

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
KRISTINE SEUBERT,

Plaintiff,

-against-

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

Defendant.
-----X

**VERIFIED
AMENDED
COMPLAINT**

Index No.: 5859/10

RECEIVED
NOV 03 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE

KRISTINE SEUBERT ("Plaintiff"), by her attorneys, The Law Office of BORRELLI & ASSOCIATES, P.L.L.C., complaining of Defendants DR. WARREN DELUTY, DDS and SHERYL M. DELUTY alleges upon knowledge as to herself and her own actions and upon information and belief as to all other matters as follows:

INTRODUCTION

This is a civil action seeking monetary damages based upon Defendants' violations of the New York State Human Rights Law, Executive Law Sections 290 et seq.; Title 8 of the Administrative Code of the City of New York; assault; battery; intentional infliction of emotional distress; fraudulent conveyance of property; and any other cause(s) of action that can be inferred from the facts set forth herein.

During her employment with Defendant Warren Deluty, Plaintiff was subjected to discrimination and harassment on the basis of her sex/gender including a severe hostile work environment. Further, Warren Deluty engaged in intentional offensive contact with Plaintiff throughout the course of her employment, which included but is not limited to: unwelcomed massages and the slapping of Plaintiff's buttocks. Upon complaining to

Warren Deluty about his offensive conduct, Warren Deluty increased the frequency of his intentionally offensive touching, in retaliation for Plaintiff having opposed discriminatory practices. Additionally, after commencement of this litigation, Warren Deluty fraudulently conveyed title of the property to his wife Sheryl Deluty.

PARTIES

1. At all times hereinafter mentioned, Plaintiff is a resident of the State of New York, County of Nassau.
2. At all relevant times herein, Defendant Warren Deluty was and is a sole proprietor who operates and maintains two (2) dental offices.
3. At all relevant times herein, Warren Deluty's principal place of business is located at is located at 14420 Liberty Avenue South, Richmond Hill, New York 11419.
4. At all times relevant herein, Plaintiff is a person within the meaning of the NYSHRL and NYCHRL.
5. At all times relevant herein, Warren Deluty is a person and an employer within the meaning of NYSHRL and NYCHRL.
6. At all times relevant herein, Sheryl Deluty is the wife of Warren Deluty.
7. At all times relevant herein, the defendants were husband and wife, residing together.

BACKGROUND FACTS

8. Plaintiff is a 27 year-old Caucasian female.
9. Defendant Warren Deluty is a middle aged, married Caucasian male.

10. On or about March 19, 2006, Plaintiff commenced her employment with Defendant Warren Deluty as a part-time Receptionist/Dental Assistant. Plaintiff worked in Defendant Deluty's West Hempstead office and Defendant's Richmond Hill office. The West Hempstead office is located at 333 Woodfield Road, West Hempstead, New York, NY 11552.
11. Plaintiff's work responsibilities included: scheduling appointments; assisting Defendant Warren Deluty with patients; sterilizing instruments; taking and developing of x-rays; and overall office administration.
12. Plaintiff's work hours were Sundays from 9am – 4pm, and Plaintiff performed her work in a satisfactory manner.
13. Within the first three (3) months of Plaintiff's employment at Defendant Warren Deluty's office, Plaintiff was subjected to unwelcome forms of sexual harassment, which included: sexual advances by Defendant Warren Deluty; verbal harassment of a sexual nature; and physical conduct of a sexual nature.
14. Specifically, Defendant Warren Deluty approached Plaintiff while she was working at the front desk of his West Hempstead office. He touched her neck and upper back, and then proceeded to give her a neck massage. Plaintiff firmly stated to Defendant Warren Deluty, "Please don't touch me. I'm sorry it's just that I don't like being touched. I am actually in therapy for that reason."
15. Because of Defendant Warren Deluty's aforementioned touching, Plaintiff became anxious, jumpy and irritable all the time both at work and away from work; as a result, she sought medical treatment.

