

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 ADAM WIERCINSKI,

5 Plaintiff,

6 versus

09 CV 4413 (ILG)

7 MANGIA 57, INC.,

8 Defendant.

U.S. Courthouse
Brooklyn, New York

9 -----x
October 22, 2013
10:00 a.m.

11 Transcript of Civil Cause for Trial

12 Before: HONORABLE I. LEO GLASSER,
District Court Senior Judge

13 APPEARANCES

14 Attorney for Plaintiff:
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20 Also Present:
21 GREGG CYMBROWITZ
22 ADAM WIERCINSKI

23 Official Court Reporter:
24 MICHELE NARDONE, CSR, RPR, CRR
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MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

1 (In open court.)

2 THE CLERK: Civil cause on trial, Wiercinski versus
3 Mangia 57, Incorporated. Please be seated.

4 (Pause.)

5 THE CLERK: Would the interpreter step forward,
6 please. Please raise your right hand.

7 (Interpreter sworn.)

8 THE INTERPRETER: I do.

9 THE CLERK: Please state your name for the record.

10 THE INTERPRETER: Jakub Zaic, J-A-K-U-B Z-A-I-C,
11 Polish interpreter.

12 THE COURT: You appeared as an interpreter in the
13 federal court before, have you?

14 THE INTERPRETER: Yes, I did, your Honor.

15 THE COURT: You interpret Polish?

16 THE INTERPRETER: I interpret Polish, your Honor.

17 THE COURT: Was that the Gortec that you worked for me
18 in?

19 THE INTERPRETER: Yes. Your Honor has a better memory
20 than I do.

21 THE COURT: That was almost entirely Polish?

22 THE INTERPRETER: Yes.

23 THE COURT: All right. As soon as the jury gets here
24 we will get underway.

25 MR. BLIT: Your Honor, we are just waiting upon the

MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

1 witnesses. They are subpoenaed for today. They are confirmed
2 to be here. They are just not here yet.

3 THE COURT: Do you have any witness here at all?

4 MR. BLIT: No. Otherwise we would put them right on.
5 As soon as we have one we will put them right on. We have
6 nobody here.

7 THE COURT: How many witnesses did you have prepared
8 for today?

9 MR. BLIT: Three.

10 THE COURT: Did you advise all of them to get here at
11 10 o'clock?

12 MR. BLIT: No, 9:30.

13 THE COURT: Pardon?

14 MR. BLIT: 9:30.

15 THE COURT: And none of them appeared?

16 MR. BLIT: Okay. They are on their way up. The
17 witnesses are on their way up now.

18 THE COURT: I want to advise you that I have requested
19 a transcript of the examination of Mr. Wiercinski yesterday,
20 and I propose to forward them to the United States Attorney.

21 MR. BLIT: May we take a moment to have a word with
22 our client?

23 THE COURT: I'm sorry?

24 MR. BLIT: May we take a moment to have a word with
25 our client?

1 THE COURT: By all means.

2 (Pause.)

3 THE COURT: Are you ready to proceed?

4 MR. BLIT: Yes, we are ready to proceed, and the first
5 witness is ready to take the stand.

6 THE COURT: All right.

7 (Continued on the next page.)

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1 (Jury enters.)

2 THE COURT: Good morning. Thank you for being prompt
3 this morning. I appreciate that. Mr. Blit or Mr. Moriarty,
4 call your next witness.

5 MR. CLARK: Plaintiff calls Marian Krajewski.

6 THE CLERK: Please raise your right hand.

7 MARIAN KRAJEWSKI, called as a witness, having been
8 first duly sworn/affirmed, was examined and
9 proceeded to testify as follows:

10 (Through the interpreter.)

