UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHALEE BALIUS-DONOVAN, Plaintiff, 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, Defendants.	CIVIL ACTION NO. 1:19-CV-2703-CAP

ORDER

This matter is before the court on the magistrate judge's Final Report and Recommendation ("R&R") [Doc. No 171] regarding the parties' motions for summary judgment [Doc. Nos. 127, 130, 140, and 143]. The court will review the plaintiff's amended complaint [Doc. No. 38], the recommendations by the magistrate judge [Doc. No. 171], the plaintiff's objections thereto [Doc. No. 173], and the applicable legal standards before discerning the remaining

issues, reciting the relevant facts, and engaging in an analysis of the contested issues in light of those facts.

I. Overview of Complaint and Summary Judgment History

The plaintiff, Shalee Balius-Donovan, filed this lawsuit on June 13, 2019, based on certain actions that occurred during her 16-year employment at one or all of a trio of restaurants owned by the defendants [Doc. No. 1]. In her amended complaint, the plaintiff alleges that Mr. Mahmoud Behnamiri, the part-owner of the three restaurants, initiated the idea of the plaintiff purchasing a home and offered to assist her in the purchase [Doc. No. 38 ¶¶ 4, 17]. The plaintiff further alleges that Mr. Behnamiri insisted that the property be titled in his name only but repeatedly asserted to the plaintiff and others involved in the transaction that he intended for the home to be owned by the plaintiff. *Id.* ¶17. The plaintiff alleges that he thereafter leveraged his power as business owner and homeowner to subject her to a pattern of sexual harassment. *Id.* ¶¶ 18-21; 24-25. The plaintiff alleges that Mr. Behnamiri required the plaintiff to leave her duty station behind the bar on busy weekend nights, which disrupted the operations of the restaurant. *Id.* at ¶ 26. According to the complaint, Hassan Negahdar, manager and partial owner of the three restaurants, had authority to remove patrons who engaged in sexually harassing behavior. *Id.* ¶¶ 5, 22, 23. However, even though Mr. Negahdar was

"well aware of Mr. Behnamiri's sexual harassment of" the plaintiff, the plaintiff alleges he did not object to Mr. Behnamiri's harassing conduct because he was "best of friends" with Mr. Behnamiri and engaged in "regular and frequent sexual harassment of female employees." *Id.* ¶¶ 26-29.

In late 2018, the plaintiff alleges that she gave Mr. Behnamiri and Mr. Negahdar advance notice that she found a new job, and the defendants immediately began to limit her work schedule to deprive her of income. *Id.* ¶¶ 30, 31. The plaintiff further alleges that shortly thereafter, Mr. Behnamiri began the process of trying to evict her from the home they had purchased together contrary to his promises and representations regarding her ownership of the property. *Id.* ¶ 32. The plaintiff alleges she suffered lost wages and benefits, emotional distress damages, and other damages to be shown at trial. *Id.* ¶ 33. Based on these allegations, she has asserted Title VII claims against the defendants for sexual harassment and retaliation[1] and state law claims for battery, negligent supervision and retention, fraud, equitable estoppel, and punitive damages. *Id.* ¶¶ 34-67. The defendants filed answers to the amended complaint [Doc. Nos. 50, 51, 58, 60, and 106], and Mr. Behnamiri asserted counterclaims against the plaintiff for defamation, intentional infliction of

[1] The plaintiff's retaliation claim [Doc. No. 38 ¶¶ 39-44] is based on Mr. Behnamiri's counterclaims to her original complaint.

emotional distress, and abusive litigation [Doc. No. 51], which the plaintiff answered [Doc. No. 52].

All parties filed motions for summary judgment on this matter [Doc. Nos. 127, 130, 140, 143], and the magistrate judge issued a R&R on those motions for summary judgment on July 14, 2021 [Doc. No. 171]. The plaintiff has objected to portions of the R&R [Doc. No. 173], and Behnamiri and Associates, LLC; Behnamiri and Negahdar, LLC, and B&N Partners, LLC (collectively "the corporate defendants") and Hassan Negahdar have responded to those objections [Doc. Nos. 174 and 175]. The time for objections and responses has now closed, and this matter is ripe for review.

II. The R&R

In the R&R, the magistrate judge issues the following recommendations:

1. The court should grant summary judgment to Mr. Behnamiri and Mr. Negahdar and deny summary judgment to the plaintiff on the plaintiff's Title VII claims because there is no individual liability under Title VII and neither Mr. Behnamiri nor Mr. Negahdar is the plaintiff's employer pursuant to *Dearth v. Collins*, 441 F.3d 931, 933 (11th Cir. 2006) [Doc. No. 171 at 7, 44-47, 69-70];

2. The court should grant summary judgment to the corporate defendants on the plaintiff's Title VII claim of sexual harassment because the plaintiff did not timely file her claim with the EEOC [Doc. No. 171 at 36-42];

3. The court should grant summary judgment to the corporate defendants and deny summary judgment to the plaintiff on the plaintiff's Title VII claim for retaliation because the corporate defendants did not engage in the alleged retaliatory behavior (*i.e.,* file counterclaims against the plaintiff) [Doc. No. 171 at 43-44];

4. The court should decline to exercise supplemental jurisdiction over the remaining claims, which are all state law claims [Doc. No. 171 at 47-49].

However, if the court does decide to exercise supplemental jurisdiction over the remaining claims, the magistrate judge recommends:

5. The court should allow the plaintiff's battery claim against Mr. Behnamiri to proceed to trial, which Mr. Behnamiri does not contest [Doc. No. 171 at 49];

6. The court should grant the corporate defendants' motion for summary judgment on the battery claim, which the plaintiff does not contest [Doc. No. 171 at 49 n.8];

7. The court should grant Mr. Negahdar's motion for summary judgment on the plaintiff's negligent supervision and retention claim because:

   (a) Mr. Behnamiri was not an employee; and

   (b) the plaintiff has failed to present evidence to create a material fact dispute as to whether Mr. Negahdar had knowledge of any past or prior conduct by Mr. Behnamiri that would have led Mr. Negahdar to believe that Mr. Behnamiri had a tendency or propensity to engage in sexual harassment of employees [Doc. No. 171 at 50-54];

8. The court should grant the corporate defendants' motion for summary judgment on the plaintiff's negligent supervision and retention claim as abandoned by the plaintiff [Doc. No. 171 at 50 n.9];

9. The court should grant Mr. Behnamiri's motion for summary judgment on the plaintiff's fraud claim because

the plaintiff failed to demonstrate: (1) justifiable reliance on Mr. Behnamiri's alleged misrepresentation; or (2) damages [Doc. No. 171 at 55-63];

10. The court should grant Mr. Behnamiri's motion for summary judgment on the plaintiff's equitable estoppel claim because the plaintiff failed to show Mr. Behnamiri made a false representation or concealment of fact; failed to show that she was ignorant of the truth; and did not present any evidence showing that Mr. Behnamiri induced her or tricked her into letting him buy the house instead of her buying the house on her own [Doc. No. 171 at 63-65];
11. The court should grant summary judgment on the remedy of a constructive trust because the plaintiff understood and agreed that the title to her home would be in Mr. Behnamiri's name only [Doc. No. 171 at 66-67];
12. The court should grant summary judgment to the corporate defendants and Mr. Negahdar regarding punitive damages because they are entitled to summary judgment on all substantive claims against them [Doc. No. 171 at 67-68];

13. The court should allow the plaintiff's claim for punitive damages against Mr. Behnamiri to proceed to trial [Doc. No. 171 at 68]; and

14. The court should grant the plaintiff's motion for summary judgment on Mr. Behnamiri's claims for defamation, intentional infliction of emotional distress, and abusive litigation [Doc. No. 171 at 70-83].

Although the defendants did not raise it on their motions for summary judgment, the magistrate judge expressed some concern about whether the plaintiff could meet the numerosity requirement required for Title VII claims and noted that at trial the plaintiff must be prepared to prove which entity (or entities) she was employed by and that there were the requisite number of employees. *Id.* at 6-8.

III. The Plaintiff's Objections to the R&R

The plaintiff objects to the R&R on her Title VII sexual harassment claim, arguing that the magistrate judge's factual recitation omits essential evidence showing that her EEOC claim was timely, or in the alternative, that the defendants waived the timeliness issue. [Doc. No. 173 at 1-10]. If the court grants summary judgment on her Title VII claims, the plaintiff does not object to the recommendation that the court decline to exercise supplemental

jurisdiction over her state law claims. *Id.* at 10. However, she takes issue with the court's analysis of her negligent supervision claim as well as her fraud and estoppel claims. *Id.* at 10-18.

IV. Applicable Legal Standards

A. District Court's Review of a R&R

To challenge the findings and recommendations of the magistrate judge, a party must file with the clerk of court written objections which "shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis of the objection." *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989). If timely and proper objections are filed, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). The court "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

B. Summary Judgment Standard

Federal Rule of Civil Procedure 56(a) provides that "[t]he court shall grant summary judgement if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine if the evidence

would allow a reasonable jury to find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if it is "a legal element of the claim under the applicable substantive law which might affect the outcome of the case." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing, by reference to materials in the record, that there is no genuine dispute as to any material fact that should be decided at trial. *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The moving party's burden can be discharged either by showing an absence of evidence to support an essential element of the nonmoving party's case or by showing that the nonmoving party will be unable to prove the case at trial. *Celotex*, 477 U.S. at 325; *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). In determining whether the moving party has met this burden, the court must consider the facts in the light most favorable to the nonmoving party. *See Robinson v. Arrugueta*, 415 F.3d 1252, 1257 (11th Cir. 2005).

Once the moving party has adequately supported its motion, the non-movant then has the burden of showing that summary judgment is improper by coming forward with specific facts showing a genuine dispute. *Matsushita*

Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). There is no "genuine [dispute] for trial" when the record as a whole could not lead a rational trier of fact to find for the nonmoving party. *Id*. All reasonable doubts, however, are resolved in the favor of the nonmoving party. *Fitzpatrick*, 2 F.3d at 1115. In addition, the court must "avoid weighing conflicting evidence or making credibility determinations." *Stewart v. Booker T. Washington Ins.*, 232 F.3d 844, 848 (11th Cir. 2000).

