

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2008 SEP 12 PM 4:08

LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONNA BERGERON,
ON BEHALF OF HER MINOR CHILD,
AND
CHRIS PHILLIPS

VERSUS

SCOTT PERRILLOUX
JOHN T. GUZZARDO, SR.
JOHN T. GUZZARDO, JR.
J.T. & STELLA GUZZARDO, INC.
AND JOHN DOE

* CIVIL ACTION NO.

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SECTION

08-4380

JUDGE:

MAGISTRATE

SECT. B MAG. 4

COMPLAINT

COMES NOW, Donna Bergeron and Chris Phillips, Plaintiffs, complaining of the defendants, who would respectfully show the Court as follows:

PARTIES

1.

Plaintiffs herein are:

- a) Donna Bergeron ("Ms. Bergeron"), a resident of the full age of majority of the Parish of Tangipahoa, within the territorial jurisdiction of the Eastern District of Louisiana. Ms. Bergeron appears herein as the natural tutrix of her minor son, Plaintiff Chris Phillips; and
- b) Chris Phillips ("Phillips"), a minor resident of the Parish of Tangipahoa, within the territorial jurisdiction of the Eastern District of Louisiana, appearing herein through his natural tutrix, Ms. Bergeron.

Fee \$350
 Process _____
 Dktd _____
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 Dec. No _____

2.

Made defendants herein are:

- a) **Scott Perrilloux** ("Perrilloux"), a resident of the full age of majority of the Parish of Tangipahoa, at all times pertinent hereto the duly elected District Attorney of the Twenty-First Judicial District of Louisiana, an office of local government organized pursuant to and under the authority of the Louisiana Constitution of 1974, and the Revised Statutes of Louisiana. Perrilloux is being sued herein in both his individual and official capacities;
- b) **John T. Guzzardo, Sr.** ("Guzzardo, Sr."), a resident of the full age of majority of the Parish of Tangipahoa;
- c) **John T. Guzzardo, Jr.** ("Guzzardo, Jr."), a resident of the full age of majority of the Parish of Tangipahoa;
- d) **J.T. & Stella Guzzardo, Inc. d/b/a Hi-Ho Barbeque, Hi-Ho #1, Hi-Ho #2 and/or Hi-Ho #3** ("Hi-Ho"), a Louisiana Corporation with its principal place of business and domicile in the Parish of Tangipahoa; and
- e) **John Doe** ("Doe"), upon information and belief, a person of the full age of majority domiciled in the Parish of Tangipahoa.

JURISDICTION

3.

This Court has subject matter jurisdiction over this cause pursuant to Federal Question Jurisdiction 28 U.S.C. 1331, particularly 42 U.S.C. §§ 1983, et seq., and RICO 18 U.S.C. §§ 1961, et seq.

4.

This Court has Pendant Jurisdiction over the state law claims in this action pursuant to Supplemental Jurisdiction 28 U.S.C. 1367.

VENUE

5.

Venue is proper pursuant to 28 U.S.C. 1391(a) and (b). Plaintiffs reside in Tangipahoa

Parish, Eastern District of Louisiana; the acts giving rise to the causes of action occurred in the Eastern District of Louisiana; and Defendants may be found in the Eastern District of Louisiana.

FACTS

6.

At all pertinent times hereto, Guzzardo, Sr. and Guzzardo, Jr. owned and operated Hi-Ho, a restaurant chain in Tangipahoa Parish, Louisiana.

7.

In or about 1999, Guzzardo, Jr., was arrested and charged with touching the genital areas of several adolescent boys who were employed at the Hi-Ho location in Ponchatoula, Louisiana.

8.

Upon information and belief, Perrilloux entered into an agreement with the Guzzardo family whereby Guzzardo, Jr. was offered a plea deal in which he was not required to serve jail time or register as a sex offender. Subsequently, and upon information and belief, Perrilloux was either given an ownership interest in Hi-Ho, or allowed to purchase an interest.

9.

