

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION**

ELIZABETH B. BENSLEY ,)	
)	
Plaintiff)	
)	
vs.)	CASE NO. 2:20-cv-86
)	
BYD WELLNESS LLC)	
d/b/a MASSAGE ENVY,)	
)	
Defendant)	

PLAINTIFF’S COMPLAINT FOR DAMAGES AND REQUEST FOR TRIAL BY JURY

Comes now Plaintiff Elizabeth B. Bensley (“Bensley”), by counsel, and for her Complaint against Defendant BYD Wellness LLC d/b/a Massage Envy (“Massage Envy”), alleges and says:

I. FACTUAL ALLEGATIONS

1. Bensley is a resident of the State of Indiana, and is domiciled in Terre Haute, Vigo County, Indiana. Bensley is a professional esthetician. Her work primarily focuses upon giving facial massages and facial treatments to clients.

2. Bensley was hired by Massage Envy to work as an esthetician at its Terre Haute, Vigo County, Indiana location. Bensley was hired in approximately February 2018. She does not believe that she is still an employee, but she has been on leave since April 2019.

3. At its Terre Haute location, Massage Envy employs a significant number of massage therapists and a few estheticians. Much of Massage Envy’s business is based upon returning customers or clients who purchase memberships with Massage Envy and who regularly return for massages, facials and other treatments.

4. On December 13, 2018, Massage Envy scheduled a customer named Tony Fisher, Jr. for a facial massage appointment with Bensley. Tony Fisher was a returning customer. Based upon information and investigation, at least two other female Massage Envy employees/therapists had made complaints to Massage Envy managers about Tony Fisher's behavior during massage appointments. Both are believed to have reported Mr. Fisher for sexually harassing/sexually inappropriate behavior and/or comments. Both are believed to have made complaints about Mr. Fisher that were so serious that Massage Envy made some record and made arrangements to prevent Mr. Fisher from being scheduled for future massages with either of the women who made complaints. That said, despite the reports about Mr. Fisher's sexual misconduct, Massage Therapy did not cancel Mr. Fisher's membership and continued to schedule massages for Mr. Fisher with other therapists.

5. On December 13, 2018, Bensley did not know Mr. Fisher and she did not know that other of her coworkers had made sexual misconduct complaints about Mr. Fisher prior to that date. Mr. Fisher's December 13, 2018 facial massage was his first appointment and first meeting with Bensley. Massage Envy managers did not tell Bensley about prior sexual misconduct complaints made about Tony Fisher and did nothing to warn or protect Bensley from Tony Fisher.

6. During the facial massage, Tony Fisher began to make sexual comments to Bensley, to the point that Fisher became verbally abusive. Fisher sexually propositioned Bensley. She refused. At that point, Fisher sexually attacked Bensley. He grabbed her head and pulled her face to his (Fisher was lying face up on a massage table) so that he could kiss her. He held her head for some time and Bensley could not escape or pull free. During the

attack, Fisher also grabbed and touched Bensley's breasts. At one point, Bensley tried to get to the closed door to escape, but Fisher caught her and picked her up to prevent her from escaping. Finally, Bensley got out of the room.

7. Bensley was in shock immediately after the attack and was not speaking. Fortunately, a coworker named Shelby (Clarkston) noticed and asked Bensley if something had happened. Bensley told Shelby that Tony Fisher had attacked her and Shelby reported the attack to the Massage Envy owner, Bridget Doll. Fisher was still in the building and, apparently, Fisher became violent again and began screaming at Ms. Doll.

8. On that same day, December 13, 2018, Bensley reported Fisher for his sexual attack on her to the Vigo County Sheriff's Department. About one week afterward, Bensley also reported the attack to a Massage Envy corporate sex abuse hotline.

9. Bensley was physically injured in the attack. She suffered a neck injury and had to make a worker's compensation claim to receive medical treatment and benefits. Initially, Bensley was off work from the date of the attack until some time in late February, when the Massage Envy owners told her they wanted her to resume working.

10. Bensley suffered significant mental and emotional injury because of Fisher's attack on her. Bensley went back on leave from work. She was treated by mental health professionals and was diagnosed with post traumatic stress disorder. After the Massage Envy owners told Bensley to return to work, Bensley tried and she worked from late February to some time in April 2019, but she continued to have so much stress and anxiety from the attack, that she was unable to work at Massage Envy and was again placed on leave.

11. Legally, Massage Envy is liable to Bensley for failing to protect Bensley from a customer the owners/manager knew or had reason to know (based upon two prior reports) was likely to engage in sexual abuse, sexual harassment and/or, in Bensley's case, sexual attack. Bensley brings her sex discrimination claim under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2(a)(1). Bensley was sexually harassed and attacked. She was placed in a hostile work environment that became a sexually abusive working environment. Massage Envy is liable because it was negligent and it failed to protect Ms. Bensley from a sexual attacker - a customer - whom Massage Envy management knew or should have known posed a risk to Bensley, a female therapist, based upon Tony Fisher's prior sexual misconduct toward other female employees and based upon the complaints made about Fisher by other female employees.