11 THE WITNESS: Yes.

12 THE CLERK: Please be seated. Please state your full
13 name and spell it for the record.

14 THE WITNESS: Marian Krajewski, M-A-R-I-A-N. Last
15 name Krajewski, K-R-A-J-E-W-S-K-I.

16 THE COURT: All right. Please be proceed.

17 DIRECT EXAMINATION

18 BY MR. CLARK:

19 Q Good morning, Mr. Krajewski.

20 A Good morning.

21 Q Did you ever work for a company known as Mangia 57? Have
22 you ever worked for a company known as Mangia 57?

23 THE COURT: Excuse me. If you can answer that yes or
24 no. Did you ever work for the company.

25 A Yes.

1 Q When did you start working for Mangia 57?

2 A 1997, in the summer.

3 Q What was your position?

4 A Deliveryman.

5 Q What hours did you work at Mangia 57?

6 A I worked from 11:00 a.m. until 3:00 p.m., part-time.

7 Q Was that Monday through Friday, or not?

8 A Most frequently Monday through Friday.

9 Q While working at Mangia 57 did you meet Adam Wiercinski?

10 A Yes. He is in this room.

11 Q When did you first meet him?

12 A It was in 1999, most probably in September.

13 Q Did he have the same position as you?

14 A Yes, similar position, but he worked full time.

15 Q Did you work at the same time, though, during the same
16 shifts?

17 A Yes.

18 THE COURT: Would you talk into the microphone,
19 please.

20 MR. CLARK: Yes, sir.

21 Q How long were you and Adam coworkers?

22 A During entire time of my work at Mangia.

23 Q How long was that?

24 A It's a period of six years.

25 Q When did that period end?

1 A Precisely in August of 2003.

2 Q Who were your supervisors during this time period?

3 A Manager at the time of Mangia was Malgorzata Cymanow.

4 Last name Cymanow.

5 Q Was there anyone else that directed your employment? Was
6 there anyone else that directed your employment?

7 A There were some deputy managers who were giving us orders,
8 and they were sending us to the clients.

9 Q What were their names?

10 A During that period of time there were many of them. Like
11 Artur Zbozien, Robert Sarosiek, Robert Bazgier, Robert
12 Rybarski, and Maslanka, whose first name I don't remember.

13 It's possible there were some others. Some of them were
14 working for quite short period of time over there, and I don't
15 remember their names.

16 Q How did these persons treat Adam?

17 A Very bad.

18 Q Why was it very bad?

19 A I remember first day. It was his first day and that same
20 day there was a delivery of boxes to Mangia and those boxes had
21 to be carried from delivery truck to the store. Carrying those
22 boxes, Mr. Adam Wiercinski unintentionally bumped into Artur
23 Zbozien. Well, Artur reacted in a very disparaging way. I
24 would have to use some vulgarities over here. Did anybody ever
25 smack you, you fucking Jew? Well, there were some -- many

1 other instances when most frequently Mr. Artur Zbozien treated
2 Adam Wiercinski in an unacceptable way.

3 Q Can you describe these unacceptable events?

4 A By the end of the shift, most frequently around 3:00 p.m.,
5 we are settling our tips. Because there were -- I don't
6 know -- a dozen or so deliverymen at Mangia, the line was
7 created.

8 When Mr. Wiercinski's turn came, Mr. Zbozien very
9 frequently he was getting up from the table announcing I won't
10 be settling with that fucking Jew. He was usually calling his
11 assistant, Mr. Bazgier, who at the time was giving money to
12 Mr. Wiercinski, and when it had been done Mr. Zbozien was
13 returning to the table.

14 Also, during the payment of those tips there was some
15 other situations related to giving change. Let's say that 20
16 cents were due to Mr. Wiercinski. So Mr. Zbozien was taking 20
17 cents, actually 20 pennies, grabbing them in the hand and
18 tossing them towards Mr. Wiercinski. All the coins were
19 spilling on the table, outside on the table, on the floor, and
20 that's how he was giving him money.

21 Q How many times did you observe this?

22 A Several times. I don't know precisely how many.

23 Q Do you know when it took place?

24 A I don't understand your question.

25 Q Do you know when this event took place, like what year?

1 A It was within the period of time when I worked over there.
2 I cannot really give you precise year. It was quite a long
3 time ago, but I'm absolutely certain that I witnessed several
4 events like that.

5 Well, there were also some other events I witnessed.
6 Near the place where we were being paid our tips there was an
7 area where they stored boxes. And part of the deliverymen's
8 duties was to fold those boxes, once a week I believe.

9 At some point Mr. Wiercinski was folding those boxes,
10 and Mr. Zbozien came over and he said, get the hell out of
11 here. And Mr. Wiercinski asked why. And Mr. Zbozien said
12 because you stink. Mr. Wiercinski said, well, I take a bath
13 every morning, I use deodorant; and Mr. Zbozien said yes, but
14 you stink of Jew. Get the hell out of here.

15 THE COURT: I don't think there is a question before
16 him at this point.

17 Q Do you remember any other instances of discrimination
18 against Mr. Wiercinski?

19 A Yes. At some point Mr. Bazgier was called for --
20 Mr. Bazgier was called to meet with Malgorzata. Quite possibly
21 they were discussing Mr. Wiercinski's case because when he came
22 back he kicked Mr. Wiercinski in the groin and he said, this is
23 for you, you Jewish pedophile. He kicked him in the groin.

24 Q Did you observe this personally?

25 A Yes. Also, manager, Ms. Malgorzata Cymanow, was using

1 some kind of wording which is unbecoming. Well, let's say
2 there were regional phrases usually used around the Polish town
3 of Krakow, where the word describing in a negative way the
4 Jewish person is called jopek, J-O-P-E-K, and she used that
5 word towards Mr. Wiercinski.

6 Q How often did she use this word?

7 A Well, sometimes. Well, she was using her name -- his
8 name, Adam, as well, but let's say one in five instances she
9 used that word, jopek.

10 Q Do you remember any other instances of discrimination
11 against Adam?

12 A Yes. Well, discrimination against him was also
13 manifesting itself in the way he was being assigned orders.
14 Usually his orders or deliveries were carrying very low tips,
15 maybe 1, maybe \$2, and sometimes the places where the delivery
16 was to be made were quite distant. So it actually cut into the
17 time of his work and obviously into his earnings.

