

IN THE CIRCUIT COURT OF THE TENTH
JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

A.B., an individual,

Plaintiff,

Case No.:

v.

SOUTHEASTERN UNIVERSITY, INC.,
a Florida corporation,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, A.B. ("Plaintiff"),¹ by and through undersigned counsel, sues Defendant, SOUTHEASTERN UNIVERSITY, INC., and alleges as follows:

INTRODUCTION

1. Plaintiff brings this lawsuit against Defendant after being subjected to sexual misconduct by Southeastern University's athletic trainer and adverse employment actions by Defendant, including discrimination, sexual harassment, and retaliation in violation of the Florida Civil Rights Act of 1992, Florida Statute §760 *et seq.* ("FCRA") and other tortious conduct as described herein.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

2. On or about May 12, 2021, Plaintiff timely filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission ("the EEOC") and the Florida Commission on Human Relations.

¹ Plaintiff has filed this lawsuit using a pseudonym to protect her privacy and because she fears further psychological injury if her name were publicly disclosed, as this lawsuit involves facts of the utmost intimacy regarding Plaintiff's sexual victimization. Plaintiff's true identity is known to the Defendant and its counsel.

3. On November 18, 2022, the EEOC issued a Dismissal and Notice of Rights.

4. All conditions precedent to the filing of this lawsuit have been met or otherwise waived.

JURISDICTION, VENUE, AND PARTIES

5. This is an action for damages in excess of fifty thousand dollars (\$50,000.00), exclusive of interest, costs, and attorneys' fees.

6. The unlawful and tortious practices alleged herein were committed within Polk County, Florida.

7. At all times pertinent, Plaintiff was an adult female and a citizen and resident of Polk County, Florida.

8. Defendant SOUTHEASTERN UNIVERSITY, INC. ("SU" or Defendant) is a Florida corporation doing business in Polk County, Florida as an institution of higher education with an athletic department, including a women's volleyball team. Jem Sirrine ("Sirrine") worked for Defendant as an athletic trainer within Defendant's athletic department, with responsibility for treating and tending to athletic injuries and concerns of student athletes and staff.

9. Venue is proper in Polk County, Florida because all causes of action set forth herein occurred in Polk County, Florida.

GENERAL ALLEGATIONS

10. At all times material, Defendant acted by and through its managers, agents, servants, work-persons, and employees, acting in the course and scope of their employment and authority and in furtherance of the business of Defendant.

11. At all times material, Plaintiff was employed by Defendant SU as an assistant women's volleyball coach.

12. On or about November 9, 2020, in her capacity as Assistant Women's Volleyball Coach, Plaintiff sought treatment from Sirrine for a tight muscle in her leg.

13. Instead of providing appropriate treatment, Sirrine seized the opportunity to sexually assault Plaintiff, running his hand up to Plaintiff's groin under Plaintiff's exercise shorts.

14. Sirrine moved Plaintiff's shorts to expose Plaintiff's vagina to him so he could see it.

15. Plaintiff was shocked and frozen.

16. Sirrine then began administering a treatment to Plaintiff, during which time Sirrine again adjusted Plaintiff's shorts to expose Plaintiff's vagina again.

17. During the sexual assault, the Head Athletic Trainer, Sirrine's manager, came into the room, but failed to take any action to stop Sirrine, despite the open and obvious nature of Sirrine's misconduct and prior knowledge of the threat to women Sirrine posed.

18. As soon as the Head Trainer left the room, Sirrine continued the sexual abuse of Plaintiff by moving her shorts and exposing her vagina to him for a third time.

19. The above referenced sexual contacts were unwanted, offensive, and without Plaintiff's consent. Further, these actions were wholly unrelated to any legitimate treatment that Plaintiff was receiving from Sirrine.

20. The next morning (November 10, 2020), Plaintiff reported Sirrine's sexual misconduct in the workplace to her immediate supervisor, the Head Volleyball Coach, who notified the Athletic Director.