V. Issues for Review

A. Undisputed Matters

As an initial matter, the parties have not objected to several recommendations in the R&R. In the absence of objections, the court ADOPTS these recommendations in full. Accordingly, the court:

1. GRANTS summary judgment to the individual defendants on the plaintiff's Title VII claims; and
2. GRANTS summary judgment to the corporate defendants on the plaintiff's Title VII claim for retaliation.

As discussed below, the court DENIES summary judgment to the corporate defendants on the plaintiff's Title VII sexual harassment claim; therefore, the court retains jurisdiction over the state law claims. Accordingly,

in the absence of objection to the magistrate judge's analysis and recommendations, the court:

3. GRANTS summary judgment to the plaintiff on Mr. Behnamiri's counterclaims;
4. GRANTS summary judgment to the corporate defendants on the plaintiff's battery claim; and
5. GRANTS summary judgment to the corporate defendants on the plaintiff's negligent supervision and retention claim.

Mr. Behnamiri has not moved for summary judgment on the plaintiff's state law battery claim. Therefore, this issue will continue to trial.

B. Remaining Issues for Review

Based on the foregoing, the court will review the plaintiff's objections and the defendants' responses thereto regarding the plaintiff's (1) Title VII sexual harassment claim against the corporate defendants; (2) negligent supervision and retention claim against Mr. Negahdar; and (3) fraud and estoppel claims against Mr. Behnamiri. The court will also explore whether summary judgment should be granted regarding the plaintiff's requests for punitive damages and the creation of a constructive trust.

VI. Factual Background[2]

A. Overview of the Parties[3]

Corporate defendant Behnamiri & Associates, LLC owns The Place located at 700 Sandy Plains Road, Suite A-1, Marietta, Georgia, 30066 ("Sandy Plains"). Mr. Behnamiri is majority owner with an 80% ownership interest, and Mr. Negahdar is the minority owner and general manager with a 20% ownership interest.

Corporate defendant Behnamiri and Negahdar, LLC owns a second location, The Place Bar and Grill, located at 1105 Parkside Lane, Suite 1102, Woodstock, Georgia, 30189 ("Towne Lake"), with the same ownership structure: Mr. Behnamiri owns 80% and Mr. Negahdar is the general manager and minority owner with a 20% ownership interest.

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[2] Regarding the disputed issues, the court has conducted an exhaustive review of the record, frequently finding it necessary to look beyond the citations referenced in the parties' Statements of Material Facts to understand the context of the cited portions of deposition testimony. For the following discussion, citations that reference only one party's Statements of Material Facts refer to statements that are not disputed. Where a material factual assertion or portion thereof is properly disputed or where the court found it necessary to establish context, the court will cite directly to evidence from the record that supports the court's factual recitation.

[3] Because the factual background about the parties is not in dispute (R&R at 12-14), the court adopts the R&R regarding this information. The court has removed citations to the record for the portions of the R&R that it adopts in full and has omitted factual references irrelevant to the current objections.

Corporate defendant B&N Partners, LLC owns the third and final location, The Place Tavern, located at 5886 Wendy Bagwell Parkway, Hiram, Georgia, 30141 ("Hiram"), where Mr. Negahdar is the general manager and Mr. Behnamiri and Mr. Negahdar each hold a 50% ownership interest.[4]

It is undisputed that at all relevant times, Mr. Behnamiri had no day-to-day involvement in managing the three restaurants, he was not employed by any of the corporate entities, and he did not receive a salary from any of the locations. Mr. Behnamiri's involvement mostly centered around the money it took to operate the restaurants, although Mr. Negahdar did consult with him about decisions regarding personnel, equipment, and leasing. Mr. Behnamiri also visited the restaurant for purposes of observing operations and dispensing business advice. He has not made any profit from the restaurants for the past six or seven years. Mr. Behnamiri testified that he has known Hassan Negahdar for many years, and they have "more of a business relationship" than a social relationship; they do not socialize with each other or together with their families. Since 1990, Mr. Behnamiri has been employed by, and is majority owner of, Southeast Restoration and Fireproofing. He also has

[4] The R&R noted that the plaintiff has asserted no allegations of sexual harassment, retaliation, or any other claim (including negligent supervision and retention) with regard to the Hiram location. R&R at 52 n.10 [Doc. No. 171].

numerous other business interests in addition to the three restaurants at issue in this lawsuit.[5]

During all relevant times, Mr. Negahdar was employed as the general manager of the three restaurants and received a salary for his role. Unless Mr. Negahdar was closing one of the restaurants or acting as the primary manager on duty that day, he mostly "popped in and out" of the different locations and did not generally stay for a prolonged period in either the Sandy Plains or Towne Lake locations.

The plaintiff began her employment at the Sandy Plains location in 2002 and worked there for the next sixteen years as a bartender and/or bar manager. The plaintiff knew Mr. Negahdar from having worked with him before at a different restaurant and considered him to be friend. Once the Towne Lake location opened in 2007 or 2008, the plaintiff would occasionally work there.

[5] Mr. Behnamiri holds corporate interests in real estate investment companies, among other things. Behnamiri Dep. at 16 [Doc. No. 128-1].

B. The Plaintiff's Relationship with Mr. Behnamiri[6]

1. The Early Relationship

The plaintiff testified that her relationship with Mr. Behnamiri began as a working relationship, but it got "overly friendly," with Mr. Behnamiri taking "more of an interest in" her than anyone else at the restaurant, within the first six months of her employment. Pl.'s Dep. at 9:4-13; 10:7-10 [Doc. No. 141-1]. The plaintiff testified when Mr. Behnamiri came into the restaurant, he was always "very friendly": kissing her, hugging her, and taking a "personal interest" in her.[7] *Id*. at 12:18-25. She testified that some of Mr. Behnamiri's attention was "extremely uncomfortable", stating that "[t]here were times whenever he would grab me and kiss me and hug me and hold me that were uncomfortable, but I was – I really didn't know what to make of it at the time." *Id*. at 13:20-24. She further testified that "he would sit at the bar and have me sit with him, and we would talk about my life, his life. But whenever it came

[6] Because many of the facts in this section are in dispute, the court has reviewed the record and generated a new iteration of the factual background based on that review. As required for summary judgment, all facts recited herein reflect the view most favorable to the plaintiff, who is the non-moving party. Where the evidence creates an issue of fact, the court does not attempt to exhaustively summarize all of the moving party's contradictory evidence.

[7] The plaintiff noted that when she first started, Mr. Behnamiri would come in, give her a hug, and kiss her on the cheek. Pl.'s Dep. at 35:22-36:4 [Doc. No. 141-1].

time for him to leave and he would hug me and kiss me and grab me, yes, it was uncomfortable." *Id.* at 13:25-14:5. She testified that, over time, "[t]he hugs got longer. The kisses got closer to my mouth." *Id.* at 209:21-22.

She stated that the first time he kissed her on the mouth, she was behind the bar at the Sandy Plains location:

> And there was an entrance from the kitchen into the bar where the phone is and a computer there. And he came in one night and he hugged me, and he grabbed my face and he just kissed me on the lips and said, You're beautiful, it's good to see you. And I was going, Well, that's strange. But that's the first time I – I can say it was a little more than a greeting maybe.

Id. at 209:23-210:10. The plaintiff testified that this occurred "probably around the time of [her] divorce," which she had previously identified as 2003. *Id.* at 210:14-17; 18:23-19:3 (identifying time of divorce).

2. Mr. Behnamiri Offers to Help the Plaintiff Buy A House

Sometime after her divorce, the plaintiff expressed to Mr. Behnamiri her concerns about her young son walking from the bus stop to her apartment. Pl.'s Dep. at 27:21-28:9. Mr. Behnamiri asked her why she was raising her family in an apartment complex. *Id.* at 28:8-9; 30:1-8. At the time, the plaintiff was not looking to buy a home, had never considered doing so, and did not think she would be able to qualify for a loan. *Id.* at 29:9-30:22. The plaintiff stated that Mr. Behnamiri told her that he knew how much money she made, and he

told her she could afford a home. *Id.* at 30:18-31:1. He offered to "help" her buy a house.[8] Behnamiri's Statement of Material Facts ("BSMF" ¶ 19) [Doc. No. 146]. Mr. Behnamiri "came up with the grand total of the amount of mortgage that" he and the plaintiff could afford ". . . [a]nd set it up with" a realtor and broker for the plaintiff to start looking."[9] Pl.'s Dep. at 137:12-18.

Ms. Vicky Vickery, a patron at "The Place" and a mortgage broker with thirty-five years' experience, spoke with the plaintiff about getting prequalified to purchase a home. BSMF ¶ 20. The plaintiff had good credit and money to put towards a down payment, but because her debt-to-income ratio was too high, she needed a co-signor. *Id.* ¶ 21. Ms. Vickery initially took a loan application for a FHA loan with the plaintiff as the borrower and Mr. Behnamiri as a co-signor. *Id.* ¶ 22; Vickery Dep. at 11:16-25 [Doc. No. 133-1]. Ms. Vickery explained that in this scenario, the plaintiff and Mr. Behnamiri would equally own the property. Vickery Dep. at 20:6-21.

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[8] Mr. Behnamiri had also helped Mr. Negahdar purchase a home by lending him $90,000 for the down payment, which Mr. Negahdar later paid back. Behnamiri Dep. at 43-44; Negahdar Dep. at 48 [Doc. No. 135-1].

[9] Mr. Behnamiri testified that the plaintiff found a real estate agent, "and they went to look for a house, and they found a house, and we went to closing. That was it." Behnamiri Dep. at 45:2-10.

A few days before closing, Ms. Vickery spoke with the plaintiff over the phone about a change in financing. BSMF ¶ 23. The plaintiff explained to Ms. Vickery that Mr. Behnamiri reviewed the paperwork and did not want her name on the mortgage. *Id.* Ms. Vickery explained to the plaintiff that more money would have to be put down if the loan was in Mr. Behnamiri's name because it would be considered an investment property rather than an owner-occupied property. Vickery Dep. at 12:5-22. Ms. Vickery told the plaintiff, "We need to just leave this the way it is because you're gonna own – you know, you won't put as much down . . . and then [Mr. Behnamiri] can just be the cosigner." *Id.* at 12:24-13:3. Ms. Vickery further stated that the plaintiff "had her down payment" as the loan was initially structured. *Id.* at 13:1-2.

