

Court Revives Retaliation Claim of Ex-Football Team Manager

Joel Stashenko
New York Law Journal
02-22-2013

A retaliation claim filed against Hofstra University by a former football team manager was reinstated yesterday by a federal appeals court, even as the court dismissed the ex-manager's underlying contention that the players' sexual harassment created a hostile working environment for her.

The decision by the U.S. Court of Appeals for the Second Circuit in [Summa v. Hofstra University](#), 11-1743, reversed, in part, a ruling by Eastern District Magistrate Judge William Wall ([See Profile](#)), who had granted Hofstra's motion to dismiss Lauren Summa's action in its entirety.

Summa, a former Hofstra graduate student, claimed she was denied jobs at Hofstra three times following the 2006 football season in which she complained that she was harassed by some players.

In May 2007, Summa filed a complaint with the state Division of Human Rights. After the agency upheld her complaint, Summa filed suit against the university in January 2008.

Summa claimed she was denied an opportunity to manage the football team during its 2007 spring practice sessions; was rejected for a graduate assistantship in the school's Office of University Relations in summer 2007; and lost her chance the next summer at any student employment at Hofstra, ostensibly because she filed time sheets that double-counted the time she spent working at two university jobs.

The circuit panel concluded that Summa was treated differently—and with harsher scrutiny—than other students seeking similar jobs with the university.

When seeking the graduate assistantship, for instance, the circuit said that of all the candidates only Summa's references were contacted by Melissa Connolly, Hofstra's vice president for university relations.

In addition, according to the ruling, Hofstra's director of human resources, Evelyn Miller-Suber, said Summa's time sheets were the only student sheets she had ever reviewed and Summa was the only student to be denied access to a job for filing allegedly inaccurate work records.

In a ruling by Judge Rosemary Pooler ([See Profile](#)), the panel said the "starkly different" treatment Summa received from school administrators "would allow a reasonable jury to conclude that Miller-Suber's cited reason for the termination was indeed pretext for a retaliatory motive."

Judges Reena Raggi ([See Profile](#)) and Gerard Lynch ([See Profile](#)) joined the opinion.

The panel said that, before the 2006 football season began, Summa was promised she could return as manager for the upcoming spring practice season, only to be told by coaches that she didn't contact the team in time and the position was filled.

Summa received \$700 as manager in fall 2006, and she produced emails indicating she would make \$300 if she returned in the spring.

The circumstances surrounding her loss of the three jobs are sufficient to indicate retaliation against Summa under Title VII of the 1964 Civil Rights Act, Pooler wrote.

The panel felt differently, however, about Summa's sexual harassment claims.

Summa contended she faced several instances of harassment during the 2006 season, including a Facebook post in the form of a "wanted" poster identifying Summa as "Miss Piggie" and "The 'Wannabe' Big Boss Man." In addition, Phillip Hall, a Hofstra player and Summa's boyfriend, was portrayed as a "missing person" whose "weight may have fluctuated because of...excessive sexual activities."

Summa also complained about Hofstra's final road trip, when "Shadowboxer," an R-rated film with numerous sex scenes, was shown on the team bus and a player allegedly made crude, sexual comments to Summa related to the film.

In order to prove a hostile work environment under Title VII and the state's Human Rights Law, Pooler noted, a claimant must show the harassment was so pervasive as to create an abusive work environment and that the employer was responsible for the hostile environment.

In Summa's case, the panel said, the behavior was caused by the players, and university officials satisfied their "remedial obligation to end the harassment" when they became aware of it.

For example, the court noted, after Summa complained about the Facebook post, head coach David Cohen confronted the responsible players and forced them to remove the page.

As to the bus incident, the panel said the assistant coach Summa complained to, John Perry, immediately had the film turned off and sat near Summa for the remainder of the ride to Long Island so players would not continue harassing her.

Once home, the court said Summa was given the opportunity to file a complaint with the school's equal opportunity office, which she did. In the meantime, Cohen dismissed the player who made the comments not only for the bus incident but for other disciplinary problems, according to the court.

"Each complaint that was brought directly to Cohen's attention was dealt with quickly and in proportion to the level of seriousness of the event," Pooler wrote. "The fact that Cohen took action at once—completed within just days in all cases—speaks to the appropriateness of the University's response in this case."

Summa's attorney, Douglas Wigdor of Thompson Wigdor, applauded the circuit ruling.

"The case has always been about retaliation in our view, so we are now looking forward to being able to have a trial on that issue," Wigdor said.

Former Wigdor associate Shaffin Dato argued for Summa before the circuit.

Domenique Camacho Moran of Farrell Fritz in Uniondale argued for Hofstra.

Hofstra, citing fan and student apathy as well as the \$4.5 million-a-year cost of the football program, dropped the sport after the 2009 season.

The suit names the university, Cohen, Hofstra's last head football coach, and Connolly as defendants.