

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil No: 1:15-cv-00007-NRB

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KATARZYNA ZACH,

Plaintiff,

AMENDED COMPLAINT

-against-

EAST COAST RESTORATION & CONSTRUCTION
CONSULTING CORP, GREG SOBOLEWSKI
JONCZYK, individually,

PLAINTIFF DEMANDS A
TRIAL BY JURY

Defendants.
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Plaintiff, KATARZYNA ZACH, by her attorneys, ARCÉ LAW GROUP, PC, hereby complains of the Defendants, upon information and belief, as follows:

NATURE OF THE CASE

1. Plaintiff, KATARZYNA ZACH, (hereinafter “Plaintiff”) complains pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et. Seq. (“Title VII”), the New York Executive Law and the Administrative Code of the City of New York, seeking damages to redress the injuries Plaintiff has suffered as a result of being sexually harassed and *quid pro quo* sexual harassment, discriminated against on the basis of gender, and retaliated against and wrongfully discharged by her employer for complaining of sexual harassment and discrimination.

JURISDICTION AND VENUE

2. Jurisdiction of this action is conferred upon the court as this action involves a Federal Question under Title VII of the Civil Rights Act. The Court also has supplemental jurisdiction over the State and City Causes of Action.
3. Venue is proper in this district based upon Defendants' residency and principal place of business within the County of New York, State of New York, within the Southern District of New York. 28 U.S.C. §1391(b).
4. On or about March 3, 2014, Plaintiff filed charges with the EEOC against Defendant as set forth herein.
5. On or about November 3, 2014, Plaintiff received a Right to Sue Letter from the EEOC.
6. This action is being commenced within 90 days of receipt of the EEOC Right to Sue Letter.

PARTIES

7. At all times material, Plaintiff KATARZYNA ZACH is an individual woman residing in the State of New Jersey.
8. At all times material, Defendant EAST COAST RESTORATION & CONSTRUCTION CONSULTING CORP (hereinafter "Defendant EAST COAST") is a domestic business entity duly existing in the State of New York, with its principal place of business located at 232 Madison Avenue, New York, NY 10016.
9. At all times material, Plaintiff ZACH was an employee of Defendant EAST COAST.
10. At all times material, Defendant GREG SOBOLEWSKI JONCZYK (hereinafter "Defendant SOBOLEWSKI") was and is an owner of Defendant EAST COAST.

11. At all times material, Defendant SOBOLEWSKI was and is an officer or director of Defendant EAST COAST.
12. At all times material, Defendant SOBOLEWSKI was Plaintiff's supervisor and/or had supervisory authority over Plaintiff.

MATERIAL FACTS

13. In or around March 2013, Plaintiff ZACH started her employment at Defendants EAST COAST.
14. Plaintiff ZACH was hired by Defendants as a bookkeeper for a weekly wage of \$700.
15. Defendants had a pattern and practice of sexually harassing female employees.
16. Very soon after starting work in March 2013, Defendant SOBOLEWSKI started asking Plaintiff out to dinner. As Plaintiff would always refuse, Defendant SOBOLEWSKI would be more and more persistent.
17. On one particular occasion, on or around March 29, 2013, Defendant SOBOLEWSKI asked Plaintiff whether she would like to join Defendant and other employees for dinner. Plaintiff said yes. However, at the end of the workday, Plaintiff asked the other employees if they were going to dinner and none of them said yes. Plaintiff, not wanting to just go to dinner with Defendant SOBOLEWSKI declined and went home. Defendant SOBOLEWSKI called Plaintiff and asked where she was. She explained she did not want to accompany Defendant for dinner alone. Defendant SOBOLEWSKI insisted that they still go to dinner. Defendant stated that he was bringing his friends along and she would feel comfortable. Defendant SOBOLEWSKI then drove to Plaintiff's home in New Jersey, picked up Plaintiff at her home and drove to a Japanese restaurant in Linden, New

