

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN SECTION OF
TENNESSEE AT KNOXVILLE

FILED

NOV 12 2010

JAMIE BRUBAKER,

Plaintiff,

v.

Docket No.: 3:10-cv-477

Clerk, U. S. District Court
Eastern District of Tennessee
At Knoxville

MICHAEL DAVID BARRETT,
COMBINED INSURANCE COMPANY OF AMERICA,
AON INSURANCE MANAGEMENT SERVICES, INC.

Jury Trial Demanded.

Phillips/Shirley

Defendants.

COMPLAINT FOR DAMAGES

Comes the Plaintiff, by and through undersigned counsel, and for her Complaint for civil damages against the Defendants, jointly and severally, would state to this Honorable Court as follows:

PARTIES

1. Plaintiff, Jamie Brubaker, is a citizen and resident of Tennessee, residing in Knox County, Tennessee;
2. Defendant, Michael David Barrett, is believed to be a citizen and resident of Westmont, Illinois, 60606;
3. Defendant, Combined Insurance Company of America, has its headquarters located at 1000 North Milwaukee Avenue, Glenview, Illinois, 60025;

4. Defendant, AON Insurance Management Services Inc., has its headquarters located at 200 East Randolph Street, Chicago, Illinois 60601;

JURISDICTION & VENUE

5. Jurisdiction is proper before this Honorable Court as the parties herein are completely diverse providing proper jurisdiction in this court pursuant to 28 U.S.C. § 1332. Further jurisdiction and venue is proper before this Honorable Court as the amount in controversy exceeds \$75,000;

FACTS GIVING RISE TO CAUSE OF ACTION

6. Plaintiff was employed by Combined Insurance Company of America (hereinafter, "Combined") in February of 2002;

7. Plaintiff resigned her position from Combined to accept a job with New York Life until June 2005 whereupon Plaintiff took a job with Waddle & Reed until July 2006;

8. Plaintiff was re-employed by Combined on July 2006 in the Life Health Division. The purpose was to build a successful branch of this division over the States of Wyoming and Montana - Plaintiff was promoted to Branch Manager on December of 2006;

9. Co-Defendant, Michael David Barrett (hereinafter, "Barrett"), was also employed at Combined at all relevant times herein and was the Executive Administrator over the Life Health Division of Combined;

10. As part of Barrett's position as Executive Administrator over the Life Health Division Barrett was to oversee all other administrative assistants of the Life Health Division, which included the Plaintiff;

11. In January of 2007, Plaintiff attended a Branch Managers Congress in Chicago, Illinois where she met Barrett for the first time;

12. In April of 2007, Plaintiff was required by Combined to attend Jet VI Training in Chicago, Illinois. Plaintiff was provided a room at the Hilton by Combined where the training conferences were conducted by Barrett;

13. In August of 2007, Combined conducted a contest with all the branch managers in the Life Health Divisions. Barrett bet the other divisional managers and picked the Plaintiff and her team to represent his division;

14. Also in August of 2007, Plaintiff was required by Combined to attend a third phase of the Jet VI training in Chicago, Illinois. Plaintiff saw Barrett at the hotel on several occasions during this training event;

15. That during this same time Plaintiff began achieving records in sales. Due to Plaintiff's success Barrett insisted that she be written up in the Combined Company paper. Thereafter, Plaintiff continued achieving excellent sales for Combined Barrett insisted Plaintiff be written up in the Combined Company paper only this time with her picture included;

16. As part of standard operating procedures with Combined Plaintiff would have a roommate when she attended seminars and business trips which required travel

for Combined, however, Plaintiff began noticing on or about July/ August of 2007 that she was being booked hotel rooms without any roommates while on business trips for Combined away from all the other sales team members who were placed in a separate section of the hotels. In March of 2009 Plaintiff stayed at the Holiday Inn hotel in Nashville, Tennessee (2200 Elm Hill Pike) and Barrett stayed on the same floor as the Plaintiff on this trip;

17. In October of 2009, Barrett was arrested for the peeping tom videos he made of Erin Andrews, an ESPN employee well known for her appearance at various college football events;

18. That Plaintiff was assured by Defendant upon questioning it, Ace Limited (hereinafter "Ace"), which had purchased Combined that no former employees of Combined and now Ace had any reason to worry that Barrett had made videos of them as he had of Erin Andrews;

19. In April of 2010, Plaintiff was provided the number for the Federal Bureau of Investigation (hereinafter "FBI"), which had been investigating Barrett's conduct regarding Erin Andrews;

20. That the FBI obtained Plaintiff's driver's license and told her that they had a possible match on a video they had obtained from Barrett;

21. In May of 2010, Plaintiff met with the FBI who showed the Plaintiff two videos, one of which Plaintiff identified as being her, unclothed and putting on her make-up in her hotel room. Plaintiff was immediately sickened with the need to vomit

and could not control her crying at the site of the videos. That upon information and belief Barrett made these videos of Plaintiff while she was unclothed with his company issued cell phone. Further, Defendants knew or had reasonable grounds to know that Barrett was making these videos with his company issued cell phone and emailing them to recipients in Europe.

22. That the knowledge that Barrett, Plaintiff's supervisor and immediate manager at Combined, had videotaped Plaintiff through her hotel room door peep hole and that ACE had assured Plaintiff she had nothing to worry about caused the Plaintiff such extreme emotional distress Plaintiff was forced to quit her job;

23. That upon information and belief Barrett sold the unclothed videos of Plaintiff in Europe for distribution on the worldwide web.