18 Q Did Artur Zbozien use any anti-Semitic remarks towards
19 Adam?

20 THE INTERPRETER: I really don't hear you, counsel.

21 THE COURT: Can you talk into the microphone.

22 MR. CLARK: Yes.

23 Q Did Artur Zbozien use any anti-Semitic remarks towards
24 Adam?

25 A Certainly. I believe that the words they were using were

1 injurious, discriminating, and when you hear phrases like
2 fucking Jew, stupid Jew, crazy Jew, well, these are the words
3 which are really discriminating; and I also heard Mr. Bazgier
4 using them from time to time.

5 Q How often would they use these words?

6 A Multiple times. I am not able to tell you precisely, but
7 he was addressed that way very frequently.

8 Q Did Artur Zbozien ever refer to Adam by his first or last
9 name?

10 A Yes.

11 Q Was it more often that he referred to him as a Jew?

12 A I believe we can just say 50/50.

13 Q Do you remember any other instances of anti-Semitic
14 remarks or actions taken by Artur?

15 A Well, I, together with other deliverymen, we were also
16 warned that we supposed to be holding our relationship,
17 friendship, or acquaintanceship with Mr. Wiercinski to the bare
18 minimum; and we were told that if we don't comply with that
19 what was for us in store --

20 MR. DANIEL KAISER: Objection.

21 THE COURT: I will allow it.

22 A -- was the same kind of a treatment like Mr. Wiercinski's.

23 Q Did Artur ever offer you anything to stop associating with
24 Mr. Wiercinski?

25 A Well, it was obvious. As I said, if we kept our distance

1 from him, wouldn't be friendly, and we won't be in any way
2 trying to get a social relationship with him, we would be paid
3 better. I believe this is an offer.

4 Q Did Artur Zbozien ever mention the term Zyklon B to Adam
5 Wiercinski?

6 A Quite possibly. Mr. Wiercinski told me about such event.

7 Q What is your religious background?

8 A I'm a Roman Catholic.

9 Q What would you consider your ethnic background?

10 A I am a Pole with American citizenship.

11 Q Have you ever received compensation from Adam in exchange
12 for your testimony in this case?

13 A Absolutely not.

14 Q Are you here today because you received a subpoena to
15 testify at this trial?

16 A Yes.

17 MR. CLARK: No further questions at this time, your
18 Honor.

19 THE COURT: All right.

20 MR. DANIEL KAISER: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MR. DANIEL KAISER:..

23 Q Mr. Krajewski, you recognize that you are here under oath
24 today, correct?

25 A Yes.

1 Q You testified in this courtroom that Ms. Cymanow made
2 anti-Semitic remarks to Adam Wiercinski, called him that name
3 in Polish, a derogatory name for Jew, correct?

4 A Yes.

5 Q And you said that Mr. Bazgier also called anti-Semitic
6 names to Adam, correct?

7 A Yes.

8 Q Do you recall providing sworn testimony in the context of
9 this litigation on an earlier date, in a deposition?

10 A Yes.

11 Q And do you recall that that deposition occurred on
12 February 16, 2011?

13 A It's possible. I don't remember precise date.

14 MR. DANIEL KAISER: Going to page 41, line 12 of that
15 deposition, your Honor, it was of Mr. Krajewski's deposition, I
16 think we have a copy for you.

17 THE COURT: May I have it?

18 Q "Question: Did you witness anyone other than Mr. Zbozien
19 calling Adam any names?

20 "Answer: I believe that the people he worked with in
21 the same circle, they know one another, they knew one another,
22 and they really weren't picky as to the words they were
23 choosing. On the other hand, they tried to act friendly with
24 Artur. I believe Robert tried to do the same thing."

25 THE INTERPRETER: Your Honor?

1 Q Yes. Did you ever hear --

2 THE COURT: I'm sorry. Are you having trouble?

3 MR. DANIEL KAISER: I will slow down.

4 THE INTERPRETER: I can go into simultaneous mode, and
5 in this case I need to hear what is being read.

6 THE COURT: Okay.

7 THE INTERPRETER: If this is going to be consecutive,
8 I need counsel to stop at some point.

9 MR. DANIEL KAISER: Okay. I apologize.

10 BY MR. DANIEL KAISER:

11 Q "Question: Did you ever see Robert or hear Robert call
12 Adam any names?

13 "Answer: I believe that I did hear it, but I don't
14 remember precisely.

15 "Question: Anyone else besides Robert?

16 "Answer: Right now I don't remember."

17 Are you telling us now your recollection has been
18 refreshed as to all of these other people who have -- who were
19 directing anti-Semitic remarks to Mr. Wiercinski?

20 A Yes, I believe that my memory improved.

21 Q Oh, okay. So we are even further away from the time that
22 this happened but your memory is better now than it was on
23 February 16, 2011?

