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EEOC v. Gold River Operating Corp

Judge Lawrence R. Leavitt

Judge Peggy A. Leen

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EEOC v. Gold River Operating Corp

Keywords

EEOC, River Palms Resort, Gold River Operating Corporation, 2:04-cv-01390-LRL-LRL, consent decree, employment law, title VII, age, sex, female, hostile environment, retaliation

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(Recitation of Counsel continued on next page)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	DOCKET NO. 2:04-cv-01349-LRL-LRL
)	
Plaintiff,)	[PROPOSED] CONSENT DECREE
)	
v.)	
)	
GOLD RIVER OPERATING CORPORATION, d/b/a RIVER PALMS RESORT and CASINO, COLUMBIA SUSSEX CORPORATION d/b/a RIVER PALMS RESORT and CASINO, and DOES 1-10, Inclusive,)	
)	
Defendants.)	

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8 Attorneys for Defendant
9 COLUMBIA SUSSEX CORPORATION
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1 Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC") and Defendants
2 Gold River Operating Corporation d/b/a River Palms Resort & Casino ("Gold River") and
3 Columbia Sussex Corporation d/b/a River Palms Resort & Casino ("Columbia Sussex")
4 (collectively "River Palms"), hereby stipulate and agree to entry of this Consent Decree to
5 resolve the EEOC's Complaint, filed under Sections 706(f)(1) and (3) of Title VII of the Civil
6 Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3); Section 102 of the Civil
7 Rights Act of 1991, 42 U.S.C. § 1981a; and Section 7(b) of the Age Discrimination in
8 Employment Act of 1967, as amended 29 U.S.C. Section 626(b). The EEOC's Complaint
9 alleges that River Palms (1) discriminated against a group of employees in terms and conditions
10 of employment because of age and/or sex, (2) subjected them to a hostile environment because
11 of age and/or sex, and (3) retaliated against those who engaged in protected activity in violation
12 of Title VII and/or the ADEA. River Palms denies liability.

13 I. JURISDICTION

14 The Court has jurisdiction over the parties and the subject matter of this lawsuit,
15 pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343, 1345, 1367 and 42 U.S.C. 2000e-5(f).
16 The Court shall retain jurisdiction of this action during the duration of the Decree for the
17 purposes of entering all orders, judgments and decrees which may be necessary to implement
18 and/or enforce the relief provided herein or to otherwise effectuate the purposes of the Decree.

19 II. PURPOSES AND SCOPE OF THE CONSENT DECREE

20 A. The parties to this Consent Decree ("Decree") are the EEOC, Gold River and
21 Columbia Sussex (collectively the "Parties"). This Decree shall be binding on and enforceable
22 against the EEOC, Gold River, Columbia Sussex, and either of their officers, directors, agents,
23 successors and assigns.

24 B. As a result of having engaged in comprehensive settlement negotiations the
25 Parties have agreed that this action should be finally resolved by entry of this Decree for the
26 following purposes:
27

- 1 1. To avoid expensive and protracted costs incident to litigation;
- 2 2. To provide a final and binding settlement upon the Parties as to all claims
- 3 alleged in the Complaint;
- 4 3. To provide monetary and injunctive relief;
- 5 4. To ensure that Columbia Sussex's employment policies and procedures at
- 6 the River Palms comply with Title VII and the ADEA;
- 7 5. To ensure training for River Palms' employees with respect to their
- 8 obligations under Title VII and the ADEA; and
- 9 6. To provide effective responses to harassment, retaliation and
- 10 discrimination complaints.

11 III. EFFECTIVE DATE AND DURATION OF DECREE

- 12 A. The provisions and agreements contained herein are effective immediately upon
- 13 the date on which this Decree is entered by the Court ("the Effective Date").
- 14 B. Except as otherwise provided herein, the Decree shall remain in effect for three
- 15 (3) years after the Effective Date.

16 IV. FINDINGS

17 Having examined the terms and provisions of this Decree and based on the pleadings,

18 record and stipulation of the Parties, the Court finds the following:

- 19 A. The Court has jurisdiction over the Parties and the subject matter of this action.
- 20 The Complaint asserts claims that, if proven, would authorize the Court to grant the relief set
- 21 forth in this Decree.
- 22 B. The terms and provisions of this Decree are adequate, fair, reasonable, equitable
- 23 and just. The rights of the Parties and the public interest for which the EEOC seeks redress are
- 24 protected adequately by this Decree.
- 25 C. This Decree conforms with the Federal Rules of Civil Procedure and Title VII
- 26 and the ADEA and is not in derogation of the rights and privileges of any person. The entry of
- 27

1 this Decree will further the objectives of Title VII and the ADEA and will be in the best interest
2 of the Parties.