16. On occasion Defendant Warren Deluty continued to rub Plaintiff's shoulders or give her unwanted hugs.
17. Subsequent to the incidents, Plaintiff contacted the office manager, Yvonne Gallagher ("Ms. Gallagher") to report Defendant Warren Deluty's inappropriate conduct. During the conversations Ms. Gallagher stated that it was good that Plaintiff had spoken up and opposed Defendant Warren Deluty's inappropriate conduct. She also stated that Defendant Warren Deluty is a touchy-feely type of guy and under the circumstances Plaintiff should keep her distance.
18. On or about July 2006, Defendant Warren Deluty again rubbed his hands across Plaintiff's back. Plaintiff squirmed away from Defendant Warren Deluty and turned to him and told him not to touch her. He responded by stating, "Oh, yeah, I forgot, you don't like to be touched."
19. After Plaintiff's objections to Defendant Warren Deluty's conduct, Warren Deluty became more aggressive by touching Plaintiff on a frequent basis, despite her objections to each individual unwanted and offensive act.
20. For example, during the year 2006 through 2007, Defendant Warren Deluty engaged in sexually suggestive and offensive acts toward Plaintiff at least once a day, causing Plaintiff to cower each time as she attempted to move away. Specifically, on repeat occasions Defendant Warren Deluty would intentionally touch Plaintiff's back, shoulder, arm, and massaging her neck.
21. Defendant Warren Deluty knew that his touching of Plaintiff was not welcomed because Plaintiff would orally oppose his conduct each and every

time Defendant Warren Deluty touched her in an offensive manner. Despite Plaintiff's objections, Defendant Warren Deluty failed to take immediate and abstinent corrective action.

22. Defendant Warren Deluty's conduct created an intimidating, hostile, and offensive working environment.
23. On or about October 21, 2007, at Defendant Warren Deluty's Richmond Hill office, Warren Deluty came behind Plaintiff and intentionally slapped her buttocks. Immediately, Plaintiff shouted, "You just grabbed my ass." Plaintiff paced around the office and continued to say, "You just grabbed my ass." Defendant Warren Deluty responded "Krissy I think you are taking this the wrong way." In response, Plaintiff angrily stated, "You just grabbed me in the ass," and requested her check and then proceeded to walk out. When Plaintiff reached her car, she immediately called her mother about Defendant Warren Deluty's offensive touching.
24. Subsequently, Plaintiff called Ms. Gallagher to report Defendant Warren Deluty's behavior. Plaintiff told her that Defendant Warren Deluty slapped her buttocks and that his consistent inappropriate behavior created an intolerable working condition for her. Plaintiff also gave Ms. Gallagher her permission to contact Defendant Warren Deluty and discuss the incidents of sexual harassment that Plaintiff had been subjected to by Defendant Warren Deluty.
25. Following the incident, Defendant Warren Deluty called Plaintiff and left five (5) voice messages.

26. On or about October 22, 2007, at approximately 3:12 p.m., Defendant Warren Deluty left Plaintiff the first voice message. Defendant Warren Deluty admitted that his action was (slapping) was inappropriate.
27. On or about October 22, 2007, at approximately 3:13 p.m., Defendant Warren Deluty left Plaintiff a second voice message. In that message, he acknowledged that he had behaved in an unwelcome manner, apologized for his actions, and asked Plaintiff to call him back to resolve the incident.
28. On or about October 22, 2007, at approximately 4:26 p.m., Defendant Warren Deluty left Plaintiff a third voice message. Again, Defendant Warren Deluty admitted that his actions were action (slapping) were inappropriate.
29. On or about October 22, 2007, at approximately 5:29 p.m., Ms. Gallagher also called and left Plaintiff a voice message. Ms. Gallagher stated that she contacted Defendant Warren Deluty and talked to him about the October 21, 2007 incident. She also stated during their conversation, Defendant Warren Deluty admitted that he was "100% wrong" and that he assured Ms. Gallagher that "it was never going to happen again."
30. On or about October 23, 2007, at approximately 9:14 p.m., Defendant Warren Deluty left Plaintiff a fourth voice message. Defendant Warren Deluty stated that he wanted to talk to Plaintiff, and that he understood that Plaintiff felt upset about the incident and he once again apologized for his inappropriate behavior.
31. On or about October 24, 2007, at approximately 9:10 p.m., Defendant Warren Deluty left Plaintiff a fifth voice message. Defendant Warren Deluty stated

