

CAUSE NO. _____

STEFANI BAMBACE,

Plaintiff,

V.

BERRY Y&V FABRICATORS, LLC.,

Defendant.

In The

District Court

Harris County, Texas

_____ Judicial District

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Stefani Bambace, (hereinafter referred to as “Bambace” or “Plaintiff”) Plaintiff, complains of Berry Y&V Fabricators, LLC. (hereinafter referred to as “the Company” or “Defendant”) Defendant, and for cause of action against it would show the Court as follows:

1. INTRODUCTION

- 1.1. This suit is brought pursuant to Rule 190.3 of the Texas Rules of Civil Procedure and is to be administered under Discovery Control Plan Level 2
- 1.2. Plaintiff demands a JURY TRIAL in this case under state common law and statutory entitlement as to any and all issues triable to a jury.
- 1.3. This action seeks legal and equitable relief, actual, compensatory damages, attorneys’ fees, expert witness fees, taxable court costs, pre-judgment and post-judgment interest and all other relief granted by the court.

2. PARTIES

- 2.1. Plaintiff Stefani Bambace is a resident of Houston, Harris County, Texas. At all pertinent times she was a resident of Houston, Harris County, Texas.

2.2. Defendant, Berry Y&V Fabricators, LLC, is a Montana Limited Liability Company. The Company may be served with process by serving its registered agent, C T Corporation System, 3011 American Way, Missoula, MT 59808.

3. VENUE

3.1. Venue of this proceeding is proper in Houston, Harris County, Texas pursuant to Texas Civil Practice & Remedies Code § 15.035 because Harris County is the county in which all or part of the cause of action accrued and the county where Plaintiff resides.

4. JURISDICTION

4.1. The jurisdiction of this Court is invoked pursuant to the Texas Workforce Commission-Civil Rights Division, as codified in the Texas Labor Code 21.001, *et seq.* The jurisdiction of this Court is invoked to secure the protection of and redress the deprivation of rights secured by Chapter 21 of the Texas Labor Code. The unlawful employment practices were committed within the jurisdiction of this Court. The amount in controversy is within the jurisdictional limits of this Court.

5. PROCEDURAL REQUISITES

5.1. All conditions precedent to the filing of this action have been met by Plaintiff in that she has filed timely her complaint with the Texas Workforce Commission-Civil Rights Division (“TWC-CRD”) and has received her right-to-sue letter from said agency to pursue her claims under Chapter 21 of the Texas Labor Code.

5.2. Plaintiff filed a Charge of Discrimination against the Defendant with the TWC-CRD on or about August 21, 2017.

- 5.3. On or about April 3, 2018, Plaintiff received her Notice of Right to File a Civil Action issued by the TWC-CRD entitling her to file suit based on her claims of discrimination and retaliation.
- 5.4. The filing of this lawsuit has been accomplished within sixty (60) days of Plaintiff's receipt of the notice from the TWC-CRD.

6. FACTS

- 6.1. Bambace is a former employee of the Company.
- 6.2. Plaintiff began her employment in mid-November 2016. She was initially hired as a private tutor and was told that she would be reporting to Tonja Fulghum. As part of her employment, she was informed that she would receive standard benefits such as medical, dental, and vision insurance, and vacation, and other benefits.
- 6.3. During Plaintiff's employment, she did not actually work on-site at the company; rather, she worked from the home of Lawrence ("Allen") Berry, the President of the Company, and his wife, Danielle Berry.
- 6.4. Initially Plaintiff was the private tutor for the Berrys' two children, and then after they entered school, she became the personal assistant to Ms. Berry. The Company was aware of the change in her employment position.
- 6.5. During Plaintiff's employment, she was subjected to sexual harassment, and she worked in a sexually charged and hostile work environment.
- 6.6. For example, a friend of the family, Keith Boxx, introduced himself to Plaintiff and groped her buttocks while giving her a hug. After the hug, he made a comment about how Plaintiff was the perfect "cuddling size." The second time Plaintiff met Mr. Boxx, Plaintiff was walking past him to get something, and he made a comment to Ms. Berry and they started

laughing. When Plaintiff turned to see what they were laughing about, he said, “I was just checking out your ass. Oops, did I say that out loud?” They both laughed again, and Ms. Berry said, “She’s a good girl; she’s too good for you.”

