

Summary Judgment Review

Case Name: *Balius-Donovan v. Behnamiri and Associates, LLC, doing business as The Place, A Georgia Corporation, Mahmoud Behnamiri, Hassan Negahdar, Behnamiri and Negahdar LLC, doing business as The Place Bar And Grill, A Georgia Corporation, and B & N Partners, LLC, doing business as The Place Tavern*

Nature of the Order: Order Partially Adopting Report and Recommendation

Magistrate Judge: Catherine M. Salinas

District Judge: Charles A. Pannell, Jr.

Claims & Outcomes:

1. **Claim:** Title VII sexual harassment
 - a. **Outcome:** Individual Defendant's MSJ Granted, Corporate Defendant's MSJ Denied
2. **Claim:** Title VII retaliation
 - a. **Outcome:** All Defendants' MSJ Granted
3. **Claim:** Sexual battery
 - a. **Outcome:** Corporate Defendants' MSJ Granted
4. **Claim:** Negligent supervision/retention
 - a. **Outcome:** Corporate Defendants' MSJ Granted, Individual Defendant's MSJ Granted
5. **Claim:** Fraud
 - a. **Outcome:** Defendant's MSJ Denied
6. **Claim:** Equitable estoppel
 - a. **Outcome:** Defendant's MSJ Granted
7. **Counterclaim:** Defamation
 - a. **Outcome:** Plaintiff's MSJ Granted
8. **Counterclaim:** Intentional infliction of emotional distress
 - a. **Outcome:** Plaintiff's MSJ Granted
9. **Counterclaim:** Abusive litigation
 - a. **Outcome:** Plaintiff's MSJ Granted

Whether R&R Followed: In Part

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: N/A

Long Summary:

Individual defendants Mr. Behnamiri and Mr. Negahdar owned the restaurants listed as corporate defendants, with Mr. Behnamiri being the majority owner in two of the restaurants. Mr.

Behnamiri was not an employee of any of the corporate defendants but did visit the restaurant locations, while Mr. Negahdar was employed as the general manager of all three locations. Plaintiff worked at two of the locations for 16 years, during which time Mr. Behnamiri would grab, kiss, and hug her. At one point, Mr. Behnamiri told Plaintiff she should buy a home and offered to help by cosigning a loan with her. Eventually, Mr. Behnamiri decided that he only wanted his name on the loan, which carried a higher interest rate for Plaintiff as a result. She also paid a down payment at closing and understood that she would be making mortgage payments. Mr. Behnamiri told Plaintiff that he would execute a quitclaim deed at closing, but he did not and never did so subsequently. He asserted that their deal was for Plaintiff to make rent payments rather than pay the mortgage, and she could buy the house from him someday if she could afford it.

After closing on the home, Mr. Behnamiri's conduct at work escalated. Plaintiff asked him to stop on multiple occasions. While she did not report his conduct, she told several people that she was uncomfortable, and there were witnesses to his behavior. Plaintiff filed suit after resigning, alleging Title VII sexual harassment, sexual battery, negligent supervision and retention, fraud, and equitable estoppel. Mr. Behnamiri filed counterclaims against Plaintiff for defamation, intentional infliction of emotional distress, and abusive litigation. Plaintiff then added a Title VII retaliation claim based on Mr. Behnamiri bringing these counterclaims.

As a preliminary matter, based on the R&R and lack of objections, the Court granted summary judgment on Plaintiff's Title VII claims in favor of the individual defendants because there is no individual liability for Title VII claims. The Court also granted summary judgment on Plaintiff's Title VII retaliation claim in favor of the corporate defendants because those defendants did not engage in the alleged retaliatory conduct of filing counterclaims. The Court also addressed recommendations from the R&R to which there were no objections as related to state law claims and granted summary judgment to Plaintiff on all of Mr. Behnamiri's counterclaims; granted summary judgment to the corporate defendants on Plaintiff's battery claim as it was only intended to be asserted against Mr. Behnamiri (Mr. Behnamiri did not file for summary judgment on this claim; thus it survived for trial); and granted the corporate defendants' motion for summary judgment on Plaintiff's negligent supervision and retention claim as Plaintiff abandoned the claim as to those defendants.

Regarding Plaintiff's Title VII sexual harassment claim against the corporate defendants, the Court found that Plaintiff did timely file her EEOC charge, disagreeing with the magistrate judge's findings. Plaintiff presented evidence that Mr. Behnamiri harassed her in nearly every instance that he visited the restaurant up until near the time of her resignation, which was within the time required for filing her charge. The Court denied the corporate defendants' motion for summary judgment because there was a genuine issue of fact as to the unwelcomeness of Mr. Behnamiri's conduct as Plaintiff presented evidence that she was uncomfortable, that she asked he stop engaging in the behavior, that she did not report him for some time out of embarrassment, and that she agreed to spend time with him out of fear of losing her home and job. Further, Plaintiff provided enough evidence that the conduct was severe and pervasive to survive summary judgment as the conduct occurred frequently over many years, involved groping that could rise to the level of assault/battery, and impacted her negatively at work in various ways.

As to Plaintiff's negligent supervision and retention claim against Mr. Negahdar, the Court held that Plaintiff could cite no authority allowing her to hold a minority owner/manager liable for the actions of a majority owner. Furthermore, the Court held that there was not a dispute of fact as to whether Mr. Negahdar knew of Mr. Behnamiri's conduct. Thus, the Court granted summary judgment to Mr. Negahdar on this claim.

Regarding Plaintiff's equitable estoppel claim, the Court granted summary judgment because Plaintiff abandoned this claim, and estoppel is not an actionable claim under Georgia law. As to Plaintiff's fraud claim against Mr. Behnamiri, the Court denied summary judgment because Plaintiff presented enough evidence supporting her fraud claim by showing that Mr. Behnamiri told Plaintiff he would quitclaim the property to her but never actually intended to do so. Further, he intended to deceive her as an unsophisticated buyer, she relied on his various representations as a sophisticated real estate investor, and she suffered financial losses.

Finally, as to the remedies at issue, the Court denied summary judgment on the availability of a constructive trust as a remedy to Plaintiff because her fraud claim survived summary judgment. Regarding punitive damages, the Court denied summary judgment in favor of the corporate defendants and Mr. Behnamiri because claims against them remained but did grant summary judgment in favor of Mr. Negahdar.