3 V. RESOLUTION OF CLAIMS

4 A. The Parties agree that this Decree constitutes a complete resolution of EEOC
5 Charge Nos. 340-2003-10738 (Barnes), 34B-2002-01700 and 34B-2003-01217 (Bowers-
6 Hughes), 34B-2002-01575 (Karsgor), 34B-2003-00184 (LaFond), 34B-2002-01674 (Lancaster),
7 34B-2002-01675 (Marshall), 34B201669 and 340-2003-0933 (Purdy) and the Complaint filed in
8 this action. The Decree does not, however, resolve any charges of discrimination that may be
9 pending with or brought in the future before the EEOC other than the charges specifically
10 referred to in this paragraph.

11 B. Nothing in this Decree shall be construed to limit or reduce River Palms's
12 obligation to comply fully with Title VII, the ADEA or any other federal employment statute.

13 C. This Decree in no way affects the EEOC's right to bring, process, investigate or
14 litigate other charges that may be in existence or may later arise against River Palms in
15 accordance with standard EEOC procedures.

16 VI. MONETARY RELIEF

17 Defendants shall pay a total of \$200,000.00 in settlement of all monetary claims of
18 Plaintiff-in-Intervention Toni Purdy and the identified claimants (*i.e.*, Christina Barnes, Barbara
19 Bowers-Hughes, Carl Karsgor, Brenda LaFond, Laura Lancaster and Penelope Marshall
20 (collectively "Claimants")). This monetary settlement shall be allocated as follows: \$5,000.00
21 to Toni Purdy and \$195,000.00 to be divided amongst the Claimants as directed by the EEOC
22 and at the EEOC's sole discretion. Monetary settlements are for compensatory damages for
23 emotional distress sustained by Purdy and each of the Claimants as a result of the conduct
24 complained-of in the Complaint. Accordingly, no FICA/FUTA or other employment-related
25 withholdings shall be made from any of the above payments. Defendants shall issue checks
26 made payable to Toni Purdy and each of the Claimants by: (a) ten (10) days from the date that
27

1 the EEOC provides River Palms with settlement allocation amounts for the Claimants and the
2 Claimants' addresses, or (b) March 7, 2008, whichever is later. Defendants shall submit a copy
3 of each check and related correspondence to the Regional Attorney, United States Equal
4 Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA
5 90012, within three (3) days of issuing the checks. At the end of 2008, Defendants shall issue
6 1099 forms to Toni Purdy and each of the claimants reflecting payment of the settlement
7 amounts. Defendants shall submit a copy of each 1099 form and related correspondence to the
8 Regional Attorney, United States Equal Employment Opportunity Commission, 255 East
9 Temple Street, 4th Floor, Los Angeles, CA 90012, within three (3) days of issuing the 1099
10 forms.

11 VII. INJUNCTIVE RELIEF

12 A. Non-Discrimination

13 Columbia Sussex, its officers, agents, management, successors, assigns, and all those in
14 active concert or participation with any of them, hereby agree (1) not to engage in sexual
15 harassment or other forms of sex discrimination; (2) not to engage in age harassment or other
16 forms of age discrimination; and (3) to prevent and correct any harassment or other
17 discrimination on the basis of sex or age.

18 B. Anti-Retaliation

19 Columbia Sussex, its officers, agents, management, successors, assigns, and all those in
20 active concert or participation with them, or any of them, hereby agree not to retaliate against
21 any current or former employee of River Palms for: (a) engaging in protected activity under
22 Title VII and/or the ADEA; (b) participating in any manner in any investigation (including any
23 internal investigation undertaken by River Palms) or proceeding relating to any alleged Title VII
24 or ADEA violation; (c) being identified as a possible witness or claimant pertaining to any
25 alleged Title VII or ADEA violation; (d) asserting any rights under this Decree; or (e) receiving
26 any relief under this Decree.

27

1 C. Training

2 1. Within forty-five days of the Effective Date, Columbia Sussex shall
3 submit its policies, procedures and training materials on discrimination, harassment and
4 retaliation at River Palms to the EEOC.