21. At that time, the Head Volleyball Coach admitted to Plaintiff that SU had received an earlier complaint about and possessed knowledge of a series of similar incidents of sexual misconduct over a period of weeks by Sirrine in which he made unwanted and unauthorized sexual contacts with a female volleyball player's genital area and underwear in the training room.

22. When SU originally learned of the prior repeated incidents of sexual misconduct, management "felt it would be best to suspend [Sirrine] immediately [and] were OK to do this due to the number of times that it occurred." Inexplicably, however, SU failed to take appropriate action and suspend Sirrine, or take any other action to protect Plaintiff from the known threat posed by Sirrine, thus allowing the extreme sexual harassment and sexual assault of Plaintiff to occur. If SU had taken appropriate action to protect Plaintiff from the known threat, Plaintiff would not have suffered the extreme sexual harassment and assault.

23. Despite the clear notice of the potential imminent threat posed by Sirrine by the Athletic Director, Head Coach, and Head Trainer, SU failed to take any action against Sirrine or otherwise adequately protect Plaintiff from Sirrine, despite the fact he was engaging in the same pattern of behavior that led to the prior report against him.

24. Indeed, the Head Trainer was present during Sirrine's sexual misconduct and attack on Plaintiff, with advance of notice of substantially similar, prior incidents, and SU still failed to act to stop Sirrine and prevent the harm to Plaintiff.

25. After Plaintiff reported the sexual misconduct, and despite prior notice of a similar incident, the Athletic Director became angry and questioned Plaintiff's motives to the Head Coach.

26. Additionally, when Plaintiff reported Sirrine's sexual misconduct in the workplace to Title IX/Human Resources for SU, Plaintiff was told there was nothing Defendant SU could do for her at this time.

27. SU constructively terminated Plaintiff's employment, as no reasonable person would continue after what happened to Plaintiff as outlined above. Although the playoffs still remained, Plaintiff was not invited to join the team and was excluded from all team activities.

28. SU then denied Plaintiff further employment opportunities, by failing and refusing to invite Plaintiff to return to serve as the assistant coach for the following volleyball season. Had Plaintiff not been sexually harassed at work and/or reported sexual misconduct in the workplace, SU would have invited Plaintiff to continue her work with the team.

29. As result of the above, SU has suffered humiliation, embarrassment, severe emotional distress, and loss of enjoyment of life. Although the Florida Department of Health eventually would revoke Sirrine's license for the wrongful sexual misconduct he perpetrated against Plaintiff, SU to date refuses to accept any responsibility for the harms suffered by Plaintiff.

30. Plaintiff has been forced to retain undersigned counsel to prosecute these claims and protect her rights and is obligated to pay counsel's reasonable attorneys' fees and costs.

COUNT I - Discrimination under the FCRA (Hostile Work Environment)

31. Plaintiff re-alleges and incorporates paragraphs 1 through 30 of the Complaint as if set forth fully herein.

32. Plaintiff's sex was a determining factor in the adverse employment actions SU perpetrated against Plaintiff as described above.

33. SU discriminated against Plaintiff, and subjected Plaintiff to a hostile work environment, on the basis of her sex, in violation of the Florida Civil Rights Act.

34. The sexual harassment Plaintiff experienced was severe and pervasive.

35. SU knowingly and willfully discriminated against Plaintiff on the basis of her sex.

36. As a direct, natural, proximate, and foreseeable result of SU's actions, Plaintiff has suffered irreparable injuries, including but not limited to, lost wages, severe emotional distress, humiliation, and loss of enjoyment of life, for which she should be compensated.

37. The conduct of SU complained of herein was willful, wanton, malicious, oppressive, and/or unmindful of obligations to Plaintiff and/or exhibited that entire want of care, which would rise to the presumption of conscious indifference to the consequences, so as to warrant the imposition of punitive damages in an amount sufficient to punish, penalize, or deter SU, for which SU is liable to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Southeastern University, Inc. for all damages to which she may be entitled, including, but not limited to:

- (a) Entry of a judgment in favor of Plaintiff and against SU;
- (b) Back pay;

- (c) Reinstatement, or in the alternative, front pay;
- (d) Compensatory damages;
- (e) Punitive damages;
- (f) Attorneys' fees and costs;
- (g) Pre-Judgment and Post-Judgment interest, as provided by law; and
- (h) Such other and further relief as the Court deems just and proper.

