

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION TWO

BONNIE WALLACE

PLAINTIFF

v.

MOTION FOR LEAVE TO
FILE AMENDED COMPLAINT

No. 94-CI-2949

CHEROKEE EQUITY CORPORATION,
CEC COMMUNICATIONS, INC.,
ANDREWS PROPERTIES, being general
partners of and d/b/a the
CARRIAGE HILL PARTNERSHIP, and
WALLACE BRANSON

DEFENDANTS

FEB 6 1995

Plaintiff, Bonnie Wallace, by and through undersigned counsel, hereby moves, pursuant to CR 15, that this Court enter an Order (1) granting her leave to file in this action the amended complaint attached hereto as Exhibit A; and, (2) allowing defendants twenty (20) days from the date the Order is served to answer the amended complaint.

As grounds for this motion, Plaintiff states that the following information has been discovered and predicate events occurred since the complaint herein was filed: (1) defendants, Cherokee Equity Corporation, CEC Communications, Inc., and Andrews Properties have admitted in discovery that they employ more than 15 employees and thus constitute an "employer" within the meaning of 42 U.S.C. § 2000e(b); and, (2) the Equal Employment Opportunity Commission has issued Bonnie Wallace a "right to sue" letter allowing her to bring the claim under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* added in her amended complaint.

NOTICE

PLEASE TAKE NOTICE that the foregoing motion will come on for hearing before Hon. Gary Payne, Judge, Fayette Circuit Court, Fayette

County Courthouse, on February 10, 1995, at 9:30 a.m. or as soon thereafter
as counsel may be heard.

Respectfully submitted,



ROBERT L. ABELL
145 W. Main Street, Suite 300
Lexington, KY 40507
(606) 254-7076

COUNSEL FOR PLAINTIFF
BONNIE WALLACE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion and attached
proposed amended complaint was mailed, postage prepaid, this
6th day of February, 1995, to the following:

Edward E. Dove, Esq.
226 E. High Street
Lexington, KY 40507

Henry E. Hughes, Esq.
271 W. Short Street
Security Trust Building, Suite 400
Lexington, KY 40507

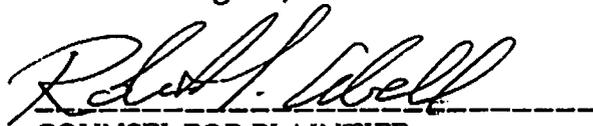
Brian P. Gilfedder, Esq.
112 N. Upper Street
Lexington, KY 40507

Wallace L. Branson
117043
Kentucky State Reformatory
LaGrange, KY 40032

Elizabeth Hughes Spears, Esq.
Gess Mattingly & Atchison
201 W. Short Street
Lexington, KY 40507

John K. West, Esq.
McCoy Baker & West
P.O. Box 1660
Lexington, KY 40592-1660

Ronald L. Green, Esq.
Boehl Stopher & Graves
444 W. Second Street
Lexington, KY 40507



COUNSEL FOR PLAINTIFF
BONNIE WALLACE



COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION TWO

CIVIL ACTION NO. 94-CI-2949

BONNIE WALLACE

PLAINTIFF

v.

AMENDED COMPLAINT

CHEROKEE EQUITY CORPORATION,
CEC COMMUNICATIONS, INC.,
ANDREWS PROPERTIES, being general
partners of and d/b/a the
CARRIAGE HILL PARTNERSHIP

DEFENDANTS

WALLACEBRANSON

Plaintiff, Bonnie Wallace, for her amended complaint against defendants, Cherokee Equity Corp., CEC Communications, Inc., and Andrews Properties, Inc., d/b/a, the Carriage Hill Partnership and Wallace Branson, states as follows:

1. Plaintiff is a female citizen of the United States and resides at present and at all times relevant hereto in Fayette County, Kentucky.

2. Defendant Cherokee Equity Corporation is a corporation incorporated under the laws of Tennessee whose agent for service of process is David J. Wilson, 3022 Vanderbilt Place, Nashville, TN 37212. Cherokee Equity Corporation has filed a certificate of assumed name with the Fayette County Clerk identifying itself as a general partner, along with defendants CEC Communications, Inc. and Andrews Properties, Inc, in a partnership doing business as the Carriage Hill Partnership.