12. Because it was an actual, physical sexual attack, this one time event was so severe that it created an actionable, hostile work environment. Massage Envy is liable for its failure to take action and for its exposure of Bensley to this known risk of sexual abuse. At the very least, Massage Envy should have canceled Fisher's membership and banned him from future appointments at Massage Envy after the first report of his sexual misconduct was made by the first female therapist. But for Massage Envy's negligence and failure to take action, Fisher's sexual attack on Bensley would never have happened.

13. Bensley is seeking all available damages under Title VII of the Civil Rights Act of 1964, including all lost wages and benefits, all compensatory damages, all punitive damages, payment of her attorney's fees, costs and expenses, and all other relief available under the law.

II. JURISDICTION AND VENUE

14. This Court has jurisdiction over Bensley's Title VII claims under 28 USC § 1331, as those Title VII hostile work environment claims raise questions of federal law.

15. This Court is the appropriate venue for this cause of action as Bensley lives and worked for Massage Envy in Vigo County, Indiana, and most of the illegal activity took place in the Southern District of Indiana. 28 USC § 1391.

III. PARTIES

16. Bensley is a resident of Terre Haute, Vigo County, Indiana.

17. Massage Envy employed Bensley at its location in Terre Haute, Vigo County, Indiana.

IV. ADMINISTRATIVE PROCEDURES

18. Bensley has complied with all of the administrative procedures that are conditions precedent to the filing of this lawsuit. Bensley received her Notice of Right to Sue from the Equal Employment Opportunity Commission dated December 18, 2019.

V. STATEMENT OF CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

19. Bensley alleges and incorporates herein by reference paragraphs 1 through 18 above.

20. As detailed above in Paragraphs 1 - 13 above, Massage Envy discriminated against Bensley and failed to protect Bensley from outrageous, violent and pervasive sexual harassment. Legally, Massage Envy is liable to Bensley for failing to protect Bensley from a customer the owners/manager knew or had reason to know (based upon two prior reports) was likely to engage in sexual abuse, sexual harassment and/or, in Bensley's case, sexual attack.

Bensley brings her sex discrimination claim under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2(a)(1). Bensley was sexually harassed and attacked. She was placed in a hostile work environment that became a sexually abusive working environment. Massage Envy is liable because it was negligent and it failed to protect Ms. Bensley from a sexual attacker - a customer - whom Massage Envy management knew or should have known posed a risk to Bensley, a female therapist, based upon Tony Fisher's prior sexual misconduct toward other female employees and based upon the complaints and reports made about Fisher by other female employees. Because it was an actual, physical sexual attack, this one time event was so severe that it created an actionable, hostile work environment. Massage Envy is liable for its failure to take action and for its exposure of Bensley to this known risk of sexual abuse. At the very least, Massage Envy should have canceled Fisher's membership and banned him from future appointments at Massage Envy after the first report of his sexual misconduct was made by the first female therapist. But for Massage Envy's negligence and failure to take action, Fisher's sexual attack on Bensley would never have happened.

21. As a direct and proximate result of Massage Envy's violations of Title VII, Bensley has found it necessary to retain the services of an attorney and is therefore entitled to her reasonable attorney's fees, costs and expenses in this matter.

22. Bensley is seeking from Massage Envy any and all available damages under Title VII, including, but not limited to, all back pay and benefits, reinstatement or front pay and benefits, all available compensatory and punitive damages, her attorney's fees, expenses and costs, and any and all other equitable relief available to Bensley.

VI. PRAYER FOR RELIEF

WHEREFORE, Bensley respectfully requests that the Court enter judgment against Massage Envy, and issue to her all available relief, including, but not limited to, the following:

1. All damages available under Title VII of the Civil Rights Act of 1964, including all back pay and benefits, reinstatement or front pay and benefits, all available compensatory damages, all available punitive damages, any and all other equitable relief, and payment of her reasonable attorney's fees, costs and expenses;
2. All reasonable attorney's fees and expenses;
3. Costs;
4. Prejudgment interest, if available; and
5. Any and all other relief just and proper in the premises.

Respectfully submitted,

HASSLER KONDRAS MILLER LLP

By/s/Robert P. Kondras, Jr.

Robert P. Kondras, Jr.
Attorney No. 18038-84
100 Cherry Street
Terre Haute, IN 47807
(812) 232-9691
Facsimile: (812) 234-2881
kondras@hkmlawfirm.com

REQUEST FOR TRIAL BY JURY

Comes now the plaintiff, Elizabeth B. Bensley, by counsel, and requests a trial by jury on all issues which may be tried to a jury.

Respectfully submitted,

HASSLER KONDRAS MILLER LLP

By /s/Robert P. Kondras, Jr.
Robert P. Kondras, Jr.