

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

KATHERINE MCMAHON

Plaintiff(s),

-against-

THE MUSEUM OF SEX LLC

Defendant(s).

Index No. [REDACTED]

Summons

Date Index No. Purchased: [REDACTED]

To the above named Defendant(s)

The Museum of Sex LLC
233 5th Ave, New York, New York 10016

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Plaintiff's place of residence
which is 141 E 61st Street Apt. 3D, New York, NY 10065

Dated: New York, New York

June 19, 2019

The Harman Firm, LLP

by /s Walker G. Harman, Jr.

Walker G. Harman, Jr.
Attorneys for Plaintiff

Katherine McMahon
381 Park Avenue South, Suite 1220
New York, NY 10016

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

-----x
KATHERINE MCMAHON,

Plaintiff,

Index No.

v.

COMPLAINT

THE MUSEUM OF SEX LLC,

Defendant.
-----x

Plaintiff Katherine McMahon, by her counsel, The Harman Firm, LLP, allege for her Complaint against Defendant The Museum of Sex LLC (the “Museum”) as follows:

PRELIMINARY STATEMENT

1. The Museum of Sex has a problem keeping their employees free from sexual harassment. Patrons and co-workers of the Museum grope its employees, use utterly inappropriate sexual language, and inquire into employees’ private sex lives. The Museum has done nothing to discourage this behavior, despite numerous complaints. There are no policies to prevent, identify, and address sexual harassment. The Museum of Sex, despite its provocative advertisements, is still a place of work, and, as such, its employees are entitled to a workplace free of sexual harassment. The Museum cannot continue to get away with refusing to address systemic sexual harassment.

2. Plaintiff McMahon suffered persistent sexual harassment and repeatedly complained to management, whose only response was that it was “the nature of the establishment.” As such, Ms. McMahon seeks damages and costs against Defendant for discriminating against her based on her gender by subjecting her to a hostile work environment and constructively terminating her employment, in violation of the New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code §§ 8-101 *et seq.*

3. Plaintiff McMahon also suffers from endometriosis—a chronic condition that causes extreme pelvic pain, fatigue, and infertility—which the Museum refused to accommodate. As such, Ms. McMahon seeks damages and costs against Defendant for discriminating against her based on her disability by failing to engage in a cooperative dialogue, failing to accommodate her, and constructively terminating her employment, in violation of the NYCHRL.

TRIAL BY JURY

4. Plaintiff respectfully requests a trial before a jury.

PARTIES

5. Plaintiff McMahon, at all times relevant hereto, was and is a resident of New York County in the State of New York.

6. Upon information and belief, at all times relevant hereto, Defendant Museum was and is a corporation organized under the laws of the State of Delaware with its principal place of business located at 233 5th Ave, New York, New York 10016.

STATEMENT OF FACTS

7. On February 18, 2018, the Museum hired Ms. McMahon as a part-time Gallery Attendant, tasking her with giving guided tours, overseeing the galleries and artwork, answering questions about the art and exhibitions, and part-time research for exhibitions, for which she was compensated at an hourly rate of \$13.25.

A. Gender Discrimination Claims: Sexual Harassment

8. Throughout her employment at the Museum, Ms. McMahon was subjected to constant and persistent sexual harassment from Museum customers.

9. This harassment ranged from inappropriate comments and behavior to physical assault, such as groping.

10. Ms. McMahon, as well as other gallery attendants, repeatedly complained to their Managers and the Museum's human resources department, yet nothing of substance was done to improve the working conditions for the Museum's staff.

11. In fact, reports often went ignored and higher-ups claimed that sexual harassment was due to "the nature of the establishment."

12. On August 18, 2018, the gallery and retail staff sent the Museum management an email detailing their grievances, specifically concerning recent changes extending Museum hours and sexual harassment in the workplace.

13. In this email, the Museum staff stated the following:

This change in hours is a policy that will also exacerbate other problems at the museum. For example, the presence of intoxicated people in the galleries has risen to an unacceptable level... Drunk people are the majority of people who sexually harass and grope staff. Groping is a sexual assault, which is illegal, and should not be tolerated by the museum. We are requesting that intoxicated people will not be allowed into the museum for the safety of the artwork as well as the staff. Furthermore, almost every woman who works here has dealt with sexual harassment and assault... There is no way for us to call security when we need them, and further, when we are able to report sexual harassment or assault, the patron is simply followed throughout the rest of the museum instead of rightfully asked to leave... We are asking for a zero-tolerance policy towards sexual harassment or assault... these problems have not been appropriately addressed by HR. We ask that HR take these concerns more seriously—the response in the past has been dismal.

14. The staff ended the email with a series of suggestions they thought would improve their working conditions, including "a code of conduct, explaining appropriate behavior for customers towards staff," which took the Museum months to circulate and which is now poorly displayed and hard to find on the Museum website; "more explicit signage in the museum, both at box office and the museum entrance, clearly delineating 'no flash photography, no touching artwork, no food, no beverages, no inappropriate behavior/harassment of staff,'" a

suggestion that was ignored for months before it was put up; and “more regular employee meetings, particularly one now,” a meeting that has, to this date, failed to take place.

15. Daniel McCluskey, the Director of Operations, responded to this email a week later, on August 25, 2018.

16. In his response, Mr. McCluskey admitted the poor state of the Museum’s security: “As far as security presence goes, I think it goes without saying that we are entirely unsatisfied with how it has been in the past.”

17. Yet no actionable steps whatsoever were taken to address the concerns of the staff, especially those of the female employees.

18. Moreover, Ms. McMahon followed up with the Museum’s higher-ups concerning the procedure of reporting sexual harassment on multiple occasions, as there were several incidences when she was a victim of sexual assault or harassment but was unable to report them due to the Museum’s faulty protocol.

19. For example, on August 27, 2018, Ms. McMahon sent an email to Mr. McCluskey, explaining these concerns:

I just spoke to Susan and asked what the protocol is for reporting sexual harassment or assault. Often, when it happens to me, I’m not able to run and grab security by myself for a number of reasons. Susan suggested that I call the manager on duty and then they will call security. This is a bit problematic because I can’t memorize every manager’s schedule especially if I’m panicking or afraid.

20. At the time she sent this email, Ms. McMahon had been at the Museum for six months and, throughout that time, there was no clearly understood protocol for reporting sexual harassment—a failure that repeatedly put Ms. McMahon in dangerous and horrible positions.

21. In response, Mr. McCluskey said, “It’s all in humanity¹ as [the Managers’ schedules] change week to week. The only alternative is to have you wear a walkie and headset during shift that goes straight to security walkie.”

22. Yet, Mr. McCluskey, nor anyone else at the Museum, ever offered Ms. McMahon a “walkie” or anything of the like.

23. On October 11, 2018, Ms. McMahon emailed Susan Belfiglio, the Director of Human Resources and the only employee in the Museum’s human resources department, about being sexually harassed at work.

24. Two customers had walked up to Ms. McMahon and asked if they could “have sex in the bounce house.”

25. When Ms. McMahon told them no and informed them that public sex is illegal, they asked if she would “spank them.”

26. At the end of her email to Ms. Belfiglio, Ms. McMahon stated, “I feel like I am reporting it [sexual harassment] and nothing is happening... Please write back to me about HR’s protocols/solution to this issue.”

27. Yet, Ms. Belfiglio never responded to Ms. McMahon’s email—a clear substantiation of Ms. McMahon’s worry that her complaints were being ignored.

28. On October 12, 2018, Ms. McMahon sent another email to Kaitlyn Overton, the Gallery Manager, and Ms. Belfiglio with concerns about the Museum’s protocol for reporting sexual harassment.

¹ This is an application used by human resources that employees download to their phone, in order to see a list of everyone who is working and their schedules.

29. The Museum informed Ms. McMahon that employees were to check Humanity to find out who the Manager on duty is at the time and report any incidences of sexual harassment to this Manager.

30. Humanity, however, only shows some of the staff members currently working.

31. Ms. McMahon, for example, is a Gallery Attendant and on Humanity she can often only see the other Gallery Attendants' schedules, not everyone who is working nor, most importantly, the Manager on duty who she is supposed to report to.

32. As a result, it is nearly impossible to follow the Museum's "protocol" to report incidences of sexual harassment.²

B. Disability Discrimination Claims

33. Ms. McMahon suffers from, and has been diagnosed with, severe endometriosis—a chronic condition that causes extreme pelvic pain, fatigue, and infertility.

34. At times, Ms. McMahon's pain becomes so extreme that it is hard for her to stand for prolonged periods of time and lift or carry heavy objects.

35. On her first day of work, Ms. McMahon informed her supervisors and the human resources department, specifically Ms. Belfiglio, of her illness and requested that she be allowed to sit during her shifts.³

36. Ms. Belfiglio told Ms. McMahon that the Museum would let her sit in the galleries whenever she needed.

² Moreover, according a friend and coworker of Ms. McMahon, Ms. Belfiglio was planning to "work on the Museum's sexual harassment procedure" after the holidays—a clear indication that in the 16 years the Museum has been open, there has been no universally understood policy on how to handle sexual harassment or assault.

³ Ms. McMahon also asked Ms. Belfiglio if she needed Ms. McMahon to provide any medical documents, to which Ms. Belfiglio said no.

37. Yet, after speaking with her supervisors, Ms. McMahon found it difficult to find seating when she was working and, when she did, was often reprimanded for doing so or asked why she was not standing.

38. On September 21, 2018, Ms. McMahon emailed Mr. McCluskey to further discuss her accommodation, stating: “I’m disabled with a chronic illness which includes constant pain, nausea, etc. It’s been very hard to be a gallery attendant not only because of the standing, which is very hard on my body, but because when I’m sick, I can’t work from home and I can’t get PTO since I’m not full time.”

39. Ms. McMahon then continued to say she would be open to doing more Research Assistant work—a position she had been recently promoted to—which allowed her to sit for more of the day, explaining that this “would be a reasonable accommodation for [her] disability.”

40. Ms. McMahon, however, received no response to this email.

41. On September 28, 2018, Ms. McMahon emailed Mr. McCluskey again to follow up regarding the accommodation she had requested.

42. In response, Mr. McCluskey said that Ms. McMahon’s accommodation wouldn’t be a problem and listed the galleries that already had seating available.

43. These seats, however, were for guests and, if they wanted to sit down, Ms. McMahon was obligated to give them up.

44. Moreover, regardless of informing Mr. McCluskey and Ms. Belfiglio of her disability, other Managers continued to regularly reprimand Ms. McMahon for sitting on benches that were for customers.

45. Many Museum Managers would also ask Ms. McMahon to explain her disability and why she needed to sit—a clear violation of Ms. McMahon’s right to privacy.

46. Furthermore, the Museum had taken Ms. McMahon off coat check duty permanently in order to accommodate her, as lifting heavy bags aggravates her chronic pain.

47. Yet, Managers regularly neglected her approved accommodation and repeatedly put Ms. McMahon on coat check duty.

48. For example, on October 12, 2018, Ms. McMahon emailed Ms. Overton because she had been put on coat duty once again.

49. Although Ms. Overton apologized for her mistake, she scheduled Ms. McMahon for the coat room on several occasions after that.

50. As a result, Ms. McMahon had to constantly remind her supervisors of her accommodations and put in significant effort to ensure that accommodations provided for her safety and well-being were actually implemented.

51. During the summer of 2018, the Museum instituted a policy that employees need a doctor's note every time they call out sick.

52. Ms. McMahon asked Ms. Overton if she needed to follow this protocol, as she is chronically ill and getting a doctor's note every time her symptoms flair up would be much more difficult and costly for her than it would be for other employees.

53. In response, Ms. Overton said that, given her condition, Ms. McMahon was exempt from following this protocol.

54. On November 23, 2018, Ms. McMahon fell ill and, according to her arrangement, "called out"⁴ to Janell Rodriguez a Museum Manager.

⁴ When Ms. McMahon began working at the Museum, she only had to divulge her disability to human resources. However, with this new Museum policy, she was instructed to "call out" or tell the Manager on duty when she was unable to work due to her disability.

55. Yet, later that day Ms. McMahon received an email saying that she would receive a write-up if she did not provide a doctor's note for her absence—in clear and absolute contradiction to what Ms. Overton had previously told her.

56. Moreover, Ms. Rodriguez—in a complete abuse of power and trust—told other Managers about Ms. McMahon's condition, which was supposed to be, and which Ms. McMahon wished to remain, confidential.

57. In fact, due to this new Museum policy, Ms. McMahon overheard many Managers talking about her confidential disability amongst themselves.

58. As a result of her working environment, Ms. McMahon has suffered exacerbated posttraumatic stress disorder, hypervigilance, paranoia, anxiety, depression, and severe emotional distress including, but not limited to, fear of men, fear of reporting sexual harassment, and hopelessness.

59. Because the Museum has fostered and condoned working conditions so intolerable that a reasonable person would feel compelled to resign, the Museum constructively terminated Ms. McMahon's employment on December 12, 2018.

CAUSES OF ACTION
FIRST CAUSE OF ACTION

Hostile Work Environment Based on Sex and Disability in Violation of the NYCHRL

60. Plaintiff hereby realleges and incorporates each and every allegation contained in paragraphs 1 through 59 with the same force as though separately alleged herein.

61. The NYCHRL prohibits an employer from discriminating against an employee in compensation or in terms, conditions, and privileges of employment on the basis of sex and/or disability.

62. Defendant violated the NYCHRL when it subjected Plaintiff McMahon to a hostile work environment based on gender, including sexual harassment, and disability.

63. As a direct and proximate consequence of Defendant's discrimination, Plaintiff McMahon has suffered, and continues to suffer, substantial damages, including, but not limited to, emotional distress and suffering, all in amounts to be determined at trial.

64. Defendant's discriminatory treatment of Plaintiff involved a conscious disregard of Plaintiff's rights or conduct so reckless as to amount to such disregard. Accordingly, Plaintiff is entitled to an award of punitive damages against Defendant.

SECOND CAUSE OF ACTION

Failure to Commence a Cooperative Dialogue in Violation of the NYCHRL

65. Plaintiff hereby realleges and incorporates each and every allegation contained in paragraphs 1 through 64 with the same force as though separately alleged herein.

66. The NYCHRL requires an employer to begin a cooperative dialogue to enable an employee with a disability to satisfy the essential requisites of a job, provided that the disability is known or should have been known to the employer.

67. At all relevant times, Plaintiff was an individual with a disability within the meaning of the NYCHRL.

68. Defendant was fully aware of Plaintiff's disability, as Plaintiff notified Defendant of her disability and requested to begin a cooperative dialogue.

69. Defendant refused to grant Plaintiff's requests to begin a cooperative dialogue concerning her disability and failed to engage in the mandatory interactive process to begin a cooperative dialogue for Plaintiff's disability.

70. As such, Defendant has violated the NYCHRL. As a direct and proximate consequence of Defendant's failure to begin a cooperative dialogue concerning her disability,

Plaintiff has suffered, and continues to suffer, substantial damages, including, but not limited to, economic loss, emotional distress and suffering.

71. Defendant's discriminatory treatment of Plaintiff involved a conscious disregard of Plaintiff's rights or conduct so reckless as to amount to such disregard. Accordingly, Plaintiff is entitled to an award of punitive damages against Defendant.

**THIRD CAUSE OF ACTION
Failure to Accommodate in Violation of the NYCHRL**

72. Plaintiff hereby realleges and incorporates each and every allegation contained in paragraphs 1 through 71 with the same force as though separately alleged herein.

73. The NYCHRL requires an employer to make a reasonable accommodation to enable an employee with a disability to satisfy the essential requisites of a job, provided that the disability is known or should have been known to the employer.

74. At all relevant times, Plaintiff was an individual with a disability within the meaning of the NYCHRL.

75. Defendant was fully aware of Plaintiff's disability, as Plaintiff notified Defendant of her disability and requested related reasonable accommodations.

76. Defendant refused to grant Plaintiff's requests for a reasonable accommodation for her disability and failed to engage in the mandatory interactive process to provide a reasonable accommodation for Plaintiff's disability.

77. As such, Defendant has violated the NYCHRL.

78. As a direct and proximate consequence of Defendant's failure to accommodate her disability, Plaintiff has suffered, and continues to suffer, substantial damages, including, but not limited to, emotional distress and suffering, all in amounts to be determined at trial.

79. Defendant's discriminatory treatment of Plaintiff involved a conscious disregard of Plaintiff's rights or conduct so reckless as to amount to such disregard. Accordingly, Plaintiff is entitled to an award of punitive damages against Defendant.

FOURTH CAUSE OF ACTION
Unlawful Termination in Violation of the NYCHRL

80. Plaintiff hereby realleges and incorporates each and every allegation contained in paragraphs 1 through 79 with the same force as though separately alleged herein.

81. The NYCHRL prohibits an employer from discriminating against an employee in compensation or in terms, conditions, and privileges of employment on the basis of sex and/or disability.

82. Defendant violated the NYCHRL when it subjected Plaintiff to a work environment so permeated with sex- and disability-based discrimination that no reasonable person would be expected to remain in the position.

83. As a direct and proximate consequence of Defendant's discrimination, Plaintiff has suffered, and continues to suffer, substantial damages, including, but not limited to, emotional distress and suffering, all in amounts to be determined at trial.

84. Defendant's discriminatory treatment of Plaintiff involved a conscious disregard of Plaintiff's rights or conduct so reckless as to amount to such disregard. Accordingly, Plaintiff is entitled to an award of punitive damages against Defendant.

