

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

AUG 06 2008

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

JOE BARRY CARROLL, :

Plaintiff, :

v. :

THE TAVERN AT PHIPPS, :

CENTRAARCHY RESTAURANT :

MANAGEMENT CO., :

THE TAVERN AT PHIPPS BY :

AND THROUGH ITS OWNERS :

GREG GREENBAUM, GAVIN :

ANGULO , HEATHER DENNIS, :

and JOHN DOE, :

Defendants. :

Civil Action File No.:

~~1:08-cv-2514~~

TWT

JURY DEMANDED

COMPLAINT

Plaintiff brings this complaint against Defendants for equitable relief and damages resulting from racial profiling and intentional race (and gender) discrimination. A finding of gender discrimination and possibly race discrimination has already been made by the Atlanta Human Relations Commission. For his Complaint, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1.

This is an federal question action for damages and equitable relief, based on discrimination in a place of public accommodation undertaken by Defendants against Plaintiff based on his race (and gender). At least two of the parties reside or do business in Georgia and the acts complained of occurred exclusively within Georgia.

2.

Federal jurisdiction is based on 28 U.S.C. § 1343.

3.

Venue in this federal district is proper under 42 U.S.C. § 2000e-5(f) and is otherwise appropriate.

PARTIES

4.

Plaintiff Joe Barry Carroll is an African-American citizen of the United States and a resident of Atlanta, Georgia. Plaintiff Carroll is a highly respected professional athlete, who played ten seasons with the National Basketball Association, before retiring and re-locating to Atlanta. Mr. Carroll is now privately employed as an investment counselor and is a respected philanthropist in the

Atlanta community.

5.

Defendant Tavern at Phipps, on information and belief, is in possession of an Atlanta City business and liquor licenses. It is located at 3500 Peachtree Road, Atlanta, Georgia 30326, in the Phipps Plaza shopping center. Defendant's business is restaurant and a place of public accommodation, generally open to the public, as defined by 42 U.S.C. § 2000a(b). To the best of Plaintiff's current knowledge, the Tavern at Phipps is not incorporated as a corporation or limited liability company under the laws of the State of Georgia. It may be served at its place of business 3500 Peachtree Road, Atlanta, Fulton County, Georgia 30326.

6.

Defendant CentraArchy is a domestic corporation licensed to do business in Georgia by the Secretary of State of Georgia beginning in 1992. Defendant runs a restaurant business, generally open to the public, that is a place of public accommodation as defined by 42 U.S.C. § 2000a(b). Its principal place of business is 236 Albemarle Road, Charleston, South Carolina 29407; however, it may be served through its registered agent for service of process: CT Corporation System, 1201 Peachtree Street, NE, Atlanta, Fulton County, Georgia 30361. CentraArchy is alternatively the management company of the Tavern at Phipps, or, its "parent

company.”

7.

Defendant Greg Greenbaum is the owner of the Tavern at Phipps. He may be served c/o the Tavern at Phipps at 3500 Peachtree Road, Atlanta, Fulton County, Georgia 30326.

8.

Defendant Gavin Angulo is the operating partner of the Tavern at Phipps, according the Phipps Plaza shopping center. He may be served c/o the Tavern at Phipps at 3500 Peachtree Road, Atlanta, Fulton County, Georgia 30326.

9.

Defendant Heather Dennis is the operating partner of the Tavern at Phipps. She may be served c/o the Tavern at Phipps at 3500 Peachtree Road, Atlanta, Fulton County, Georgia 30326.

10.

Defendant John Doe is any unknown owner or operating partner of the Tavern at Phipps. He or she will be served upon as soon as he/she is identified in discovery.

STATEMENT OF FACTS

10.

Plaintiff Carroll on August 11, 2006, along with his friend attorney Joseph Shaw, visited the Tavern at Phipps (hereinafter "Tavern") at approximately 6:00 P.M. The two men took seats at the end of the Tavern's bar.

11.

At the time they entered the Tavern, Plaintiff Carroll and his friend were the only African-Americans sitting at the bar.

12.

Plaintiff Carroll and Mr. Shaw ordered their first respective beers, and respective meals.

13.

Plaintiff Carroll and Mr. Shaw then received their meals and began eating.

14.

At some point shortly thereafter, the Tavern's bartender approached Plaintiff Carroll and Mr. Shaw and requested that they relinquish their seats to two caucasian women. There were several white males at the bar, but none were subject to a similar request. The two men politely declined and continued with their meals and conversation. The bartender indicated it was the custom, practice and policy

for men to give up their seats to women at the Tavern's bar.

15.

Shortly thereafter, Plaintiff Carroll and Mr. Shaw were approached by Defendant Heather Dennis, who stated she was the operating partner of the Tavern, and Rick Russell, who stated he was the Tavern's manager.

16.