Mrs. Vickery called Mr. Behnamiri after speaking to the plaintiff, and Ms. Vickery testified:

> . . . [H]e did not want her name on the loan. I don't know the reason for that, he never explained it, and he said I'll just buy the house outright and he said buy the house only in my name, which meant she had to put more money down. And then I said well, are you gonna quitclaim half of it because the deal was that [the plaintiff] would always make the payments. And I said are you gonna quitclaim, you know, at closing half of it to her, you know, so that she owns the house? Otherwise, she has no rights.

Id. at 13:3-13; 15:8-10 (explaining the order of the phone calls). Ms. Vickery further testified that Mr. Behnamiri:

> [T]old me from the very beginning yes, it's [the plaintiff's] house. Yes, [the plaintiff] is gonna make the payments. I just – for my business purposes and my paperwork, I just don't need her name on the loan. But he had agreed to put her name on the deed since she was gonna be making the payments. Because from day one, you know, he said I will help you buy a house; go find one.

Id. at 13:17-24; *see also id.* at 31:15-23 (noting that Mr. Behnamiri agreed that he needed to do a quitclaim deed at closing at her suggestion).

Ms. Vickery testified that she talked to the plaintiff every day leading up to closing. *Id.* at 17:1. She said that she explained to the plaintiff that she would have no rights absent a quitclaim, but that the plaintiff was young, "didn't do this business," and "didn't understand the process." *Id.* at 13:8-13; 14:1-7. She stated further that she "was worried about [the plaintiff] being protected and [Mr. Behnamiri] assured me all along that she would be . . .". *Id.* at 14:19-21. Ms. Vickery testified that she heard Mr. Behnamiri say, "'[T]his is [the plaintiff's] house, 'this is her house,' – 'her house' . . .. This is her house. Don't worry about it." Vickery Dep. at 43:17-23.

The plaintiff believed the financing terms for Mr. Behnamiri were "just a much more beautiful deal" than that for which she could otherwise qualify for on her own. BSMF ¶ 25. However, Ms. Vickery testified that the plaintiff – who was paying the mortgage - was actually paying a higher interest rate on

Mr. Behnamiri's loan because it was an investment loan. Vickery Dep. at 17:6-21.

At the closing, the plaintiff paid $6,900 toward the down payment. Behnamiri Dep. at 48:12-16. Despite this, it is undisputed that Mr. Behnamiri did not execute a quitclaim deed in the plaintiff's favor at the time of closing. The plaintiff testified that Mr. Behnamiri "made out like this was my house and going to be my house" and told her on several occasions, including shortly after the closing and shortly after he had brain surgery, that he was "quick-deeding the house over to" her. Pl.'s Dep. at 175:12-17; 176:17-177:2.

The parties agree that the house was not a gift from Mr. Behnamiri to the plaintiff or otherwise free. BSMF ¶ 26. The parties agreed that the plaintiff was responsible for paying whatever the amount on the mortgage statement indicated. *Id.* ¶ 27. However, the record reflects two different understandings of what these payments represented. The plaintiff understood that she was going to be making mortgage payments to Mr. Behnamiri for twenty or thirty years over the loan's life, and that "this was [her] house." BSMF ¶ 28; Pl.'s Dep. at 149:14-18. She stated that she believed that when the house was paid off it was going to be her house "a hundred percent." Pl.'s Dep. at 152:18-20. Mr. Behnamiri, on the other hand, testified that "she was paying the rent monthly on the house, and I told her whenever she can afford to purchase the house, I

will sell her the house. That was our agreement." Behnamiri Dep. at 46:2-8. He later clarified that the rent payments were going to be "whatever the mortgage was that she was going to pay." *Id.* at 46:25-47:3. He said he intended her to pay "whatever the balance was on the note from the mortgage company" for a purchase price but stated that he didn't recall talking about the details with the plaintiff when "we did buy the house." *Id.* at 47:10-24.

After the plaintiff bought the house, she said that Mr. Behnamiri attempted to visit her there. *Id.* at 44:18-47:11. She said she came up with excuses for him not to stop by, and then he told her that he "bought this house so that you and I could have a place to – to be together during the day while your kids were [sic] in school." *Id.* Regarding Mr. Behnamiri's assistance with the house, the plaintiff indicated that she was initially appreciative "until he called me up and told me that he bought this house so that he could have some sort of liaison with me [there] when my children weren't [home]." *Id.* at 155:12-17. She said this happened on multiple occasions and then she "realized . . . the mess [she] had gotten herself into." *Id.* at 155:21-156:7.

3. The Relationship After the Home Purchase

Despite the plaintiff's description of her uncomfortable interactions with Mr. Behnamiri during her early employment, she testified that Mr. Behnamiri's behavior didn't become alarming until after the closing of the

house. *Id.* at 10:14-15. She testified that Mr. Behnamiri came in, for the most part, every Saturday night to the Sandy Plains location,[10] and that his harassment of her, which was frequent, occurred then, "among other times." *Id.* at 32:18-33:8. She described his general behavior, which occurred "any time he walked in" as follows:

> Generally he would come in. As soon as he got there he would come behind the bar. He would grab my face, cup my face in his hands and kiss me on the mouth. He would hug me, my lower waist, my hips. He would pull me into him. He would tell me he's missed me, that I looked beautiful, if I knew how much he cared about me. He would ask if I knew how much he loved me. He would kiss on my neck.

Id. at 33:16-24; 34:5-7. She reiterated that this behavior happened "[w]henever he was there," not just on Saturday nights. *Id.* at 35:13-19

The plaintiff testified that on Saturday nights, around 12:30 – 1:00 am, Mr. Behnamiri would say he was getting ready to leave and ask her to come outside and sit on the deck with him. *Id.* at 37:22-25; 39:14-17. When asked how she responded to Mr. Behnamiri's requests, the plaintiff answered: "What

[10] Mr. Behnamiri stated that he didn't have a set schedule and that he visited the Sandy Plains location sometimes once a month, other times four times a month, but disagreed with the statement that he was there most Saturday nights in the year. Behnamiri Dep. at 32:6-33:14. Edwin Peters, a bartender, stated that Mr. Behnamiri comes in The Place at Sandy Plains "sometimes once, twice a week; once or twice a month. You never know." Peters Dep. at 7:10-16 [Doc. No. 136-1].

could I say? Okay, I'll be right out." *Id.* at 40:20-22. In a declaration, she stated that she "never went to the deck at the Place with Mr. Behnamiri willingly." Pl.'s Decl. ¶ 9 [Doc. No. 154-1]. She elaborated that she "went there when I was summoned by Mr. Behnamiri. Sometimes I tried to get out of it by telling him I was too busy, but he generally would insist that I come anyway." *Id.* She stated that for the most part, she and Mr. Behnamiri sat next to each other at a table alone. Pl.'s Dep. at 41:3-5; 41:14-16. She testified that they engaged in small talk "[a]nd then it would turn personal very quickly." *Id.* at 41:25-42:5. She stated:

> He would then tell me you look beautiful, you know that I care about you, what am I going to do with you. He would ask me questions like if I had any idea how much he loved me. He would grab my knees. He would grab my legs, grab my face.

Id. at 42:16-20.

The plaintiff testified that Mr. Behnamiri wasn't trying to hide his behavior, but it wasn't on display "whenever we were sitting in the booth and he's grabbing me closer to him" or when she was sitting at the bar and her legs were under the bar and his hands were under the bar. *Id.* at 80:9-22. She said that he came behind the bar and kissed her in front of everyone. *Id.* at 80:20-22. The plaintiff testified that sometimes when Mr. Behnamiri went in to kiss her, she recoiled, pushed back, or stood up straight. *Id.* at 98:18-23. When Mr.

Behnamiri greeted her, the plaintiff stated that she would hug him around the neck like she would other customers or employees, but she "wasn't grabbing his hips." *Id.* at 80:23-81:19.

4. The Plaintiff Asks Mr. Behnamiri to Stop His Behavior

The plaintiff testified that there were several times she told Mr. Behnamiri to stop his behavior. She stated that when he asked to come to her house so they could be together, she told him "No, you can't come to my house." *Id.* at 46:11-47:4. She described a lunch that she went to with him,[11] as well as Erin Pringle and Mr. Behnamiri's friend Oscar early on in her employment. *Id.* at 48:7-54:6. Everyone was drinking alcohol over the course of several hours, and the plaintiff recounted that Mr. Behnamiri "was kissing me on the side of the face and the neck and hugging me and coming onto me, and I would just push his hand back in his own lap and told him to stop." *Id.* at 48:7-54:6.

She recounted a few more similar occasions, one during which Mr. Behnamiri stopped her as she was getting out of the car and:

> kissed me, said he had a great time, that we'd have to do this again, this was great. And I pushed him away because at that time he

[11] In her declaration, the plaintiff stated that she agreed to go to the lunch even though she didn't want to go, indicating that she didn't think she could refuse his invitations because he had control of her job and house [Doc. No. 154-1 ¶¶ 6-7]. She testified that she invited Ms. Pringle to come along so she would have some sort of protection. *Id.* ¶ 7.

> was trying to kiss me with his tongue, and I was not trying to kiss him back like that. He had me by the – he cupped my face and then the back of my neck and was holding me there and was trying to kiss me.

Id. at 55:13-22.

The plaintiff also recounted a night when she met Mr. Behnamiri off duty at the Sandy Plains location. *Id.* at 70:22-76:3. He asked her to come outside to talk with him, they walked through the kitchen, and she followed him to his car where she sat in the passenger seat. *Id.* at 72:23-73:10. She said he got into the driver's seat, grabbed her face, and started kissing her. *Id.* at 73:8-13. She proceeded:

> He was kissing me, and I was pulling back. And I was in the passenger seat. He was in the driver's seat. And he put his arm across my chest (indicating). And he was grabbing my breasts, and he was grabbing my face, and he was just kissing me all over the place. And at that point I was trying to get him off of me, telling him, No, stop this, you're married, I'm your employee, I work for you, stop this now, I can't do this with you. And he continued and got very, very, very forceful with my breasts, trying to pull my breast out of my shirt. I was trying to push him off. And he took his hand, pushed me further back against the passenger side seat forcefully, and took his hand and shoved it between my legs, down my pants, and into me, inside of me (indicating). And I started crying. I started yelling. I was pushing him off of me. I was trying to figure out how to get the hell out of his car. And he just kept holding onto me and holding onto me. And then finally I got the door open and I got out from underneath him, and he tried to grab me again to pull me back in there. And then he started profusely apologizing. And I was crying.

