

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

SAMANTHA BACA,

CASE NO.: CACE-16-003324

Plaintiff,

vs.

KURT TOMECECK and
ISLAND GIRL, LTD.,

Defendants.

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AMENDED COMPLAINT

Plaintiff, SAMANTHA BACA, by and through her undersigned counsel, brings this Amended Complaint against Defendant, ISLAND GIRL, LTD., and states as follows:

INTRODUCTION

1. This maritime case involves a female crew member, SAMANTHA BACA (“BACA”), who was brutally raped on the luxury yacht, ENDLESS SUMMER, by an intoxicated male crew member, RAFAL DOWGWILLOWICZ-NOWICKI (“RAFAL”). The rape occurred in the early morning of February 25, 2015 while the yacht was docked in navigable water in Broward County, Florida. The Defendant, ISLAND GIRL, LTD. (“ISLAND GIRL”) is the owner of ENDLESS SUMMER and employed BACA and RAFAL at the time of the rape.

JURISDICTION, VENUE AND PARTIES

2. This lawsuit seeks damages exceeding the jurisdictional minimum of this Court of \$15,000.00, exclusive of interest, costs, and attorney’s fees.

3. Venue properly lies in this judicial circuit in that the rape and other acts that are the subject of this lawsuit occurred in Broward County, Florida.

4. At all relevant times, Plaintiff, SAMANTHA BACA, was and is an adult female citizen and resident of the State of Florida. BACA was at all relevant times employed on a permanent basis by ISLAND GIRL as stewardess on ENDLESS SUMMER. At all relevant times, RAFAL was employed as a deckhand on ENDLESS SUMMER, where he also worked and resided.

5. ENDLESS SUMMER is a one hundred fifty (150) foot yacht with three decks. At the time of the rape, there were only three employees – BACA, RAFAL, and the captain/project manager KURT TOMECEK.

6. Defendant, ISLAND GIRL, is a Marshall Islands business entity conducting business in Florida, specifically the ownership, maintenance, and operations of ENDLESS SUMMER and the employment and supervision of employees who work aboard ENDLESS SUMMER.

7. At all times material hereto, ISLAND GIRL employed BACA on a full-time basis to serve as a seaman, as defined by the General Maritime Law and 46 U.S.C. 30104, (commonly known as the “Jones Act”), aboard the ENDLESS SUMMER. BACA performed all of her employment duties on ENDLESS SUMMER and was required to sleep overnight on ENDLESS SUMMER.

8. Pursuant to the Jones Act, ISLAND GIRL owed BACA the duty of providing a reasonably safe place to work and live on the cruise ship.

9. Pursuant to the General Maritime Law, ISLAND GIRL owed BACA the absolute and non-delegable duty to provide a seaworthy vessel.

10. Pursuant to the Jones Act and the General Maritime Law, ISLAND GIRL owed BACA the non-delegable duty to arrange, provide and pay for prompt, adequate, and complete medical care and treatment for illnesses and/or injuries that ISLAND GIRL may experience while in service to the vessel.

11. Pursuant to the Jones Act and the General Maritime Law, ISLAND GIRL owed BACA the non-delegable duty to provide timely and complete maintenance and cure for illnesses or injuries that BACA may experience while in service to the vessel.

12. In addition to both being employees on ENDLESS SUMMER, RAFAL and BACA also were required to reside on the yacht in private rooms on the lowest deck and were under the supervision and employment of the yacht owner, ISLAND GIRL and its project manager, KURT TOMECEK. TOMECEK's living quarters were on the third and highest deck of ENDLESS SUMMER.

13. The rape and sexual battery of SAMANTHA BACA by RAFAL DOWGWILLOWICZ-NOWICKI occurred in BACA's living quarters on lowest deck of ENDLESS SUMMER, while they were on board ENDLESS SUMMER in Broward County, Florida as part of their job duties.