In the spring of 2008, Plaintiff Phillips was hired to work at the Hi-Ho location in Hammond, Louisiana. At the time, Phillips was 17 years old. Phillips' work schedule was usually four days a week from noon until 3:00 p.m. during weekdays and from 10:00 a.m. until 3:00 p.m. on Saturdays.

10.

After Phillips was hired, Guzzardo, Jr., approached him in the Hi-Ho parking lot and inquired as to whether Phillips was a homosexual. When Phillips said that he was, Guzzardo, Jr., said that was the reason he hired Phillips. He stated to Phillips that he could "relate" and hoped

that Phillips got "the hint".

11.

Thereafter, Guzzardo, Jr., began a pattern of scheduling Phillips to work when Guzzardo, Jr., was working. Guzzardo, Jr., also began a pattern of instructing Phillips to go to "the shed", a storage area behind the restaurant and away from the restaurant's security cameras and other employees. Guzzardo, Jr., ostensibly instructed Phillips to go to the shed to "straighten up" and get supplies; however, Guzzardo, Jr., would often follow Phillips into the shed.

12.

On one such occasion several weeks after Phillips was hired, Guzzardo, Jr., followed him into the shed and placed his hand several inches from Phillips' genitals. Guzzardo, Jr., asked Phillips what he would do if Guzzardo grabbed his genitals. Phillips responded that he did not want Guzzardo, Jr., to touch his genitals and told Guzzardo, Jr., that he would hit him if Guzzardo, Jr., did so.

13.

On several occasions, Guzzardo, Jr., offered Phillips \$20.00 bonuses to allow him to touch Phillips' genitals, to which Phillips declined.

14.

Approximately two weeks later, Guzzardo, Jr., followed Phillips into the shed. He walked up behind Phillips. When Phillips turned around, Guzzardo, Jr., grabbed Phillips' genitals. Phillips' back was against a wall, so he moved to his side and left the shed. Phillips did not report the incident because Guzzardo, Jr., was the manager at the restaurant and the Guzzardo family owned the restaurant.

15.

Not long after this incident, Guzzardo, Jr., called Phillips into the back of the restaurant and made an implicit threat to Phillips. Guzzardo, Jr., asked Phillips what happens to “big mouth bass.” Phillips responded that he did not know. Guzzardo, Jr., told Phillips that they get killed and mounted on the wall because they have big mouths. He further told Phillips that would also happen to him if he told anyone about the incident in the shed.

16.

Phillips was so upset after being threatened that he left Hi-Ho and never returned. He went directly home and told his mother, Plaintiff Bergeron, what had happened. She took him to the Hammond police station to meet with his uncle Greg Bergeron, who is a police officer. He also met with another police officer that he believes is named Rick. Phillips filed charges against Guzzardo, Jr.

17.

Several weeks later, Guzzardo, Jr., was arrested.

18.

No one from the District Attorney’s office ever contacted Plaintiffs to interview them, to provide them with information about the victim’s assistance program, or to provide them with information on hearing dates.

19.

Upon information and belief, thereafter Defendants conspired together to threaten and coerce Phillips into dropping the charges against Guzzardo, Jr., in an effort to, among other things, protect their business interests and protect Defendant Perrilloux who is up for reelection October 4, 2008.

20.

Shortly after Guzzardo, Jr.'s arrest, Phillips was sleeping at the home of Angie Vicknair ("Ms. Vicknair"), his paternal grandmother. Ms. Vicknair awakened him and told him that he needed to drop the charges against Guzzardo, Jr. Ms. Vicknair stated that a person or persons identified herein as Defendant Doe approached and/or called her at her place of business, Angie's Bar and Grill in Independence, Louisiana. Defendant Doe stated that if Phillips would drop the charges Phillips would receive \$1,000.00 in cash. Ms. Vicknair was so frightened that she has never told Plaintiffs the name(s) of Doe or what exactly was said; however, based on her conversation with Doe, she indicated to Plaintiffs that she was afraid that if Phillips did not agree "they" would hurt or kill him. She also stated that she believed that, based on the conversation with Doe, if Phillips agreed "they" would offer legal help and protection to her family and business if it was ever needed in the future. Ms. Vicknair pleaded with Phillips to accept the offer, as did Phillips' father after learning of Ms. Vicknair's meeting with Doe.