Id. at 73:15-74:12.

She testified that she continued to go out to his car "whenever he would tell me to," which included during the day, during the night, and "times when I was working." *Id.* at 76:20-77:9. She testified that sometimes she would go out to his car and just leave the bar without another bartender present "if he told me to" for periods between a few minutes and 15 minutes. *Id.* at 78:10-16; 79:8-12.

The plaintiff described another episode in 2017 that occurred while she was working at Sandy Plains as follows:

> I was working that day. He came in – I don't remember if he had a meeting or what he was doing that day – and sat at the bar. He was drinking beer that day. And he was leaving, and he came up and asked for a bottle of water, and I handed him a bottle of water over the bar. And he said, Come outside, I want to talk to you. And I was like, All right. And I told whoever the waitress was I – I—however went out there. It was the day manager. I don't remember. And he was already sitting in his car. And then I got in on the passenger seat, and we were facing the building. And he said something to the effect of, you know, How are you doing, what's going on, you know, I've missed you and, you know, I want to talk to you. And I said, Okay. And same thing, he grabbed my face, kissed me on the side of the face and started – my boobs. And it was later in the afternoon. And I just – at that point I was just like this is – this is crazy. And I said, I can't – I'm not doing this, I can't do this, I'm not going to kiss you, I'm not going to stay in your car, I'm not coming back in your car, you're not going to grab my boobs like this and – and try to make out with me in the parking lot.

Id. at 215:17-216:21.

5. The Plaintiff's Conversations with Customers and Employees

When asked if she talked to other employees about the harassment she was experiencing, the plaintiff stated she was "very embarrassed. That was a very embarrassing part of my life." *Id.* at 90:20-22. She testified that she told Erin Pulver Pringle, Eddie Peters, Pamela Ferrell, and Pamela Lee that she was experiencing unwanted sexual harassment or that Mr. Behnamiri wanted to have an affair with her.[12] *Id.* at 104:23-105:21; 91:21-96:6 (describing conversations with Ms. Lee); 96:7-100:7 (describing conversations with Ms. Ferrell).

In addition, the plaintiff testified that other co-workers at The Place observed Mr. Behnamiri's behavior and questioned her about it. She said that Richard Higgins, a friend who served as a bouncer for The Place asked her, in regard to Mr. Behnamiri's behavior, "Are you uncomfortable with this? Are you okay with this? What's going on? Is there anything I can do?" *Id.* at 100:8-23.

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[12] Mr. Peters testified that the plaintiff never told him that she felt uncomfortable with something Mr. Behnamiri had done. Peters Dep. at 15:13-16 [Doc. No. 136-1]. Ms. Pringle also indicated that the plaintiff did not tell her about the episodes with Mr. Behnamiri, stating that if she had been aware that there was sexual harassment, she would have done something to protect the plaintiff. Pringle Dep. at 14:16-15:17 [Doc. No. 137-1]. She further testified that she never witnessed anything at all from Mr. Behnamiri regarding the plaintiff that, in her mind, was inappropriate. *Id.* at 39:21-24.

She told him that she was fine, and she stated in deposition that she didn't want to tell him the intimate details of her life.[13] *Id.* at 100:23-101:21. In addition, the plaintiff stated that Janice Scott, a friend and a co-worker, also asked if she was okay with Mr. Behnamiri's behavior and "it's very possible that I told her I was extremely uncomfortable with it." *Id.* at 103:3-22. The plaintiff stated that Crystal O'Shields, who was a bartender at Sandy Plains and/or a manager at Towne Lake from 2004 – 2008 asked the plaintiff several times, "Are you okay? Oh my God, why is he touching you like that? Does he do that every time he comes in here?" *Id.* at 84:7-85:13. The plaintiff also testified that another manager, Jim Harrison, asked her about her interactions with Mr. Behnamiri too, but she never initiated conversations with him or Crystal O'Shields because it was embarrassing. *Id.* at 88:1-19. She testified that Mr. Harrison wanted to know why Mr. Behnamiri always called her away from her duty station, saying things like: "What's going on? Why does he always pull you out to the patio? What I am supposed to do, Shalee? The place is busy; you're not here." *Id.* at 88:24-89:2. The plaintiff stated further:

> My job, whenever there's a lot of people in that restaurant, was very important for the sales, for the business. And whenever I was

[13] The plaintiff later stated, "It's very possible I said this is uncomfortable and I'm uncomfortable with it, but, no, I never went into grave details. Again, sir, I was very embarrassed. I was very embarrassed, especially for people who I considered my friends." *Id.* at 102:22-103:2.

> pulled away and no one was allowed to go out there and interrupt us, including the managers, he would ask me, what in the world's going on? What am I supposed to do? You're out there; you're supposed to be in here; the bar's going under, and we need you out here but you're with [Mr. Behnamiri]. What am I supposed to do?"

Id. at 89:2-10.

The plaintiff testified that Don Gatlin, her boyfriend/fiancé who was also a bouncer at The Place, witnessed Mr. Behnamiri hug her and try to kiss her and grab her, but he wasn't in a position to ask her questions about it or have a say in the matter because "we worked for [Mr. Behnamiri], [Mr. Behnamiri] owned my house." *Id.* at 117:8-118:6; 120:15-18.[14]

The plaintiff testified that Mr. Negahdar witnessed Mr. Behnamiri's behavior to her at work over the course of 16 years, but she never complained to Mr. Negahdar because he and Mr. Behnamiri "were friends" and "the conversation wouldn't have gone anywhere." Pl.'s Dep. at 227:1-10; 230:19-24; 231:14-19. She further stated that she knows Mr. Negahdar well and:

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[14] In his declaration, Mr. Gatlin testified that the plaintiff told him that he couldn't do anything because Mr. Behnamiri owned her house. [Doc. No. 154-2 ¶ 5]. He further stated:

> Throughout this time, it was my impression that Mr. Behnamiri held his ownership of the house over her head. I believe he felt he could get away with this conduct, because he could have fired both of us and kicked her out of the house if either of us strongly objected.

Id.

> [h]e would – he wouldn't have known what to say or what to say to me. And it was embarrassing. It wasn't like something I just walked around talking to people about; Oh, by the way, I need to tell you this. It was embarrassing, and I didn't want to – it was embarrassing enough. And they were friends. They were friends.

Id. at 231:21-232:2.

6. Observations from Others about Mr. Behnamiri's Interactions with the Plaintiff

Janis Scott, the plaintiff's co-worker until 2012 or 2013, stated through declaration that "Mr. Behnamiri frequently took [the plaintiff] away from her workstation, to the back deck or other more isolated locations" [Doc. No. 154-4 ¶ 6]. She stated that:

> [d]uring these times, Mr. Behnamiri would typically be putting his hands on [the plaintiff], grabbing, touching, and trying to kiss her. I have seen him do this to [the plaintiff] may times. [The plaintiff] seemed to be uncomfortable with these advances, but appeared to be attempting to hide her feelings.

Id. ¶7.

Co-worker Crystal O'Shields testified via declaration that she understood from the plaintiff that "she felt beholden to Mr. Behnamiri" due to his assistance on the purchase of her home and felt dependent on him for her employment and housing [Doc. No. 154-3 ¶ 4]. She further stated that, based on her observations of interactions between Mr. Behnamiri and the plaintiff, that Mr. Behnamiri felt that he was able to engage in inappropriate conduct

towards the plaintiff. *Id.* ¶ 5. She stated that virtually every time Mr. Behnamiri came into the restaurant, she saw him take the plaintiff's face in his hands and kiss her, that he required that the plaintiff serve him, and that he:

> would take [the plaintiff] out onto the patio . . . for extended periods of time, often more than an hour.[15] Mr. Behnamiri told myself and other restaurant staff that we were not to intrude on these visits with [the plaintiff].

Id. ¶¶ 6-8. She also stated that the plaintiff would often sit at a table with Mr. Behnamiri for extended periods of time when he came to the restaurant and that when she observed them together on the patio, she had witnessed his hand on the plaintiff's leg. *Id.* ¶¶ 7, 9.

In her declaration, Pamela Lee stated that she was a regular customer at the Sandy Plains location from 2006 to 2018 [Doc. No. 154-5 ¶ 2]. She stated that she had seen Mr. Behnamiri put his arms around the plaintiff frequently. *Id.* ¶ 3. Ms. Lee described the following incident in her declaration:

> In or around August 2018, I was in The Place restaurant. Mr. Behnamiri came up behind Ms. Balius, put his arms around Ms. Balius and put his face close to hers, either kissing her or whispering in her ear. She was very busy at the time, and I noticed that she seemed taken aback, or surprised.

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[15] The court notes that Erin Pringle stated that the plaintiff went outside on the deck with Mr. Behnamiri two times a month, maybe, and was outside 15 minutes to half an hour. Pringle Dep. at 9:15-10:4.

Id. ¶ 4. She stated that she had seen Mr. Behnamiri engage in the same or similar behavior toward the plaintiff many times over the years. *Id.* ¶ 5.

Ms. Vickery, a customer and the broker in the transaction involving the plaintiff's residence, testified that she saw Mr. Behnamiri engage in behavior she wasn't comfortable with towards the plaintiff. Vickery Dep. at 35:13-17. Specifically, she said the way Mr. Behnamiri touched the plaintiff made her uncomfortable: "Putting his arm around her too far down on her behiney [sic]" in a way in which she didn't believe "a man his age should be doing . . . to any woman, much less her age, unless he was with that woman." *Id.* at 35:18-36:3. Ms. Vickery stated that she never discussed it with the plaintiff, saying "I knew something was wrong, but she didn't want to talk about it until she wanted to talk to me about it. I did know the talk of The Place, but she's a big girl." *Id.* at 37:7-13. She further testified that when Mr. Behnamiri came into The Place, he did not carry himself like any other customer; instead giving the impression to her that "The King has just walked in the door." *Id.* at 48:19-22.