- 6.7. On April 4, 2017, Ms. Berry called Plaintiff into her bedroom; she was completely naked, rubbing coconut oil on her body and told Plaintiff how it’s great for lube. She then asked Plaintiff, “Do you like girls?” Plaintiff said “No,” and she laughed and said, “Ok, I’m just wondering. I didn’t either until about two months after marrying Lawrence. Well...first time for everything.” For the next week she would say things like, “I’m giving you two months, remember?” while laughing and alluding to Plaintiff having a threesome with her and her husband.
- 6.8. On April 4, 2017, Ms. Berry asked Plaintiff if her boyfriend “pulls out” when they have sex and said, “Lawrence never cums inside me. I even prefer it all over. SNOW DAY!!”
- 6.9. Ms. Berry asked Plaintiff to change all the batteries in the closet safes in both houses. When Plaintiff entered the master bedroom of their pool house, she was in there with Oscar, the officer on duty at the time. Ms. Berry said, “Oh, we were just talking about you. I was just telling him how you’re the hottest one here.”
- 6.10. During the week of June 12th, Ms. Berry and friends were going to the Electric Daisy Carnival in Las Vegas. Ms. Berry told Plaintiff that all the men on the trip usually bring prostitutes with them so they will have “guaranteed pussy.” She then went on to tell Plaintiff that two of her friends, Calob McDonald and Oscar Diaz, asked her if they could bring her to Vegas with them (presumably to have sex with them), to which she said, “You know, if I thought they were husband material I would allow it, but...”

- 6.11. Ms. Berry showed Plaintiff photos of her and her best friend, Cora Suzanne Hiller, engaging in sexual acts.
- 6.12. Ms. Berry showed Plaintiff a nude photo of her from the hotel room bed during her stay in Las Vegas. She also told Plaintiff that she “accidentally” sent the photo to Sergeant Scott Dyer of HPD, who worked as private security at their house. Ms. Berry told Plaintiff that she tried to make passes at Officer Dyer but he’s “too straight-laced.” She also said that Office Dyer was “giving [her] a complex” because he will not entertain her sexual advances.”
- 6.13. Ms. Berry told Plaintiff that “I didn’t know big dicks came in white until I met my husband.”
- 6.14. Ms. Berry told Plaintiff that she said to her husband, “A few blowjobs ago you promised me an \$11,000 bracelet.”
- 6.15. April 24-30, 2017, Plaintiff accompanied the Berry family on their annual family trip to the Dominican Republic where Plaintiff worked as a nanny to their daughters. The night they arrived Ms. Berry asked her to book a flight for Jessica Pimentel and her 10-year-old daughter to fly to the Dominican Republic the following day. At the time Jessica and her daughter were living in the Berry’s pool house. Ms. Berry told Plaintiff that her husband Lawrence met her at The Men’s Club and the three of them engage in sexual acts for which Jessica is paid. Ms. Berry expressed to Plaintiff that she does not approve of the situation but since she has no say in the matter, she would rather “play nice” and join them to make her life more tolerable.
- 6.16. On June 26, 2017, Plaintiff complained to Human Resources about the sexual harassment and the sexually charged and hostile work environment. One week later, Plaintiff was

notified that they would be starting the investigation and Plaintiff would be on paid absence until the investigation was complete. Two weeks after that, on July 17th Plaintiff was terminated because there was allegedly no longer a need for her position. Plaintiff worked in a sexually hostile work environment and she was discriminated against and retaliated against based on her complaints of sexual harassment and the sexually charged and hostile work environment in violation of Chapter 21 of the Texas Labor Code.