Jersey. At the restaurant, Defendant SOBOLEWSKI's friends started making sexual jokes about Plaintiff as well as very inappropriate comments such as: "Don't worry about overtime. Just fire her for the weekend, it would be much cheaper." One of Defendant's friends became excessively intoxicated. Defendant SOBOLEWSKI told Plaintiff that he had to drive his friend home. They all drove to Defendant's friend's place in South Jersey and continued to drink alcohol. Around 3-4 am, Plaintiff ZACH was exhausted and went to sleep. Plaintiff woke up in the middle of the night with Defendant SOBOLEWSKI's fingers inside her vagina. Plaintiff tried to stop him and pushed him away. Defendant SOBOLEWSKI forcefully thrust his penis into Plaintiff's vagina and forced sexual intercourse on (Raped) Plaintiff without using a condom. Plaintiff kept crying and screaming "No!" but Defendant SOBOLEWSKI did not stop. When finished, Defendant SOBOLEWSKI took his penis out and ejaculated on Plaintiff's stomach. In the morning she asked Defendant SOBOLEWSKI why he did that to her. Defendant SOBOLEWSKI replied that he got turned on when she said "No." He added that the more she rejected him and cried, the more excited he got. Defendant SOBOLEWSKI then drove Plaintiff home and told her he "had fun." Plaintiff felt violated, frightened, embarrassed, ashamed and disgusted. Despite these horrors, Plaintiff had no source of income other than her employment with SOBOLEWSKI.

18. Plaintiff went back to work after the weekend, and she told Defendant SOBOLEWSKI that what he had done to her was wrong and that she did not want it to happen ever again. Defendant SOBOLEWSKI replied that the incident was a private matter and that Plaintiff should never talk about it at work. Defendant SOBOLEWSKI then said that Plaintiff should not bring personal matters to work and "Nothing good would come out of it if you

do.” Moreover, he added that Plaintiff getting upset would not help her at work.

19. Plaintiff lived with her brother and sister in law and had no other income apart from her work at Defendants. Quitting was therefore not an option for Plaintiff.
20. Plaintiff feared for her job and decided to remain silent about the whole incident. Defendant SOBOLEWSKI continued to ask Plaintiff out. Plaintiff was compelled to say yes in order to keep her job. Defendant SOBOLEWSKI took Plaintiff out for dinner approximately 10 times. They would also go to a hotel or to Defendant SOBOLEWSKI’s home to have sex. All the while, each sexual encounter was unwelcome.
21. Defendant SOBOLEWSKI had coerced unwelcome sexual intercourse on Plaintiff approximately 15 to 20 times without a condom. As a result, Plaintiff was required take the “Morning After Abortion Pill” twice a week for three weeks. Plaintiff’s hormones became completely unbalanced.
22. Defendant SOBOLEWSKI would be very violent in bed, choking and hitting Plaintiff during intercourse. Plaintiff would have to wear long sleeves and trousers all the time to cover the bruises all over her body.
23. On or around September 1, 2013, Defendant SOBOLEWSKI went to Plaintiff’s home and tried to have anal sex with her. When Plaintiff refused, Defendant SOBOLEWSKI became very angry and stormed out of Plaintiff’s house.
24. The day after, Defendant SOBOLEWSKI completely ignored Plaintiff at work. Plaintiff asked him whether Defendant would fire Plaintiff. Defendant SOBOLEWSKI became angry and told Plaintiff that he did not want her to speak about this ever again. Plaintiff was very anxious and scared of losing her job and she therefore apologized to him.
25. On or around September 15, 2013, Defendant SOBOLEWSKI went to Plaintiff’s house

and sexually assaulted Plaintiff again. Once again, Plaintiff begged him not to ejaculate inside her. And once again, Defendant SOBOLEWSKI refused to use a condom and did ejaculate inside her. When Defendant SOBOLESWSKI was finished, Plaintiff went to the balcony and burst into tears. Defendant SOBOLEWSKI grabbed her shoulder and shook her to make her stop. Plaintiff could not stop crying and reiterated to Defendant SOBOLEWSKI that she could not tolerate being sexual assaulted anymore and that she hated herself. She added that her hormones were wreaking havoc on her body because of the morning after pill and that she was scared of being pregnant. Defendant SOBOLEWSKI replied: "You know what? I've got to go" and stormed out of the house.