Via declaration, Mr. Gatlin, the plaintiff's boyfriend/fiancé/co-worker, stated that he had:

> seen Mahmoud Behnamiri act in an inappropriate sexual manner towards [the plaintiff] many, many multiples of times while working at The Place, putting his arm around her, pulling her close to him, touching at or near her lower back and backside, grabbing her face in both his hands and kissing her. Many times he took her

> out to the patio or deck to spend time with him. I understood he was not to be interrupted during those times. This was a regular occurrence almost every time Mr. Behnamiri came into the restaurant. . . . Based on our discussions and her behavior, I know that [the plaintiff] did not welcome Mr. Behnamiri's attentions . . .. It was expected and routine that [the plaintiff] would accept hugs from Mr. Behnamiri as a greeting, and to [sic] serve his table when he entered the restaurant. He used that opportunity to grab, hug, and kiss her virtually every time this happened. . . . I observed and understood that Mr. Behnamiri, as well as his friends and acquaintances, were allowed to touch and kiss employees. It seemed as though they expected special treatment, including the ability to make physical advances towards waitresses and bartenders. . . . With both Mr. Behnamiri, his friends, and Mr. Negahdar, I knew that I was expected to turn a blind eye to their conduct and not to interfere. I expected that I would lose my job if I intervened in any way.

Gatlin Decl. ¶¶ 3, 4, 5, 6, 9, 11 [Doc. No. 154-2].

C. Impact on the Plaintiff's Job

In addition to her professed humiliation/embarrassment and conversations with co-workers who were frustrated with her absence from her duty station, the plaintiff stated that there were complaints to Lina Rodriguez about her being away from the bar from waitresses who were having a hard time getting their product. Pl.'s Dep. at 202:7-25. She further testified that Lina told her she was going to talk to Mr. Negahdar about the time the plaintiff spent on the patio with Mr. Behnamiri. *Id.* at 225:10-18. The plaintiff doesn't know if Lina ever talked to Mr. Negahdar or Mr. Behnamiri about it. *Id.* at 225:21-23; 226:1-8. Mr. Negahdar testified that there were complaints from

about five different managers about the plaintiff not being at her duty station, and some of those episodes were related to her speaking with Mr. Behnamiri. Negahdar Dep. at 51:5-54:25. He further testified that he did not really discipline her for not being present during those times. *Id.* at 55:1-3.

D. The Plaintiff "Gets Behind" in Mortgage Payments

In August 2014, the plaintiff got behind on monthly payments to Mr. Behnamiri. BSMF ¶ 30. On December 6, 2017, Mr. Behnamiri offered to pay the plaintiff her portion of the down payment she made towards the home plus her moving expenses. *Id.* ¶ 31. By February 5, 2018, the plaintiff was over a year behind on her payments to Mr. Behnamiri, while he continued to pay the mortgage company. *Id.* ¶ 32.

E. The Plaintiff Resigns

The plaintiff testified that she gave the defendants notice in early or mid-September 2018 that she would leave the following January by telling Mr. Negahdar that she had been offered another position and it was in her best interest to move on. Pl.'s Dep. at 192:16-193:13. The plaintiff writes that

> Right before I put in my notice to leave, [Mr. Behnamiri] called me to the patio and asked me if I was mad at him for any reason. I asked if he was talking about all the stuff that had happened, he replied yes. I told him I wasn't. He kissed me on the mouth and said, "thank you. . .".

Pl.'s Interrog. Resp. ¶ 3 [Doc. No. 138-1]. By declaration, the plaintiff reiterates that Mr. Behnamiri engaged in kissing, touching, or other inappropriate conduct until very close to the time she resigned in September 2018. Pl.'s Decl. ¶ 5.

F. Mr. Behnamiri Seeks to Evict the Plaintiff

It was not until the plaintiff resigned from "The Place," that Mr. Behnamiri sought to evict her. BSMF ¶ 33. The plaintiff has not made a payment to either Mr. Behnamiri or the mortgage company for the house since October 2018. *Id.* ¶ 34. The plaintiff testified that she did not know how far behind she was in payment when she received the eviction letter because she didn't know what the payments were, stating:

> I didn't know what the actual mortgage was on the house. I've never seen any paperwork on this house at all, ever. [Mr. Behnamiri]'s never shown me a document. We went – I went solely on what he said. And whenever he would say I was such and such behind, I had absolutely no proof whether it was true or not.

Pl.'s Dep. at 154:2-15.

When asked if she ever asked for documentation regarding the mortgage, she stated, "I never questioned [Mr. Behnamiri], absolutely not, no. I wasn't in a position to – I had no weight to throw around. I was [sic] in that position . . . to question him, to insinuate that he was not being truthful. I just had to roll with the punches." *Id.* at 154:21-155:2. In his deposition, Mr. Behnamiri

testified that he told her what amount to write the mortgage checks for, but it was never the exact amount and the "purpose was not making any profit out of her." Behnamiri Dep. at 105:16-25. However, the two examples he was questioned about demonstrated that on those two occasions, the plaintiff paid more than the mortgage amount. *Id.* at 102:13-105:19.

G. The Plaintiff Files a Charge of Discrimination

The plaintiff filed a charge of discrimination with the EEOC on February 1, 2019. BSMF ¶ 25. In her charge of discrimination, she states:

> 1. I was employed by Behnamiri & Associates LLC dba The Place as a bar manager for many years. Mr. Behnamiri, owner, offered to assist me in purchasing a house. After I moved into the house, he began a regular pattern of sexual harassment which created a hostile environment.
>
> 2. Mr. Behnamiri regularly kissed me, touched me, and subjected me to sexual comments and sexual advances for many years. I objected to his actions, but he did not stop. He attempted to come by my home to see me when he knew I was alone, and sexually harassed me at work almost every day. When I found another job and gave several months' notice, I was constructively discharged, and now Mr. Behnamiri is trying to evict me from my home.
>
> 3. I believe I have been discriminated against based upon my gender, female, and in retaliation for protected conduct, in violation of Title VII, 42 USC 2000e *et seq*.

[Doc. No. 140-2]. She lists the earliest acts of discrimination as occurring in 2004 and the latest acts of discrimination occurring in 2018. *Id.*

The EEOC elected to discontinue further processing of her claim and notified her of the same via letter [Doc. No. 140-2 at 3].

VII. Analysis of Issues

A. Title VII Sexual Harassment Claim Against the Corporate Defendants

1. The Timeliness of the Plaintiff's EEOC Charge

As the magistrate judge pointed out:

> Title VII requires a plaintiff to first exhaust the available administrative remedies by filing a charge of discrimination with the EEOC before filing a lawsuit in federal court. *See* 42 U.S.C. § 2000e-5; *Wilkerson v. Grinnell Corp.*, 270 F.3d 1314, 1317 (11th Cir. 2001). In a non-deferral state such as Georgia, the plaintiff must file the EEOC charge within 180 days of the date of the alleged discrimination. 42 U.S.C. § 2000e-5(e)(1). Failure to file the charge within 180 days of the alleged unlawful employment practice bars the claim. *Alexander v. Fulton County, Ga.*, 207 F.3d 1303, 1346 (11th Cir. 2000), *overruled in part on other grounds by Manders v. Lee*, 338 F.3d 1304, 1328 n.52 (11th Cir. 2003) (*en banc*).

R&R at 36 [Doc. No. 171]. The plaintiff filed her EEOC charge of discrimination on February 1, 2019; thus, the magistrate judge calculated that the plaintiff must present evidence that at least some of the unlawful conduct about which she complains took place on or after August 5, 2018. After reviewing the record and holding a hearing concerning the same, the magistrate judge concluded that the plaintiff had failed to present adequate evidence of any specific act of sexual harassment or sexual misconduct on or after August 5, 2018. *Id*. at 41-

42. Accordingly, the magistrate judge recommends granting summary judgment to the corporate defendants on the plaintiff's Title VII sexual harassment claim. *Id.* at 42.

The plaintiff objects to the R&R, arguing that it fails to consider and construe in her favor substantial evidence creating an issue of fact regarding the timeliness of the EEOC charge. Pl.'s Obj. at 2 [Doc. No. 173]. The court has reviewed the plaintiff's evidence and agrees that it is sufficient to withstand summary judgment.

As the magistrate judge cited:

> The Supreme Court has "instructed that a hostile work environment, although comprised of a series of separate acts, constitutes one 'unlawful employment practice' and so long as one act contributing to the claim occurs within the filing period, 'the entire time period of the hostile environment may be considered by a court for the purposes of determining liability.'" [*Jones v. Allstate Ins. Co.*, 707 F. App'x 641, 647] (citations omitted). A series of harassing conduct comprises the same hostile work environment where the "pre- and post-limitations period incidents involve[d] the same type of employment actions, occurred relatively frequently, and were perpetrated by the same managers." *Id.* (citing *National R.R Passenger Corp. v. Morgan*, 536 U.S. 101, 120 (2002)).

R&R at 39. "Put simply, if the smallest portion of 'practice' occurred within the limitations time period, then the court should consider it as a whole." *Shields v. Fort James Corp.*, 305 F.3d 1280, 1282 (11th Cir. 2002).

It is true, as the magistrate judge pointed out, that the plaintiff's EEOC charge alleges only that Mr. Behnamiri's pattern of sexual harassment continued until 2018, without giving a date certain [Doc. No. 140-2 at 2]. However, in her deposition and in response to a previously submitted interrogatory, the plaintiff detailed Mr. Behnamiri's ongoing behavior dating back over more than a decade of grabbing her face, kissing her on the lips and her neck, rubbing her legs, grabbing her at work, asking her to come to the patio and his car where he could be alone with her, and several more serious incidents. *See supra* Section VI. The plaintiff writes that:

> [r]ight before I put in my notice to leave, [Mr. Behnamiri] called me to the patio and asked me if I was mad at him for any reason. I asked if he was talking about all the stuff that had happened, he replied yes. I told him I wasn't. He kissed me on the mouth and said, "thank you. . .".

Id. The record reflects that the plaintiff did not tender her resignation until early or mid-September, putting this incident - which arguably contributes to her claim of harassment - within the relevant period when viewed in the light most favorable to the plaintiff. *See* Pl.'s Dep. at 192:21-193:13.