24 A Sometimes you remember things, you forget them, and then
25 you recall them again, and did.

1 Q Did Mr. Wiercinski -- I'm sorry.

2 A On the other hand, I was fully aware that I were to
3 testify in court. So I took my time and thought about what I
4 was to say.

5 Q Well, did you take your time to think about what you were
6 going to say when you were under oath the last time?

7 A Well, I was more surprised at the time. As of now I was
8 more aware of the fact that I were to testify.

9 Q Did Mr. Wiercinski help improve or refresh your
10 recollection between now and then?

11 A Your question is ridiculous. I have not met him since
12 that time.

13 Q You said that Mr. Wiercinski hadn't offered you
14 compensation.

15 Has he offered you any future compensation depending
16 upon the success of this litigation?

17 A My answer is as before, absolutely not.

18 Q You also testified that Mr. Wiercinski complained to you
19 about the Zyklon B.

20 Do you recall that testimony on your direct?

21 A It was quite a long time ago, but since the event was
22 quite shocking, it's embedded in my memory.

23 Q Okay. Do you recall giving this answer to these questions
24 the last time you were giving sworn testimony in an official
25 court proceeding? Page 39, line 7.

1 "Question: Did you ever have any conversations with
2 Adam about Mr. Zbozien, about how Mr. Zbozien was treating him?

3 "Answer: It's hard to tell. Sometimes, maybe
4 sometimes he was complaining to me that he was being called a
5 dirty Jew or stupid Jew, and sometimes it was just in the form
6 of kind of drawing my attention to it, did you hear that, did
7 you hear that.

8 "Question: Did Adam tell you that he complained to
9 anyone about Mangia, about these comments or names that he was
10 called?

11 "Answer" --

12 THE INTERPRETER: Counselor.

13 THE COURT: If you slow down a little bit, Mr. Kaiser,
14 the interpreter will be able to follow along.

15 Do you want to repeat that question? You are at
16 line 18.

17 MR. DANIEL KAISER: Let me withdraw that question.

18 BY MR. DANIEL KAISER:

19 Q Let me ask you this, Mr. Krajewski: You were fired from
20 Mangia, correct?

21 A Yes.

22 Q And you were told that you were fired from Mangia for
23 stealing, correct?

24 A No.

25 Q You were never provided an explanation for your discharge?

1 A No.

2 Q So when you were fired did you ask for an explanation?

3 A No.

4 Q Weren't you curious as to why you were being terminated?

5 A I was curious, surprised.

6 Q So you never said to your manager, why am I losing my job?

7 A No. In Mangia it was a normal procedure that people were
8 fired, hired, rehired, transferred to different locations.

9 Q But in this case Margaret Cymanow was the one who fired
10 you, correct?

11 A Yes.

12 Q And Margaret Cymanow had given you information about how
13 Mangia had determined that you had been stealing from the
14 company, correct?

15 A No.

16 Q And you participated, Mr. Krajewski, in a lawsuit against
17 Mangia, correct?

18 A Yes.

19 Q And you were a plaintiff, one of several plaintiffs who
20 sued Mangia, correct?

21 A Yes.

22 Q Mr. Krajewski, did you know during the time that
23 Mr. Wiercinski was at Mangia that he went by the name of Adam
24 Jamroz?

25 A Please repeat the last name. I didn't hear you well.

1 Q Adam Jamroz, J-A-M-R-O-Z.

2 A Please repeat entire question.

3 Q Did you know that Mr. Wiercinski used the name Adam Jamroz
4 while he worked at Mangia?

5 A No.

6 Q And Mr. -- okay.

7 Did you give these answers to these questions during
8 your deposition?

9 "Question: Were you aware" --

10 THE COURT: Excuse me. What page are you on?

11 MR. DANIEL KAISER: I'm sorry. Page 44, line 7.

12 Q "Were you aware of Adam using the name Adam Jamroz while
13 he worked at Mangia?

14 "Answer: I encountered it, yes."

15 So you did know that?

16 A Well, if I testified that way, at that time I remembered
17 that.

18 Q Do you know why he was using the name Adam Jamroz?

19 A I wasn't really interested in that.

20 Q You never asked him?

21 A Why should I be asking him? It was his business.

22 Q Did he ever volunteer to you why he was going by this
23 alternative name while working there?

24 A It happens that people have two last names. Nothing is
25 strange about it.

1 Q Do you have two last names?

2 A No.

3 Q When did Mr. Wiercinski first communicate to you that he
4 wanted you to testify on his behalf in this litigation?

5 A It was quite a long time ago. I don't remember the year.
6 I was notified by his attorney.

7 Q Did you ever have a direct communication with
8 Mr. Wiercinski about him wanting you to testify for him?

9 A I don't recall situation like that.

10 Q So far as you sit here today in this courtroom, it's your
11 sworn testimony that you never had a direct discussion with
12 Mr. Wiercinski about you testifying for him in this case?

