

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

U.S. EQUAL EMPLOYMENT OPPORTUNITY))	
)	
Plaintiff,))	
)	CIVIL ACTION NO.
v.))	
)	<u>C O M P L A I N T</u>
MORENO FARMS, INC.,))	
)	JURY TRIAL DEMAND
Defendant.))	
)	
)	
_____))	

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful sex-based and retaliatory employment practices, and to provide appropriate relief to Charging Parties Maria Aguilar, Brigida Gomez-Velazquez, Sandra Lopez, Ana Francisco, and Ligia Martinez, who were adversely affected by such practices. As alleged with greater specificity below, these five female vegetable packaging workers were subjected to a hostile work environment based on sex by their direct supervisor, Omar Moreno, by Moreno’s assistant, Javier Garcia, and/or by Moreno’s brother, Oscar Moreno. The sexual harassment included frequent sexual comments, bodily touching, and rape. Charging Parties Aguilar, Lopez, Francisco, and Martinez were terminated and Charging Party Gomez-Velazquez was constructively discharged based on their sex and in retaliation for opposing sexual harassment.

JURISDICTION AND VENUE

1. Jurisdiction of this Court 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 (“Title VII”), as amended, 42 U.S.C. §2000e-5(f)(1) and (3), and Section 102 of Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. Defendant’s principal place of business is within the jurisdiction of the United States District Court for the Southern District of Florida, Miami Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (“EEOC” or “Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Moreno Farms, Inc. (“Moreno Farms”), a Florida corporation, has continuously been doing business in the State of Florida with its principal place of business in Miami, Florida, and has continuously had at least 15 employees.

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

CONDITIONS PRECEDENT

6. More than thirty days prior to the institution of this lawsuit, Maria Aguilar (“Aguilar”), Brigida Gomez-Velazquez (“Gomez-Velazquez”), Sandra Lopez (“Lopez”), Ana Francisco (“Francisco”), and Ligia Martinez (“Martinez”) (collectively, the “Charging Parties”) filed charges with the Commission alleging violations of Title VII by Moreno Farms.

7. The Commission issued Letters of Determination on May 2, 2014 finding reasonable cause to believe that Charging Parties were subjected to a sexually hostile work environment by Moreno Farms through Omar Moreno, Javier Garcia (“Garcia”), and/or Oscar Moreno. The Letters of Determination further stated that Aguilar, Lopez, Francisco, and Martinez were terminated because of their sex, and that Gomez-Velazquez was constructively discharged because of her sex. The Commission also found that Charging Parties were terminated in retaliation for rejecting unwelcomed sexual conduct.

8. All conditions precedent to the institution of this lawsuit have been fulfilled.

STATEMENT OF FACTS

Moreno Farms Organization

9. Moreno Farms is a farming business growing a variety of produce. Moreno Farms has facilities for packaging and distributing its produce.

10. Moreno Farms is owned by Oscar B. Moreno.

11. Oscar B. Moreno’s sons, Omar and Oscar Moreno, directly supervise workers at Moreno Farm’s operations in Felda, Florida.

12. Omar Moreno directly supervises employees who work at Moreno Farms’ packaging facility.

13. Oscar Moreno directly supervises the pickers, who work in fields close to the packaging facility.

14. Omar Moreno has authority to hire and fire packaging facility employees.

15. Omar Moreno determines the work assignments and schedules of packaging facility employees.

16. Oscar B. Moreno visits the packaging facility occasionally, but rarely, if ever, speaks to or interacts with employees there.

17. Garcia has supervisory authority at the packaging facility when Omar is not present.

18. Garcia reports employee issues to Omar Moreno.

19. Moreno Farms does not have a policy in place for the handling and/or reporting of complaints of sexual harassment or discrimination.

Packaging Facility and Workforce

20. The packaging facility is housed primarily in a large warehouse space.

21. The warehouse space contains a cooler area to store produce.

22. There were two mobile home trailers just outside the warehouse space used to store supplies and containing office space.

23. There is a small office inside the warehouse with large windows facing the packaging area where employees work.

24. The packaging facility employs approximately 50 workers during the harvesting seasons. Approximately ten men work in the packaging facility as haulers or forklift operators; the rest of the packaging facility work force is made up of women.

25. Female employees at the packaging facility generally work together in groups or

stand next to one another working along a conveyor belt.

26. Charging Parties worked at the packaging facility.

Maria Aguilar

27. Omar Moreno hired Aguilar in or about December 2011.

28. Throughout Aguilar's employment, Omar Moreno frequently grabbed her butt and other body parts during working hours and in front of other employees.

29. Aguilar complained and objected by rejecting Omar Moreno's touching and advances and telling Omar Moreno to stop touching her, but he continued to do so.