3. Defendant CEC Communications, Inc. is a corporation incorporated under the laws of Tennessee whose agent for service of process is John Powers, 3022 Vanderbilt Place, Nashville, TN 37212. CEC Communications, Inc. has filed a certificate of assumed name with the Fayette County Clerk identifying itself as a general partner, along with defendants Cherokee Equity Corporation and Andrews Properties, Inc., in a partnership doing business as the Carriage Hill Partnership.

4. Defendant Andrews Properties, Inc. is a corporation incorporated under the laws of Tennessee whose agent for service of process is Susan A. Andrews, 224 White bridge Road, Nashville, TN 37209. Andrews Properties, Inc. has filed a certificate of assumed name with the Fayette County Clerk identifying itself as a general partner, along with defendants Cherokee Equity Corporation and Andrews Properties, Inc, in a partnership doing business as the Carriage Hill Partnership.

5. Defendant Wallace Branson, inmate number 117043, is presently incarcerated at Kentucky State Reformatory, LaGrange, KY 40032. On June 1, 1994, Branson was convicted in Fayette Circuit Court of sexual abuse in the first degree arising from acts he inflicted on plaintiff and others as alleged in Fayette Circuit Court Indictment No. 94-CR-242.

6. Defendants Cherokee Equity, CEC, and Andrews Properties, d/b/a the Carriage Hill Partnership (these defendants will hereinafter be referred to collectively as "defendants") are the owners of an apartment complex known, at the times relevant to this action, as the Carriage Hill apartment complex (hereinafter referred to as "Carriage Hill") and located in Lexington, Fayette County, Kentucky.

7. Defendant Wallace Branson and his wife, Alice Branson, were employed by defendants as the maintenance manager and manager, respectively, at Carriage Hill. Because of his employment as maintenance manager, Wallace Branson acted, all times pertinent hereto, as the agent of defendants.

8. Because of his position as maintenance manager, Wallace Branson possessed pass keys that allowed his entry, at this own discretion, to all the apartments at Carriage Hill. Because of his position as maintenance manager and because of his concomitant ability to enter, at his own will and discretion, tenant's apartments, Wallace Branson could, as a routine matter during the course of his employment by defendants and in furtherance of their business interests, dictate the terms and conditions of the tenant's residencies, including the security of their apartments.

9. Plaintiff Bonnie Wallace, her husband, and two children became tenants at Carriage Hill on or about July 15, 1993.

10. Plaintiff Bonnie Wallace and her family were tenants at Carriage Hill up to on or about January 1, 1994.

11. At various times during the residency of her and her family at Carriage Hill, Wallace Branson came to and entered her apartment and embraced, hugged, rubbed, grabbed and fondled Bonnie Wallace in sexually suggestive manners and in sexually sensitive areas of her body and further made sexually lewd propositions and statements to her. Further, Wallace Branson subjected Bonnie Wallace to sexual touching by forcible compulsion during and in the course of her tenancy at Carriage Hill.

12. At various times during the residency of her and her family at Carriage Hill, Bonnie Wallace and her family had difficulty in staying current on their rent payments. Wallace Branson indicated to Bonnie Wallace that he could, as a consequence of his employment and in the course of that employment and in furtherance of defendants' business interests, cause favorable discretion to be exercised against instituting eviction proceedings against Bonnie Wallace and her family because they were late with the rent.

13. As owners of Carriage Hill, defendants are a real estate operator within the meaning of KRS 344.360.

14. Bonnie Wallace did not invite or consent to Wallace Branson's sexual advances to and sexual abuse of her.

15. Upon information and belief, male residents of Carriage Hill were not subjected by Wallace Branson to the sexual overtures, invitations and abuse that Bonnie Wallace suffered.

16. By subjecting Bonnie Wallace to sexual harassment as a term and condition of her lease of an apartment at Carriage Hill and in the furnishing of facilities or services in connection therewith, defendants and Branson subjected Bonnie Wallace to unlawful discrimination based on her sex.

17. As a direct and proximate result of the unlawful sex discrimination to which she was subjected by defendants and Branson, Bonnie Wallace has suffered and will continue to suffer grievous emotional distress and mental anguish and embarrassment and humiliation.

