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Date: 10/1/2013 11:42 AM

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Subject: seubert decision

SHORT FORM ORDER**SUPREME COURT - STATE OF NEW YORK**

Present: ANTONIO I. BRANDVEEN
J. S. C.

KRISTINE SEUBERT,

Plaintiff,

- against -

DR. WARREN DELUTY, DDS and SHERYL M.
DELUTY,

Defendants.

TRIAL / IAS PART 29
NASSAU COUNTY

Index No. 5859/10

The Calendar Control Part of the Supreme Court, Nassau County referred the underlying sexual harassment and retaliation matter here on May 8, 2013, for an inquest on damages pursuant to 22 NYCRR § 202.27. An inquest was held pursuant to CPLR 3215 regarding the plaintiff's proof of damages. The plaintiff seeks damages under the Administrative Code of the City of New York Title 8, also known as the Human Rights Law, and the Executive Law of the State of New York Article 15, §290 et seq., also known as the Human Rights Law. The plaintiff also seeks to set aside a fraudulent conveyance of real property against both defendants pursuant to the Debtor and Creditor Law, but no damages.

The plaintiff worked from March 2006 through October 2007, for Warren Deluty, D.D.S. as a part-time dental assistant and receptionist in Nassau County and Queens County. The plaintiff provides evidence showing it took the plaintiff approximately five

to six months to replace lost work hours with Dr. Deluty with another part-time job. The wages lost were \$1,781.00 during the time spent by the plaintiff without employment. The plaintiff testified she suffered several changes to her emotional state from Dr. Deluty's sexual harassment of her. Those changes comprised an impact on her romantic life, including her general interactions with men and relationships with other employers and lost friends. The plaintiff testified she became depressed, and sought psychological treatment from Shane Gregory Owens, Ph.D., a New York State licensed psychologist on a weekly basis from October 29, 2007 through June 2009. The plaintiff testified she stopped treatment because it became too expensive, and the process of discussing the incidents with Dr. Deluty were very painful.

The plaintiff's parents testified the plaintiff lived with them, and worked with Dr. Deluty. They each testified their daughter was an outgoing person with many friends before she worked for Dr. Deluty. They each testified their daughter's negative personality changes while she worked for the doctor which continued after she left that employment.

Dr. Owens examined the plaintiff, and found the plaintiff sustained adjustment disorder with mixed disturbance of emotions. Dr. Owens observed the plaintiff exhibited anxiety, sadness and anger over the incidents involved Dr. Deluty. Dr. Owens put the plaintiff through cognitive behavior therapy and rational emotional therapy to change the symptoms by changing the plaintiff's behavior and thoughts that lead to her emotions. Dr. Owens noted the plaintiff's symptoms improved for a time, but by the conclusion of the

treatment those symptoms returned, and the plaintiff stopped treatment because it became very difficult for her. Dr. Owens testified the plaintiff paid \$1,435.00 for his services.

Dr. Deluty and Sheryl Deluty his wife transferred joint title of their West Hempstead home on February 12, 2010, by quitclaim deed to Sheryl Deluty. The plaintiff claims that transfer was not for fair consideration, and Dr. Deluty testified he was insolvent four months after the transfer despite his business grossing more than \$200,000.00 in 2011, and approximately \$200,000.00 in 2012. Sheryl Deluty testified she earns more than \$59,000.00 yearly.

This Court determines the plaintiff meets the burden of showing she was deprived of \$1,781.00 in wages by the defendant due to unlawful discrimination under Administrative Code of the City of New York Title 8, also known as the Human Rights Law, and the Executive Law of the State of New York Article 15, §290 et seq., also known as the Human Rights Law (*New York State Div. of Human Rights v. ABS Electronics, Inc.*, 102 AD3d 969). The plaintiff's last day of work was October 27, 2007, and it took the plaintiff five months to acquire replacement employment, that is January 1, 2008. The Court also determines the plaintiff is entitled to 9.00% prejudgment interest for the \$1,781.00 in wages by the defendant due to unlawful discrimination accruing from January 1, 2008 (*Aurecchione v. New York State Div. of Human Rights*, 98 NY2d 21).

