

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

ATHENA NICK,

Plaintiff

v.

INTECON, LLC,

Defendant.

Complaint

COMES NOW Plaintiff, Athena Nick, and for her Complaint against Defendant, alleges the following:

Introduction

1. This is a proceeding for reinstatement and damages to redress violations of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e. Plaintiff claims that she was subjected to hostile work environment sexual harassment, and termination in retaliation for her complaints about, and opposition to, unlawful discrimination.

Jurisdiction

2. This Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1343 to enforce the provisions of Title VII.

Venue

3. The unlawful employment actions described below were committed in the state of Colorado. Venue is proper in the United States District Court for the District of Colorado under 28 U.S.C. § 1391(b).

Exhaustion of Administrative Remedies

4. On or about December 30, 2010, Plaintiff filed a charge of discrimination against Defendant with the United States Equal Employment Opportunity Commission in Denver, Colorado alleging discrimination on the sex, and retaliation.

5. On or about July 14, 2011, the Equal Employment Opportunity Commission mailed a Right to Sue letter to Plaintiff. This action was commenced within 90 days of Plaintiff's receipt of that letter.

Parties

6. Athena Nick is a woman who was employed by Defendant INTECON, LLC in various positions, including receptionist, executive assistant to the CEO, and manager.

7. Defendant INTECON, LLC ("INTECON") is a Colorado limited liability company which provided consulting services to government and corporate customers.

General Allegations

8. Paragraphs 1 through 7 are incorporated herein.

9. Ms. Nick commenced her employment with INTECON on September 1, 2010, working as a front desk receptionist.

10. Within one week of her hire, Ms. Nick was promoted, and began working as the Executive Assistant to INTECON's CEO, Ray Phillips.

11. Not long after she was hired, Ms. Nick's duties were expanded to include working as the technical team manager for INTECON's involvement in the Department of

Defense's Mentor-Protégé program with defense contractor L-3. She was also assigned to be INTECON's lead point of contact for ISO9001 certification, and given her own private office.

12. As part of her duties as the technical team manager for the Mentor-Protégé program, Ms. Nick traveled to Tampa, Florida with Mike Anderson, INTECON's owner and President, and Ray Phillips, INTECON's CEO, to attend the Service Disabled Veteran Owned Small Business Conference from October 26-30, 2010.

13. On October 26, 2010, Ms. Nick met Mr. Phillips and Mr. Anderson at Denver International Airport to depart for Tampa. From the time that Mr. Anderson arrived at the airport that morning, until the group returned to Colorado on October 30, 2010, Mr. Anderson subjected Ms. Nick to a continuous barrage of unwelcome and offensive comments about her appearance and her interactions with men.

14. The following paragraphs 15 through 51 contain recitations or examples of Mr. Anderson's comments and his interactions with Ms. Nick that she found to be offensive and unwelcome.

15. When Mr. Anderson arrived at the airport to leave for Tampa, Ms. Nick was having a conversation with the passenger in line in front of her; Mr. Anderson saw this and loudly stated "I knew you would be talking with a guy." He then loudly commented to Mr. Phillips, "didn't I tell you she would be talking with a guy."

16. While waiting to retrieve their luggage after arriving in Tampa, Mr. Anderson asked Ms. Nick if she had ever been the Homecoming Queen.

17. Ms. Nick felt this question was intrusive and intended to be a way for Mr. Anderson to engage in additional commentary about her appearance. Accordingly, Ms. Nick did not answer his question.

18. When she did not answer immediately, Mr. Anderson began making “ooh” and “aah” noises before stating something to the effect of “that was a long pause . . . you’d better tell us.”

19. Ms. Nick did not want to answer his question, but Mr. Anderson continued needling her about it until she admitted that she had twice been Homecoming Queen while in high school.

20. Throughout the course of the conference, Mr. Anderson repeated the information about Ms. Nick’s election as Homecoming Queen to a number of attendees, which subjected her to extreme embarrassment.

21. On the evening of October 26, 2010, Mr. Anderson, Mr. Phillips, and Ms. Nick went to dinner at Mollie’s Steakhouse in Tampa. While walking to the restaurant, Mr. Anderson repeatedly informed Ms. Nick that the people around her were “checking you out.”

22. Later, during dinner, Mr. Anderson made a number of remarks about how Ms. was dressed and called her “the INTECON model” on multiple occasions. Notably, Ms. Nick was dressed in professional attire—a skirt and a blouse.