30. Omar Moreno called Aguilar his "vieja" ("old lady") in front of other employees.

31. Omar Moreno repeatedly demanded that Aguilar have sex with him and stated that he would fire her if she did not do so.

32. Omar Moreno told Aguilar that he would give her additional working hours she had requested if she had sex with him.

33. Omar Moreno kissed Aguilar almost every day. Omar Moreno yelled out to Aguilar: "Come here. It's your turn," while slamming his fist against his open palm. Aguilar said to Omar in response, "no" or "I don't want to." Omar Moreno would nonetheless order Aguilar out of the work line and take her to the cooler or the trailer.

34. Aguilar had sex with Omar Moreno on three occasions because she feared losing her job if she did not do so.

35. Omar Moreno told Aguilar not to tell anyone about having sex with him.

36. On one occasion, Omar Moreno instructed Aguilar to go to the trailer to have sex with his brother Oscar Moreno. Aguilar refused to enter the trailer or have sex with Oscar

Moreno. Omar Moreno became enraged and told Aguilar that he would terminate her employment.

37. On or about March 5, 2012, shortly after Aguilar's refusal to have sex with Oscar Moreno, Omar Moreno told her to clean the perimeter of the packaging facility, including the portable toilets. Aguilar said she would not do it because it was not part of her job. Omar Moreno told her that she was fired.

Brigida Gomez-Velazquez

38. Omar Moreno hired Gomez-Velazquez in or about November 2011.

39. Omar Moreno harassed Gomez-Velazquez on a daily basis. The harassment included hugging Gomez-Velazquez; touching her back, legs, neck, and breasts; telling her she was beautiful; expressing a desire to have sex with her; and/or talking about the large size of her breasts and asking her if her breasts were real.

40. Garcia asked Gomez-Velazquez to have sex with him on several occasions. Garcia told Gomez-Velazquez that if she had sex with him she "would forget about her boyfriend." Gomez-Velazquez refused to have sex with Garcia.

41. Gomez-Velazquez complained and objected by repeatedly telling Omar Moreno and Garcia to stop sexually harassing comments about her. The comments continued unabated.

42. In response to Gomez-Velazquez's rejection of their sexual advances, Omar Moreno and Garcia told her to work faster and perform more work than other employees.

43. In response to Gomez-Velazquez's rejection of his sexual advances, Omar Moreno told her, "I know you need this job, you need to do what I say or you will die of hunger."

44. Gomez-Velazquez saw Omar Moreno sexually harass other female employees and

deny them breaks, including bathroom breaks, if they rejected his advances.

45. Gomez-Velazquez tried to prevent Omar Moreno's harassment by staying near other women as she worked, but Omar Moreno assigned Gomez-Velazquez tasks that required her to work alone and/or apart from other women. Once Gomez-Velazquez was isolated, Omar Moreno proceeded to touch her butt, legs, and breasts.

46. Omar Moreno took Gomez-Velazquez to the trailers and threatened to fire her if she did not sleep with him, while promising her the additional hours of work she had requested if she slept with him.

47. On one occasion, Omar Moreno told Gomez-Velazquez to go to a trailer to clean it. When she entered the trailer, Oscar Moreno was waiting. Oscar Moreno proceeded to touch her butt and breasts and then rape her.

48. In or about March 2012, Gomez-Velazquez resigned because of the sexual harassment and rape.

Sandra Lopez

49. Omar Moreno hired Lopez in or about November 2011.

50. A few weeks after Lopez started working at the packaging facility, Garcia began routinely waiting for her outside the bathroom and telling her he liked her when she came outside.

51. Lopez complained and objected by rejecting his advances and telling him to leave her alone and that she was married. Garcia said that it did not matter that she was married; he could be with her anyway. This continued for two weeks and occurred throughout each day.

52. After approximately two weeks of this daily harassment, Omar Moreno assisted

Garcia to lure Lopez inside one of the trailers under false pretenses. Once Garcia had Lopez inside the trailer, he raped her. After raping her, Garcia told Lopez that if she told anyone about what had happened she would lose her job.

53. Lopez was fired in or about February 2012.

Ana Francisco

54. Omar Moreno hired Francisco in or about November 2011.

55. On one occasion soon after Francisco was hired, Omar Moreno insisted that a co-worker give him his car so that he could take Francisco home. Instead of driving Francisco home, Omar Moreno drove her to the Moreno Farms packaging facility. He instructed Francisco to get out; she refused. He dragged her by the arm, took her to the trailer, took off his pants, took out a condom, and instructed her to put it on him. Francisco refused and told Omar Moreno that she did not want to have sex with him.

