

A Newsletter by Budd Larner, P.C.

New Jersey Supreme Court Clarifies Sexual Harassment Law

By Mitchell Rait, Esq.

On August 9, 2004, the Supreme Court of New Jersey clarified three issues involving sexual harassment:

Emotional distress: A plaintiff suing for sexual harassment under New Jersey's Law Against Discrimination (LAD) may recover damages for emotional distress and mental anguish arising out of embarrassment and humiliation without the need to prove severe emotional or physical injury.

Aiding and abetting: In order to hold an employee liable as an aider or abettor, a victim must show that:

- The principal violator who was aided must have performed a wrongful act that caused an injury;
- the aider must have been aware of his role in the activity;
- the aider must have knowingly and substantially assisted the principal violator.

Counsel fees: To qualify as a "prevailing party" entitled to counsel fees, a party must be granted some form of affirmative relief, *i.e.*, an enforceable judgment or settlement. In cases where a prevailing party receives only nominal damages, a court has discretion to award no counsel fees.

Factual Background

Carol Tarr v. Bob Ciasulli involved allegations of a hostile work environment and sexual harassment. The plaintiff, Ms. Tarr, worked for Mack Auto Mall as a finance and insurance manager. She resigned after enduring constant sexual harassment at work,

at the hands of a particular group of male employees. Despite numerous complaints to management, the sexual harassment continued unfettered.

Tarr originally brought suit against Bob Ciasulli, the owner of Mack Auto Mall, along with some of his other corporations and their employees. However, all of the defendants other than Ciasulli, Bob Ciasulli Auto Group, Mack Auto Mall, Inc. were dismissed. In addition, once the case went to trial, the court dismissed the plaintiff's emotional distress claim for lack of evidence, and dismissed the claims against Ciasulli and Mack Auto Mall.



At trial, the jury found that the plaintiff was in fact a victim of hostile work environment sexual harassment. However, she was not awarded any damages, because the jury did not find that she suffered any monetary loss. On the other hand, the jury did award attorney fees to Ms. Tarr as a "prevailing party".

On appeal, the court reversed the dismissal of the emotional distress claim, and remanded for a new trial on the damages. The court also reversed the trial court's dismissal of the complaint against Ciasulli, and remanded to determine his liability. In addition, the court affirmed the plaintiff's counsel fee award and the court's dismissal of the Auto Group complaint. The Supreme Court of New Jersey granted certification.

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"This decision eases the way for employees to make claims for, and receive, damages from, their employers for sexual harassment in the workplace. As such, a lower standard of proof leaves employers at a greater risk of liability."

The authors thank summer associate Lori Zeglarski for her assistance in the preparation of this article.

New Jersey Supreme Court Clarifies Sexual Harassment Law (cont.)**SUPREME COURT OPINION****Emotional Distress Damages**

LAD was originally enacted to eliminate discrimination in the workplace, and to compensate victims for their injuries. In 1990, LAD was amended to permit recovery for emotional distress. Under LAD, courts do not require expert testimony to prove emotional distress damages, nor corroborating testimony or medical evidence.

The Supreme Court of New Jersey determined that the standard of proof for emotional distress claims brought under LAD is lower than that for claims brought under the common law tort. The Court stated that, unlike relief under the common law tort, relief under LAD for mental anguish, embarrassment, or other emotional distress was not limited to severe emotional or physical injury. Compensatory damages for emotional distress, including humiliation and indignity resulting from willful discriminatory conduct, are remedies that require a far less stringent standard of proof than that required for a tort-based emotional distress cause of action. In fact, the court reasoned that limiting the application of LAD to cases where a plaintiff suffers serious harm would defeat the statute's remedial purpose.

The Court found that the plaintiff in this case presented sufficient evidence of emotional distress damages to submit that issue to the jury. Therefore, the Court affirmed the appellate division's decision to hold a new trial on the damages.

Aiding and Abetting

The Court affirmed the trial court's decision to dismiss the complaint against Mr. Ciasulli for lack of evidence. To hold a supervisor individually liable for sexual harassment, a plaintiff must prove that the supervisor aided and abetted the harasser. As stated above, under New Jersey law, the principal violator

who was aided must have performed a wrongful act that caused an injury; the aider must have been aware of his role in the activity; and the aider must have knowingly and substantially assist the principal violator.

The Court did not find that the plaintiff met this burden. In fact, the Court did not find that the plaintiff presented enough evidence to show Mr. Ciasulli even witnessed the harassment. Instead, the Court found that he, at most, negligently supervised his employees. Negligent supervision, the Court stated, is insufficient to find substantial assistance to wrongdoers to impose individual liability under LAD.

Counsel Fees

The Court also held that a plaintiff, who receives some sort of affirmative relief, *i.e.*, an enforceable judgment, a settlement, a consent decree, or even a nominal damage award, qualifies as a prevailing party under LAD thus entitled to counsel fees. However, the court added, when a plaintiff is awarded nominal damages, the trial court has the discretion to determine whether to award counsel fees or not.

Conclusion

This decision eases the way for employees to recover damages from their employers for sexual harassment in the workplace. With a lower standard of proof, more employees alleging sexual harassment are likely to succeed on their emotional distress claims than ever before. An enhanced rate of success may even encourage more employees who are victims of sexual harassment to initiate such claims. A lower standard of proof also leaves employers at a tremendous risk for liability. Therefore, the best solution for both employer and employee is for an employer to implement proactive measures designed to eliminate sexual harassment in the workplace in the first instance.

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The firm's Labor & Employment attorneys are experienced in handling the full range of employment issues. We appear on behalf of our clients in both state and federal courts in addition to administrative agencies such as the Division on Civil Rights, Equal Employment Opportunity Commission, state and federal departments of labor and National Labor Relations Board.