

CAUSE NO. CC-16-03169-B

ICHEL MARIA COOK,

Plaintiff,

v.

PHILIP J. ROMANO

Defendant.

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IN THE COUNTY COURT

AT LAW NO. 2

DALLAS COUNTY, TEXAS

**ICHEL MARIA COOK'S VERIFIED FIRST AMENDED PETITION & APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY AND PERMANENT
INJUNCTION**

Ichel Cook files this Verified First Amended Petition & Application for Temporary Restraining Order and Temporary and Permanent Injunction against Philip J. ("Phil") Romano and states as follows:

I.

DISCOVERY CONTROL PLAN AND RULE 47 STATEMENT

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Ichel Cook intends to conduct discovery under Level II.
2. Ichel Cook seeks monetary relief over \$1,000,000.00 in accordance with Texas Rule of Civil Procedure 47(c)(4).

II.

PARTIES

3. Ichel Cook is a resident of Dallas County, Texas.
4. Defendant Philip Romano is an individual residing in Dallas County, Texas, and may be personally served at his residence at 4838 Shadywood Lane, Dallas, Texas 75209.

III.
JURISDICTION AND VENUE

5. The Court has personal jurisdiction over Defendant because Defendant was a resident of Texas during all times material to this dispute. This Court has subject matter jurisdiction over the claims for monetary relief herein and the amount of monetary relief sought is within the jurisdictional limits of the Court.

6. Venue is proper in Dallas County pursuant to Section 15.002(a)(2) of the Texas Civil Practice and Remedies Code, because all or a substantial part of the events giving rise to Ichel Cooks' claims occurred in Dallas County.

IV.
FACTS

7. Phil Romano is an investor, entrepreneur, and businessman, who owns and operates dozens of restaurant chains and businesses in Texas and across the country.

8. Ichel Cook ("Ichel") is a Hispanic woman who was honorably discharged after serving for four years in the United States Air Force and is the only female assistant general manager at Eatzi's Grocery and Market on Oak Lawn Avenue in Dallas ("Eatzi's").

9. On April 7, 2016, Ichel was attending a manager meeting at the front counter of Eatzi's, an upscale grocery store owned by Phil Romano. Phil Romano entered Eatzi's and approached the front counter. While walking behind Ichel Cook, Phil Romano inappropriately grabbed Ichel's buttocks with a grin on his face.

10. Ichel immediately turned around to face her attacker in shock. Upon recognizing the man that had violated her, Ichel became mortified and turned away to avoid escalating the situation in public.

11. Without any shame or remorse for his touching, Phil Romano grinned, walked several feet past Ichel, turned around, and stared back at Ichel in a disgusting and mocking manner. Phil Romano showed no signs of regret or shame.

12. The entire incident was captured on video.

13. Phil Romano later confronted Ichel to discuss what happened. Shockingly, the only justification Phil Romano offered was, "I thought you were just one of the guys." Ichel is not "just one of the guys." She is the mother of two boys. Phil Romano's attempted justification is inaccurate as to his motivations for the unwanted touching and also demeaning to Ichel.

14. Ichel has never made any statements or engaged in any conduct that would indicate to Phil Romano that she was interested in a physical relationship. She never invited him to touch her buttocks, much less in a sexual manner.

15. Phil Romano was aware that unsolicited touching of a female is inappropriate and unacceptable. In this case, Phil Romano went even further by sexually grabbing a female's private area in a public setting. Phil Romano was aware that such conduct is against all social norms and is outrageous by all measures. This did not deter Phil Romano from his actions, and he never demonstrated any remorse for his actions.

16. Ichel has suffered substantial emotional and psychological distress as a result of Phil Romano's touching. Prior to the incident, Ichel was an engaging and fun loving person. Since the incident, Ichel has become sullen and distant from others.

17. Ichel is currently receiving counseling. Further, Ichel's primary care physician has instructed her not to go to work in the immediate future, and said that she should take time to heal from the stress, anxiety, and mental anguish she is currently suffering. Every aspect of Ichel's life has been disrupted by this assault.

18. Unfortunately, Ichel is the primary provider for her two children, and had to return to work where the attack took place to make ends meet. On June 20, 2016, Ichel's counsel emailed Phil Romano's counsel, Michael McCabe, informing him that Ichel would return to work on June 22, 2016. Ichel's counsel instructed Phil Romano, through his counsel, that no employee, supervisor, or human resources personnel of Eatzi's was speak to Ichel regarding the assault unless one of her attorneys was present. Despite this instruction, Ichel was called into a room and interrogated by Eatzi's CEO (Adam Romo) and the director of HR as soon as she returned to Eatzi's on Jun 22, 2016.

19. On information and belief, Phil Romano instructed the Eatzi's personnel to interrogate, harass, and try to intimidate Ichel. Specifically, Adam Romo and the HR director forced Ichel to travel from Eatzi's on Oaklawn to Eatzi's corporate office and sign an affidavit stating that she never witnessed Phil Romano assault any other patrons or staff. As a result, Ichel has endured even more stress, anxiety, and fear of returning to work. On information and belief, this harassing and intimidating conduct will continue to occur without Court intervention.

