

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DIANA FALZONE,

Index No.

Plaintiff,

v.

COMPLAINT AND JURY DEMAND

FOX NEWS NETWORK, LLC,

Defendant.

This is an action by plaintiff Diana Falzone (“Falzone” or “Plaintiff”) against Fox News Network, LLC for: (i) gender discrimination in violation of the New York City Human Rights Law, New York City Administrative Code § 8-107 (“NYCHRL”); and (ii) disability discrimination in violation of the NYCHRL. Falzone alleges as follows:

PARTIES

1. Falzone is a resident of New York, New York, who is currently employed by defendant Fox News Network, LLC (“Fox News” or “Defendant”), in New York, as a reporter/writer for its website Foxnews.com.

2. Until January 27, 2017, when Fox News demoted her, Falzone was an on-air personality, interviewer, program developer, booker, writer, trainer and mentor.

3. Falzone was the creator and/or host (or co-host) of various successful and popular Foxnews.com programs, including “In the Zone,” “Four4Four Entertainment,” “Four4Four Science,” “Four4Four Tech,” “Break Time,” “Heroes @ Home” and “She Said, He Said.”

4. Additionally, Falzone was an on-air guest on Fox News Network programs such as Fox Business News (with Neil Cavuto and Maria Bartiromo), Hannity (with Sean Hannity), Fox and Friends Weekend, and Red Eye.

5. Falzone is a graduate of The New School with a B.A. in psychology.

6. Fox News is a cable television news and entertainment company that operates, among other things, the Fox News Network, Fox Business News and Foxnews.com.

7. Fox News maintains its principal place of business in New York, New York, where the acts complained of occurred.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action because it is a court of general jurisdiction in law and equity of the State of New York.

9. Venue is proper pursuant to CPLR § 503(a) because the parties reside in this County.

FACTUAL BACKGROUND

10. For the past 4.5 years, until January 27, 2017, Falzone was an on-air personality for Foxnews.com and has appeared as an on-air guest for Fox News, Foxnews.com and Fox Business News since or after 2008.

11. During this period, she received rave reviews from her superiors and her viewers/readers. In 2016, her reports on Foxnews.com were viewed/visited more than 65 million times -- more online visits than Bill O'Reilly, Megyn Kelly or Sean Hannity.

12. Falzone created, hosted and wrote popular programs that continue to air to this day and interviewed scores of celebrities and other personalities in the entertainment and lifestyle space.

13. She consistently received high praise for her work and was described by her supervisors and the production crew as the "Face of Foxnews.com."

14. In early 2016, Falzone became ill and was diagnosed with endometriosis, a chronic condition that occurs when endometrial tissue grows outside of the uterus on other organs or structures in the body. Endometriosis causes, among other things, severe pain and bleeding and affects an estimated 176 million women globally.

15. Prior to having emergency surgery in March 2016, Falzone was informed by her physicians that she would likely be infertile -- a devastating prognosis for a then 33 year old woman.

16. In January 2017, Falzone wrote an op-ed piece for Foxnews.com in which she discussed her battle with endometriosis in the hope of helping and inspiring other women who are affected by this condition. (A true copy of the article is annexed hereto as Exhibit A.)

17. Before writing her op-ed article, Falzone obtained the approval of her supervisors, Refet Kaplan and Chris Kensler. In fact, a Foxnews.com editor selected the title: "Women Should Never Suffer in Silence."

18. Falzone's op-ed appeared on Foxnews.com on January 24, 2017, and went viral. Foxnews.com's website was flooded with reader responses praising Falzone and thanking her for having the courage to discuss the subject and comfort and inspire other women.

19. Prior to the publication of her op-ed, it was not publicly known that Falzone suffered from endometriosis or that she was likely to be infertile.

20. Shortly after the op-ed ran, Falzone was informed by her supervisor Kaplan that, upon instructions from the "Second Floor," she was permanently banned from ever appearing on air on any Foxnews.com, Fox News Network, Fox Business News Network or any other Fox News medium and would never again be permitted to host her own shows or conduct her own interviews. A Foxnews.com producer, Justin Craig, later informed the production staff that

Falzone was also prohibited from doing voiceovers, even for programs or stories she wrote or originated.