- that he wants to personally express his apology and he asked Plaintiff to call him back.
32. After the October 21, 2007 incident, Plaintiff did not return back to Defendant Warren Deluty's office, as Plaintiff refused to be further sexually harassed.
 33. Furthermore, Plaintiff was forced to seek additional emotional counseling because of Defendant Warren Deluty's offensive conduct.
 34. As a result of the aforementioned acts by Defendant, Plaintiff has been irreparably damaged.
 35. Defendants Warren Deluty and Sheryl Deluty are a legally married couple and purchased their home located at 33 Woodfield Road, West Hempstead, New York (Parcel number: 35-392-0247-0), in 1984.
 36. On or about February 12, 2010, after the initial Complaint, Defendant Warren Deluty fraudulently conveyed title of his property to his wife Defendant Sheryl Deluty.
 37. Defendant Warren Deluty conveyed the title of the property to Defendant Sheryl Deluty by means of a Joint Tenant Quit Claim Deed, while the instant Complaint was pending against Defendant.
 38. Defendant Sheryl Deluty did not receive fair consideration for the value of the property.
 39. On or about June 8, 2010, Defendant Warren Deluty pleaded his inability to satisfy a potential judgment against him because of his financial conditions during an Order to Show Cause for the withdrawal of Defendant's counsel.

40. As of this date, Defendant Warren Deluty is no longer the owner of the home, thereby placing the real property beyond the reach of Plaintiff, if a judgment is entered against Defendant Warren Deluty in this matter.

FIRST CLAIM AGAINST DEFENDANT

(Discrimination and Harassment under the NYSHRL)

41. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.
42. The NYSHRL prohibits discrimination in the terms, conditions, and privileges of employment on the basis of an individual's sex/gender.
43. Defendant Warren Deluty discriminated against Plaintiff in violation of the NYSHRL because Plaintiff was subject to a hostile work environment.
44. As a result of Defendant Warren Deluty's discriminatory acts, Plaintiff has suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and has suffered other monetary damages and compensatory damages for, inter alia, mental anguish, emotional distress, humiliation, and loss of reputation.
45. Defendant Warren Deluty acted intentionally and with malice and reckless indifference to Plaintiff's rights under the NYSHRL and is thereby liable to Plaintiff for compensatory damages under the NYSHRL.

SECOND CLAIM AGAINST DEFENDANT

(Retaliation in Violation of the NYSHRL)

46. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

47. Plaintiff complained to Defendant Warren Deluty about the harassment and discrimination she experienced and otherwise opposed practices made unlawful by the NYSHRL.
48. Defendant Warren Deluty discriminated and retaliated against Plaintiff because of her complaints and opposition to discrimination.
49. Defendant Warren Deluty's actions constitute discrimination and retaliation against Plaintiff in violation of the NYSHRL.
50. As a proximate cause of Defendant Warren Deluty's acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages as set forth above.
51. Defendant Warren Deluty's actions were done with malice and with reckless indifference to Plaintiff's protected rights.

THIRD CLAIM AGAINST DEFENDANT

(Discrimination and Harassment under the NYCHRL)

52. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.
53. The NYCHRL prohibits discrimination in the terms, conditions, and privileges of employment on the basis of an individual's sex/gender.
54. Defendant Warren Deluty discriminated against Plaintiff in violation of the NYCHRL because Plaintiff was subject to a hostile work environment.
55. As a result of Defendant Warren Deluty's discriminatory acts, Plaintiff has suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and has suffered other

monetary damages and compensatory damages for, inter alia, mental anguish, emotional distress, humiliation, and loss of reputation.

56. Defendant Warren Deluty acted intentionally and with malice and reckless indifference to Plaintiff's rights under the NYCHRL and is thereby liable to Plaintiff for compensatory damages under the NYCHRL.