13 A I don't recall.

14 MR. DANIEL KAISER: Can I have a moment, your Honor?

15 (Pause.)

16 Q Mr. Krajewski, you left Mangia in August 2003, correct?

17 A Yes.

18 Q Okay. And it's still your testimony that Mr. Wiercinski
19 communicated to you about getting kicked in the groin, correct?

20 A No, I don't claim that he told me that.

21 Q You saw that?

22 A Yes.

23 Q All of the things that you heard was said to
24 Mr. Wiercinski by Mr. Zbozien that you claim that you heard,
25 all of that was in Polish?

1 A Yes.

2 Q So Mr. Zbozien, according to you and what you heard, all
3 of these insults, dirty Jew, all these comments were
4 communicated in Polish?

5 A Yes.

6 Q You would not have understood it if these comments were
7 made in English, correct -- you would not have understood the
8 derogatory remarks if they were made in English?

9 A It's ridiculous what you say. After 20-odd years of being
10 in America -- well, at that time it was a dozen or so -- you
11 are claiming that I wouldn't understand English? Of course I
12 would.

13 Q So you would understand dirty Jew if it was said in
14 English, is that what your testimony is?

15 A Of course.

16 Q Okay, but that's not what you heard. It was all in
17 Polish?

18 A Yes.

19 Q Are you currently employed?

20 A No.

21 Q When was the last time you were employed?

22 A Last year.

23 Q So is your income support from the government currently?

24 A Yes.

25 Q Do you get social security disability?

1 A No.

2 Q Another type of government support?

3 A Yes.

4 MR. DANIEL KAISER: Thank you. That's all I have.

5 THE COURT: Any redirect?

6 MR. CLARK: Yes, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. CLARK:

9 Q Mr. Krajewski, why do you believe you were fired from
10 Mangia 57?

11 A Because I had too close relationship with Mr. Wiercinski,
12 and the gentleman who asked me a question before you asked me,
13 if I wanted to learn why I had been fired; and at some point I
14 did. So I made appointment with the owner of Mangia, Mr. Sasha
15 Muniak, and I went to his office on 48th Street. Unfortunately
16 he wasn't willing to see me. That's all.

17 Q Why did you sue Mangia 57?

18 THE COURT: I'm sorry?

19 Q Why did you sue Mangia 57?

20 A No, I didn't sue them. I reported them to the labor
21 department.

22 Q What was the result of your report to the labor
23 department?

24 MR. DANIEL KAISER: Objection, your Honor.

25 THE COURT: I will allow it.

1 A Mangia was fined because I was being cheated by Mangia
2 while they were giving me my checks.

3 Q Did you receive any compensation as a settlement as a
4 result of that?

5 A I was recompensed.

6 Q Were you satisfied with that result? Were you satisfied
7 with that result?

8 A Of course, because I had proven that I wasn't cheating,
9 that Mangia was cheating.

10 MR. CLARK: No further questions, your Honor.

11 THE COURT: Anything further?

12 MR. DANIEL KAISER: No, your Honor.

13 THE COURT: You are excused.

14 Call your next witness, please. Can you call your
15 next witness?

16 MR. BLIT: If you just give us a five-minute recess,
17 your Honor.

18 THE COURT: We will take a brief recess.

19 (Jury exits.)

20 (Continued on the next page.)

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1 THE COURT: Mr. Blit, when you answer ready to
2 proceed, I expect you to be ready with your witnesses. Is that
3 clear?

4 MR. BLIT: Yes, your Honor.

5 THE COURT: It's your responsibility to have your
6 witnesses here on time. I will not grant adjournments very
7 readily if you continue with this kind of behavior. Is that
8 plain?

9 MR. BLIT: Yes, your Honor.

10 THE COURT: We will resume in about five minutes.

11 (Recess.)

12 THE CLERK: Civil cause on trial.

13 Counsel, please come forward.

14 MR. BLIT: We are ready to proceed, your Honor. We
15 have the next two witnesses here. One witness will be in, one
16 will be outside. I apologize.

17 (Continued on the next page.)

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1 (Jury enters.)

2 THE COURT: All right. Thank you. Call your next
3 witness, please.

4 MR. MORIARTY: Your Honor, plaintiffs call Marcin
5 Swiderski.

6 THE CLERK: Please stand here, raise your right hand.

7 MARCIN SWIDERSKI, called as a witness, having been

8 first duly sworn/affirmed, was examined and

9 proceeded to testify as follows:

10 (Through the interpreter.)

11 THE WITNESS: I swear.

12 THE CLERK: Please be seated. Please state and spell
13 your name for the record.

14 THE WITNESS: (In English) My name is Marcin
15 Swiderski. I'm 31 years old. I'm going to spell my name.
16 It's M-A-R-C-I-N S-W-I-D-E-R-S-K-I.

17 DIRECT EXAMINATION

18 BY MR. MORIARTY:

19 Q Mr. Swiderski, first of all, thank you for appearing here
20 today. I'm going to ask you a few questions related to
21 Mr. Wiercinski.