COUNT II - Discrimination under the FCRA (Constructive Termination/Denial of Employment Opportunities)

38. Plaintiff re-alleges and incorporates paragraphs 1 through 30 of the Complaint as if set forth fully herein.

39. Plaintiff's sex was a determining factor in the adverse employment actions SU perpetrated against Plaintiff as described above.

40. SU discriminated against Plaintiff, and constructively terminated Plaintiff's employment and denied Plaintiff employment opportunities on the basis of her sex.

41. SU knowingly and willfully discriminated against Plaintiff on the basis of her sex.

42. As a direct, natural, proximate, and foreseeable result of SU's actions, Plaintiff has suffered irreparable injuries, including but not limited to, lost wages, severe emotional distress, humiliation, and loss of enjoyment of life, for which she should be compensated.

43. The conduct of SU complained of herein was willful, wanton, malicious, oppressive, and/or unmindful of obligations to Plaintiff and/or exhibited that entire want of care, which would rise to the presumption of conscious indifference to the

consequences, so as to warrant the imposition of punitive damages in an amount sufficient to punish, penalize, or deter SU, for which SU is liable to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Southeastern University, Inc. for all damages to which she may be entitled, including, but not limited to:

- (a) Entry of a judgment in favor of Plaintiff and against SU;
- (b) Back pay;
- (c) Reinstatement, or in the alternative, front pay;
- (d) Compensatory damages;
- (e) Punitive damages;
- (f) Attorneys' fees and costs;
- (g) Pre-Judgment and Post-Judgment interest, as provided by law; and
- (h) Such other and further relief as the Court deems just and proper.

COUNT III - Retaliation Under The FCRA

44. Plaintiff re-alleges and incorporates paragraphs 1 through 30 of the Complaint as if set forth fully herein.

45. Plaintiff complained to SU regarding the sexual harassment and hostile work environment perpetrated against Plaintiff as described above.

46. Plaintiff's complaints of sexual harassment were a determining factor in the retaliatory acts SU perpetrated against Plaintiff as described above, including but not limited to inappropriately questioning Plaintiff's motivations without any basis, constructively terminating Plaintiff's employment and denying Plaintiff the opportunity to continue with her team and to return as a coach for the team.

47. SU retaliated against Plaintiff for her complaints in violation of the Florida Civil Rights Act.

48. SU knowingly and willfully retaliated against Plaintiff for her complaints of sexual harassment.

49. As a direct, natural, proximate, and foreseeable result of SU's actions, Plaintiff has suffered irreparable injuries, including but not limited to, lost wages, benefits and other economic losses, emotional pain and suffering, mental anguish, humiliation, embarrassment, personal indignity, and other intangible injuries for all of which she should be compensated.

50. The conduct of SU complained of herein was willful, wanton, malicious, oppressive, and/or unmindful of obligations to Plaintiff and/or exhibited that entire want of care, which would rise to the presumption of conscious indifference to the consequences so as to warrant the imposition of punitive damages in an amount sufficient to punish, penalize or deter SU, for which SU is liable to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant Southeastern University, Inc. for all damages to which she may be entitled, including, but not limited to:

- (a) Entry of a judgment in favor of Plaintiff and against SU;
- (b) Back pay;
- (c) Reinstatement, or in the alternative, front pay;
- (d) Compensatory damages;
- (e) Punitive damages;
- (f) Attorneys' fees and costs;

- (g) Pre-Judgment and Post-Judgment interest, as provided by law; and
- (h) Such other and further relief as the Court deems just and proper.

COUNT IV – Negligent Retention / Supervision

51. Plaintiff re-alleges and incorporates paragraphs 1 through 30 of the Complaint as if set forth fully herein.

52. SU had a duty to exercise reasonable care in the supervision and retention of Sirrine while he was an employee of SU. Likewise, SU had a corollary duty to Plaintiff as an employee and assistant coach in the athletic department to exercise reasonable care in providing a safe environment free of the risk of being sexually victimized.