14. The rape and sexual battery occurred in the early morning of February 25, 2015 when RAFAL returned to the yacht while clearly intoxicated after getting drunk at a Broward County bar. RAFAL was allowed to board ENDLESS SUMMER despite being intoxicated as there was no security on ENDLESS SUMMER to prevent or deter RAFAL from returning intoxicated.

15. Upon RAFAL's return to ENDLESS SUMMER, he forcefully entered BACA's stateroom, forcibly raped BACA and threatened to kill her if she did not comply with his sexual demands, including intercourse and oral sex. During the battery, RAFAL physically shoved, grabbed, pushed, and forced BACA while having aggressive, rough sex with her against her will.

16. BACA's supervisor on ENDLESS SUMMER, KURT TOMECEK, was the only other person aboard ENDLESS SUMMER at the time of RAFAL's rape of BACA. Due to a non-

functioning telecommunications system on ENDLESS SUMMER, the absence of any security, and the distance between their rooms which were two floors apart, there was no method for BACA to contact TOMECEK and BACA's incessant calls for help during the assault were unable to be heard by TOMECEK.

17. ISLAND GIRL and TOMECEK knew that the telecommunications system on the ENDLESS SUMMER was not working due to a refit that the yacht was undergoing but nevertheless placed BACA – the lone female on the yacht -- in living quarters where there was no security system and where she could not communicate her need for help in the event of an emergency.

18. On the date of the rape, there was no method for SAMANTHA BACA to immediately alert TOMECEK once she was in danger and at risk of harm by RAFAL.

19. Prior to RAFAL's rape of SAMANTHA BACA, ISLAND GIRL knew or should have known that RAFAL was unfit for his duties assigned and/or posed a risk of perpetrating unwanted sexual contact with SAMANTHA BACA.

20. Despite having such information, ISLAND GIRL retained RAFAL without any limitations on his employment, failed to provide additional supervision, and took no action to protect BACA with whom RAFAL would have foreseeable contact and the opportunity to be alone.

COUNT I
(JONES ACT - NEGLIGENCE)

21. Plaintiff repeats and re-alleges paragraphs 1 through 20 above.

22. At all times material, BACA was employed by ISLAND GIRL, LTD. as a seaman, within the definition of the Jones Act, to serve as a member of the crew of the yacht ENDLESS SUMMER which was in navigable waters on the date and time of the sexual battery and rape.

23. ISLAND GIRL owed BACA the duty to provide a safe place to work such that BACA could perform the job obligations in a reasonably safe manner and live aboard the vessel free from sexual violence and/or sexual harassment. ISLAND GIRL breached the foregoing duty, in the following respects, by:

- a. Failing to use reasonable care to provide BACA with a safe place to work and live on the cruise ship;
- b. Failing to adopt and enforce an alcohol control policy and other security systems;
- c. Failing to determine the sobriety and health of the crew before the crew boarded the vessel;
- c. Failing to provide any experienced and trained security officers, supervisors, and guards on the cruise ship and/or otherwise provide adequate security to its female crew members;
- d. Failing to install security cameras on the cruise ship in the crew area and other public areas, which are monitored by security personnel, which could serve as a deterrent to incidents of sexual harassment and/or battery or permit Defendant to respond to such incidents;
- e. Failing to provide adequate training, instruction, and supervision of its crew members;
- f. Failing to maintain and enforce reasonable rules and regulations regarding preventing sexual harassment and/or battery;
- g. Failing to perform adequate background checks on its crew;
- h. Negligently hiring, selection and retaining crew members with dangerous propensities;
- i. Requiring BACA to work under hostile conditions;
- j. Failing to warn BACA of the unreasonably dangerous conditions which existed in the workplace;

- k. Failing to provide prompt, adequate, and complete medical care which aggravated BACA'S injuries and caused BACA to experience additional pain and suffering and disability.

24. As a direct and proximate result of ISLAND GIRL's breach of the foregoing legal duties and negligence, BACA suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, loss of earnings, loss of ability to earn money, aggravation of previously existing conditions, and medical expenses. These losses and injuries are either permanent or continuing and BACA will suffer these losses and injuries in the future.