22 At some point in the past had you worked for
23 Mangia 57?

24 A Yes.

25 Q Do you recall from what year to what year you worked for

1 Mangia 57?

2 A I started working Mangia 57 September 2006, and I finished
3 working in May 2008.

4 Q At some point during your work at Mangia 57 did you come
5 to meet Adam Wiercinski?

6 A Yes, yes, I did.

7 Q Do you recall about when that was?

8 A That was about early 2007. I met him as soon, of course,
9 I worked, I saw him for the first time. In the first weeks of
10 my work, which is September 2006. That's when I first met
11 Adam.

12 Q Did you and Adam work together at Mangia 57?

13 A Yes, we did work together, yes.

14 Q Did you have the same job duties?

15 A Excuse me?

16 Q Did you have the same job duties?

17 A Yes, we did the same position, the same job.

18 Q So you would interact and see Adam on a daily basis at
19 work; is that correct?

20 A Yes, that's correct.

21 Q And during your time working for Mangia 57, did you
22 witness how Adam was treated by his supervisors?

23 A Yes. I observed several times how Adam was treated or
24 mistreated.

25 Q Do you know of Artur Zbozien?

1 A Yes, I do.

2 Q Who is this Artur Zbozien?

3 A Artur Zbozien, he was a supervisor of Mangia 57, evening
4 supervisor.

5 Q If you could just describe for the court how you witnessed
6 Mr. Wiercinski being treated by his supervisors at Mangia?

7 A I witnessed several times, many times during all those
8 years, Adam being called negative nicknames, also he been
9 pushing around, making -- those guys make him feel humiliated,
10 using names. Can I say the names, or should I say like a Jew,
11 stupid Jew, several times, like I said; and that was the
12 situation also too, that they were making him -- they were
13 humiliating him.

14 We were standing on the line to get paid. That was a
15 daily routine, to get paid, and I was a few -- I was the person
16 behind Adam standing in line. So Adam was going to take --
17 there is always some amount to get paid every day and there is
18 also coins and cash and coins.

19 So Adam was going to take, say, \$10.25; and Artur open
20 the register and take 25 pennies out of the register and put on
21 the counter. When Adam refuse, he didn't want to take those
22 coins, he took the coins and threw it on the floor and he told
23 Adam to collect it one by one. Adam felt terrible, and that
24 was something that surprised me too.

25 There was another situation where there was also a

1 pay, daily routine, pay, like at the end of the shift; and
2 Artur Zbozien saw Adam approaching the register. He stood up
3 and he said he is not going to pay off this Jew, and I told --
4 he ordered to his -- another supervisor to finish him paying
5 off and he stood up and left. That shocked me too.

6 Q You mentioned some names that Adam was called before.

7 I would like you to be specific as to exactly what you
8 remember the names that Adam was called.

9 A They were referring to his religion, religious. He was
10 saying he is a Jewish. So they were calling him all kind of
11 nicknames, like stupid Jew, stinky Jew, jopek, which is a
12 Polish translation of like a Jew, like a scum Jew, stuff like
13 that.

14 Q When you said they were calling him these names, who were
15 you referring to specifically?

16 A Artur Zbozien mostly and Grzegorz Sarosiek and Bazgier,
17 they were managers, supervisors of morning shift, evening
18 shift, and Robert Bazgier was a helper of Artur Zbozien.

19 Q Do you have any opinion or belief as to why Mr. Zbozien
20 was treating Mr. Wiercinski in this manner?

21 A Well, I know that Artur Zbozien was anti-Semite racist,
22 and he was not tolerant about sexual, you know, the gender,
23 about male. He didn't like gays, Jews, and black people.

24 Q Was this just your opinion of Artur Zbozien, or was this a
25 general feeling?

1 A Mine as well as, I guess, other workers too, because there
2 was -- you could see that his behavior during the working hours
3 that was not difficult to figure out. Actually, I think he
4 admitted once. I overheard that he admitted that once, he is
5 anti-Semite and racist.

6 Q When you witnessed Mr. Wiercinski being treated in this
7 manner, how was his demeanor, what was his reaction to this
8 treatment?

9 A His react? His reaction, he was being depressed most of
10 the time. Most of the time I remember him, would be at Mangia,
11 he was there but he was quiet, kind of like he is not there;
12 and several times when we have conversation, when I have a
13 chance to get to know him better, he complained, mentioned
14 about me that he is being mistreated, he is being humiliated in
15 front of other coworkers, he doesn't like that.

16 And also there was a financial matter too that he said
17 he's not satisfied with his wage and that he feels that he is
18 being mistreated, that he is getting heavy deliveries,
19 low-paying deliveries, even though that he is -- he has a huge
20 seniority. That also surprised me too because he has been
21 working -- he told me he is working over 20 years, and then he
22 is being treated like somebody who just came here or even worse
23 because even the new workers they were not treated like him.