Both Defendant Heather Dennis and Mr. Russell reiterated that it was the "custom" at the Tavern for male customers to relinquish their seats to female customers, and then Defendant Dennis asked the men to leave. Plaintiff Carroll and Mr. Shaw also advised Defendant Dennis and Mr. Russell that they were not ready to leave and that they had not finished their meals. Plaintiff Carroll and Mr. Shaw again politely declined to relinquish their seats and declined to leave the premises. None of the white males sitting at the bar were subject to either a first or second request to relinquish their seats to white females.

17.

Subsequently, Defendant Dennis advised Plaintiff Carroll and Mr. Shaw that she would take care of their bill. Plaintiff Carroll and Mr. Shaw declined this offer, advising Defendant Dennis that they intended to pay their own bill and wanted further service. Defendant Dennis then unilaterally closed out the men's tab, before

they had even finished their meals, and declined further service at the establishment.

18.

While this incident was occurring and Defendant Dennis became more agitated, patrons in the bar area began to gawk at the spectacle created by Defendants creating an embarrassing situation for Plaintiff Carroll and Mr. Shaw.

19.

During this incident, Mr. Shaw explained to Mr. Russell that since Plaintiff Carroll and he were the only African-Americans at the bar, it was not a good idea to ask them to leave the premises. Plaintiff Carroll and Mr. Shaw also noted to Defendant Dennis and Mr. Russell that white males were also seated at the bar, but that not asked to give up their seats. Plaintiff Carroll and Mr. Shaw also informed Defendant Dennis and Mr. Russell that there were two empty seats at the other end of the bar. To these comments by Plaintiff Carroll and Mr. Shaw, Defendant Dennis repeatedly stated "let me worry about that."

20.

No explanation was given why none of the white males sitting at the bar were subject to either a first or second request to relinquish their seats to white females, and none had their tabs ended prematurely for not relinquishing their seats to white

females, and none had further service denied for not relinquishing their seats to white females.

21.

Defendant Dennis subsequently stated that she was going to telephone the police. On information and belief, Plaintiff believes that Defendant Dennis did telephone the police.

22.

No explanation was given why none of the white males sitting at the bar were subject to either a first or second request to relinquish their seats to white females, none had their tabs ended prematurely for not relinquishing their seats to white females, none had further service denied for not relinquishing their seats to white females, and none had the police called when they failed to relinquish their seats to white females.

23.

An Atlanta City police officer by the name of Nehemiah Sanders then arrived. He had on his uniform, badge, and gun. The officer stated it was the custom of the Tavern to do business this way. No allegation was made by the officer or anyone else at any time that Plaintiff or Mr. Shaw were being disorderly or disruptive in any way.

24.

Plaintiff Carroll and Mr. Shaw at that point reasonably feared arrest. They were escorted out of the Tavern by the officer without being able to complete their meal, or have further service.

25.

Throughout the incident, the Tavern made at least five requests and demands that Plaintiff Carroll and Mr. Shaw relinquish their seats. *See* Human Relations Commission Order at 2, below. No white males received similar requests.

26.

Throughout the incident, Plaintiff Carroll and Mr. Shaw remained the only African-American customers of the Tavern in the bar area.

27.

At the time of this incident, there was not published anywhere a policy or rule that male customers at the Tavern were to give up their seats to women.

28.

The actions of the Defendants traumatized and humiliated Plaintiff Carroll and Mr. Shaw.

29.

Plaintiff Carroll and Mr. Shaw were and remain shocked by their treatment.

30.

Approximately one month later, Plaintiff Carroll and Mr. Shaw filed a Complaint concerning these issues before the Human Relations Commission of the City of Atlanta. *See* Case No. 2006-10-01.

31.

A full hearing was held before The Human Relations Commission of the City of Atlanta on September 19, 2007, including counsel for all parties and several witnesses.

32.

On October 10, 2007, the Human Relations Commission entered an Order finding that the Defendants violated Article III, Sections 94-66, 94-67, and 94-68 (“Non-Discrimination in Public Accommodations”) of the City Code of Atlanta. “Specifically, the Tavern has denied the Complainants the full and equal enjoyment of the good, services, facilities, privileges, advantages and accommodations of the Tavern.” *See* Order at 1.

33.

In its Order, the Human Relations Commission found that the Tavern has an unwritten policy of requesting males who are seated at the Tavern Bar to relinquish their seats to females. *See* Order at 1.

34.

The Human Relations Commission found that this policy violates the City's Ordinance. *See* Order at 2.

35.

The Human Relations Commission found that the Defendants' treatment of Plaintiff Carroll and Mr. Shaw violated the City's Ordinance and their rights. *See* Order at 2.

36.

The Human Relations Commission's Order made findings concerning the Defendants' improper treatment of Plaintiff Carroll and Mr. Shaw based on race. *See* Order at 2.

37.

The Human Relations Commission found that "race was a factor in the escalation of the situation." *See* Order at 3.