26. On or around September 21, 2013, Defendant SOBOLEWSKI sent a text to Plaintiff ZACH firing her. Plaintiff received her last pay in cash.
27. After her wrongful termination, Plaintiff ZACH was scared to leave the house for two weeks.
28. Defendants SOBOLEWSKI forced Plaintiff to engage in sexual acts against her will.
29. Plaintiff was and is experiencing severe anxiety and depression due to her work environment and requires medical and psychiatric attention. Plaintiff is currently taking medication to cope with the emotional distress. This is due to the discriminatory unprofessional, degrading, condescending and horrid treatment towards Plaintiff by Respondents.
30. The above are just some of the instances of sexual harassment and assault which Plaintiff suffered.
31. As Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands Punitive Damages against Defendants jointly

and individually.

AS A FIRST CAUSE OF ACTION
FOR DISCRIMINATION UNDER TITLE VII
(Not Against Individual Defendants)

32. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
33. Title VII states in relevant part as follows: SEC. 2000e-2. [Section 703] (a) Employer practices 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; (k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise.
34. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. § 2000e *et seq.*, by discriminating against Plaintiff because of her sex/ gender, sexual harassment and *quid pro quo* sexual harassment.

AS A SECOND CAUSE OF ACTION
FOR DISCRIMINATION UNDER TITLE VII
(Not Against Individual Defendants)

35. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

36. 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.”

37. Defendants engaged in unlawful employment practice prohibited by 42 U.S.C. § 2000e *et seq.* by retaliating against Plaintiff with respect to the terms, conditions or privileges of employment because of her opposition to the unlawful employment practices of Defendant.

AS A THIRD CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

38. Plaintiff repeats and realleges each and every allegation made in the complaint as if they were set forth herein fully at length.

39. Defendants’ behavior was extreme and outrageous to such extent that the action was atrocious and intolerable in a civilized society.

40. Defendants’ conduct was so outrageous in character and extreme in degree as to go beyond all possible bounds of decency.

41. Defendants caused plaintiff to fear for Plaintiff’s own safety.

42. Defendants' breach of their duties to Plaintiff caused Plaintiff to suffer numerous injuries as set forth herein.
43. As a result of defendants' acts, Plaintiff has been damaged in an amount to be determined at the time of trial.

AS A FOURTH CAUSE OF ACTION UNDER STATE LAW § 213-c
BY VICTIM OF CONDUCT CONSTITUTING CERTAIN SEXUAL OFFENSES
AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE

44. 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.
45. § 130.35 of the New York State Penal Law provides as follows: Rape in the first degree 1 A person is guilty of rape in the first degree when he or she engages in sexual intercourse with [fig 2] another person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically helpless; or 3. Who is less than eleven years old; or 4. Who is less than thirteen years old and the actor is eighteen years old or more. NY CLS Penal § 130.35
46. § 130.50 of the New York State Penal Law provides as follows: Criminal sexual act in the first degree 1 A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically helpless; or 3. Who is less than eleven years old; or 4. Who is less than thirteen years old and the actor is eighteen years old or more. NY CLS Penal § 130.50
47. Section 130.70 of the New York State Penal Law; "Aggravated sexual abuse in the first degree" provides that "A person is guilty of aggravated sexual abuse in the first degree

when he inserts a foreign object in the vagina, urethra, penis or rectum of another person causing physical injury to such person:(1) By forcible compulsion; or (2) Who is incapable of consent by reason of being physically helpless; Aggravated sexual abuse in the first degree is a class B felony.”