18. On or about October 5, 1993, Bonnie Wallace became employed by defendants cleaning apartments at Carriage Hill. Her

direct and immediate supervisor was Wallace Branson. Wallace was defendants' employee within the meaning of 42 U.S.C. § 2000e(f).

19. Defendants, at all times pertinent hereto, were engaged in an industry affecting commerce and, upon information and belief, have had 15 or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. Therefore, defendants are an "employer" within the meaning of 42 U.S.C. § 2000e(b).

20. During the course of her employment by defendants, Wallace Branson embraced, hugged, rubbed, grabbed and fondled Bonnie Wallace in sexually suggestive manners and in sexually sensitive areas of her body and further made sexually lewd propositions and statements to her. Further, Wallace Branson subjected Bonnie Wallace to sexual touching by forcible compulsion during and in the course of her employment by defendants. Wallace alleges that Branson's aforescribed conduct constitutes unlawful employment discrimination and sexual harassment and violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)(1).

21. Bonnie Wallace endured the sexual harassment to which Wallace Branson subjected her as a term and condition of her employment by defendants and out of the fear that she would lose her job and her income, which she and her family needed to pay rent and other expenses.

22. Bonnie Wallace has timely filed a charge of employment discrimination regarding the aforescribed events with the Equal Employment Opportunity Commission (EEOC) and on or about January 31, 1995, was issued a "right to sue" letter by the EEOC.

23. As a direct and proximate result of the unlawful employment discrimination and sexual harassment to which she was subjected by defendants' agent, Branson, Wallace has and will suffer grievous emotional distress and mental anguish and embarrassment and humiliation and loss of pay.

24. Defendants, as real estate operators and as owners of the Carriage Hill and as principals employing persons, owed a duty to its employees, including Bonnie Wallace, to neither hire nor retain employees, such as Wallace Branson, that would exploit their financial insecurity and vulnerability and subject them to sexual contacts, propositions, abuse and assaults as the terms and conditions of their residency in defendant's apartment complex or as employees of defendants.

25. Defendants were provided with adequate notice of Wallace Branson's misconduct as it was not directed solely at Bonnie Wallace. As set forth in Fayette Circuit Court indictment no. 94-CR-242, Wallace Branson also subjected Teresa King, Trina Vance and Patricia Mattox "to sexual contact through use of forcible compulsion."

26. If defendants claim that they did not have notice of Wallace Branson's misconduct, it was because they failed to establish any reasonable means by which Bonnie Wallace and persons similarly situated could inform defendants of Wallace Branson's actions.

27. Defendants, by hiring and retaining Wallace Branson and further by failing to establish any reasonable means by which she could inform defendants of Wallace Branson's actions, breached their duty to Bonnie Wallace.

28. As a direct and proximate result of defendants' aforescribed breach of duty to Bonnie Wallace, she was subjected to sexual harassment and abuse by defendants' agent, Wallace Branson. Further, as a direct and proximate result therefrom, Bonnie Wallace has and will suffer grievous emotional distress and mental anguish and embarrassment and humiliation.

29. The conduct of Wallace Branson, in subjecting Bonnie Wallace to sexual contact through the use of forcible compulsion, by subjecting her to sexual harassment as a term and condition of her employment and of her housing, his reliance on her and her family's financial insecurity and vulnerability as a means to try and get away with his unlawful conduct, was beyond the bounds of human decency and utterly intolerable in a civilized society.

30. Wallace Branson could reasonably foresee that his outrageous conduct directed at Bonnie Wallace would cause her severe and grievous emotional distress and mental anguish and embarrassment and humiliation.

31. As a direct and proximate result of Branson's outrageous conduct, Bonnie Wallace has and will suffer grievous emotional distress and mental anguish and embarrassment and humiliation.

32. Because defendants either knew or should have known of Branson's outrageous conduct and, if they had not notice of Branson's actions such ignorance was because of their willful and negligent failure to provide reasonable means by which Bonnie Wallace could inform them of Branson's outrageous conduct, defendants are liable for the damages caused Bonnie Wallace by Wallace Branson's outrageous conduct.

33. The conduct of defendants, as described above, is malicious and oppressive such that punitive damages should be awarded Bonnie Wallace.