23. Before the dinner was over, the restaurant’s owner approached the table and made a comment about Ms. Nick being “a beautiful lady.” Although Ms. Nick was embarrassed by his attention, and stated her embarrassment, Mr. Anderson felt it was appropriate to recount this incident to other people during the conference.

24. On the ride back to the hotel after dinner, Mr. Anderson told Ms. Nick that because of the way she looks, she was part of his “new business model.”

25. Wednesday, October 27, 2010 was the kick-off meeting for the Mentor-Protégé program between L-3 and INTECON. Throughout that meeting, Mr. Anderson repeatedly called Ms. Nick “the INTECON model,” and also stated multiple times that “all the men in the room must love you because you are so attractive.”

26. Later during the kick-off meeting, Ms. Nick was discussing cage codes with L-3’s Senior Vice President and General Manager, Sam Clopper, and Mr. Anderson made statements expressing his belief that Mr. Clopper and Ms. Nick were having a secretive, inappropriate conversation of an intimate nature.

27. When Mr. Clopper loaned Ms. Nick his suit coat because she was cold, Mr. Anderson insisted on taking a picture of me wearing his jacket, and intimated that the interaction between the two was somehow inappropriate or romantic.

28. After the meeting concluded, Mr. Anderson, Mr. Phillips, representatives of L-3, and Ms. Nick went to dinner at Bern’s Steakhouse.

29. While Mr. Clopper and Ms. Nick were having a conversation during dinner, Mr. Anderson again commented that they appeared to be having an intimate conversation.

30. At that time, Mr. Anderson announced to the whole table that “Sam and Athena are in another world having their own special conversation.”

31. During that dinner at Bern’s Steakhouse, Mr. Anderson once again directed the conversation toward Ms. Nick’s physical appearance, and informed the table that she had left a “modeling career to come to INTECON.”

32. As the dinner progressed, Mr. Anderson continued to make comments that were insulting and demeaning to Ms. Nick. On several occasions, when a man at the table would get up to use the restroom, Mr. Anderson asked “Do you need any help in there? Because Athena is here if you do.”

33. It was clear from Mr. Anderson’s tone of voice and facial expressions, as well as litany of prior comments about Ms. Nick, that his comments about Ms. Nick’s availability to provide “help” to the men going to the restroom were of a sexual nature and intended to objectify and demean her.

34. Mr. Anderson’s comments were made in front of managers and vice presidents from L-3, as well as the CEO of INTECON.

35. Ms. Nick found Mr. Anderson’s comments to be extremely humiliating and embarrassing.

36. Before the dinner ended, Mr. Anderson distributed men’s boxer shorts to all the L-3 representatives at dinner, and then insisted on taking a photo of Ms. Nick among the men holding up the underwear.

37. The following morning, Ms. Nick had breakfast with Mr. Anderson and Mr. Phillips prior to a golf outing that the three of them were attending with Wayne Pizer from L-3.

38. During breakfast, Mr. Anderson informed Ms. Nick that her role during the golf outing was to be very social and that she was not to talk at all about business. This comment led Ms. Nick to believe that Mr. Anderson’s purpose in having her attend the outing was merely to serve as “eye-candy” for the other participants in the outing.

39. Throughout the round of golf, Mr. Anderson again referred to Ms. Nick as “the INTECON model.”

40. Ms. Nick is not a golfer, and was not playing golf during the outing. It was her plan to merely observe the round of golf; however, Mr. Anderson decided to involve Ms. Nick by ordering her to move the flagstick from the hole on each green. During the round, Mr. Anderson referred to Ms. Nick as “flag girl” and repeatedly spoke to her in an objectifying and demeaning manner.

41. Mr. Anderson also made comments about how well she and Mr. Pizer were “bonding;” intimating that they were having an affectionate or romantic conversation.

42. Later that evening, Ms. Nick went to dinner with Mr. Anderson and Mr. Phillips at the Sheraton Riverwalk Restaurant.

43. During dinner, Mr. Anderson asked Ms. Nick to rate, on a scale of one to ten, how attractive she believed herself to be.

44. Since Ms. Nick felt that all of Mr. Anderson’s comments about her appearance were inappropriate, she attempted to deflect his question by not responding and stating that she believed a person’s attractiveness is related to their ability to interact with and present themselves to others. Mr. Anderson responded to her answer by stating “bullshit.”