21. The “Second Floor” is a reference to the executive offices of Fox News, which, beginning in or about August 2016, has been run by Bill Shine and Jack Abernethy, who were appointed co-Presidents of Fox News following the July 2016 departure of Roger Ailes.

22. When Falzone asked Kaplan why she was being demoted and punished in this way, Kaplan declined to answer.

23. On January 27, 2017, Craig called a meeting of the Foxnews.com production team and announced, in Falzone’s absence, that Falzone would no longer appear on air in any Fox News programs. He gave no reason for this action, thus leaving employees with the false impression that Falzone had done something terribly wrong. Indeed, Falzone was later approached by several coworkers who either said or suggested that she must have done very bad things in order to have earned this lifetime ban.

24. For several days following January 27, Falzone attempted, without success, to get an explanation for why she was being humiliated and her career was being sabotaged.

25. Instead of giving her an explanation, Falzone’s supervisor suggested that she look for another job, confirming that the management of Fox News had no intention of ever reinstating her to her former position.

26. Falzone submitted a formal complaint of discrimination to Twenty-First Century Fox, the parent of Fox News, pursuant to its “hotline” procedure. She did not file anonymously. She did not contact the Fox News human resources department or Fox News general counsel Dianne Brandi because for years both Brandi and the Fox News HR Department have been

complicit in covering up and enabling a hostile and harassing environment for women at Fox News.

27. Neither Fox News nor Twenty-First Century Fox took remedial action in response to Falzone's complaint. Among other things, defendant refused to restore Falzone to her prior position as an on-air contributor on Fox News shows and its website.

28. By permanently removing Falzone from the air, Fox News has significantly damaged, and will continue to significantly damage, her career path. Appearing on air is one of the most substantial benefits of the job for a television news contributor and personality such as Falzone because it is a highly-competitive industry and on-air appearances generate publicity, help grow the fan base and create opportunities for promotions, permanent or more frequent hosting or contributor positions, and increased financial benefits. Extended absences from the air, such as the permanent ban that Fox News has imposed on Falzone, have a devastating impact on the career prospects for a program host, contributor and personality such as Falzone, who had been working her way up in the competitive television news and contributor industry. Compounding the damage normally caused by removal from the air, Fox News offered no legitimate reason for Falzone's absence and thereby permitted the viewing public, the media at large and her co-workers to believe that she was at fault for her removal from on-air status.

29. Additionally, the stress caused by Fox News' unlawful conduct described herein has exacerbated Falzone's existing medical condition of which the "Second Floor" became aware on January 24, 2017.

COUNT ONE

(Discrimination based on Gender in Violation of the New York City Human Rights Law)

30. Plaintiff repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Complaint as if set forth herein at length.

31. The NYCHRL makes it unlawful for an employer to discriminate against an employee in the terms, conditions or privileges of employment based on gender.

32. Falzone was demoted, marginalized, humiliated and discriminated against by Fox News because she is a woman.

33. Falzone was fully qualified for the position that she held at Fox News, and had performed her job responsibilities to a high standard, prior to her unlawful demotion.

34. Fox News knowingly violated the NYCHRL based on the conduct alleged herein by engaging in intentional discrimination with malice or reckless indifference to Falzone's protected rights.

35. Fox News has for years promoted and continues to promote a discriminatory environment in which female on-air personalities are required to maintain an image as sex objects, while male on-air personalities are not subjected to a comparable standard.

36. The male-dominated senior management of Fox News obviously objected to the fact that a female on-air host had disclosed that she suffers from a women's reproductive health condition, which, in their eyes, detracted from her sex appeal and made her less desirable.

37. A co-worker confided to Falzone that the management of Fox New did not want its female reporters to report, speak or write about matters involving women's reproductive health (such as fertility) or transgender issues.

38. By imposing a lifetime on-air ban on Falzone, Fox News treated her differently than it treated her male counterparts who openly discussed their personal health issues on air and in op-eds.