CLAIMS FOR RELIEF

COUNT I

34. Plaintiff incorporates paragraphs 1 through 33 above as if fully set forth herein.

35. The sexual abuse and harassment to which defendants and Wallace Branson subjected Bonnie Wallace as a term and condition of her residence at Carriage Hill constitutes an unlawful housing practice based on sex within the meaning of KRS 344.360(2) and caused damages to Bonnie Wallace as above set forth for which defendants and Wallace Branson are liable as set forth in KRS 344.450.

COUNT II

36. Plaintiff incorporates paragraphs 1 through 35 above as if fully set forth herein.

37. By subjecting Bonnie Wallace to sexual contact through forcible compulsion and by otherwise subjecting her to unwelcome and to sexual touching and further by creating the fear of further such conduct, Wallace Branson committed assault and battery on Bonnie Wallace and caused her damages including grievous and severe emotional distress and mental anguish and embarrassment and humiliation.

COUNT III

38. Plaintiff incorporates paragraphs 1 through 37 above as if fully set forth herein.

39. The conduct undertaken by Wallace Branson, including the motivation that he believed he could get away with it because Bonnie Wallace feared he would cause her family to be evicted if she did not endure without complaint his groping, sexual propositions, sexual harassment, is far, far beyond the realm of human decency and constitutes outrageous conduct intended to create severe emotional distress for Bonnie Wallace, in which it succeeded all to her damage.

COUNT IV

40. Plaintiff incorporates paragraphs 1 through 39 above as if fully set forth herein.

41. As a direct and proximate cause of defendant's negligent hiring and retention of Wallace Branson and further because of their negligent and willful failure to establish reasonable means by which they could be informed of Wallace Branson's conduct, if in fact defendants were not informed of Wallace Branson's actions, defendants breached their duty to provide Bonnie Wallace with a reasonably safe and habitable apartment and working environment and caused Bonnie Wallace to be subjected to sexual assault, sexual touching by forcible compulsion, sexual harassment, assault and battery and other outrageous conduct all to her great damage for which defendants are liable.

COUNT V

42. Plaintiff incorporates paragraphs 1 through 41 hereof as if fully set forth herein.

43. Plaintiff is due punitive damages from defendants because of their malicious and oppressive conduct and to deter such in the future.

COUNT VI

44. Plaintiff incorporates paragraphs 1 through 43 hereof as if fully set forth herein.

45. The sexual abuse and harassment to which defendants and Wallace Branson subjected Bonnie Wallace as a term and condition of her employment by defendants constitutes an unlawful employment practice based on sex within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)(1), and caused damages to Bonnie Wallace as above set forth for which defendants and Wallace Branson are liable.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff Bonnie Wallace demands the following:

(1) That she be awarded compensatory damages against defendants, Cherokee Equity Corporation, CEC Communications, Inc, and Andrews Properties, Inc., jointly and severally, in an amount in excess of this Court's jurisdictional minimum to redress her damages caused by said defendants as above set forth;

(2) That she be awarded compensatory damages against defendant Wallace Branson, in an amount in excess of this Court's jurisdictional minimum to redress her damages caused by said defendant as above set forth;

(3) That she be awarded punitive damages against defendants, Cherokee Equity Corporation, CEC Communications, Inc, and Andrews Properties, Inc., jointly and severally, in an amount in excess of this Court's jurisdictional minimum to punish said defendant for their malicious and oppressive conduct and to further deter its future repetition;

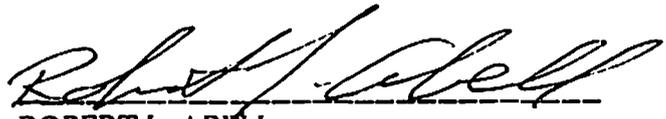
(4) That she be awarded punitive damages against defendant Wallace Branson, in an amount in excess of this Court's jurisdictional minimum to punish said defendant for his malicious and oppressive conduct and to further deter its future repetition;

(5) That she be awarded, pursuant to KRS 344.450 and/or 42 U.S.C. § 2000e-5(k), her costs and attorney's fees herein expended;

(6) That she be granted any and all further relief to which she is entitled.

DEMAND FOR A JURY TRIAL

Pursuant to CR 38, Plaintiff hereby demands a jury trial on all issues so triable.



ROBERT L. ABELL
145 W. Main Street, Suite 300
Lexington, KY 40507
(606) 254-7076

COUNSEL FOR PLAINTIFF
BONNIE WALLACE