21.

Fearing for his and his family's safety, Phillips agreed. He went to the Hammond police station and asked to drop the charges. He was informed that the matter had already been transferred to Defendant Perrilloux's office and that he would have to wait until his first court date to drop the charges.

22.

Phillips called Ms. Vicknair and told her what happened. Vicknair stated that she would call Doe and find out what to do. After speaking with Doe, she called Phillips back and told him to go to Perrilloux's office at the Amite courthouse and ask for a woman named Donna or Diane.

23.

Phillips drove to the Amite courthouse alone. He went to the second floor and was allowed into Perrilloux's office suite. He entered the reception area and asked for the woman. The woman at the reception desk informed him that she was the woman he was looking for and that he should have a seat. Phillips noticed that the woman had a note on her desk with his name on it.

24.

Phillips was eventually ushered into a hallway. At that time, Perrilloux came out of an office and instructed Phillips to sit in a chair and wait. Sometime later, Perrilloux asked another woman in the hallway to escort Phillips across the street to the office of a local attorney. He handed the woman a note and told her to give it to the attorney. He instructed Phillips to sign paperwork that the attorney would prepare and asked the woman to bring it back to him. Phillips' parents were not present at this meeting.

25.

The woman brought Phillips down a private staircase and out the back of the courthouse. They walked across the street to the attorney's office.

26.

Phillips met with the attorney and signed an affidavit that he prepared for Phillips' signature. The attorney specifically asked Phillips how old he was, and Phillips responded that he was 17. Again, Phillips' parents were not present. The affidavit was replete with lies, including: (1) Phillips recanting his allegations against Guzzardo, Jr.; (2) Phillips indicating that he was signing the affidavit of his own free will (despite the fact that he had not obtained the age

of majority and thus lacked the capacity to consent); and (3) Phillips agreeing to pay the court costs incurred in the criminal action.

27.

The woman then took the affidavit and brought it back to the courthouse.

28.

Later that day, Doe brought ten \$100.00 bills to Ms. Vicknair in an envelope.

COUNT ONE

VIOLATION OF CIVIL RIGHTS, 42 U.S.C. §§ 1983, ET SEQ.

29.

Plaintiffs restate and reallege each and every allegation made above as if set forth fully herein.

30.

Upon information and belief, Defendants, under the color of law, conspired to deprive Phillips of his constitutional and legal rights, privileges and immunities, in violation of 42 U.S.C. 1983, including, but not limited to, his right to access the courts, which right is guaranteed to him by the First and Fourteenth Amendments to the U.S. Constitution.

31.

By threatening and coercing Phillips and his family into signing the affidavit, Defendants deprived Phillips of his right to seek redress in the courts of Louisiana, both civilly and criminally, for the abuse he suffered at the hands of Guzzardo, Jr.

32.

Defendants' actions also violated §1985(2) by obstructing justice and intimidating a witness or party to a legal proceeding.

COUNT TWO**RICO VIOLATION, 18 U.S.C. §§ 1964, ET SEQ.**

33.

Defendants' actions and/or threats from 2004 until present, upon information and belief, constitute two or more acts of "racketeering activity" as defined by §1961(1) in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

34.

These actions and/or threats of Defendants have injured Phillips in his business or property in violation of §1964(b) by: (1) creating a work environment where he was subjected to sexual harassment and molestation such that he was forced to quit and thereby lost wages and/or his ability to seek unemployment; and (2) preventing Phillips' access to the courts of the State of Louisiana to obtain redress, both civilly and criminally, for the abuse he suffered at the hands of Guzzardo, Jr.

COUNT THREE**STATE LAW INTENTIONAL TORT CLAIMS**

35.

Plaintiffs restate and reallege each and every allegation made above as if set forth fully herein.

36.