39. For example, in 2016, Neil Cavuto, an executive of Fox News and the host of programs on Fox News Channel and Fox Business Network, told his viewers on air and in an op-ed that he suffered from heart disease and multiple sclerosis, described the effects that those conditions were having on his life, and later used his heart surgery as an excuse for his mean-spirited and baseless attack on Gretchen Carlson, a former Fox News host, after she had sued former Fox News Chairman and CEO Roger Ailes for sexual harassment. Cavuto suffered no adverse employment consequences as a result of his health disclosures.

40. Fox News contributor and co-host Bob Beckel spoke about his substance abuse problems on the air. Yet, Beckel was returned to the air as a co-host of a popular Fox News program after completing rehab.

41. Fox News correspondent Greg Jarrett spoke on air about his problems with substance abuse and depression and later returned as an on-air correspondent for Fox News.

42. As a direct and proximate result of Defendant's conduct, Falzone has suffered, and continues to suffer, loss of stature, damage to her career path, adverse job consequences, including economic damages, severe mental, physical and emotional stress, pain and suffering, anxiety, stress, humiliation, exacerbation of existing medical conditions and personal sickness, loss of enjoyment of life and damage to her reputation.

COUNT TWO

(Discrimination based on Disability in Violation of the New York City Human Rights Law)

43. Plaintiff repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Complaint as if set forth herein at length.

44. The NYCHRL makes it unlawful for an employer to discriminate against an employee in the terms, conditions or privileges of employment based on disability.

45. Endometriosis constitutes a protected disability under the NYCHRL.

46. Falzone was demoted, marginalized, humiliated and discriminated against by Fox News because she suffers from endometriosis.

47. Falzone was fully qualified for the position that she held at Fox News, and had performed her job responsibilities to a high standard, prior to her unlawful demotion.

48. Fox News knowingly violated the NYCHRL based on the conduct alleged herein by engaging in intentional discrimination with malice or reckless indifference to Falzone's protected rights.

49. Almost immediately after Falzone publicly disclosed that she suffers from endometriosis and the medical conditions that accompany that diagnosis, Fox News permanently banned her from ever appearing on air because of her medical condition, notwithstanding that Falzone had been an extremely successful on-air personality for Fox News prior to this demotion.

50. Falzone's medical condition did not prevent her from satisfying the requirements of her job, including the job as an on-air personality that she had successfully performed until Fox News unlawfully demoted her.

51. As a direct and proximate result of Defendant's conduct, Falzone has suffered, and continues to suffer, loss of stature, damage to her career path, adverse job consequences, including economic damages, severe mental, physical and emotional stress, pain and suffering, anxiety, stress, humiliation, exacerbation of existing medical conditions and personal sickness, loss of enjoyment of life and damage to her reputation.

WHEREFORE, plaintiff Diana Falzone demands judgment in her favor against Defendant Fox News, as follows:

(a) A declaration that Defendant has violated the New York City Human Rights Law, NYC Administrative Code § 8-107;

(b) compensatory damages for all back and future loss of wages, lost income, benefits, retirement losses, pain, suffering, stress, humiliation, mental anguish, emotional harm and personal physical injury and physical sickness, as well as damage to her reputation, damage to career path, and loss of income stemming therefrom;

(c) punitive damages;

(d) attorneys' fees and expert fees;

(e) pre- and post-judgment interest;

(f) reimbursement for the negative tax consequences of a judgment;

(g) costs of suit; and

(h) such other relief as the Court may deem equitable and just.

Dated: May 1, 2017

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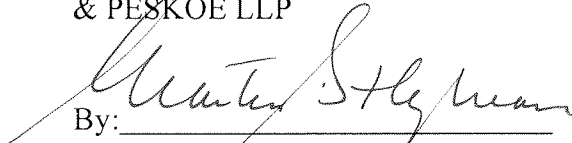
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JURY DEMAND

Plaintiff Diana Falzone demands a trial by jury with respect to all issues properly triable by jury.

