

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

ROBERT C. BARRY

CASE NO: 2011 CA 440

Plaintiff,

v.

PUBLIX SUPER MARKETS, INC.

Defendant.

PAPER NO.

BY

2011 MAY 26 AM 10:20

FILED IN THE OFFICE
CLERK OF COURT
FLAGLER COUNTY, FLA.

COMPLAINT AND DEMAND FOR JURY TRIAL

JURISDICTION AND VENUE

1. At all time material to the Complaint, Plaintiff, Robert C. Barry, is a resident of Flagler County, Florida..
2. At all time material to the Complaint, Defendant, Publix Supermarkets, Inc. Is a Florida corporation doing business in Flagler County, Florida.
3. This is an action for damages which exceeds fifteen thousand dollars (\$15,000.00) and punitive damages are recoverable under Count II, Chapter 760.
4. The Plaintiff has exhausted his administrative remedies under Fla. Stat. Chapter 760 prior to filing suit.

FACTUAL ALLEGATIONS

1. Plaintiff, ROBERT C. BARRY, began his employment with Publix Supermarkets, Inc. at store #77 (Palm Coast) as a stock clerk on August 19, 2004, part time.
2. At the time of Plaintiff's hire, his mother, Cynthia Barry, who was hired in September, 2003, was a full time employee at store #77. Plaintiff's brother, David Barry, was hired as a part time employee by Publix in May 2004, as a deli associate and began his employment at store

#660 (Halifax Plantation).

3. Both Cynthia and David Barry are presently employees of Defendant Publix.
4. Plaintiff, Robert Barry, was hired full time in 2005 at store #77 with the support of his team leader, Craig Dario (supervisor).
5. Plaintiff, Robert Barry, was transferred to work at store #1138 (Palm Coast - Belle Terre Parkway) as a full time stock clerk before the store was officially opened on December 7, 2006.
6. Plaintiff's mother was also transferred to store #1138 on November 27, 2006, before the grand opening to the deli department as a full time associate.
7. Craig Dario had been Plaintiff's grocery team leader (supervisor) at store #77 and also transferred to store #1138 shortly after Plaintiff, Barry, was transferred. Mr. Dario was later promoted to assistant grocery manager.
8. On February 11, 2010, Plaintiff, Barry, contacted Divisional Associate Relations Manager, Beth Grove, by telephone at corporate human resources to report sexual harassment by his supervisor, Craig Dario, against a co-employee, Michelle Brown, among other complaints he raised against his supervisor, Mr. Dario.
9. Prior to this Michelle Brown had complained to Plaintiff, Barry, that Mr. Dario was sexually harassing her by saying he wanted to do her "doggy style" and asked for "blow jobs" and touched her buttocks when stocking products in the back loading area, among other sexual inappropriate conduct.
10. Before Plaintiff Barry raised the complaints about Mr. Dario's conduct towards Michelle Brown, Brown's boyfriend, T.J. Deering, had an altercation with Dario about the way his

girlfriend, Michelle Brown, was being treated. This altercation was heard by co-employee Henry Torro.

11. Approximately one week later Plaintiff, Mr. Barry, contacted corporate human resources again, identified himself and voiced similar complaints, including the sexual harassment that was occurring to a co-employee.
12. On February 26, 2010, Plaintiff, Barry, was interviewed by Carol Sellers, Retail Associate Relations Specialist at store #1138.
13. About one week later, Henry Torro, a co-employee was also interviewed by Carol Sellers. Mr. Torro corroborated the facts about the sexual harassment of Michelle Brown by Mr. Dario, which was initially conveyed to Ms. Sellers by Plaintiff, Robert Barry.
14. Sometime after the Henry Torro interview by Ms. Sellers. Plaintiff, Barry was interviewed again in March 2010, about the facts with assistant store manager, Daniel Keefer, present.
15. Both Mr. Keefer and Ms. Sellers tried to persuade Mr. Barry that the sexual harassment by Mr. Dario to Michelle never happened.
16. Mr. Barry refused to retract his complaint.
17. Within a short period from this interview Mr. Barry was terminated from Publix on March 25, 2010, for 'providing incorrect information on his 2004 job application and during a sexual harassment investigation". Publix alleged that Mr. Barry was dishonest during an internal investigation.
18. Publix contested Plaintiff Barry's unemployment compensation and argued that it terminated Mr. Barry for misconduct.
19. During the AWI hearing on July 15, 2010, Barry presented evidence which included a copy

of Henry Torro's statement given to Publix during its investigation. Torro's statement corroborated Mr. Barry's on the issue of sexual harassment of Craig Dario against Michelle Brown.