45. The next morning, October 29, 2010, Ms. Nick walked with Mr. Anderson and Mr. Phillips from the hotel to the convention center. During the walk, Mr. Anderson made comments about how Ms. Nick was “going to cause an accident with your body,” and also that passersby were “checking you out from their cars.” He asked Ms. Nick “did you see that guy? Man, they are all staring at you.”

46. Mr. Anderson then commented about Ms. Nick's choice of clothing—she was dressed in business attire—and stated that he was sure there would be a lot of male attention at INTECON's trade show booth all day because she was there.

47. Throughout the sessions of the conference, Mr. Anderson's behavior toward Ms. Nick did not change.

48. At one point, a photographer was preparing to take picture of a group of people, including Ms. Nick, who was the only woman in the photo. Prior to the picture being taken, Mr. Anderson loudly yelled to Ms. Nick "stick your chest out!"

49. Additionally, Mr. Anderson insisted that Ms. Nick be present whenever he handed out men's boxer shorts to anyone working with INTECON. Mr. Anderson appeared to derive great pleasure from distributing underwear to men in Ms. Nick's presence.

50. After the conference had concluded for the day, and on the walk back to the hotel, Mr. Anderson repeated some of his earlier comments about people getting in accidents because they were distracted by Ms. Nick's appearance, and also that people were "checking you out."

51. At one point in time, a passing car honked while Mr. Anderson, Mr. Phillips, and Ms. Nick were crossing a street against the light. When the driver honked, Mr. Anderson started making "ooh" and "aah" sounds and stated that the driver who honked had thought Ms. Nick "was hot."

52. Mr. Anderson made similar comments to Ms. Nick for the remainder of the trip to Tampa, and finally stopped commenting about her appearance when Ms. Nick was met by her husband and young daughter upon her return to Denver International Airport.

53. Mr. Anderson made the comments to Ms. Nick that are set forth above in paragraphs 15-52 because of Ms. Nick's gender.

54. Mr. Anderson behaved inappropriately toward Ms. Nick as set forth above in paragraphs 15-52 because of Ms. Nick's gender.

55. The comments Mr. Anderson made to Ms. Nick, and about Ms. Nick to others, caused her to suffer extreme embarrassment and humiliation.

56. Mr. Anderson's comments and behavior made it clear to Ms. Nick that he did not view her as a valued employee, or even as an employee, but rather as an object he could show off during the conference and use to titillate himself and other male attendees of the conference.

57. Accordingly, Mr. Anderson treated Ms. Nick in a demeaning and belittling manner because of her gender.

58. Following the conference in Tampa, INTECON held its monthly "all hands" luncheon in downtown Colorado Springs on Monday, November 1, 2010.

59. After enduring much unpleasant treatment from Mr. Anderson over the previous five days, Ms. Nick purposefully avoided him at the luncheon.

60. As the luncheon progressed, Mr. Anderson walked to where Ms. Nick was seated and asked her to stand up. Ms. Nick asked "why?" to which Mr. Anderson responded "just stand up!" Ms. Nick again asked "why?" to which Mr. Anderson responded "because I want to see what you are wearing! I want to show everyone our new INTECON model."

61. After hearing Mr. Anderson's explanation, Ms. Nick said "no" and refused to stand up. After Ms. Nick refused to stand up, Mr. Anderson angrily stalked away.

62. This exchange occurred in front of approximately ten INTECON employees, and Ms. Nick was extremely embarrassed and humiliated at being subjected to that type of objectification by Mr. Anderson in front of her co-workers.

63. Following the interaction with Mr. Anderson at the business lunch on November 1, 2011, Ms. Nick made complaint to INTECON's Human Resources Representative about how Mr. Anderson had behaved toward her while they were on the business trip and his behavior at the monthly "all hands" lunch.

64. On or about Friday, November 5, 2010, Ms. Nick met with Mr. Phillips and made a complaint about Mr. Anderson's inappropriate behavior and how he had treated her in an offensive manner while in Tampa and at the luncheon. Mr. Phillips discussed Ms. Nick's complaint with her, and assured her that he would take action to remedy the situation.

65. It would be clear to any reasonable person that Ms. Nick's complaint to INTECON's Human Resources Representative and her complaint to Mr. Phillips were complaints of sexual harassment.