V. CAUSES OF ACTION

COUNT 1 – ASSAULT AND OFFENSIVE PHYSICAL CONTACT

20. Ichel Cook incorporates all foregoing paragraphs as though fully set forth herein.

21. An assault, whether civil or criminal, is the act of “intentionally or knowingly caus[ing] physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.” Tex. Pen.Code§ 22.01(a)(3); *Foye v. Montes*, 9 S.W.3d 436, 441 (Tex. App.—Houston [14th Dist.] 1999, pet. denied).

22. Phil Romano assaulted Ichel when he intentionally and inappropriately touched her buttocks. Ichel never invited Phil Romano to begin a physical relationship or to touch her. Phil

Romano knew that Ichel would not consent to his touching of a personal and private area of her body and would find such touching harmful and offensive.

23. Phil Romano nevertheless approached Ichel from her rear and slowly and deliberately grabbed and rubbed her buttocks. Further, Phil Romano knew that the unwanted or uninvited touching of a woman's backside was offensive and unacceptable. Phil Romano disregarded the standards of decent behavior, disregarded Ichel's personal dignity and bodily integrity, and offensively touched Ichel.

24. As a result of this unwanted touching, Ichel has suffered emotional and psychological harms. Her life has been interrupted and she has been unable to return to her normal life.

COUNT 2 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

25. Ichel Cook incorporates all foregoing paragraphs as though fully set forth herein.

26. Phil Romano, by his intentional or reckless conduct, caused Ichel severe emotional and psychological distress. Phil Romano inappropriately touched Ichel without her consent. Phil Romano subjected Ichel to embarrassment, shame, humiliation, and worry. Phil Romano's actions were outrageous and are wholly unacceptable in a civil society.

27. Phil Romano intended to cause or should have known that his actions would cause Ichel such emotional and psychological harms. Further, Phil Romano acted recklessly to the extent that he knew or had reason to know that his actions posed a high risk of causing Ichel tremendous harm. Phil Romano chose to engage in his actions in total disregard of the risk.

28. Phil Romano's actions directly and proximately caused Ichel's emotional distress. Romano's actions caused Ichel distress of such an unusual and outrageous character that Ichel has no alternative recognized means of redress for the specific emotional harm she complains of.

COUNT 3 – NEGLIGENCE

29. Ichel Cook incorporates all foregoing paragraphs as though fully set forth herein.

30. Phil Romano acted negligently when he made physical contact with Ichel's rear end in an inappropriate manner. Phil Romano had the duty not to violate the personal privacy and other rights of women. Ichel Cook would show that the occurrence made the basis of this lawsuit and the harms and damages Ichel suffered, were proximately caused by Phil Romano's negligent conduct in the following respects:

- i. In failing to abide by socially acceptable standards of conduct;
- ii. In failing to respect Ichel's personal autonomy and right to privacy;
- iii. In invading Ichel's personal space and violating her right to not be touched; and
- iv. In violating Ichel's bodily integrity.

Each of the foregoing, singularly or in combination with others, constitutes negligence and proximately caused the occurrence and injuries made the basis of this action.

31. Phil Romano's actions have caused Ichel to suffer significant physical, emotional, psychological, and economic harms.

COUNT 4 – GROSS NEGLIGENCE

32. Ichel Cook incorporates all foregoing paragraphs as though fully set forth herein.

33. Phil Romano's actions presented obvious and extreme risks of emotional, psychological, physical, and other harm to Ichel. Despite his awareness that inappropriately touching a woman's rear end presents an extreme degree of risk and substantial harm, Phil Romano acted with conscious indifference and offensively touched Ichel.

34. Phil Romano's actions constitute gross negligence and entitle Ichel to exemplary damages pursuant to Section 41.003(a) of the Texas Civil Practice & Remedies Code.

VI.
DAMAGES

35. Ichel Cook was harmed by the wrongful actions of Phil Romano. As a result of these actions, Ichel has suffered the following damages:

- i. Past and future pain and suffering;
- ii. Past and future medical bills;
- iii. Past and future mental anguish;
- iv. Emotional distress;
- v. Loss of use and enjoyment of life; and
- vi. All other harms to which Ichel may demonstrate herself to have suffered.

VII.
EXEMPLARY DAMAGES

36. In addition to actual damages, Ichel Cook seeks recovery of exemplary damages against Defendant as a penalty or by way of punishment in an amount commensurate with the nature of the wrong, the character of conduct involved, the degree of culpability of the wrongdoer, the situation and sensibilities of the parties concerned, the extent to which such conduct offends a public sense of justice and propriety, and the net worth of Defendant. Defendant's conduct exemplifies exactly the outrageous, malicious, and morally culpable conduct that exemplary damages are meant to deter. Ichel's damages resulted from Defendant's gross negligence and/or malice, meaning (i) an act or omission by Defendant, which, when viewed objectively from the standpoint of Defendant at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of potential harm to others; and (ii) Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Ichel.