The Court determines the plaintiff sustained damages by the defendant's conduct for \$1,435 in out-of-pocket expenses for psychological treatment from May 21, 2008 through February 25, 2009 which are compensatory damages (*New York Stat Div. of*

Human Rights v. Caprarella, 82 AD3d 773). The Court also determines the plaintiff is entitled to 9.00% prejudgment interest for the \$1,435 in out-of-pocket expenses for psychological treatment accruing from October 1, 2008 (*Aurecchione v. New York State Div. of Human Rights*, 98 NY2d *supra*).

The Court determines the plaintiff meets the burden of showing she sustained damages for severe emotional distress from the defendant's actions (*see New York City Transit Authority v. State Div. of Human Rights*, 78 NY2d 207). The Court determines the plaintiff is entitled to \$85,000.00 to compensate her for the mental anguish, emotional distress, humiliation and embarrassment which the defendant caused her. The Court also determines the plaintiff is entitled to 9.00% prejudgment interest for the \$85,000.00 for the mental anguish, emotional distress, humiliation and embarrassment which the defendant caused the plaintiff accruing from January 1, 2010 (*Aurecchione v. New York State Div. of Human Rights*, 98 NY2d *supra*).

The Court determines the plaintiff meets the burden of showing the defendant engaged in conduct where he sexually harassed the plaintiff by touching her inappropriately over her vehement objections with the knowledge the plaintiff was seeking therapy because the plaintiff did not like being touched, and mocking her for not wanting to be touched for approximately nineteen months of her employment (*Umansky v. Masterpiece Intern. Ltd.*, 276 AD2d 692). The Court also determines the plaintiff is entitled to \$15,000.00 in punitive damages because of the defendant's willful violation by his conduct done with knowledge he violated the law of the City of New York (Administrative Code of the City

of New York § 8-692; *see Kolstad v. Am. Dental Assoc.*, 527 US 526).

The Court determines the plaintiff meets the burden of showing entitlement to reasonable attorney's fees (Administrative Code of the City of New York § 8-502(f); *McGrath v. Toys "R" Us, Inc.*, 3 NY3d 421). The plaintiff is the prevailing party here, and the reasonable attorney fees are determined by the time expended by the plaintiff's attorney calculating the number of hours reasonably expended by reasonable hourly rates (*McGrath v. Toys "R" Us, Inc.*, *supra*). The plaintiff provides proof in admissible form regarding the reasonable attorney's fees. The plaintiff's attorney expended 474.5 hours regarding the prosecution of this litigation including the preparation of the final paper submission after the inquest. The plaintiff attorney's litigation team included two experienced attorneys, a founding partner of the law firm and a supervising associate with the firm's longest tenured paralegal each attorney satisfying the requirements of bar admission and paralegal satisfying qualifications for that position. The firm's hourly rate for the partner is \$400.00 and the associate is \$350.00 with the paralegal's hourly rate of \$125.00. The Court finds the plaintiff satisfies the burden by providing proof showing this reasonable attorney's fees is the customary fees in this type of litigation, and the plaintiff's attorney has the experience, reputation and ability to handle this litigation. The Court determines the reasonable attorney fee for the plaintiff is \$150,637.50. The Court also determines the plaintiff is entitled to 9.00% prejudgment interest for the \$150,637.50 for the reasonable attorney's fees which the defendant caused the plaintiff accruing from May 8, 2013 (*Miller Realty Associates v. Amendola*, 51 AD3d 987; *Aurecchione v. New*

York State Div. of Human Rights, 98 NY2d *supra*). The Court further finds the plaintiff satisfies the burden for an award of costs and disbursements by showing proof in admissible form, hence the plaintiff is further awarded \$5,151.87 in disbursements, and \$700.00 in costs.


The Court determines the plaintiff satisfies the burden of showing defendants' transfer of joint title to their home in West Hempstead solely to the Sheryl M. Deluty was not made for fair consideration (*Joslin v. Lopez*, 309 AD2d 837). The quitclaim deed executing that transfer was entered into evidence. The plaintiff also provided evidence in admissible form showing Dr. Deluty admitted four months after the transfer he was then insolvent to satisfy any judgment in this matter. The Court grants an order to the plaintiff setting aside the February 12, 2010 transfer by that quitclaim deed of the defendants' West Hempstead property, that parcel number 35-392-0247-0.

Accordingly, the Court grants judgment for damages to the the plaintiff in accord with this decision with reasonable attorney's fees, costs and disbursements. Submit judgment.

So ordered.

Dated: **September 30, 2013**

ENTER:



J. S. C.

FINAL DISPOSITION