Defendants violated Louisiana Civil Code art. 2315 in the following non-exclusive manners, to-wit:

- a. Defendants committed the intentional tort of assault by placing Phillips in imminent threat of a harmful or offensive touching when Guzzardo, Jr., placed his hand several

inches from Phillips' genitals;

- b. Defendants committed the intentional tort of battery when Guzzardo, Jr., placed his hand on Phillips' genitals, which was a harmful and offensive touching;
- c. Defendants committed the intentional tort of assault by threatening to kill Phillips; and
- d. Defendants committed the intentional tort of intentional infliction of emotional distress by assaulting and battering Phillips and then by conspiring together to threaten and coerce Phillips and his family so that he would sign the affidavit and drop charges against Guzzardo, Jr.

37.

As co-conspirator, Defendants are liable jointly, severally and *in solido* for the commission of these torts and the resulting damages in accordance with LA-C.C. art. 2324(A).

38.

Defendants' actions were the cause-in-fact and proximate cause of Phillips' damages, including, but not limited to, past, present and future mental pain, suffering and emotional distress.

DAMAGES

39.

Plaintiffs restate and reallege each and every allegation made above as if set forth fully herein.

40.

Plaintiff Phillips is entitled to compensatory damages in the amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00), punitive damages, treble damages, attorney's fees,

cost and all other applicable general and equitable relief for the actions and violations of Defendants as stated herein.

INJUNCTIVE RELIEF

41.

In accordance with 42 U.S.C. §§1983, et seq., RICO and applicable Louisiana State Law, Plaintiffs seek injunctive relief as follows:

42.

Based on the implied and/or explicit threats made to Phillips and Ms. Vicknair and the other facts set forth herein, Ms. Bergeron and Phillips believe that irreparable harm or injury may result to them if a temporary restraining order, and in due course preliminary and permanent injunctions, does not issue herein, without bond, enjoining, prohibiting and restraining Defendants and/or their agents or assigns, from stalking, harming and/or harassing Ms. Bergeron, Phillips and/or their families, or by contacting them or going to their homes, places of employment or any other place(s) they may be found in order to do so.

EXERCISE OF CONTINUING JURISDICTION

43.

Because of the weight of the allegations herein, the repeated and persistent violations of by Defendants, individually and as co-conspirators, and the willful nature of the violations alleged, the continuing jurisdiction and oversight of this Court is necessary to ensure future compliance with the laws alleged herein to have been violated.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs herein prays that this Honorable Court enter judgment in their favor and against all Defendants for compensatory damages, statutory penalties, punitive damages, treble damages and all other damages owed to them, including pre-judgment and post judgment interest, reasonable attorneys' fees, court costs and other costs of these proceedings, injunctive and declaratory relief, the continuing oversight and exercise of jurisdiction over Defendants to ensure compliance with the laws alleged herein to have been violated, and any other remedy, equitable or otherwise, to which Plaintiffs may be entitled under the applicable law and facts.

Respectfully submitted,

BASS & DUNCAN LEGAL SOLUTIONS



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AFFIDAVIT OF VERIFICATION

STATE OF LOUISIANA

PARISH OF TANGIPAHOA

BEFORE ME, the undersigned Notary Public, personally came and appeared Donna Bergeron and Chris Phillips, Plaintiffs herein, who, after being first duly sworn, did depose and state that they have read the foregoing Complaint and that all of the allegations of fact contained therein are true and correct to the best of their knowledge, information and belief, except those allegations made specifically upon information and belief, and, as to those, they believe them to be true.

Donna Bergeron
Donna Bergeron

Chris Phillips
Chris Phillips

Sworn to and subscribed before me this 12 day of September, 2008.

Michael Bass
Michael Bass, Notary Public
LSBA #27954

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ATTORNEY'S CERTIFICATE
REGARDING REQUEST FOR TEMPORARY RESTRAINING ORDER

Undersigned counsel certifies to the Court that he has not attempted to contact Defendants prior to filing a request for a temporary restraining order as his clients believe that to do so may subject them to further threats, harm or harassment.



MICHAEL D. BASS