VIII.
APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION AND PERMANENT INJUNCTION

37. Ichel Cook incorporates all foregoing paragraphs as though fully set forth herein.

38. As evidenced by the preceding allegations, verified by Ichel, Ichel is likely to succeed on the merits of her claims at trial. This temporary restraining order is requested in order to protect the well-being of Ichel and to prevent imminent harm to her. On information and belief, if Ichel's application is not granted, Phil Romano will continue his harassing behavior and intimidation tactics. Ichel has suffered, and will continue to suffer, immediate irreparable harm if Phil Romano is not enjoined from this wrongful conduct. Ichel has no adequate remedy at law.

39. Ichel asks the Court to prevent Phil Romano, his agents, servants, employees, representatives, any entity in which he owns a controlling interest, and all those acting in concert with him from:

(a) Directly or indirectly communicating in any way with Ichel regarding:

(i) the assault made the basis of this suit;

(ii) Phil Romano; or

(iii) any previous assaults of Phil Romano involving any other woman or man; and

(b) Directly or indirectly communicating in any way with Ichel in a manner constituting harassment, intimidation, or threats.

40. Ichel requests that this Court grant her Application for Temporary Restraining Order, and further asks this Court to set her application for temporary injunction for hearing within fourteen (14) days after the signing of the temporary restraining order, and, after hearing, issue a temporary injunction against Phil Romano pending final resolution at a trial on the merits of this action, and a permanent injunction after a trial on the merits of this action restraining Phil Romano from committing the actions more fully set forth herein.

41. The Texas Civil Practices and Remedies Code authorizes Ichel's application for injunctive relief. TEX. CIV. PRAC. & REM. CODE § 65.011 (1)-(5).

42. Ichel will post a reasonable bond as ordered by the Court.

IX.
REQUEST FOR DISCLOSURE

43. Ichel Cook requests that Defendant Phil Romano disclose, within fifty (50) days of the service of this Petition, the information described in Rule 194.2 of the Texas Rules of Civil Procedure.

X.
JURY DEMAND

44. Ichel Cook requests a trial by jury and tenders the proper jury fee with the filing of her Petition.

XI.
PRAYER

Ichel Cook respectfully requests that upon the pleadings and trial as set forth herein, the Court grant judgment against Phil Romano, and grant Ichel Cook the following relief:

1. Actual or monetary damages in excess of the minimum jurisdiction of the Court;
2. Special and exemplary damages to the fullest extent permitted by law;
3. Court costs;
4. Pre- and post-judgment interest at the highest rates permitted by law;
5. A restraining order, and temporary and permanent injunction enjoining Phil Romano, his agents, servants, employees, representatives, any entity in which he owns a controlling interest, and all those acting in concert with him from:
 - a. Directly or indirectly communicating in any way with Ichel regarding:

- i. the assault made the basis of this suit;
 - ii. Phil Romano; or
 - iii. any previous assaults of Phil Romano involving any other woman or man; and
 - b. Directly or indirectly communicating in any way with Ichel in a manner constituting harassment, intimidation, or threats; and
6. All other and further relief, special or general, legal or equitable, to which Ichel Cook may be lawfully entitled.

Respectfully submitted,

/s/ Ramez F. Shamieh
Ramez F. Shamieh
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Louisiana State Bar No. 35558
New York State Bar No. 5280219
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ATTORNEYS FOR ICHEL COOK

RULE 2.02 CERTIFICATION

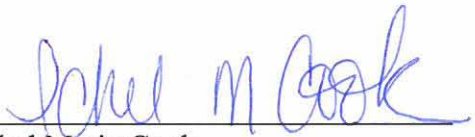
I certify that a copy of this application and proposed order will be provided to opposing counsel for Defendant at least 2 hours before the application and proposed order are to be presented to the Court for decision. I certify that to the best of my knowledge, the case in which the application is presented is not subject to transfer under Local Rule 1.06.

/s/ Ramez F. Shamieh
Ramez F. Shamieh

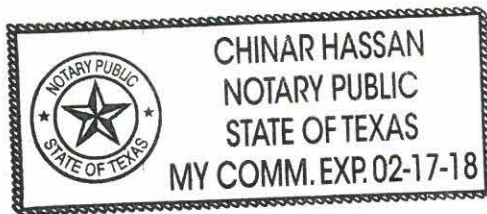
ICHEL MARIA COOK'S VERIFICATION


STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned officer, on this day personally appeared ICHEL MARIA COOK, who is in all respects duly qualified to make this verification, who, after being by me first duly sworn on oath, deposed and said that she has read the foregoing VERIFIED FIRST AMENDED PETITION & APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTION, and that the factual statements contained therein are within her personal knowledge, and the same are true and correct.


Ichel Maria Cook

SWORN TO AND SUBSCRIBED TO on this 27th day of June, 2016, to certify which witness my hand and seal of office.




Notary Public in and for
The State of Texas