5 2. For the Term of the Decree, Columbia Sussex shall continue to require its
6 managerial and non-managerial employees at River Palms to attend annual live training on their
7 obligations and responsibilities under Title VII and the ADEA. All River Palms' employees'
8 training shall include coverage of the subjects of equal employment opportunity rights and
9 responsibilities, harassment, discrimination, retaliation, and Columbia Sussex's policies and
10 procedures for reporting and handling complaints of harassment and discrimination.

11 D. Record Keeping and Reporting

12 1. Record Keeping

13 Columbia Sussex shall establish a record keeping procedure at River Palms that provides
14 for the centralized tracking of complaints of discrimination and the monitoring of such
15 complaints to prevent retaliation. The records to be maintained during the Term of this Consent
16 Decree shall include:

- 17 a. All documents generated in connection with any complaint of
18 discrimination or retaliation for the duration of the Decree, including
19 documents related to the investigation into and resolution of each
20 complaint;
- 21 b. The identities of the parties involved in each such complaint;
- 22 c. All forms acknowledging River Palms' employees' receipt of Columbia
23 Sussex's discrimination and anti-retaliation policy, including any
24 revisions thereto. Where the relevant policy is distributed or made known
25 to employees electronically, Columbia Sussex will maintain a sample
26 notice to employees of the availability of the policy in electronic format;
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- d. All documents verifying the occurrence of all training sessions and names and positions of all attendees for each session as required under this Decree; and
- e. Documents tracking and analyzing complaints failed against the same employee.

2. Reporting

Columbia Sussex shall provide, without assertion of the attorney-client privilege or attorney work product, the following reports to the EEOC in writing, by mail or facsimile:

- a. Within forty-five (45) days after the Effective Date, Columbia Sussex shall submit its policies, procedures and training materials on discrimination, harassment and retaliation at River Palms, pursuant to Paragraph VII(C)(1). In the event that Columbia Sussex modifies its policies, procedures or training materials at River Palms during the term of the Decree, it will within forty-five (45) days of the modification, submit the new material to the EEOC;
- b. Within twelve (12) months of the Effective Date, and annually thereafter during the term of the Decree, Columbia Sussex shall report the dates of trainings to non-managerial and managerial employees at River Palms undertaken pursuant to Paragraph VII(C)(2) and provide a statement that attendance records and employee lists are available for inspection;
- c. Within six (6) months of the Effective date, and semi-annually thereafter during the term of the Decree, Columbia Sussex shall report any and all internal complaints of discrimination, harassment or retaliation at River Palms for the applicable reporting period. For each internal complaint, the semi-annual reports shall
 - i. Summarize the nature of the complaint;

- 1 ii. List the date the complaint was received;
- 2 iii. List the date the complaint was resolved;
- 3 iv. Summarize Columbia Sussex's findings, and
- 4 v. Summarize any corrective action and/or discipline taken in
- 5 response to the complaint.

6 The semi-annual reports shall enable the tracking of multiple complaints
7 by or against a single employee. In conjunction with each semi-annual
8 report, an Employee Relations representative at the Director level or
9 higher shall audit each internal complaint investigation to ensure that
10 such complaints were handled in accordance with Columbia Sussex's
11 internal policy for handling complaints of harassment, discrimination and
12 retaliation, especially with respect to multiple complaints received
13 regarding the same individual. The semi-annual report shall include
14 information on the results of the audit. Dana Johnson, Peter Laura, Derek
15 Li or, in the event of their unavailability, another member of the EEOC's
16 legal unit, shall review the semi-annual reports on behalf of the EEOC.
17 If, after reviewing any semi-annual report, the EEOC has concerns that
18 Columbia Sussex may have failed to appropriately investigate or respond
19 to an internal complaint, then it may request and review particular
20 documents related to such internal complaint. If Columbia Sussex
21 objects to all or part of any such documents request, then the parties shall
22 utilize the dispute resolution process set forth in Paragraph IX, below.

23 **VIII. MODIFICATION AND SEVERABILITY**

24 A. This Decree constitutes the complete understanding of the Parties with respect to
25 the matters contained herein. No waiver, modification or amendment of any provision of this
26 Decree will be effective unless made in writing and signed by an authorized representative of
27

1 each of the Parties effected by the waiver, modification or amendment.

2 B. If one or more provisions of the Decree are rendered unlawful or unenforceable,
3 the Parties shall make good faith efforts to agree upon appropriate amendments to this Decree in
4 order to effectuate the purposes of the Decree. In any event, the remaining provisions will
5 remain in full force and effect unless the purposes of the Decree cannot, despite the Parties' best
6 efforts, be achieved.