53. Prior to the subject incident involving Plaintiff, Defendant knew, or in the exercise of reasonable care, should have known that Sirrine was unfit for the duties of athletic trainer for which he had been hired and had a temperament and/or history that rendered him unfit to be alone in the training room with women and/or posed a risk of perpetrating unwanted sexual conduct.

54. Indeed, the continued placement of Sirrine in the position of athletic trainer where he would interact with female employees in this capacity was reasonably foreseeable to result in injury to the female students and employees – a risk of which Plaintiff was not aware of when she was alone with Sirrine.

55. SU breached its duty of care by retaining and/or failing to adequately supervise Sirrine, even though it knew, or should have known, that he was unsuitable for this particular workplace and posed a risk of acting out with females with whom he interacted with in the course of his duties as an athletic trainer.

56. After hiring Sirrine, SU did not warn or otherwise implement protocols to protect persons who may foreseeably be subjected to misconduct by Sirrine, including athletes and coaches within the Athletic Department.

57. As a direct and proximate result of SU's breach of its duty of care, Sirrine had access to and opportunity to engage in lewd and tortious behavior directed at Plaintiff, causing psychological and emotional injuries.

58. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, loss of income, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Southeastern University, Inc. for compensatory damages, costs and such other and further relief as this Court deems proper.

COUNT V – RESPONDEAT SUPERIOR / VICARIOUS LIABILITY

59. Plaintiff re-alleges and incorporates paragraphs 1 through 30 of the Complaint as if set forth fully herein.

60. Sirrine was at all material times an employee, appointee and/or agent of SU.

61. Sirrine committed acts of sexual misconduct on Plaintiff by offensively running his hand up to Plaintiff's groin under Plaintiff's exercise shorts and exposing her vagina to him.

62. Sirrine was authorized by SU to be alone with A.B. and other female athletes/coaches, and to have unfettered and unsupervised control and access to A.B. while A.B. was there for treatment.

63. The acts of battery and offensive touching in a sexual manner perpetrated by Sirrine on A.B. occurred in SU's training room where Sirrine was required to perform his employment duties, and his contact with A.B. was initiated within the course and scope of Sirrine's performance of those duties.

64. The sexual misconduct described above occurred during Sirrine's working hours while he was there to provide treatment on behalf of SU.

65. Sirrine's initial contact and relationship with A.B. was in furtherance of SU's business interests.

66. In addition, Sirrine was authorized by SU to touch A.B. Sirrine extended and converted this authorized touching into acts of sexual assault and battery of A.B. as described above.

67. The acts engaged in by Sirrine were in the apparent course and scope of his employment or agency with SU.

68. As a result of the sexual misconduct described herein, A.B. has suffered psychological, emotional and physical injuries, as well as shame, humiliation and the inability to lead a normal life.

69. Under the doctrine of respondeat superior, SU is responsible for the negligent, reckless and intentional actions of its servant, A.B., committed in the apparent scope of his duties.

WHEREFORE, Plaintiff demands judgment against Southeastern University, Inc. for compensatory damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

s/ Bradley P. Rothman
Bradley P. Rothman
Florida Bar No. 0677345
Primary E-Mail: BRothman@weldonrothman.com
Secondary E-Mail: sweston@weldonrothman.com
WELDON & ROTHMAN, PL
2548 Northbrooke Plaza Dr.
Naples, Florida 34119
Tel: (239) 262-2141
Fax: (239) 262-2342

-and

Adam D. Horowitz
Florida Bar No. 376980
Primary E-Mail: adam@adamhorowitzlaw.com
Secondary E-Mail: maria@adamhorowitzlaw.com
Elana B. Goodman
Florida Bar No. 145076
Primary E-Mail: elana@adamhorowitzlaw.com
Secondary E-Mail: maria@adamhorowitzlaw.com
HOROWITZ LAW
110 East Broward Blvd., Ste. 1530
Fort Lauderdale, FL 33301
Tel: (954) 641-2100
Fax: (954) 828-0596
Counsel for Plaintiff