not limited to terminating Plaintiff's employment.

**AS AN EIGHTH CAUSE OF ACTION
NEGLIGENCE
(NEGLIGENT HIRING / RETENTION)**

64. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

65. Defendants were careless and reckless in hiring and retaining Mclean as an employee in that Mclean lacked the experience, deportment and ability to be employed by Defendants; in that Defendants failed to exercise due care and caution in their hiring practices, and in particular, in hiring Mclean, who lacked the maturity, mental capacity, and ability to function as an employee of Defendants; in that Defendants failed to investigate Mclean's background; in that Defendants hired and retained Mclean as an employee of their business establishment; in that Defendants knew of Mclean's lack of ability, experience, deportment, and/or maturity when they hired him to be employed, and when Defendants decided to retain him as an employee; and in that Defendants, their agents, servants and employees were otherwise careless, negligent and reckless.
66. That the aforesaid occurrences and the resulting injuries to mind and body therefrom, were caused wholly and solely by reason of the negligence of Defendants, their agents, servants and employees without any negligence on the part of the Plaintiff.
67. That by reason of the aforesaid, Plaintiff was injured in mind and body, still suffers, and upon information and belief, will continue to suffer mental pain and anguish. As a direct and proximate result of Defendants' negligence, Plaintiff has been and will continue to suffer from severe emotional distress, pain, suffering and inconvenience.
68. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered a loss of enjoyment of life.

WHEREFORE, Plaintiff respectfully requests a judgment against the Defendants:

- A. Declaring that the Defendants engaged in unlawful employment practices prohibited by Title VII, the New York City Administrative Code, the New York Executive Law, and the New York Common Law; and that Defendants harassed and discriminated against Plaintiff on the basis of her sex/gender, together with sexual harassment, interference with her protected rights, creating a hostile work environment, retaliation and unlawful termination;
- B. Declaring that Defendants were negligent in the hiring and/or retention of Mclean as an employee, thereby causing Plaintiff injuries because of said negligence;
- C. Awarding damages to the Plaintiff for any lost wages and benefits, past and future, back pay and front pay, resulting from Defendants' unlawful employment practices;
- D. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to reputation;
- E. Awarding Plaintiff punitive damages;
- F. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action;
- G. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy the Defendants' unlawful employment practices.


JURY DEMAND

Plaintiff requests a jury trial on all issues to be tried.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount to be determined at the time of trial plus interest, punitive damages, attorneys' fees, costs, and disbursements of action; and for such other relief as the Court deems just and proper.

Dated: New York, New York
July 15, 2014

ARCÉ LAW GROUP, P.C.
Attorneys for Plaintiff

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