24. That Barrett as a manager and supervisor over the Plaintiff in her employment with Defendants and Combined exercised authority over the Plaintiff;

25. That Barrett in his course and scope of his employment for the Co-Defendants by videotaping the Plaintiff through her hotel room peephole sexually harassed Plaintiff;

26. That as a result of the Defendants sexual harassment of the Plaintiff she has suffered severe emotional damages, embarrassment, pain, suffering and lost wages;

COUNT I - SEXUAL HARRASMENT AGAINST DEFENANTS, BARRET, COMBINED,
AON

27. Plaintiff re-alleges paragraphs 1-26 in support of Count I;

28. That Barrett as a manager and supervisor over Plaintiff in her employment with Combined exercised authority over Plaintiff;

29. That Barrett in his course and scope of his employment for his Co-Defendants, Combined, AON and ACE, by video taping Plaintiff through her hotel room peephole sexual harassed Plaintiff;

30. That as a result of Defendants sexual harassment of the Plaintiff she has suffered severe emotional damages and lost wages;

COUNT II - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

31. Plaintiff re-alleges paragraphs 1-26 in support of Count II;

32. Defendants conduct was intentional or reckless;

33. Defendants conduct was so outrageous that it cannot be tolerated by civilized society;

34. Defendants conduct resulted in serious mental injury to the Plaintiff;

COUNT III - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

35. Plaintiff re-alleges paragraphs 1-26 in support of Count III;

36. Defendants had a duty to act reasonable in their dealings with her as an employee;

37. Defendants breached that duty by negligent supervision of Barrett; negligence in filming by Barrett; negligence in failing to investigate Barrett, and negligence in conveying a false sense of security to Plaintiff;

38. Defendants caused severe emotional distress on the Plaintiff;

39. Plaintiff is entitled to recover damages under a theory of negligent infliction of emotional distress;

COUNT IV - NEGLIGENCE AS TO DEFENDANTS COMBINED & AON

40. Plaintiff re-alleges paragraphs 1-26 in support of Count IV;

41. That Defendants owed a duty of care to Plaintiff as an employee of Defendants where Plaintiff was under the direct supervisory position of Barrett;

42. That Defendants breached their duty of care to the Plaintiff when they failed to properly investigate Barrett's conduct when Defendants were made aware of Barrett's conduct as to Erin Andrews and further as to Defendants' own employees which were exposed to Barrett and more specifically the Plaintiff, telling Plaintiff she had nothing to worry about regarding Barrett taking videos of employees of the Defendants;

43. Defendants were further guilty of negligent supervision in failing to supervise and monitor the activities of Barrett;

44. That as a direct and proximate cause of Defendants' breach of their duty of care for the Plaintiff, Plaintiff has suffered damages;

COUNT V - CONSTRUCTIVE DISCHARGE

45. Plaintiff re-alleges paragraphs 1-26 in support of Count V;

46. Defendants acts created a hostile work environment that rendered Plaintiff's working conditions so intolerable that resignation was Plaintiff's only reasonable alternative;

47. Plaintiff's working conditions were so difficult and unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign;

COUNT VI - OUTRAGEOUS CONDUCT

48. Plaintiff re-alleges paragraphs 1-26 in support of Count VI;

49. The acts of the Defendants were outrageous and constitute the tort of outrage;

50. The Defendants acts were outrageous, atrocious and extreme beyond all possible bounds of decency and utterly intolerable in a civilized community;

51. Defendants acted intentionally by videotaping and permitting the filming and/or broadcast set forth above, and acted intentionally to inflict emotional distress on the Plaintiff who suffered severe emotional distress;

COUNT VII - INVASION OF PRIVACY

52. Plaintiff re-alleges paragraphs 1-26 in support of Count VII;

53. Defendants violated the privacy rights of the Plaintiff

a. **Intentional Invasion on Seclusion:**

The hotel room filmed by Barrett's company issued cell phone was a private and secluded place and Plaintiff had a right of privacy to prevent invasion into this private, confidential and protected area. The intentional acts of Barrett to film Plaintiff while unclothed in her hotel room were an invasion of privacy under the theory of intentional invasion on seclusion.

b. **Invasion of Privacy; Public Disclosure of Private Facts:**

Plaintiff further avers that the Defendant's through Barrett published the private and confidential images of the Plaintiff's unclothed body on the Internet (World Wide Web). Plaintiff states a cause of action of invasion of privacy under a theory of public disclosure of private facts;

c. **Invasion of Privacy Rights to the Photographs and Films of the Plaintiff:**

Plaintiff further avers that the Defendants improperly invaded the privacy rights of the Plaintiff in the photographs and films of the Plaintiff. In this case the Defendants photographed and filmed (or permitted filming) of the Plaintiff without her consent or permission and broadcast these images on the Internet in an exploitative and lurid way. This constitutes an invasion of the privacy rights in the photographs and films of the Plaintiff.

COUNT VIII - RECKLESSNESS

54. Plaintiff re-alleges paragraphs 1-26 in support of Count VIII;

55. Plaintiff avers the acts of the Defendants constitute recklessness, which proximately caused severe emotional distress to Plaintiff.

WHEREFORE, PREMISES CONSIDERED PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

A. For this Complaint to be filed and served upon the Defendants herein requiring that the Defendants answer this Complaint within the time required by law;

B. That the Plaintiff be awarded actual; and punitive damages in an amount to be determined by the trier of the fact;

C. That the Plaintiff be awarded all her discretionary costs jointly and severally against the Defendants;

D. That the costs of this cause be taxed against the Defendants;

E. For general relief.

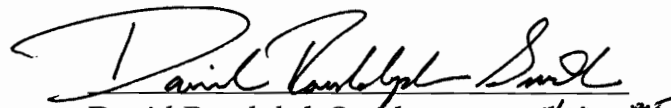
Respectfully submitted,

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