WHEREFORE, SAMANTHA BACA prays this Honorable Court enter a judgment against ISLAND GIRL, LTD. for compensatory damages in excess of the jurisdictional limits of this Court, together with costs, interest, and award any and all other relief this Court deems appropriate.

COUNT II
(UNSEAWORTHINESS)

25. Plaintiff re-alleges paragraphs 1 through 20 and alleges as follows:

26. At all times material hereto, ISLAND GIRL owned, operated, maintained, or controlled ENDLESS SUMMER, and employed and controlled the crew, and implemented work practices aboard ENDLESS SUMMER.

27. At all times material hereto, ISLAND GIRL owed BACA the non-delegable duty to provide BACA with a seaworthy vessel upon which to work and live free from sexual battery and/or sexual harassment.

28. ISLAND GIRL breached the foregoing duty by failing to provide BACA with a seaworthy vessel on which to work. ENDLESS SUMMER was unseaworthy by reason of the following:

- a. inadequate security system;
- b. a non-functioning telecommunications system which made it impossible for BACA to call for help on a three-deck, one hundred fifty (150) foot yacht in which she was the only female member of the crew and was two decks below her supervisor;
- c. Failing to use reasonable care to provide BACA with a safe place to work and live on the cruise ship;
- d. Failing to adopt and enforce a shore leave policy, alcohol control policy, and failing to determine the sobriety and health of the crew before the crew boarded the vessel;
- e. Unsafe living quarters which placed BACA at a risk of harm on a three-deck, one hundred fifty (150) foot yacht in which she was the only female member of the crew and was two decks below her supervisor; and
- f. The presence of a dangerous, violent and aggressive male crew member (RAFAL) who was had an opportunity to sexually batter the lone female crew member BACA without fear of being stopped or BACA's cries for help being heard.

29. The unseaworthiness of Defendant's vessel and/or the unsafe workplace provided to BACA was the legal cause of the injuries sustained by BACA.

30. Plaintiff in no way contributed to the unseaworthiness of the vessel.

31. As a direct and proximate result of ISLAND GIRL's breach of the foregoing legal duties and the unseaworthiness of the vessels, BACA suffered bodily injury and resulting pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, loss of earnings, loss of ability to earn money, aggravation of previously existing conditions, and medical expenses. These losses and injuries are either permanent or continuing and BACA will suffer these losses and injuries in the future.

WHEREFORE, SAMANTHA BACA prays this Honorable Court enter a judgment against ISLAND GIRL, LTD. for compensatory damages in excess of the jurisdictional limits of this Court, together with costs, interest, and pre-judgment interest, and award any and all other relief this Court deems appropriate.

COUNT III
(CURE)

32. BACA re-alleges paragraphs 1 through 20 and alleges as follows:

33. As a seamen, BACA is due maintenance and cure, including but not limited to prompt, proper and adequate medical care, transportation to and from medical providers, room and board, and unearned wages.

34. ISLAND GIRL is aware of BACA's injuries. BACA has been denied maintenance and cure by Defendant.

35. Defendant has not paid Plaintiff for medical expenses, counseling, and cure.

36. Plaintiff has been forced to hire undersigned counsel to represent her to obtain full maintenance and cure that she is owed, and she is bound to pay her attorney a reasonable fee.

WHEREFORE, SAMANTHA BACA demands judgment against Defendant for damages, plus court costs and pre-judgment interest, post-judgment interest, prejudgment interest where applicable, punitive damages, attorney's fees under general Maritime law and any other further relief that the court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury and all issues so triable as a matter of right.

CERTIFICATE RE: E-FILING AND E-SERVICE

I HEREBY CERTIFY that this Amended Complaint was filed electronically in compliance with Florida Rules of Judicial Administration 2.515 and 2.516(e).

I FURTHER CERTIFY for purposes of service of any documents after initial process that staff.efile@pathtojustice.com is primary.

Dated: July 13, 2016.

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