

Case Reports (190864)

by admin

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A jury has awarded \$30,000 in punitives and \$8,000 in compensatory damages to a Gaston County secretary who claimed sexual harassment forced her to quit after only three weeks on the job.

The plaintiff's successful suit was based in part on claims of quid pro quo sex harassment under Title VII.

But in a twist, she also alleged the harassment violated North Carolina public policy — creating a *Coman* exception to the usual at-will employment rules for wrongful discharge.

Said the plaintiff's attorney, Julie Fosbinder of Charlotte: "Under *Coman*, a lot of plaintiffs have brought wrongful discharge claims when they were fired because of their race or sex. We claimed that whenever you have sexual harassment, that's also in violation of public policy."

The case is *Russell v. Carolina Machine and Associates, Inc.* (Gaston County Superior Court; 95 CvS 2502).

The plaintiff, a working mother, said that shortly after being hired as personal secretary to a company's president, he began pestering her for sex. He grabbed her buttocks on one occasion, rubbed his foot up her leg, and told her to wear only dresses to work — without undergarments.

When she rejected the advances, he cut her salary by 25 percent, she said. Because of the ensuing humiliation and distress, she quit before the month was out and filed what is believed to be the first sex harassment suit in Gaston County.

The plaintiff's claim under state law hinged on G.S. § 143-422.2, which declares that job discrimination based on sex, among other things, violates the state's public policy.

Evidence that employment is conditioned on sexual favors meets that test, according to a Fourth Circuit ruling, *Harrison v. Edison Bros. Apparel Stores*, 924 F.2d 530 (1991). And state courts look to federal decisions for establishing evidentiary standards under the act, the North Carolina Supreme Court said in *N.C. Dept. of Correction v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983).

The bottom line, Fosbinder argued: the state's equal employment practices act mirrors Title VII.

Fosbinder also argued the defendant's conduct violated the public policy underlying the state's prostitution statutes, which bar the exchange of sexual favors for money.

Despite the viable *Coman* claim, Fosbinder did not limit the lawsuit to state grounds.

"In the past, most of the successful harassment claims were brought under state law allegations of assault and intentional infliction of emotional distress," she said. "But after Title VII was amended in 1991 to allow for compensatory and punitive damages, you can get the same sort of recovery. And the nice thing is that you don't need compensatory damages to get punitives under Title VII."

In fact, the plaintiff's recovery on compensatory damages was only \$8,300, far less than the punitives award.

But Fosbinder said her client's short stint on the job actually made the case simpler than some other harassment cases she's handled.

"She only worked three weeks so job performance was not an issue," said Fosbinder.

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