In addition to this incident, customer Pamela Lee described the following incident in her declaration:

> In or around August 2018, I was in The Place restaurant. Mr. Behnamiri came up behind [the plaintiff], put his arms around [the plaintiff] and put his face close to hers, either kissing her or

> whispering in her ear. She was very busy at the time, and I noticed that she seemed taken aback, or surprised.

[Doc. No. 154-4]. When read in the context of the plaintiff's allegations as a whole, the hugging and kissing/whispering in the plaintiff's ear described by Ms. Lee reflects a continuation of Mr. Behnamiri's alleged harassing behavior. While Lee's declaration, like the EEOC charge, does not list a date certain, the court finds that – when construed in the light most favorable to the non-moving plaintiff – it also creates an issue of fact as to the timeliness of the plaintiff's EEOC charge sufficient to survive summary judgment.

In addition to the above evidence, the plaintiff points the court to her deposition, where she testified that Mr. Behnamiri harassed her (grabbed her face, cupped her face in his hands, kissed her on the mouth, hugged her, her lower waist, her hips, pulled her into him, told her she looked beautiful, kissed her on the neck, etc.) "for the most part" every time he came into the bar. *See supra* Section VI. By declaration, the plaintiff clarified that Mr. Behnamiri continued with his kissing, touching, and other inappropriate conduct until very close to the time she resigned in September 2018. *Id.* She also points the

court to the declaration of Mr. Gatlin, who stated he witnessed the harassing behavior "almost every time Mr. Behnamiri came into the restaurant."[16] *Id.*

The plaintiff testified that during the end of her employment, she "was working two or three days during the day and Saturday nights . . ." Pl.'s Dep. at 200:21-201:2. She clarified that in the last seven or eight months of her employment she was "there during the day only" but "would pick up at night if need be." *Id.* at 201:3-9. In her interrogatory responses, she stated that after a surgery in 2017 she:

> was working mostly days and [Mr. Behnamiri] would come in for lunch. He would kiss me, grab my face, tell me how beautiful I was. He told me how much he loved me, how he didn't know what to do with me because I was so stubborn. He told me how much he loved to kiss me.

[Doc. No. 138-1 at 10].

In the R&R, the magistrate judge concluded that since the plaintiff worked mostly during the day at the end of her employment and Mr. Behnamiri chiefly visited The Place late in the evening a couple of Saturday nights a month, their schedules did not align. R&R at 40. However, the court concludes that when the evidence is viewed cumulatively and in the light most

[16] The plaintiff also refers the court to Ms. O'Shields declaration; however, Ms. O'Shields last worked for the defendant in 2008. *See* O'Shields Decl. ¶ 2 [Doc. No. 155-3]. Therefore, Ms. O'Shields's observations are irrelevant for purposes of determining the timeliness of the plaintiff's EEOC charge.

favorable to the non-moving plaintiff, a question of fact exists as to whether the plaintiff's schedule aligned with Mr. Behnamiri's. Because the plaintiff and at least one other witness testified that Mr. Behnamiri engaged in the harassing behavior every time he came into the restaurant, including up until very close to the time of her resignation, the court finds that the timeliness of the plaintiff's EEOC charge cannot be resolved on summary judgment.

2. Substance of Sexual Harassment Claim

a. Legal Standard

Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e2(a)(1). Although Title VII does not mention "harassment," the phrase "terms, conditions, or privileges of employment" is interpreted to encompass "the entire spectrum of disparate treatment" of protected classes in employment, "which includes requiring people to work in a discriminatorily hostile or abusive environment." *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1244 (11th Cir. 1999) (*en banc*). Sexual harassment via hostile work environment violates Title VII's prohibition on gender discrimination. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 786 (1998) (discussing Title

VII's prohibition on severe or pervasive harassment based on prohibited factors, including sex, race, and national origin). A plaintiff asserting such a harassment claim must show that (1) she is a member of a protected class; (2) she has been subject to unwelcome harassment; (3) the harassment was based on her membership in the protected class; (4) the harassment was sufficiently severe or pervasive such that it altered the terms and conditions of her employment and created a discriminatorily abusive working environment; and (5) there is a basis for holding her employer liable. *See Johnson v. Booker T. Washington Broadcasting Serv., Inc.*, 234 F.3d 501, 508 (11th Cir. 2000) (outlining elements of sexual harassment claim).

b. The Parties' Arguments

In their motion for summary judgment, the corporate defendants argue that they are entitled to summary judgment on the plaintiff's Title VII sexual harassment claim because the plaintiff failed to produce any evidence that she was (a) subjected to unwelcome sexual harassment and (b) that the alleged harassment was sufficiently severe or pervasive to alter the terms of employment and create a discriminatory environment. Corp. Def.'s Mot. for Summ. J. at 13 [Doc. No. 143-1].

i. Was Mr. Behnamiri's conduct unwelcome?

The corporate defendants argue that the plaintiff has failed to demonstrate that Mr. Behnamiri's conduct was unwelcome because she never complained to any manager about Mr. Behnamiri's behavior; only made a complaint about the behavior after Mr. Behnamiri sent her a notice of eviction; voluntarily went on the back deck with Mr. Behnamiri; and willingly socialized with Mr. Behnamiri on multiple occasions when she was off duty. *Id.* at 13 - 17. In response, the plaintiff points to deposition testimony where she repeatedly asked Mr. Behnamiri to stop touching her and kissing her. Pl.'s Resp. Br. at 12 [Doc. No. 154]. She also points to declarations and deposition testimony of co-workers and customers who perceived her to be uncomfortable when Mr. Behnamiri physically engaged with her at work. *Id.* The plaintiff points to her own testimony that she did not initiate conversations about the harassment because it was embarrassing, but co-workers and other managers asked her about it. *Id.* The plaintiff argues that Mr. Behnamiri had control over her livelihood and home, and she felt obliged to follow his direction when having a drink with him on the deck, going to his car, or making a rent payment without proof of the amount. *Id.*

This court has previously described "unwelcome" conduct as conduct that the employee neither solicited nor incited and which the employee regarded as

undesirable or offensive. *Morgan v. Fellini's Pizza, Inc.*, 64 F. Supp. 2d 1304, 1310 (N.D. Ga. 1999). "In determining whether the conduct was unwelcome, the nature of the sexual advances and the context in which they occurred are to be viewed in light of the totality of the circumstances at issue." *Id.*

In this case, the court has reviewed the plaintiff's evidence in the context of the totality of the circumstances and finds that it creates an issue of fact as to whether it was unwelcome sufficient to survive summary judgment. As noted in the statement of facts, the plaintiff has presented evidence in the form of declarations that co-workers and customers/friends noticed that she seemed to be uncomfortable, taken aback, or did not welcome Mr. Behnamiri's advances. *See supra* Section VI. In addition, the plaintiff's own deposition testimony is replete with instances where she told Mr. Behnamiri not to come to her house, told him to stop his advances, cried, yelled, and pushed him away, and told him explicitly that she was not going to "do this." *Id.* Moreover, the plaintiff has articulated in deposition testimony that she did not complain about Mr. Behnamiri's behavior because she was embarrassed and thought it would be unproductive, and has testified via declaration that she accepted Mr. Behnamiri's invitations to accompany him to the deck and on off-duty social encounters only because she felt beholden to him regarding her house and job. *Id.*

"At the summary judgment stage, the [c]ourt is not entitled to weigh the credibility of the varying accounts of the events that took place", and the plaintiff has presented evidence from which a reasonable jury could determine that Mr. Behnamiri's conduct was unwelcome. *Otu v. Papa John's USA, Inc.*, 400 F. Supp. 2d 1315, 1326 (N.D. Ga. 2004). Accordingly, summary judgment is not appropriate on the issue of unwelcomeness.

ii. Was the alleged conduct severe or pervasive?

In regard to the severity and pervasiveness of the alleged conduct, the corporate defendants argue that Mr. Behnamiri's actions of grabbing the plaintiff's face and kissing her was not severe or pervasive considering the plaintiff engaged in the same behavior with co-workers and patrons; that Mr. Behnamiri didn't engage in the complained of acts every time he was at the bar; that the "overt sexual acts" occurred when the plaintiff was off-duty and voluntarily spending time with Mr. Behnamiri; and that the conduct did not unreasonably interfere with her job performance. Corp. Def.'s Mot. for Summ. J. at 17-20 [Doc. No. 143-1].

The plaintiff responds, arguing that Mr. Behnamiri's conduct was both severe and pervasive. Pl.'s Resp. Br. at 15 [Doc. No. 154]. In terms of severity, the plaintiff alleges that Mr. Behnamiri forcefully assaulted her in a car twice,

in addition to numerous incidents of groping, touching the plaintiff's legs and backside, kissing, hugging, and making declarations of love and sexual interest. *Id.* at 15-16. She contends that the behavior she endured was regular and repeated over 15 – 16 years, and that numerous others were subjected to an environment where females were pursued by both Mr. Behnamiri and Mr. Negahdar. *Id.* at 16-17. She argues that Mr. Behnamiri's conduct left her extremely embarrassed in front of co-workers and friends. *Id.* at 17 n.5.

To establish that the harassment is sufficiently severe or pervasive to violate Title VII, a plaintiff must show that she subjectively perceived it to be hostile and abusive and that a reasonable, objective person would also. *Gupta v. Florida Bd. of Regents*, 212 F.3d 571, 583 (11th Cir. 2000), overruled on other grounds as recognized by *Crawford v. Carroll*, 529 F.3d 961, 973-74 (11th Cir. 2008). In determining whether the conduct was objectively hostile and abusive, courts consider the following four factors: "(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." *Id.* at 584; *see also Faragher v. City of Boca Raton*, 524 U.S. 775, 787-88 (1998) (outlining same factors for determining whether work environment is objectively hostile and abusive). These four factors are used to "delineate a minimum level of

severity or pervasiveness necessary for harassing conduct to constitute discrimination in violation of Title VII." *Mendoza v. Borden*, 195 F.3d 1238, 1246 (11th Cir. 1999). No single factor is controlling or required. *Mangrum v. Republic Indus., Inc.*, 260 F.Supp.2d 1229, 1247 (N.D. Ga. 2003) (citing *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993)). Instead, a court must "look[ ] to the totality of the circumstances to determine whether harassment is sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and create an abusive working environment." *Mendoza*, 195 F.3d at 1258. The above inquiries serve to ensure that Title VII does not become "a general civility code." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998).