- 6.17. Plaintiff executed an Arbitration Agreement (the “Agreement”) with Defendant on November 14, 2016.
- 6.18. Since executing the Agreement, Texas, and the entire nation, including a number of major corporations, and even top nationwide law firms, have stood against arbitration agreements in sexual harassment cases, and have decided to do away with them altogether in sexual harassment cases.¹
- 6.19. Quite simply, arbitration in sexual harassment cases needs to end. In fact, in 2018, every attorney general in the United States, including Texas, recently signed a letter to Congress demanding that lawmakers end the practice of mandatory arbitration in sexual harassment cases. *See* Exhibit A. The officials stated in the letter that the secrecy of the settlements prevents the public from learning about harassment complaints and that ending the practice “would help to put a stop to the culture of silence that protects perpetrators at the cost of their victims.” *Id.* The letter also states, “Congress today has both opportunity and cause to champion the rights of victims of sexual harassment in the workplace by enacting legislation to free them from the injustice of forced arbitration and secrecy when it comes to seeking redress for egregious misconduct condemned by all concerned Americans.” *Id.*

¹ *See* <https://www.nytimes.com/2017/12/19/technology/microsoft-sexual-harassment-arbitration.html>; *see also* <https://www.law360.com/articles/1026032/munger-tolles-arbitration-dust-up-may-spark-biglaw-changes>.

6.20. Accordingly, Plaintiff seeks a judicial declaration that the Agreement is void based on public policy and to protect future potential victims of sexual harassment. Defendant is not entitled to have this matter arbitrated under the Agreement.

7. FIRST CAUSE OF ACTION: CHAPTER 21 OF THE TEXAS LABOR CODE

7.1. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

7.2. Defendant, by and through its agents and employees, has intentionally engaged in the aforementioned practices of sexual harassment, discrimination, and retaliation made unlawful by the Texas Labor Code.

8. SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

8.1. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

8.2. Pursuant to Tex. Civ. Prac. & Rem. Code §37.004, a person “interested under a [written contract] or whose rights, status or other legal relations are affected by a [contract] may have determined any question of construction or validity arising under the [contract] and obtain a declaration of rights, status or other legal relations thereunder.”

8.3. There is a real and substantial judiciable controversy between the parties over the validity of their respective rights and obligations under the Agreement.

8.4. Accordingly, Plaintiff seeks a judicial declaration that the Agreement is void based on public policy, and Defendant is not entitled to have this matter arbitrated under the Agreement.

9. DAMAGES

9.1. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered economic loss, compensatory loss, and mental anguish.

9.2. Plaintiff is not bringing any federal claims in this lawsuit. The unlawful employment practices were committed within the jurisdiction of this Court. The amount in controversy is within the jurisdictional limits of this Court. Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000, in addition to all other relief to which Plaintiff is entitled.

10. ATTORNEY'S FEES

10.1. Defendant's actions and conduct as described herein and the resulting damage and loss to Plaintiff has necessitated her retaining the services of SHELLIST LAZARZ SLOBIN LLP, 11 Greenway Plaza, Suite 1515, Houston, Texas 77046, in initiating this proceeding. Plaintiff seeks recovery of reasonable and necessary attorneys' fees.

11. JURY DEMAND

11.1. Plaintiff hereby makes her request for a jury trial. A jury fee in the amount of \$30.00 is being paid simultaneously with the filing of this Petition.

12. PRAYER

12.1. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and answer, and that on final hearing of this cause, Plaintiff has the following relief:

- 12.1.1. Judgment against Defendant for actual damages sustained by Plaintiff as alleged herein;
- 12.1.2. Pre-judgment interest at the highest legal rate;
- 12.1.3. Post-judgment interest at the highest legal rate until paid;
- 12.1.4. Back-pay;
- 12.1.5. Front-pay;

- 12.1.6. Damages for mental pain and mental anguish;
- 12.1.7. Compensatory damages;
- 12.1.8. Punitive damages;
- 12.1.9. Attorneys' fees;
- 12.1.10. All costs of court expended herein;
- 12.1.11. Such other and further relief, at law or in equity, general or special to which Plaintiff may show she is justly entitled.

Respectfully submitted,

SHELLIST | LAZARZ | SLOBIN LLP

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