20. After the unemployment hearing on July 15, 2010, on the same day, Henry Torro was suspended without documentation or reason given by his superiors. On July 26, 2010, Mr. Torro was discharged for "dishonesty and violating publix rules, improper and inappropriate treatment of associates".
21. After Mr. Barry's termination, Cynthia Barry, Plaintiff's mother, was confronted by Margaret Russell in the grocery department and told Ms. Cynthia Barry that her son was fired for "stealing a pickle".

COUNT I: PUBLIX SUPER MARKETS, INC., VIOLATION OF THE FLA. PRIVATE

WHISTLE BLOWER ACT

22. Plaintiff reasserts and restates paragraphs one (1) through twenty-one (21) as if fully stated herein.
23. Fla. Stat. § 448.102, entitled "Prohibitions", states in part,

An employer may not take any retaliatory personnel action against an employee because the employee has: . . . (3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation. (Fla. Stat. § 448.102 (3)).

24. Plaintiff, Mr. BARRY, was an employee of the Defendant, PUBLIX SUPER MARKETS, INC., as that term is defined by Fla. Stat. § 448.101 (2).
25. Defendant, PUBLIX SUPER MARKETS, INC., is an employer as that term is defined by Fla. Stat. § 448.101 (3).
26. Plaintiff, Mr. BARRY engaged in statutorily protected activity when he, “Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation” as that phrase is defined by Fla. Stat. § 448.101 (4) in that he objected to a violation of the Florida Civil Rights Act, Fla. Stat. §§ 760.10 (1)(a), in his reporting of the sexual harassment of Michelle Brown to the Defendant’s management and Human Resources Department.
27. Because the Plaintiff reported sexual harassment of another PUBLIX SUPER MARKETS, INC., employee and “Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation”, Mr. BARRY suffered an adverse employment action and was terminated by the Defendant.
28. There is a causal connection between the Plaintiff’s engaging in protected activity and his termination by the Defendant.
29. Because Mr. BARRY was terminated in retaliation for engaging in protected activity, he was damaged.

Wherefore, Plaintiff, ROBERT C. BARRY, demands judgment against Defendant, PUBLIX SUPER MARKETS, INC., for relief in the form of: economic damages, including lost wages, benefits, and other remuneration; reinstatement to the same position held before the retaliatory personnel action was taken, or to an equivalent position; reinstatement of full fringe benefits and seniority rights; front pay; any other compensatory damages allowable under law; emotional distress

damages, prejudgment interest and post judgment interest; attorneys' fees and costs (Fla. Stat. § 448.104), and any other relief the court deems just and proper.

COUNT II: DEFENDANT'S VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT
FOR PLAINTIFF ENGAGING IN PROTECTED ACTIVITY.

30. Plaintiff reasserts and restates paragraphs one (1) through twenty-one (21) as if fully stated herein.
31. Fla. Stat. § 760.10 (a)(7) states,
- (7) **It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section,** or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. (Emphasis added).
32. Mr. BARRY was engaged in statutorily protected activity when he opposed the sexual harassment of Michelle Brown and reported it to the Defendants' management and Human Resources Department.
33. Because Mr. BARRY opposed the unlawful employment practice of his employer, he was discriminated against and received an adverse employment action through his termination of employment.
34. There is a causal relationship between Mr. BARRY's engaging in statutorily protected activity in opposing sexual harassment and his receiving an adverse employment action.

35. Because Mr. BARRY was terminated in retaliation for engaging in protected activity, he was damaged.

Wherefore, Plaintiff, ROBERT C. BARRY, demands judgment against Defendant, PUBLIX SUPER MARKETS, INC., in the form of economic damages, including back pay, the value of any lost employee benefits with interest thereon; damages for emotional distress, mental anguish, humiliation, embarrassment and inconvenience; punitive damages; reinstatement to the same position held before the retaliatory personnel action was taken, or to an equivalent position; reasonable attorneys' fees and costs; post judgment interest, prejudgment interest and any other such relief that the court deems just and proper.

DEMAND FOR JURY TRIAL

The Plaintiff demands a trial by jury on all issues so triable.



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