In this case, the plaintiff has presented evidence that the complained of conduct occurred frequently - almost every time Mr. Behnamiri came into her place of employment - over a period of 15 – 16 years, that it involved groping and touching in the workplace sufficient to make the plaintiff as well as observers uncomfortable, that at least two alleged incidents (one which occurred during work hours) involved touching and groping that could rise to the level of sexual battery/assault, that the behavior made the plaintiff feel humiliated and embarrassed, and that the time it caused her to miss from her workstation interfered with her work in such a way that it solicited a

reprimand from Lina Rodriguez as well as negative feelings and frustration from co-workers.[17] *See supra* Section VI. Accordingly, the court finds that the plaintiff has supported her Title VII claim with evidence of severe and pervasive conduct sufficient to withstand summary judgment. *See, e.g., Johnson*, 234 F.3d at 509 (defining roughly fifteen separate instances of harassment over the course of four months as "not infrequent" and finding the harasser's alleged behavior including unwanted massages, standing so close to the plaintiff that his body parts touched her from behind, and pulling his pants tight to reveal the imprint of his body parts sufficiently severe); *Smith v. Pefanis*, 652 F. Supp. 2d 1308, 1328 (N.D. Ga. 2009) (finding "multiple sexual advances coupled with offensive physical touches" sufficiently severe to survive summary judgment); *Patton v. Keystone RV Co.*, 455 F.3d 812, 816 (7th Cir. 2006) ("[D]irect contact with an intimate body part constitutes one of the most

[17] Although the plaintiff has presented evidence that Mr. Behnamiri's behavior interfered with her job performance, "[t]he Supreme Court has cautioned that harassment need not be shown to be so extreme that it produces tangible effects on job performance in order to be actionable." *See Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1277 (11th Cir. 2002) (citations omitted) (finding that the plaintiff's failure to establish convincingly how conduct interfered with his duties was not fatal to his hostile environment claim, given the frequency, severity, and humiliating nature of the conduct).

severe forms of sexual harassment."); *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1065 (9th Cir. 2002) ("Physical sexual assault has routinely been prohibited as sexual harassment under Title VII").

B. State Law Claims

1. Negligent Supervision and Retention Claim Against Mr. Negahdar

In the R&R, the magistrate judge recommended granting summary judgment in favor of Mr. Negahdar on the plaintiff's negligent supervision and retention claim. R&R at 54 [Doc. No. 171]. The R&R found that the plaintiff presented no evidence suggesting Mr. Behnamiri was an employee of the businesses and presented no case law suggesting that a minority owner and employee-manager like Mr. Negahdar could be liable under a claim of negligent supervision and retention for the actions of a majority, non-employee owner like Mr. Behnamiri. *Id.* at 50-55. In addition, the R&R found that the plaintiff failed to present evidence creating a dispute of material facts as to whether Mr. Negahdar had knowledge of any past or prior conduct by Mr. Behnamiri that would have led him to believe that Mr. Behnamiri had a tendency or propensity to engage in sexual harassment of employees. *Id.* at 54.

The plaintiff objects to the R&R, arguing that "the parameters of negligent hiring/supervision under Georgia law are not clearly defined, [and]

the R&R's finding that it is limited to the employer-employee relationship is incorrect. Pl.'s Obj. at 15-16 (referring to cases that she claims "show this claim may be asserted against a franchisor, [sic] or an organization supervising a volunteer."). In addition, the plaintiff contends that there is a dispute of fact as to whether Mr. Negahdar knew of Mr. Behnamiri's sexual harassment of the plaintiff; as to whether sexual harassment was tolerated in the workplace; and as to whether the plaintiff reported the harassment to a manager. *Id.* at 17-18.

The court has reviewed the cases that the plaintiff cites, but - like the magistrate judge - can find no authority for extending a negligent supervision and retention claim to a situation such as this where the plaintiff seeks to hold an employee and minority owner liable for the negligent supervision and retention of the non-employee majority owner. In the absence of such authority, the court adopts the recommendation of the R&R and agrees that Mr. Negahdar is entitled to summary judgment.

2. Fraud Claim[18] Against Mr. Behnamiri

a. Fraud Claim as Outlined in the Complaint

In her amended complaint, the plaintiff alleges that Mr. Behnamiri offered to assist her in purchasing a home, and then insisted that the property be titled solely in his name. Am. Compl. ¶ 17 [Doc. No. 38]. The plaintiff alleges that he defrauded her by repeatedly making misrepresentations of fact regarding his intention and/or the effect of the joint purchase of her residence. *Id.* ¶ 55. She claims that he repeatedly asserted to her and others involved in

[18] In her complaint, the plaintiff also asserts a claim for equitable estoppel, which the R&R recommends that this court dismiss through summary judgment. In her objections to the R&R, the plaintiff argues in a section heading that the "R&R ERRED IN RECOMMENDING SUMMARY JUDGMENT ON FRAUD, ESTOPPEL CLAIMS," but does not devote any of her arguments to the court's analysis of equitable estoppel in a meaningful way. Pl.'s Obj. at 10 [Doc. No. 173]. Therefore, it appears to the court that she has abandoned this theory of recovery. However, even if she did not intend to abandon this claim, "[e]stoppel . . . is not a cause of action under Georgia law" and "establishing all the elements of equitable estoppel will not entitle [the] plaintiff to relief." *Sabin Meyer Reg'l Sales Corp. v. Citizens Bank*, 502 F. Supp. 557, 560 (N.D. Ga. 1980); *see also Dibrell Bros. Int'l S.A. v. Banca Nazionale Del Lavoro*, 38 F.3d 1571, 1583 (11th Cir. 1994) ("Under Georgia law, a plaintiff cannot assert a separate cause of action for estoppel."). Moreover, in Georgia "[i]t is well established that estoppel conveys no title." *Peacock v. Horne*, 126 S.E. 813, 823 (Ga. 1925); *see also Smith v. Hawks,* 355 S.E.2d 669, 673 (Ga. Ct. App. 1987) ("Estoppels do not convey title in this state."). Therefore, it cannot be used, as the plaintiff attempts, to have legal title in the home vested in her name. As a result, the court finds that Mr. Behnamiri is entitled to summary judgment on this claim.

the transaction "his intention that the property was to belong to her, that she was entitled to use and possess same, and that he would not take action to interfere with her use and possession" of the home. *Id.* ¶¶ 17, 56. The plaintiff alleges that she relied upon these representations, making payments for the property at the time of the purchase and regularly over the next number of years, as well as maintaining, renovating, and repairing the property. *Id.* ¶ 57. The plaintiff asks the court to use its equitable authority to have legal title properly vested in her name (*Id.* ¶¶ 54-58).

b. R&R's Analysis of Fraud

As noted above, the R&R recommended summary judgment in favor of Mr. Behnamiri on the plaintiff's fraud claim. After analyzing the plaintiff's claim as articulated in the plaintiff's summary judgment response brief,[19] the magistrate judge found that the plaintiff failed to establish justifiable reliance because Mr. Behnamiri's assurance that she would eventually own the house was a representation as to a future event conditioned on her making the payments, and the plaintiff failed to submit any probative evidence that such a statement was untrue at the time it was made. R&R at 62. In addition, the

[19] The R&R first found that the plaintiff failed to state a valid claim for fraud because she failed to plead facts with sufficient particularity as required by both federal and state law. R&R at 56-57.

magistrate judge found that the plaintiff failed to support a claim for actual damages as to the alleged fraud because Mr. Behnamiri continues to pay the mortgage for the home, she pays no taxes or insurance on the home, and has not made a payment since at least October 2018, when she was already behind on payments. *Id.* at 63.

c. The Plaintiff's Objections

The plaintiff objects to the R&R, arguing that it misconstrued the nature of the alleged misrepresentation. Whereas the R&R determined that the parties agreed and understood that the plaintiff's interest in the property would not accrue until she paid the mortgage for thirty years, the plaintiff argues that Mr. Behnamiri represented that the property was to be quitclaimed and titled in her name at the time of closing, before her monthly payments began. Pl.'s Obj. at 12 -13 [Doc. No. 173]. She argues that his actions at the time of the transaction show that he did not intend to fulfill his promise because he could have quitclaimed the property at that time, and he did not do it. *Id.* at 13. She argues that the money she paid towards the down payment, Mr. Behnamiri's representations to Ms. Vickery, and the ongoing conversations regarding execution of a quitclaim deed support her claim. *Id.* at 10-14.

d. Legal Standard for Analyzing Fraud Claim

In Georgia, the elements of a fraud claim are: (1) false representation by a defendant; (2) scienter; (3) intention to induce the plaintiff to act or to refrain from acting; (4) justifiable reliance by the plaintiff; and (5) damage to the plaintiff. *See Fortson v. Hotard*, 684 S.E.2d 18, 21 (Ga. Ct. App. 2009). Stated differently:

> fraud requires proof (1) that the defendant made the representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the plaintiff; (4) that the plaintiff justifiably relied on such representations; and (5) that the plaintiff sustained the alleged loss and damage as the proximate result of their having been made.

Greenwald v. Odom, 723 S.E.2d 305, 312 (Ga. Ct. App. 2012) (citations omitted).

Although fraud generally cannot be "predicated on statements that are in the nature of promises as to future events," ". . . an exception to this rule exists where a promise as to future events is made with a present intent not to perform or where the promisor knows that the future event will not take place." *TechBios, Inc. v. Champagne*, 688 S.E. 2d 378, 380-81 (Ga. Ct. App. 2009). These disingenuous promises must be contrasted against representations that consist "of general commendations or mere expressions of opinion, hope, expectation and the like . . . [which] cannot serve the basis for . . . a fraud . . .

claim." *Bithoney v. Fulton-DeKalb Hosp. Auth.*, 721 S.E. 2d 577, 584 (Ga. Ct. App. 2011).