FOURTH CLAIM AGAINST DEFENDANTS

(Retaliation in Violation of the NYSHRL)

57. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.
58. Plaintiff complained to Defendant Warren Deluty about the harassment and discrimination she experienced and otherwise opposed practices made unlawful by the NYCHRL.
59. Defendant Warren Deluty discriminated and retaliated against Plaintiff because of her complaints and opposition to discrimination.
60. Defendant Warren Deluty's actions constitute discrimination and retaliation against Plaintiff in violation of the NYCHRL.
61. As a proximate cause of Defendant Warren Deluty's acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages as set forth above.
62. Defendant Warren Deluty's actions were done with malice and with reckless indifference to Plaintiff's protected rights.

FIFTH CLAIM AGAINST DEFENDANT

(Assault)

63. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

64. Defendant Warren Deluty intended to cause Plaintiff to suffer apprehension of an immediate harmful contact.
65. Defendant Warren Deluty intended to cause and did cause Plaintiff to suffer immediate harmful contact.
66. The aforementioned conduct has caused Plaintiff severe emotional distress.
67. As a proximate cause of Defendant Warren Deluty's acts and omissions, Plaintiff has in the past and will in the future suffer damages.

SIXTH CLAIM AGAINST DEFENDANT

(Battery)

68. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.
69. Defendant Warren Deluty intended to touch Plaintiff, without Plaintiff's consent.
70. Defendant Warren Deluty intended to touch and did touch Plaintiff causing her to suffer immediate offensive harmful contact.
71. The aforementioned conduct has caused Plaintiff severe emotional distress.
72. As a proximate cause of Defendant Warren Deluty's acts and omissions, Plaintiff has in the past and will in the future suffer damages.

SEVENTH CLAIM AGAINST DEFENDANT

(Intentional Infliction of Emotional Distress)

73. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

74. Defendant Warren Deluty by the actions described herein exhibited extreme and outrageous conduct.
75. In undertaking the aforementioned actions, Defendant Warren Deluty intended to cause Plaintiff severe emotional distress.
76. The aforementioned conduct has caused Plaintiff severe emotional distress and mental anguish.
77. As a proximate cause of Defendant Warren Deluty's acts and omissions, Plaintiff has in the past and will in the future suffer damages.

EIGHTH CLAIM AGAINST DEFENDANT

(Fraudulent Conveyance of Property)

78. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.
79. At the time of their bad acts Defendants Warren and Sheryl Deluty were the record and title owners of real property (Parcel number: 35-392-0247-0), with the street address of 333 Woodfield Road West Hempstead, New York 11552.
80. On this parcel of property is the home where Warren and Sheryl Deluty resided at all times relevant.
81. In or about February 2010, Defendant Warren Deluty conveyed title of the property to his wife Defendant Sheryl Deluty by means of a Joint Tenant Quit Claim Deed.
82. This conveyance was made without fair consideration.

83. Defendants Warren and Sheryl Deluty conveyed title to their home in anticipation of litigation regarding the bad acts set out above with the intent, actual or constructive, to become insolvent; and/or with the intent, actual or constructive, to place their home beyond the reach of the Plaintiff in collecting any money judgment obtained against them with regard to their bad acts; and /or with the intent to hinder, delay, or defraud the plaintiff in collecting any money judgment obtained against them with regard to their bad acts.
84. As a result of the conveyance, Warren and Sheryl Deluty do not have the assets to satisfy a money judgment obtained in this matter.
85. Accordingly, the conveyance was fraudulent.
86. The conveyance should be vacated, nullified, or otherwise set aside.
87. If the Defendants are found to have acted with actual intent, the Plaintiff is entitled to costs, treble damages, and attorney fees in prosecuting this action.

DEMAND FOR A JURY TRIAL

88. Plaintiff demands a trial by jury of all issues and claims in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

1. Preliminary and permanent injunctions against Defendants' and its officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;

2. A judgment declaring that the practices complained of herein are unlawful and the acts of the Defendants' are in violation of the aforementioned and applicable laws;
3. Granting an order restraining Defendants' from any retaliation against Plaintiff for participation in any form in this litigation;
4. All damages which Plaintiff has sustained as a result of Defendants' conduct, including back pay, front pay, general and special damages for lost compensation and job benefits she would have received but for Defendants' tortious conduct, and for emotional distress, humiliation, embarrassment, and anguish;
5. Front pay to Plaintiff until such time as she can be placed in the same position she would have occupied but for Defendants' tortious conduct;
6. Exemplary and punitive damages in an amount commensurate with Defendants' ability and so as to deter future malicious, reckless and/or intentional conduct;
7. Awarding Plaintiff costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees and other costs;
8. A judgment vacating, nullifying, or otherwise setting aside the conveyance, plus costs, attorney fees, and treble damages;
9. Pre-judgment and post-judgment interest, as provided by law; and
10. Granting Plaintiff other and further relief as this Court finds necessary and proper.