24 Q Do you recall any other anti-Semitic comments or anything
25 else directed at Mr. Wiercinski?

1 A Well, no. Basically those calling names and then those
2 few incidents in front of the register. There were also names
3 being used, Jew, stupid Jew, all those. That -- I think that's
4 most of it, constant anti-Semite.

5 Q Are you Jewish, sir?

6 A No, I am not.

7 Q Final question: Were you offered any kind of compensation
8 by Mr. Wiercinski in exchange for your testimony?

9 A No, never.

10 MR. MORIARTY: No further questions at this time, your
11 Honor.

12 THE COURT: Mr. Kaiser.

13 CROSS-EXAMINATION

14 BY MR. DANIEL KAISER:

15 Q Mr. Swiderski, you began in March 2006, correct?

16 A Yes, yes.

17 Q And worked through, I think you said, 2008?

18 A Yes.

19 Q Did you hear Mr. Wiercinski being called these names
20 throughout this period of time?

21 A Yeah. Through all those two years, that's when it
22 happened. That's when I heard him being called these names,
23 yes.

24 Q Right. So from 2006 through 2008?

25 A Yes.

1 Q Okay. But do you remember giving sworn testimony in this
2 case?

3 A Excuse me?

4 Q Do you remember giving sworn testimony in this case?

5 A Yes.

6 Q Do you remember testifying that according to you,
7 Mr. Wiercinski disappeared in December 2007?

8 A Uh-huh. He went to --

9 Q So there were no remarks made in 2008 because he wasn't
10 there, correct?

11 A Right. He went to -- he went to -- he went to visit his
12 mother in Poland around December 2007. So of course we would
13 be excluding this time.

14 Q But through December 2007?

15 A When he left to Poland?

16 Q No. Through December 2007 you were hearing these remarks
17 made?

18 THE WITNESS: Can you?

19 (Through the interpreter.)

20 A Yes, yes, yes, 2007, yes.

21 Q But Mr. Wiercinski testified that after his lawyer sent a
22 letter in February of 2007 the conduct stopped. So it
23 wasn't -- not only wasn't it in 2008, but it couldn't have been
24 after February of 2007, correct?

25 MR. MORIARTY: Objection, your Honor.

1 THE COURT: Overruled.

2 A Well, those situation of course they were at the time that
3 I was working, the time that I was working over there, which
4 was from September 2006. It would be between any time of
5 September 2006 until 2007 when he left to Poland.

6 Q But according to you, Mr. Swiderski, during the time that
7 Mr. Wiercinski was there through December 2007 when he
8 disappeared it was your testimony, and it is your testimony
9 that the remarks were being made, correct?

10 A Yes.

11 Q Okay. So if Mr. Wiercinski testified that they stopped
12 well before then, it would not be consistent with what you are
13 now testifying to.

14 THE WITNESS: I need his help.

15 (Through the interpreter.)

16 THE COURT: You ought to put that in the form of a
17 question, Mr. Kaiser. That was a statement.

18 MR. DANIEL KAISER: Yes, your Honor.

19 THE COURT: Put it in the form of a question. That
20 was a statement.

21 MR. DANIEL KAISER: Okay. Sure. Withdrawn.

22 Let me ask the question again.

23 THE COURT: The testimony, please.

24 THE WITNESS: Okay. If you want to form it as a
25 question I can answer you better.

1 BY MR. DANIEL KAISER:

2 Q You were testifying, putting aside now -- we will have an
3 opportunity to see what Mr. Wiercinski testified to, but it is
4 your testimony that the conduct, the bad conduct occurred
5 through December 2007, correct?

6 A Yes, that's correct.

7 Q Now, you testified that this occurred many times?

8 A (In English) At least those times that I said what I
9 witnessed, and I also during the main time of work I overheard
10 like how they calling him, for example, not per his name as
11 Adam, Adam come over here. That was I heard a few times, not
12 as many but I heard him calling him as a Jew like, call this
13 Jew to come over here, not using his real name.

14 Q And this calling him a Jew, not using his real name, this
15 was occurring weekly?

16 A Between those years that I worked a few times. Maybe not
17 weekly. I didn't do this every week, but I heard once in a
18 while, at least like once a month.

19 Q So once a month during this time, that would be 24, 30
20 times?

21 A Um, more or less, more or less, not -- it's not like it
22 happened every month, but you could hear it, you could -- when
23 you are there working every day you could hear like once in a
24 while. I also didn't count how many days was it calling him as
25 a different name than he has.

1 Q No, I understand, but you said that -- we are trying to
2 get your best recollection.

3 If you worked from September 2006 to December 2007 and
4 it was about once a month, that would be -- I don't know -- 20
5 times?

6 MR. MORIARTY: Objection, your Honor. That's not
7 true.

8 A It was definitely less than that, definitely less than 20
9 times, but there was enough many times enough for me to stay in
10 my -- to memorize and remember those facts. It didn't happen
11 only once, that's for sure.