48. Defendant SOBOLEWSKI violated the herein sections as set forth herein.

49. § 213-c of the Civil Practice Law and Rules provides as follows: § 213-c. Action by victim of conduct constituting certain sexual offenses. Notwithstanding any other limitation set forth in this article, a civil claim or cause of action to recover from a defendant as hereinafter defined, for physical, psychological or other injury or condition suffered by a person as a result of acts by such defendant of rape in the first degree as defined in section 130.35 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law may be brought within five years. As used in this section, the term "defendant" shall mean only a person who commits the acts described in this section or who, in a criminal proceeding, could be charged with criminal liability for the commission of such acts pursuant to section 20.00 of the penal law and shall not apply to any related civil claim or cause of action arising from such acts. Nothing in this section shall be construed to require that a criminal charge be brought or a criminal conviction be obtained as a condition of bringing a civil cause of action or receiving a civil judgment pursuant to this section or be construed to require that any of the rules governing a criminal proceeding be applicable to any such civil action. NY CLS CPLR § 213-c.

50. Defendant SOBOLEWSKI is civilly liable under § 213-c for violating all of the above Sections of the New York State Penal Law as described above.

51. Defendants violated the above law as set forth herein.

AS A FIFTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER STATE LAW

52. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

53. Executive Law § 296 provides that "1. It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sex, or disability, or marital status of any individual, 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."

54. Defendants engaged in an unlawful discriminatory practice by discriminating against the Plaintiff because of her sex/gender, sexual harassment and *quid pro quo* sexual harassment.

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

AS A SIXTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER STATE LAW

56. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

57. 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."
58. Defendants engaged in an unlawful discriminatory practice by wrongfully retaliating against Plaintiff.

**AS A SEVENTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER STATE LAW**

59. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
60. New York State Executive Law §296(6) provides that it shall be an unlawful discriminatory practice: "For any person to aid, abet, incite compel or coerce the doing of any acts forbidden under this article, or attempt to do so."
61. Defendants engaged in an unlawful discriminatory practice in violation of New York State Executive Law §296(6) by aiding, abetting, inciting, compelling and coercing the discriminatory conduct.

**AS AN EIGHTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER
THE NEW YORK CITY ADMINISTRATIVE CODE**

62. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
63. 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 age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienate or citizenship status 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."

64. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(1)(a) by creating and maintaining discriminatory working conditions, and otherwise discriminating against the Plaintiff because of Plaintiff's sex/ gender, sexual harassment and *quid pro quo* sexual harassment.
65. Plaintiff hereby makes a claim against Defendants under all of the applicable paragraphs of New York City Administrative Code Title 8.

AS A NINTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER
THE NEW YORK CITY ADMINISTRATIVE CODE

66. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
67. The New York City Administrative Code Tide 8, §8-107(1) (e) provides that it shall be unlawful discriminatory practice: "For an employer . . . , to discharge . . . or otherwise discriminate against any person because such person has opposed any practices forbidden under this chapter. . . ."
68. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Tide 8, §8-107(1) (e) by discriminating against the Plaintiff because of Plaintiff's opposition to the unlawful employment practices of Plaintiff's employer.

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

69. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
70. The New York City Administrative Code Title 8, §8-107(6) provides that it shall be unlawful discriminatory practice: "For any person to aid, abet, incite, compel; or coerce the doing of any of the acts forbidden under this chapter, or attempt to do so."
71. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(6) by aiding, abetting, inciting, compelling and coercing the above discriminatory, unlawful and retaliatory conduct.

**AS AN ELEVENTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER THE
NEW YORK CITY ADMINISTRATIVE CODE**

72. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
73. Section 8-107(19), Entitled Interference with Protected Rights provides that: "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."
74. Defendants violated the above section as set forth herein.

JURY DEMAND

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

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, 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
October 15, 2015

ARCÉ LAW GROUP, P.C.
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