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EMPLOYMENT LAW

Intra-Company Romance Leads to Sexual Harassment Claim

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Special to the Legal

Intra-company romantic relationships are a minefield for employers. Nowhere is this better exemplified than in the recent case of *Gatter v. Ika-Works*, No. 16-953, 2016 U.S. Dist. LEXIS 174816 (E.D. Pa. Dec. 16, 2016). The case seems to merge employment law with a reality television show gone bad—involving the romantic relationship between a local sales representative and the son of the Ika-Works' president, himself a part-owner of the company, with walks on a beach and a Mediterranean boating trip. The sexual harassment complaint seems to have been almost inevitable.

PART-OWNER ROMANCES SALES REP

Courtney Gatter was hired as a sale representative for Ika-Works in March 2014. Gatter worked remotely from her home in Pennsylvania and was supervised by the company's managing director, Rafika Biljic, who worked from headquarters in North Carolina. Biljic was romantically involved with the company's part-owner and president, Rene Stiegelmann. The remainder of Ika-Works, a chemical manufacturer,



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was owned by other members of the Stiegelmann family, including Rene's son Marcel. Marcel, however, did not work for Ika-Works. As such, Gatter and Marcel did not know each other.

A few months after Gatter began her employment, she was invited on a sailing trip with a few other sales representatives, as well as the Stiegelmann family and Biljic.

Although, as noted, Gatter and Marcel had never met before the sailing trip, by the third day they were engaged in sexual activity. Notably, Gatter claimed that she first rejected Marcel's invitation to have sex because it was "not a good idea on a work trip on a sailboat." She

and Marcel, however, engaged in sexual activities during a long walk on the beach later that evening.

FATHER DISAPPROVES

The next day, Rene (the company president and Marcel's father) and Biljic (Gatter's manager and Rene's girlfriend) discussed how to proceed regarding the relationship between Gatter and Marcel, to the point that sending both home was contemplated. Rene, however, rejected the idea, as he did not want to "ruin the trip."

The principal lesson of this case is the peril of an intra-company sexual relationship, particularly between an owner/supervisor and a subordinate employee.

A few days later, Gatter and Biljic spoke about Gatter's relationship with Marcel. Gatter recalled Biljic "squealing with delight" over the relationship, while Biljic recalled Gatter apologizing. According to Biljic, she told Gatter that

going forward, her employment would be “judged by her sales numbers.”

On the final day of the trip, it is undisputed that Gatter spoke with Rene and Biljic and apologized for “having sex on a business trip.” Rene then spoke to Gatter alone. According to Gatter, Rene asked her how she could “open her legs” and “let” Marcel have sex with her. Even Rene admitted that he gave Gatter an ultimatum to either quit her employment or end her relationship with Marcel. Whether on her own or at Rene’s insistence, Gatter texted Marcel at the end of the trip saying “it’s best if we just leave what happened here in Spain.”

EMPLOYEE IS TERMINATED

Gatter returned to the United States on Sept. 10. Contrary to what she told Rene, Gatter continued to text with Rene upon her return. By the end of September (at the latest), Rene and Biljic had learned of the continued communication between Gatter and Marcel. In light of this information, the company decided to terminate Gatter citing various reasons, the principal of which was a “lack of communication”—presumably about her continuing relationship with Marcel.

Gatter brought suit against Ika-Works claiming sexual harassment, disparate treatment and retaliation.

SEXIST VIEW OF WOMENS’ ROLE IN COMPANY ROMANCE

In considering Ika-Works’ motion for summary judgment, the court began its analysis with a discussion of whether Gatter was subject to disparate treatment under Title VII. Initially, although the court did not address whether Marcel was a valid “comparator” to Gatter, it found that the ultimate decision-maker, Rene, “viewed sexual activity as more problematic from a female employee’s perspective than

similar behavior on the part of a male employee.” Further, the court found that, based upon his treatment of Gatter, Rene harbored traditional stereotypes regarding the relationship between the advancement of woman in the workplace and their sexual behavior.

With respect to evidence of pretext, the court noted that Ika-Works’ proffered reason for Gatter’s termination was “vague and imprecise.” Further, the court found that Biljic’s assertion that Gatter was “dishonest or insubordinate” based upon her lack of proactive communication, was undermined on many levels—not the least of which was the fact that Marcel continued to text Gatter in after she had returned to the United States (which Biljic and Rene knew or should have known). Further undermining Biljic’s contention was Gatter’s testimony that Biljic had told her in Spain that her relationship with Marcel would not impact her status with the company and that she would be judged on her sales performance. There was no evidence of new information regarding Gatter’s sales performance in the 10 days between her return to the United States and her termination.

OVERALL SCENARIO PROBLEMATIC

With respect to Gatter’s sexual harassment claim, the court focused upon what it termed to be the “overall scenario” experienced by Gatter on the trip. More specifically, the fact that the sequence between Gatter being propositioned for sex by a part-owner of the company and the conclusion of the trip where she was “berated for accepting that proposition by Rene (his father)” represented, to the court, “an intermingling of sex-discrimination and employment conditions.” The court also noted that “the fact that a consensual relationship eventually emerged between Marcel and Gatter does not

mitigate the severity of the initial proposition as an instance of sexual harassment.”

It should be noted that the court found that Gatter has satisfied the burden of establishing that the alleged harassment was “objectively severe” based upon a finding that “in cases such as this in which a hostile work environment is based primarily on the severity of conduct rather than its pervasiveness, the objective detrimental effect prong aligns with the severity prong. In other words, if conduct is so severe that it alters the conditions of employment despite a lack of pervasiveness, then it follows that it is objective detrimental to a reasonable employee.” The court cited no case support for this proposition, which would seem to unduly merge the objective and subjective tests for the detrimental effect component of a sexual harassment claim. That is, it is certainly conceivable that an individual would claim to be subjectively offended by the severity of a single comment which would not rise to the level of being objectively detrimental to a reasonable person.

Summary judgment was, therefore, denied on Gatter’s sexual harassment claim and her disparate treatment allegations. The principal lesson of this case is the peril of an intra-company sexual relationship, particularly between an owner/supervisor and a subordinate employee. Once such a relationship develops, it is critical that any future employment action be insulated from the relationship and that the subordinate employee not be blamed for the development. In this case, that appears to be exactly what occurred. •