Dated: Carle Place, New York
November 1, 2011

Respectfully Submitted,

The Law Office of
BORRELLI & ASSOCIATES, P.L.L.C.

By:



MICHAEL J. BORRELLI

Attorneys for Plaintiff

One Old Country Road, Suite 347

Carle Place, NY 11514

Tel. (516) 248-5550

Fax. (516) 248-6027

To: Nassau County Clerk's Office
240 Old Country Road
New York, NY 11501

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
KRISTINE SEUBERT,

Plaintiff,

-against-

VERIFICATION

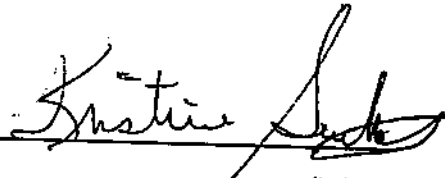
DR. WARREN DELUTY, DDS, and
SHERYL M. DELUTY,

Defendants.
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

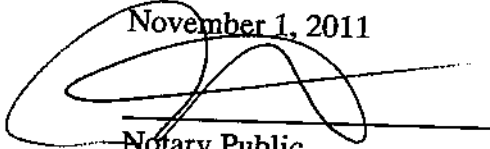
Kristine Seubert, being duly sworn, deposes and says:

I am the individual Plaintiff in the above-entitled proceeding; I have read the foregoing Verified Amended Complaint and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Kristine Seubert

Sworn to before me
November 1, 2011



Notary Public

MICHELLE F. HAGLER
Notary Public - State of New York
No. 02HA6200579
Qualified in Kings County
My Commission Expires Jan. 26, 2013

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

Index No.: 5859/10

KRISTINE SEUBERT,

Plaintiff,

- against -

**DR. WARREN DELUTY, DDS and
SHERLY M. DELUTY**

Defendant.

VERIFIED AMENDED COMPLAINT

**The Law Office of
BORRELLI & ASSOCIATES, P.L.L.C.
Michael J. Borrelli
Attorneys for Plaintiff(s)
One Old Country Road, Suite 347
Carle Place, New York 11514
(516) 248-5550-Phone
(516) 248-6027-Fax**

TO:

Solomon Basch, Esq.
Attorney for Defendant
25 Park Place, 4th Floor
New York, NY 10007

ADMISSION OF SERVICE

Service of a copy of the within
Dated:

is hereby admitted.

.....
Attorney(s) for

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a (certified) true copy of an Order duly entered in the office of the Clerk of the within named Court on

NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that an Order, of which the within is a true copy, will be presented for settlement to the Hon. _____, one of the judges of the within named Court in _____, New York, on

Dated: Carle Place, NY
November 1, 2011

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

Index No.: 5859/10

KRISTINE SEUBERT,

Plaintiff,

- against -

**DR. WARREN DELUTY, DDS and
SHERLY M. DELUTY**

Defendant.

VERIFIED AMENDED COMPLAINT

**The Law Office of
BORRELLI & ASSOCIATES, P.L.L.C.
Michael J. Borrelli
Attorneys for Plaintiff(s)
One Old Country Road, Suite 347
Carle Place, New York 11514
(516) 248-5550-Phone
(516) 248-6027-Fax**

TO: Mrs. Sherly M. Deluty
14420 Liberty Avenue South,
Richmond Hill, New York 11419

ADMISSION OF SERVICE

Service of a copy of the within
Dated:

is hereby admitted.

.....
Attorney(s) for

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a (certified) true copy of an Order duly entered in the office of the Clerk of the within named Court on

NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that an Order, of which the within is a true copy, will be presented for settlement to the Hon. _____, one of the judges of the within named Court in _____, New York, on

Dated: Carle Place, NY
November 1, 2011