56. Omar Moreno promised her more hours and better work if she had sex with him; he also complained that Francisco was not submitting to his proposition as other workers did. Francisco again insisted that she was not interested in having sex with him and asked to be taken home. Omar Moreno forcibly kissed her, put his clothes on, and took her home.

57. Afterwards, Garcia told Francisco that Omar referred to her as a “culera” (someone who refuses to have sex).

58. Omar Moreno began treating Francisco harshly the day after she refused to have sex with him. He yelled at her in front of other employees, grabbed her hands, and instructed her to work faster. He also gave her harder, more physically demanding work normally assigned to male workers.

59. In or about February 2012, Omar Moreno terminated Francisco's employment. He acknowledged at the time that Francisco was among his best employees.

Ligia Martinez

60. Omar Moreno hired Martinez in or about October 2011.

61. Immediately after Martinez started working at the packaging facility, Garcia began to harass her. He made daily sexual comments, including but not limited to: "esta buenota" ("you are fine"); "tanta carne y yo chimuelo" ("so much meat and I'm toothless"); "que morenota" (reference to her brown skin and good looks); and "what an ass you have." When Garcia saw Martinez go to the bathroom he would say to her: "Wipe it clean, wipe it real good because I want it." On other occasions, Garcia would make eye contact with Martinez and suck his fingers or make other sexual gestures. On one occasion, Garcia told Martinez he could see her pink underwear when she bent over and liked the color. Garcia would also tell Martinez he thought her husband was ugly and ask her why she was with him.

62. Garcia also touched Martinez on her butt and/or put his arm around her on a daily basis.

63. Martinez repeatedly complained and objected by rejecting Garcia's advances and telling Garcia that she was not interested in him, that she wanted him to stop touching her, and that she wanted him to stop saying offensive things.

64. On one occasion, Garcia told Martinez that if she did not want to sleep with him, she should sleep with one of Omar Moreno's uncles.

65. In or about January 2012, Garcia told Martinez that she had to go with him to the cooler and added: "vamos a ver de que cuero salen mas correas" ("let's see what you're made

of”). Martinez was terrified because she knew Omar Moreno and Garcia took female co-workers to the cooler and to the trailers to harass and sexually assault them.

66. On February 29, 2012, approximately a month after Garcia took Martinez to the cooler, Omar Moreno terminated Martinez. Martinez and Francisco were terminated on the same day. Omar Moreno told Martinez that she and Francisco were his best employees but he was “tired of hearing their names.”

67. Martinez saw Omar Moreno kiss Aguilar almost every day. Martinez regularly heard Omar Moreno yell out to Aguilar: “Come here. It’s your turn,” while slamming his fist against his open palm. Martinez also witnessed Aguilar say to Omar in response, “no” or “I don’t want to.” Omar Moreno would nonetheless order Aguilar out of the work line and take her to the cooler or the trailer.

Damages

68. As a result of the foregoing, Charging Parties suffered damages.

STATEMENT OF CLAIMS

69. Paragraphs 9 through 68 are fully incorporated herein.

70. Since at least as early as October 2011, Moreno Farms engaged in unlawful employment practices, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by subjecting Charging Parties to a sexually hostile work environment.

71. Since at least as early as October 2011, Moreno Farms engaged in unlawful employment practices, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by terminating Aguilar, Lopez, Francisco and Martinez because of their sex and constructively discharging Gomez-Velazquez because of her sex.

72. Since at least October as early as October 2011, Windmill Farms engaged in unlawful employment practices, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), by terminating Charging Parties in retaliation for opposing unlawful employment activities, including rejecting and refusing and attempting to reject and refuse unwelcome sexual conduct and advances.

73. The effect of the practices complained of in paragraphs 9-68 above has been to deprive Charging Parties of equal employment opportunities and otherwise adversely affect their status as an employee because of sex.

74. The unlawful employment practices complained of in paragraphs 9-68 above were intentional.

75. The unlawful employment practices complained of in paragraphs 9-68 above were done with malice or with reckless indifference to the federally protected rights of Charging Parties.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Moreno Farms, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from participating in discriminatory conduct based on sex including but not limited to permitting a sexually hostile work environment, terminating employees based on their sex, and retaliating against employees who engage in statutorily protected activity such as rejecting sexual advances in the workplace.

B. Order Defendant Moreno Farms to institute and carry out policies, practices, and

programs which provide equal employment opportunities women.

C. Order Defendant Moreno Farms to make whole Charging Parties, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Moreno Farms to make Charging Parties whole, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 9-68 above.

E. Order Defendant Moreno Farms to make Charging Parties whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 9-68 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Defendant Moreno Farms to pay Charging Parties punitive damages for its malicious and reckless conduct described in paragraphs 9-68 above, in amounts to be determined at trial.

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

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Date: August 28, 2014

RESPECTFULLY SUBMITTED,

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