66. From the time of Ms. Nick's meeting with Mr. Phillips to complain about Mr. Anderson's sexual harassment through the following week, Mr. Phillips "considered" what course of action to take in response to Ms. Nick's complaint. Mr. Phillips also went to INTECON's Human Resources department for assistance with handling and resolving Ms. Nick's complaint.

67. At the end of the second week of November, Mr. Phillips informed Ms. Nick that she would be transitioned from her current position to work under the supervision of Ann Marshall, Director, Program Operations.

68. On November 15, 2010, Ms. Nick's office was moved, and her title was changed to ISO9001: Administrative and Marketing Liaison.

69. On Tuesday, November 23, 2010, Mr. Phillips called Ms. Nick into his office and informed her that her employment with INTECON was terminated.

70. Ms. Nick's employment with INTECON was terminated in retaliation for her complaints about Mr. Anderson's unwelcome and harassing behavior directed at her.

71. Ms. Nick's November, 2010 complaints to Human Resources and Mr. Phillips about Mr. Anderson's conduct served as the motivation for INTECON to terminate her employment.

72. Ms. Nick was subjected to hostile work environment sexual harassment and her employment was terminated because she complained about that harassment.

73. The discrimination and retaliation to which she has been subjected has caused Ms. Nick to suffer a great deal of emotional distress and economic loss.

First Cause of Action (Title VII- Hostile Work Environment Sexual Harassment)

74. Plaintiff realleges all prior paragraphs and incorporates them herein.

75. Plaintiff has exhausted her administrative remedies under Title VII of the Civil Rights Act of 1964, as amended.

76. Defendant discriminated against Plaintiff because of her gender in violation of Title VII, 42 U.S.C. § 2000e-(2)(a), by engaging in, tolerating or failing to prevent the gender-based harassment alleged herein and by failing to take affirmative action to correct and redress these unlawful employment practices.

77. During Plaintiff's employment, Mr. Anderson, Defendant's President and owner, subjected to Ms. Nick to a barrage of offensive and unwelcome comments.

78. Plaintiff clearly indicated that the conduct was unwelcome. Plaintiff did not solicit or incite the conduct and she perceived the conduct to be offensive and/or undesirable.

79. This conduct and other incidents of harassment described above were because of Plaintiff's gender.

80. The conduct suffered by Plaintiff was sufficiently pervasive and/or severe to alter and did alter a condition of Plaintiff's employment and created an abusive working environment.

81. Plaintiff was detrimentally affected by the conduct and such conduct would have detrimentally affected a reasonable woman in Plaintiff's position.

82. The Defendant knew or should have known of the harassment described herein and Mr. Anderson's propensity to engage in such gender-based harassment and failed to implement prompt and appropriate corrective action.

83. The harassment directed at Plaintiff was either intended to cause her severe emotional distress or was perpetrated with malice or reckless indifference to the likelihood that it would cause such distress. Defendant is, therefore, liable to Plaintiff for all damages proximately resulting from the distress she has suffered relating to the conduct of Defendant.

Second Cause of Action (Retaliation—Title VII—42 U.S.C. § 2000e-2)

84. Plaintiff realleges all prior paragraphs and incorporates them herein.

85. Plaintiff has exhausted her administrative remedies under Title VII of the Civil Rights Act of 1964, as amended.

86. Plaintiff engaged in protected activity by opposing discrimination in internal complaints about sexual harassment to Defendant's Human Resources Representative and to Defendant's CEO.

87. Plaintiff was subjected to materially adverse employment actions by Defendant in retaliation for her complaints of sexual harassment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief, pursuant to 42 U.S.C. §§ 1981, 1988, 2000e-5(g), and Fed. R. Civ. P. 54:

- a. Nominal damages;
- b. Nonpecuniary and compensatory damages, including damages for emotional distress and consequential damages;
- c. Punitive damages;
- d. Reinstatement and back pay, including loss of benefits and seniority, or front pay in lieu of reinstatement;
- e. Injunctive relief;
- f. A declaration that Defendant's conduct violated Plaintiff's rights under Title VII;
- g. Pre- and post-judgment interest at the highest rate allowed by law;
- h. Costs and reasonable attorneys fees; and
- i. All other legal or equitable relief to which Plaintiff is entitled.

DEMAND FOR A JURY TRIAL

Plaintiff demands a jury trial for all issues triable by jury.

Respectfully submitted this 12th day of October, 2011.

CORNISH & DELL'OLIO

s/Ian D. Kalmanowitz

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