Because "fraud is inherently subtle, a claimant may survive summary judgment if there is slight, circumstantial evidence supporting a fraud claim." *Rubenstein v. Palatchi*, 857 S.E.2d 81, 88 (Ga. Ct. App. 2021). Georgia courts have recognized that fraud "can be accomplished in an infinite number of ways including signs and tricks and even, in some instances, by silence." *Fed. Ins. Co. v. Westside Supply Co.*, 590 S.E.2d 224, 229 (Ga. Ct. App. 2003) (citations omitted). As a result, Georgia courts have stated that "recourse to circumstantial evidence *usually is required"* and have dictated that "it is peculiarly the province of the jury to pass on these circumstances showing fraud." *Id.* "Except in plain and indisputable cases," both scienter and justifiable reliance are generally issues for the jury. *Id.* (regarding scienter) and *Rubenstein*, 857 S.E.2d at 87 (regarding justifiable reliance).

e. Analysis of Fraud Claim

After reviewing the facts in the light most favorable to the plaintiff, the court concludes that the plaintiff has met her burden to survive summary

judgment on the fraud claim and have a jury evaluate the evidence. When viewed in her favor, the evidence could be interpreted as follows:[20]

Without solicitation from the plaintiff, Mr. Behnamiri encouraged her to leave her current rented apartment and buy a home that he would "help" her buy as co-signor because her debt-to-income ratio was too high to obtain a loan. The plaintiff found a real estate agent, looked for a house, and chose a house. She worked with Ms. Vickery to obtain an owner-occupied FHA loan with a favorable interest rate that Mr. Behnamiri would co-sign and was prepared to pay the down payment on the house with the loan for financing.

A few days before closing, Mr. Behnamiri reviewed the paperwork and told the plaintiff first, and the broker second, that he wanted to restructure the deal. Rather than serving as a co-signer on the plaintiff's loan for the plaintiff's owner-occupied house, he wanted the paperwork in his name only. Such a transaction altered the very foundation of the deal: rather than assisting the plaintiff in the purchase of a home paid for with her down payment money, titled in both of their names, and financed pursuant to the plaintiff's loan that he co-signed, Mr. Behnamiri wanted to purchase an investment property in his name only using the plaintiff's money as part of the down payment. Although

[20] Because all facts included in this analysis are derived from the statement of facts recited above, the court will not cite to the record here.

the plaintiff, who by all accounts was an unsophisticated buyer, understood this to be a better deal, her broker with 35 years of experience clarified in deposition that it was a worse deal for the plaintiff because Mr. Behnamiri's loan was an investment loan with a higher interest rate and all parties understood the plaintiff would be paying the higher monthly mortgage.

The plaintiff's broker, Ms. Vickery, was concerned about the plaintiff and told both the plaintiff and Mr. Behnamiri that he needed to execute a quitclaim at closing or the plaintiff would have no rights in the house. Ms. Vickery, who had daily conversations with the plaintiff during this timeframe, testified that Mr. Behnamiri agreed he needed to do a quitclaim at closing and told her repeatedly that the house would be the plaintiff's house. On the day of the transaction, however, Ms. Vickery was not present, and Mr. Behnamiri did not sign a quitclaim deed. The plaintiff testified that she understood that the house was her house, and Mr. Behnamiri reiterated shortly after closing and again after he had a brain surgery that he was going to execute a quitclaim deed in her favor.

For many years, the plaintiff paid the higher interest mortgage payments - and sometimes more - on Mr. Behnamiri's investment property by making monthly payments to Mr. Behnamiri, who paid the bank. It was her understanding that, though the bank technically owned the house, the house

was hers and that she would be the owner "a hundred percent" when she finished paying the loan. It appears from his own testimony, however, that Mr. Behnamiri never intended for this to occur. Instead, he testified that he intended to sell the house to her when she was able to buy it for whatever the balance on the loan was.

In the meantime, the situation worked to Mr. Behnamiri's benefit: he owned an investment property he purchased, in part, with the plaintiff's down-payment funds, the plaintiff paid the mortgage on the investment property with a higher interest rate than she would have paid on a loan if the house was titled in her name and Mr. Behnamiri's name jointly, and the entire situation gave him significant leverage over the plaintiff, who worked for his business and lived in his house that he purchased using her savings. If the trier of fact credits the plaintiff's testimony as true, Mr. Behnamiri sought to exploit that leverage by soliciting sexual liaisons, favors, and encounters from and with the plaintiff.

The court is aware that Mr. Behnamiri has a different version of these facts, one which he will have the opportunity to tell at trial. In the meantime, the court finds that the plaintiff has presented evidence - both direct and circumstantial - that supports her theory: namely, that she contributed to the down payment on the house and made monthly payments on the house because

Mr. Behnamiri represented repeatedly that he would quitclaim to her the property; that he knew at the time of purchase and subsequent statements that he would not honor such representations but would instead sell the home to her at some future date; that he – a sophisticated real estate investor - made the representations that the house would be her house and that he would quitclaim it to her with the intention of deceiving the unsophisticated plaintiff, resulting in a favorable financial and power dynamic for him; that the plaintiff justifiably relied on such representations; and that the plaintiff suffered losses from Mr. Behnamiri's misrepresentations including her down payment, any equity in the home, and the excess payments she made over the actual mortgage amounts due to Mr. Behnamiri's misrepresentations of the mortage payments. As such, the court finds that this claim should proceed to trial where a trier of fact can interpret the evidence and determine whether the plaintiff's allegations are credible.

Accordingly, the court rejects the recommendations of the R&R as it pertains to this claim and denies summary judgment to Mr. Behnamiri on the fraud claim.

C. Remedies

1. Constructive Trust

If a party succeeds on a claim of fraud or unjust enrichment, "a constructive trust is a device by which property might be recovered." *Giller v. Slosberg*, 858 S.E.2d 747, 753-54 (Ga. Ct. App. 2021), reconsideration denied (June 18, 2021). Pursuant to O.C.G.A. § 53-12-132:

> (a) A constructive trust is a trust implied whenever the circumstances are such that the person holding legal title to property, either from fraud or otherwise, cannot enjoy the beneficial interest in the property without violating some established principle of equity.
>
> (b) The person claiming the beneficial interest in the property may be found to have waived the right to a constructive trust by subsequent ratification or long acquiescence.

While "a constructive trust generally may not be imposed [in regard to interests in real property] based solely on a broken verbal promise to hold or transfer the land for the benefit of another," "[a] broken verbal promise may be the basis of a constructive trust . . . if it was fraudulently made with the intention of being broken and for the purpose of thereby obtaining title." *Troutman v. Troutman*, 676 S.E.2d 787, 790 (Ga. Ct. App. 2009); *see also Watkins v. Watkins*, 344 S.E.2d 220, 221 (Ga. 1986) ("… equity will declare a constructive trust in respect of property acquired by [the] fraudulent oral promises of a vendee, which he intends at the time of making to violate.") "In

other words, there must be positive fraud accompanying the promise." *Troutman,* 676 S.E.2d at 790 (citations omitted).

As noted above, the court has determined that there is enough evidence for the plaintiff to survive summary judgment on her fraud claim. If the trier of fact determines Mr. Behnamiri is liable for the fraud as charged, the court cannot say as a matter of law that Mr. Behnamiri - who obtained an investment property using the plaintiff's savings and accrued equity over the course of many years while the plaintiff paid the mortgage, and sometimes even more than the mortgage - has not been unjustly enriched. Accordingly, the court rejects the recommendation of the R&R and denies summary judgment on the remedy of a constructive trust.

2. Punitive Damages

In Georgia, "[p]unitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to the consequences." O.C.G.A. § 51-12-5.1(b). Pursuant to the governing code section, "the trier of fact shall first resolve from the evidence produced at trial whether an award of punitive damages shall be made." O.C.G.A. § 51-12-5.1(d)(1). "Georgia courts have consistently

recognized that a claim for punitive damages is effective only if there is a valid claim of actual damages to which it could attach, and that punitive damages may not be recovered if the party's substantive claims have failed." R&R at 68 (citing *J. Kinson Cook of Ga., Inc. v. Heery/Mitchell*, 644 S.E.2d 440, 449 (Ga. Ct. App. 2007) and *Nelson & Hill, P.A. v. Wood*, 537 S.E.2d 670, 677 (Ga. Ct. App. 2000)).

Because the R&R concluded that the corporate defendants and Mr. Negahdar were entitled to summary judgment on all claims against them, the R&R also recommended summary judgment on the plaintiff's request for punitive damages as to these defendants. R&R at 68. However, as noted herein, this court is not granting summary judgment in favor of the corporate defendants; therefore, the court concludes that the issue of punitive damages is better reserved for the trier of fact at trial. Accordingly, the court DENIES summary judgment to the corporate defendants in regard to punitive damages. In addition, the court – in agreement with the R&R – DENIES summary judgment as to Mr. Behnamiri in regard to punitive damages since the battery and fraud claims against him will proceed to trial. Since the court has granted summary judgment to Mr. Negahdar on the substantive claim against him, the court also GRANTS summary judgment in his favor as to punitive damages.

VIII. Conclusion

For the reasons stated herein, the court ADOPTS in part and REJECTS in part the R&R [Doc. No. 171]. Accordingly, the pending motions are adjudicated as follows:

1. The plaintiff's amended motion for partial summary judgment [Doc. No. 127] is GRANTED as to Mr. Behnamiri's counterclaims and DENIED as to her claim for retaliation.
2. Mr. Behnamiri's first motion for summary judgment [Doc. No. 130] is GRANTED as to the plaintiff's Title VII claims and equitable estoppel claim, and is DENIED as to the plaintiff's fraud claim, the plaintiff's request for a constructive trust, and for punitive damages.
3. Mr. Negahdar's amended motion for summary judgment [Doc. No. 140] is GRANTED as to the plaintiff's Title VII claims, the plaintiff's claim for negligent supervision and retention, and the plaintiff's request for punitive damages.
4. The corporate defendants' motion for partial summary judgment [Doc. No. 143] is GRANTED as to the plaintiff's Title VII claim for retaliation and state law claims of battery and negligent

supervision and retention and DENIED as to the plaintiff's Title VII claim for sexual harassment.

Because this order resolves all claims against Mr. Negahdar, the clerk is DIRECTED to terminate him as a party defendant in this action. The remaining parties are ORDERED to file their pretrial order within 30 days of the date of this order.

SO ORDERED this 30th day of September, 2021.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge