

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. PLCV2001-01474

SOPHIA APESSOS,
Plaintiff,
v.
MEMORIAL PRESS GROUP,
Defendant.

VERIFIED
COMPLAINT AND
JURY DEMAND

INTRODUCTION

Plaintiff Sophia Apossos, formerly Sophia Hernandez, brings this complaint against Memorial Press Group, her former employer, for wrongful termination in violation of public policy and breach of implied covenant of good faith and fair dealing. Memorial Press Group discharged Ms. Apossos because she was absent from work in order to obtain a permanent abuse prevention order against her abusive husband. Ms. Apossos's appearance in court on Monday, July 31, 2000, was required by M.G.L. c. 209A, § 5, and constituted the exercise of her legal right to obtain protection from domestic abuse. Defendant's discharge of Ms. Apossos was in violation of a clearly defined public policy and was unlawful.

PARTIES

1. Plaintiff Sophia Apossos ("Plaintiff" or "Ms. Apossos") is an individual residing in Hingham, Massachusetts.
2. Defendant Memorial Press Group ("Defendant" or "MPG") is a Massachusetts corporation with offices located at 9 Long Pond Road, Plymouth, Massachusetts.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Defendant pursuant to M.G.L. c. 223A, §§ 2 & 3.
4. Venue is proper pursuant to M.G.L. c. 223, § 1.

BACKGROUND

Massachusetts Maintains A Clearly Defined Public Policy Protecting Victims Of Domestic Violence

5. The Commonwealth of Massachusetts maintains a clearly defined public policy to promote the health, physical safety, and economic self-sufficiency of individuals victimized by domestic violence. This public policy is evidenced by the many measures Massachusetts has implemented to ensure the safety of these victims in their homes and workplaces, and to enhance the ability of these victims to access and retain employment opportunities that will avoid or reduce their financial dependence on their assailants.

6. This public policy is evidenced in statutes enacted by the Massachusetts Legislature, an Order issued by the Executive Branch, and even the Massachusetts Constitution. For example, the Massachusetts Legislature has enacted an Abuse Prevention Act (M.G.L. c. 209A) which provides protection for victims of domestic abuse. Further, the Governor has decreed that “[i]t is the policy of the Commonwealth to have zero tolerance for domestic violence in any form at any place, whether at home, at the workplace, or elsewhere.” Executive Order 398, Establishing a Policy of Zero Tolerance for Domestic Violence, 824 Mass. Reg. 3 (1997).

7. The Commonwealth of Massachusetts also maintains a clearly defined public policy to protect its citizens victimized by crime and to encourage cooperation with the criminal justice system. This policy is evidenced, for example, by the Massachusetts Constitution, Part I, Article XI, which provides that all individuals of the Commonwealth have access to the courts in order to obtain justice or gain redress for their grievances and wrongs. Similarly, M.G.L. c. 265,

§13A defines criminal penalties for assault and battery and M.G.L. c. 295 §3(b) grants “basic and fundamental rights” to victims of crimes including the right to attend “all court proceedings related to the offense committed against the victim.”

**MPG’s Termination Of Ms. Apessos Violated The Commonwealth’s
Clearly Defined Public Policy Protecting Victims Of Domestic Violence**

8. Ms. Apessos began working for MPG as a full-time newspaper reporter on June 10, 1999.

9. Although a talented local reporter, Ms. Apessos was nonetheless a victim of domestic abuse during her tenure at MPG. Married since June 24, 1994, Ms. Apessos’s then husband (Gilbert C. Hernandez) engaged in a pattern of verbal abuse that ultimately escalated to a series of physical assaults.

10. During July 2000, Mr. Hernandez’s attacks on Ms. Apessos took on a new fierceness. On Thursday evening, July 13, 2000, Mr. Hernandez beat Ms. Apessos on her leg with a ten-pound weight, poked her forcefully in the eyes, and violently choked her. Hernandez cursed at Ms. Apessos, calling her a “f ... ing bitch,” and told her, “I should kill you right now.”

11. On or about July 24, 2000, Ms. Apessos told Ann Archambault, her supervisor at MPG, and Nan Anastasia, managing editor, that she was going through a difficult divorce. Both women indicated that Ms. Apessos could count on their support and assistance.

12. On Saturday night, July 29, 2000, Mr. Hernandez again attacked Ms. Apessos. Mr. Hernandez once more choked Ms. Apessos, but this time he also slapped and punched her, blackening her left eye and causing it to swell.

13. Fearing for her safety, Ms. Apessos fled to the Plymouth Police Department to report the incident and seek protection. Mr. Hernandez was arrested, charged with assault and battery upon Ms. Apessos, pursuant to M. G. L. c. 265, § 13A, and taken into custody.

14. That evening, with the assistance of the Plymouth Police Department, Ms. Apessos obtained a temporary emergency abuse prevention order pursuant to the Massachusetts Abuse Prevention Act, M.G.L. c. 209A, § 5. Because it was a Saturday evening and the court was closed for business, Judge Daniel O'Malley issued this order to Police Officer Higgins by telephone, who recorded the order on a court-approved form.

15. Despite the issuance of the temporary abuse prevention order, later that night Mr. Hernandez placed a collect call to Ms. Apessos from jail. The call was a violation of the earlier issued court order, and the police charged Mr. Hernandez with a violation of M.G.L. c. 209A, § 7.

16. Because her temporary order was scheduled to expire Monday, July 31, 2000 at 4:00 p.m., Officer Higgins instructed Ms. Apessos to report to the Plymouth District Court on the morning of Monday, July 31, 2000 so that the temporary abuse prevention order could be extended by the presiding judge. In fact, M.G.L. c. 209A, § 5 required Ms. Apessos to appear in court on the next business day to file a formal complaint.

17. Realizing she would need to miss work on Monday in order to appear in court, Ms. Apessos immediately telephoned Ms. Archambault, her supervisor at MPG that Saturday evening, to notify her that she would be absent from work on Monday. Ms. Apessos left a voice mail message on Ms. Archambault's voice mail box at the office. Ms. Apessos explained in her message that her presence was required in court on Monday, July 31, 2000 in order to obtain a permanent abuse prevention order against her husband, and that she would not be at work.

18. On July 31, 2000, Mr. Hernandez was arraigned in Plymouth District Court on two counts: (a) assault and battery, and (b) violation of M.G.L. c. 209A, § 7. Mr. Hernandez ultimately admitted to facts sufficient for a finding of guilty on both counts.

19. Ms. Apossos appeared at the arraignment, and completed a sworn affidavit detailing the incidents of abuse she had suffered on July 13 and July 29, 2000. Ms. Apossos recounted the events of Saturday, July 29, 2000 for the court, and sought an order extending her temporary abuse prevention order.

20. The court granted Ms. Apossos the protection provided under the M.G.L. c. 209A, ordering the July 29, 2000 temporary abuse prevention order to remain in effect for the following year. The order provided Ms. Apossos with necessary protection by precluding Mr. Hernandez from, *inter alia*, contacting Ms. Apossos both at her workplace and at their marital residence.

21. Following the adjournment of the court proceedings the Police Prosecutor, Sergeant John Abbot, invited Ms. Apossos to return to the Plymouth Police Department to allow the police to take additional photographs of her left eye. Ms. Apossos believed this request was to provide assistance in an ongoing criminal investigation, and therefore she complied.

22. Before leaving the Plymouth Police Department, the police urged Ms. Apossos to change the locks to her house that very afternoon, as Mr. Hernandez had been released from custody and earlier had violated the temporary abuse prevention order within hours of its issuance. In order to preserve her safety, Ms. Apossos followed this direction.

23. While Ms. Apossos waited at her home for a locksmith to arrive, she received a telephone call from Ms. Archambault inquiring whether she planned to come to work that day. Ms. Apossos told Ms. Archambault she was waiting for a locksmith, and indicated that she would see her the following morning.

24. When Ms. Apossos arrived at MPG the next morning on Tuesday, August 1, 2000, the area around her left eye remained visibly discolored and swollen. Upon information and belief, this was not the first time Ms. Archambault had seen bruises on plaintiff, although she had never mentioned her observations to Ms. Apossos in the past.

25. Ms. Archambault immediately escorted Ms. Apossos to the office of Barbara French, Human Resources Director for MPG.

26. Ms. French discharged Ms. Apossos from MPG's employment because of her absence on July 31, 2000.

27. But for her absence from work on July 31, 2000, MPG would not have terminated Ms. Apossos on August 1, 2000.

Count One
Wrongful Termination
In Violation Of Public Policy

28. Plaintiff repeats and realleges Paragraphs 1 through 27 of the Complaint as if set forth here in their entirety.

29. Ms. Apessos's appearance in court on Monday, July 31, 2000 was an exercise of her legal right to seek protection from domestic abuse, required by the terms of M.G.L. c. 209A, § 5, and was at the direction of Officer Higgins of the Plymouth Police Department.

30. Ms. Apessos's pursuit of her legal rights, and compliance with what the law required, prohibited her attendance at work on July 31, 2000.

31. Ms. Apessos provided Defendant with advance notice that she would be absent on July 31, 2000 in order to attend court. Defendant therefore knew or should have known that Ms. Apessos would be absent from work on July 31, 2000, to obtain a restraining order against her abusive husband.

32. Defendant terminated Ms. Apessos because she was absent from work on July 31, 2000. But for her absence on this day, she would not have been terminated.

33. Defendant's termination of Ms. Apessos violates the Commonwealth's clearly defined public policy to promote the health, physical safety, and economic self-sufficiency of individuals victimized by domestic violence.

34. Defendant's wrongful discharge of Ms. Apessos caused, or significantly contributed to causing, injuries and damage to the plaintiff, including but not limited to loss of earnings; loss of employment related opportunities; and pain and suffering, mental anguish, and distress past, present and future.

Count Two
Breach Of Implied Covenant
Of Good Faith And Fair Dealing

35. Plaintiff repeats and realleges Paragraphs 1 through 34 of the Complaint as if set forth here in their entirety.

36. Ms. Apessos and Defendant were parties to an implied employment agreement, whereby Ms. Apessos was an “at will” employee of Defendant.

37. This employment agreement imposed an obligation of good faith and fair dealing between Defendant and Ms. Apessos.

38. Defendant breached its contractual obligation of good faith and fair dealing by terminating Ms. Apessos’s employment on August 1, 2000 without cause and in violation of public policy.

39. Defendant’s breach of the implied covenant of good faith and fair dealing caused, or significantly contributed to causing, injuries and damage to the plaintiff, including but not limited to loss of earnings; loss of employment related opportunities; and pain and suffering, mental anguish, and distress past, present and future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

- (a) For a determination by the jury of the damages to which she is entitled from the various Defendant;
- (b) For entry of judgment in her favor in the amount of such damages;
- (c) For equitable relief; and
- (d) For such other and further relief as this Honorable Court deems appropriate.

SOPHIA APESSOS

By Her Attorneys,

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Dated: December 10, 2001

THE PLAINTIFF CLAIMS A TRIAL BY JURY ON ALL COUNTS

VERIFICATION OF COMPLAINT

I, Sophia Apossos, do hereby declare that I have read the foregoing Complaint and know the contents thereof. The allegations contained therein are true to my knowledge except to those matters that are alleged on information and belief; as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on this 5th day of December, 2001.

Sophia Apossos