Dated: May 1, 2017

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EXHIBIT A

INFERTILITY

Women should never suffer in silence

By Diana Falzone

Published January 24, 2017

FoxNews.com



It was just days after my 33rd birthday when my doctor delivered the worst news of my life: I will likely never have a child and fulfill my greatest wish of being a mother. When hit with the news that I am infertile, I could not stop crying. And not only was it very unlikely I'd ever conceive, my health was in jeopardy.

How did I get here? One word: endometriosis.

I've been reluctant to share the story of my infertility because it is so personal. But I was persuaded by the manager in my doctor's office to tell my story because, as she put it, "Many women suffer in silence alone. Please share your story."

I am not alone. I am one of an estimated nearly 176 million women globally who suffer with endometriosis, a chronic condition where endometrial tissue grows outside of the uterus on other organs or structures in the body. There is often an autoimmune component to the disease.

The symptoms can be intense and life-altering: debilitating pain, cramps, menstruation that lasts more than a week, bowel and urinary disorders and infertility. Some women, however, have no sign of the disease and it's not until they try in vain to conceive a child that silent endometriosis (asymptomatic endo) is discovered.

In my case, I did not have symptoms until my body was under acute attack.

Women diagnosed with endometriosis do not all wind up in a similar situation. Here's what happened in my case:

It was Feb. 1, 2016, and it was one of my happiest days at work. I joined my colleagues in fawning over a group of adorable puppies for an "Animal Planet" segment on "Puppy Bowl." It was a day filled with smiles.

But later that afternoon, I suddenly became very ill. I was bleeding heavily; I had an intense pain on my right side.

Confused and scared, I reached out to Fox News' Dr. Manny Alvarez. He offered several possibilities, then told me I should see my gynecologist as soon as possible.

I was unable to get an appointment with my doctor, who was booked solid. My fear grew as the bleeding continued and I developed a high fever.

I decided to go to the emergency room.

I waited there for several hours before I saw a general practitioner. He said he could not find anything wrong, but said that I should get an ultrasound – which was not available at the hospital at the time I was being treated. So, I was sent on my way.

I grew sicker and sicker.

When I finally got an appointment with my gynecologist, she looked at me and said, "Oh, you look so sick." I sat in her

office pale, sweaty, fighting back tears. She, too, could find nothing wrong.

My condition continued to worsen, so I went to a specialist.

A few minutes into my exam, the doctor discovered a mass in my uterus. As she delivered the news, my heart raced and my legs shook. She explained that I would need surgery and something called an egg reserve blood test to see if my fertility was compromised.

Two days later, she called to say that I would need surgery immediately. I was shocked at the sudden urgency, but she explained that my low egg reserve indicated aggressive endometriosis.

I was then referred to the team of doctors I now call my "Earth angels." Dr. Andrea Vidali, his partner Dr. Jeffrey Braverman and Dr. Mutahar Ahmed. If not for their expertise and the quality care of their medical teams, I likely would have had a hysterectomy at the age of 33!

Last year, I underwent a 3 ½ -hour surgery on my uterus, ovaries and bladder to remove the endometrial tissue that was causing the excessive bleeding and paralyzing pain.

After months of healing and physical therapy, I completed two rounds of egg retrieval to save the eggs I have left. I still have one more round of the retrieval process, which is extremely taxing, both emotionally and physically.

While I often dream about the child I want, the one I may not be able to have, I will forever be grateful to the doctors who have given me even a small chance to be a mother. I am grateful, too, that I have access to top medical care. I know there are women who are not able to get a proper diagnosis or care.

I have shed many tears because of endometriosis. But this illness, which made my body so weak, has also made me so strong.

So, I tell my story here for all the ladies in the world. If you have symptoms of endometriosis, do not be afraid to advocate for yourself. Trust your intuition and seek out a specialist. Remember, not all medical practitioners are well-versed with the signs of this disease.

As for me, my story is still being written. I wish I could offer a Hollywood happily-ever-after ending. I can't. But for now my contribution is knowledge from experience.

The more we talk about women's health issues, the sooner we will get to finding cures and better treatment options.

You are not alone.

Fox News.com Reporter and FOX411 host Diana Falzone covers celebrity news and interviews some of today's top celebrities and newsmakers. You can follow her on Twitter @dianafalzone.