7 C. By mutual agreement of the Parties, this Decree may be amended or modified in
8 the interests of justice and fairness in order to effectuate the provisions of this Decree.

9 IX. COMPLIANCE AND DISPUTE RESOLUTION

10 A. The Parties expressly agree that any party may bring an action before this Court
11 to enforce the Decree if it has reason to believe that the other party has failed to comply with
12 any provision of this Decree. Prior to initiating such petition, such party will notify the other
13 party and/or its legal counsel of record, in writing, of the nature of the dispute. This notice shall
14 specify the particular provision(s) that the party believes has/have been breached.

15 B. The Parties agree to cooperate with each other and use their best efforts to
16 resolve any dispute referenced in the above notice.

17 C. After forty-five days have passed with no resolution or agreement to extend the
18 time further, either party may petition this Court for resolution of the dispute, seeking all
19 available relief, including, but not limited to, the imposition of attorneys' fees and costs and an
20 extension of the term of the Decree for such period of time as such party is shown to be in
21 breach of the Decree.

22 X. COSTS OF ADMINISTRATION AND IMPLEMENTATION OF CONSENT DECREE

23 Gold River and Columbia Sussex shall bear all costs associated with their obligations
24 under this Consent Decree.

25 XI. COSTS AND ATTORNEYS' FEES

26 Each Party shall bear its own costs of suit and attorneys' fees.

27

1 XII. COUNTERPARTS AND FACSIMILE SIGNATURES

2 This Decree may be signed in counterparts. A facsimile signature shall have the same
3 force and effect of an original signature or copy thereof.

4 IT IS SO ORDERED.

5 

6 Hon. Lawrence R. Leavitt
7 United States Magistrate Judge

8 Dated: 4-25-08

9 Respectfully Submitted,

10 EQUAL EMPLOYMENT
11 OPPORTUNITY COMMISSION
12 Anna Y. Park
13 Dana C. Johnson


14 Date: 3/27/08

15 By: 
16 Anna Y. Park

17 Attorneys for Plaintiff
18 EQUAL EMPLOYMENT
19 OPPORTUNITY COMMISSION

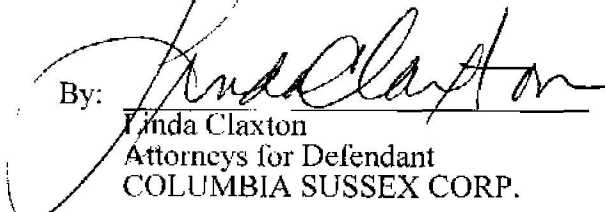
20 PEEL BRIMLEY LLP
21 Norman H. Kirshman

22 Date: 3/30/08

23 By: 
24 Norman H. Kirshman
25 Attorneys for Defendant
26 GOLD RIVER OPERATING CORP.

27 OGLETFEE DEAKINS NASH SMOAK &
STEWART, P.C.
Linda Claxton

Date: 3/25/08

By: 
Linda Claxton
Attorneys for Defendant
COLUMBIA SUSSEX CORP.

PROOF OF SERVICE VIA ELECTRONIC FILING SYSTEM

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I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, over the age of eighteen (18) years and not a party to the above-entitled cause.

I am employed in the Legal Unit of the Los Angeles District Office of the United States Equal Employment Opportunity Commission.

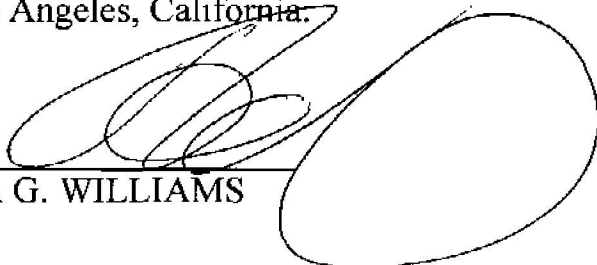
My business address is Equal Employment Opportunity Commission, Los Angeles District Office, 255 East Temple Street, Fourth Floor, Los Angeles, CA 90012.

On the date that this declaration was executed, as shown below, I served the foregoing **[PROPOSED] CONSENT DECREE** via the Case Management/Electronic Case Filing (CM/ECF) system at Los Angeles, County of Los Angeles, California to:

Norman H. Kirshman
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Linda Claxton
633 West 5th Street, Suite 5300
Los Angeles, CA 90071

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 28, 2008, at Los Angeles, California.



LINA G. WILLIAMS