Finally, the Commission believes it would be remiss not to discuss the full allegation of the Complainants that the Tavern's Policy as administered to them, is not only discriminatory on the basis of gender but also race. In light of the long racial history between white and black, the Commission can't help but to wince at the notion of expressly sanctioning a practice that would have the effect of requiring an African American to relinquish her or her seat to a Caucasian patron. The Commission could well expect an African American individual finding himself in such a situation to believe he or she is being singled out for hurtful, disparate treatment, especially given the

fact that the Tavern has no formal policy and therefore nothing posted regarding the policy in public view. We are divided as a Commission, however, as to whether race played an integral role in this matter. Nonetheless, given the aggressive manner in which the Tavern sought to compel the Complainants to relinquish their seats, we believe that race was a factor in the escalation of the situation.

Order, at 2-3.

COUNT I - RACIAL DISCRIMINATION
IN A PLACE OF PUBLIC ACCOMMODATION
IN VIOLATION OF 42 U.S.C. § 2000a

38.

Plaintiff incorporates herein the preceding and foregoing paragraphs as if stated herein for this claim for relief.

39.

Plaintiff had and has a right to full and equal enjoyment of Defendants' business/restaurant establishment, a place of public accommodation generally open to the public.

40.

Plaintiff was denied that right based on his race (and gender). He and his friend attempted to contract for services and enjoy the full benefits and enjoyment of a public accommodation, but were denied the full benefits or enjoyment of a public accommodation, and such services were available to similarly situated persons outside their protected class who received full benefits and/or were treated

better. Defendants required that black-male customers give up their seats for white-female customers, and subsequently refused further service to Plaintiff when he failed to abide by this discriminatory requirement. Other similarly situated white-male customers were not asked to move their seating to accommodate later-arriving white-female patrons even when Plaintiff notified Defendants of their discriminatory practice. Plaintiff was specifically refused further service, and escorted out of the premises by an officer for failing to give up his seat.

41.

Defendants' denial of Plaintiff's rights constitutes discrimination in violation of 42 U.S.C. § 2000a.

COUNT II - DISCRIMINATION IN CONTRACTUAL RELATIONS
IN VIOLATION OF 42 U.S.C. § 1981

42.

Plaintiff incorporates herein the preceding and foregoing paragraphs as if stated herein for this claim for relief.

43.

Plaintiff is members of a protected class based on race (and gender).

44.

Defendants intended to, and did, discriminate based on Plaintiff's race.

45.

Defendants discriminated against Plaintiff based on he and his friends race and interfered with Plaintiff's ability to make, perform, modify, or terminate contracts, or the enjoy of all benefits, privileges, terms and conditions of the contractual relationship with Defendants, and specifically was treated dissimilarly based on race and ultimately refused further service and instructed to leave. Defendants required that black-male customers give up their seats for white-female customers, and subsequently refused further service to Plaintiff when he failed to abide by this discriminatory requirement even after Plaintiff notified Defendants of their discriminatory practice.

46.

Defendant's denial of Plaintiff's rights constitutes discrimination in violation of 42 U.S.C. § 1981.

COUNT III - INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

47.

Plaintiff incorporates herein the preceding and foregoing paragraphs as if stated herein for this claim for relief.

48.

Defendants requirement that black-male customers give up their seats for

white-female customers, and the subsequent refusal of further service to Plaintiff when he failed to abide by this discriminatory requirement, and use of security in front of the viewing customers to require that Plaintiff leave the premises was intentional or reckless, extreme and outrageous, and caused severe emotional distress.

49.

Defendants committed the tort of intentional infliction of emotional distress.

COUNT IV - TORTIOUS MISCONDUCT

50.

Plaintiff incorporates herein the preceding and foregoing paragraphs as if stated herein for this claim for relief.

51.

Defendants owe a duty to Plaintiff-customers who were lawfully in their establishment by implied invitation for the purpose of transacting business, to protect the them against the use of any discriminatory requirements tending to humiliate, mortify, and wound the feelings of the Plaintiff.

52.

Defendants breached that duty by their requirement that black-male customers give up their seats for white-female customers, and then their subsequent


refusal of further service to Plaintiff when he failed to abide by this discriminatory requirement, and the use of security in front of the viewing customers to require that Plaintiff leave the premises.

WHEREFORE, Plaintiff prays for judgment as follows:

1. Injunctive relief ensuring free and unfettered access to Defendants' establishment without future discriminations based on race/gender;
2. Compensatory damages in an amount to be determined by the conscience of the jury and evidence presented;
3. Punitive damages in an amount to be determined by the conscience of the jury and evidence presented;
4. Trial by jury on all issues so triable;
5. Reasonable expenses and attorneys fees incurred in bringing this action; and,
6. Such other relief as the Court deems just and proper.

Dated: This the 5th day of August, 2008.

Respectfully submitted,

/s Gerald Weber 

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