12 Q Did it happen more than a few times?

13 A I would say a few times.

14 Q A few times?

15 A Up to maybe seven times, five times calling those, being
16 called those names. That's what I heard.

17 Q Did Adam ever complain to you about this treatment?

18 A Yeah, of course. When we were talking, when we stopped by
19 during the time to have a few words, he was always, first of
20 all, upset; and when I ask him what's causing the trouble, he
21 said that those mistreatments and the financial matter too. Of
22 course that matters for him too because he was coming to, of
23 course, work and he is aged and he has to carry heavy
24 deliveries, the deliveries that make him feel pain and things
25 like that, and also humiliated.

1 He felt humiliated in front of other coworkers. That
2 was his -- the worst problem, because everybody saw what was
3 going with him. Everybody heard the names he would be called.

4 Q And he would talk to you about that, according to your
5 testimony?

6 A He mentioned this a few times.

7 Q Do you recall on page 63 -- do you recall giving sworn
8 testimony in this case?

9 A Excuse me? I'm sorry?

10 Q Do you recall providing sworn testimony in this case on an
11 earlier date?

12 A Yes, yes.

13 Q At a deposition?

14 A Yes.

15 Q And do you recall giving this answer to these questions?
16 Page 62, line 21.

17 "Question: But did he complain to you about those
18 comments?

19 "Answer: No. I was the witness. I didn't have a
20 very close relationship with Adam at that time and actually
21 never did have a very close relationship with him. Not that
22 close that he would complain to me.

23 "I have seen it, and it was enough for me to have
24 proof that he was called a name. He didn't have to state it to
25 me. That was something that was really unpleasant."

1 A Yeah, I said that. That was probably in the beginning of
2 my working, of my career working at Mangia 57.

3 Because later on there is also, after so many years I
4 remember more details, and I definitely recall Adam complaining
5 and coming to me. So if I said that, that's probably in the
6 beginning when I didn't know all the coworkers. But like early
7 2007 I knew Adam better already, and there was no way to don't
8 know him because he was a nice guy. So he always come to me,
9 always approach me, we talked together.

10 Q Now, you were deposed on December 17, 2010, thereabouts,
11 correct?

12 A Yes, deposition.

13 Q And you understood that you were to give complete and
14 truthful answers at that deposition?

15 A Yes, I understand.

16 Q So when you said no, that wasn't -- that wasn't truthful?

17 A I was -- I didn't remember. I mean like I guess there was
18 some details that I didn't remember that I remember clear right
19 now. I guess that's what happened. There is some stuff that I
20 still -- that come back to my memory. So what can I say.

21 Q Now, Adam would always complain to you about his
22 compensation, correct?

23 A About did Adam complain to me about the conversation?

24 Q Compensation.

25 A Oh, compensation. Oh, no, never.

1 Q Page 41, line 8.

2 "Question: Do you know what Adam received in tips?

3 "Answer" --

4 (Ringing noise in courtroom.)

5 THE COURT: What's the question?

6 Q Yes. Page 41, line 8. "Do you know what Adam received in
7 tips?

8 "Answer: I do not know exact amount. I know that he
9 was always complaining about his compensation."

10 A Yes, this is true, that he was complaining about his wage
11 because he was make way less.

12 He was always being given -- you could see this. So
13 there were people who were carrying deliveries worth a lot of
14 hundreds of dollars and there were deliveries for worth few
15 dollars, and the guy who was distributing was always giving
16 Adam the deliveries that there were less there and usually
17 heavy deliveries, far deliveries. That's why he was
18 complaining. That's how his wage was small.

19 Q Mr. Swiderski, you just testified that he never complained
20 to you about his compensation.

21 A I'm just -- I guess because he explained to me I
22 understood you wrong. I'm so sorry. He just translated for
23 me. I'm sorry.

24 Q But you also can speak English and you understand my
25 questions, don't you?

1 A Yes, I do understand. It's just sometimes -- this is my
2 second time. So please, to understand, I need his help too.

3 Q The anti-Semitism that you heard, that you allege to have
4 heard directed at Mr. Wiercinski, that you claim to have heard
5 directed at Mr. Wiercinski, was this in Polish?

6 (Through the interpreter.)

7 A Yes, in Polish, yeah, they were in Polish.

8 Q Now, you testified -- before I ask you that, did you ever
9 speak directly to Mr. Wiercinski about your testimony?

10 A No. I mean I spoke with him about. He -- of course he
11 asked me if I could help him and then to testify, and then I
12 agreed because I also work there. I saw what happened, and I'm
13 his friend. I like Adam, I like Mr. Wiercinski, and I decide
14 to help.

15 Q You never spoke about the substance of your testimony at
16 any time with Mr. Wiercinski?

17 A We never speak about details.

18 Q Anything?

19 A No.

20 Q So as you sit here today throughout the course of this
21 whole litigation you never had a single substantive discussion
22 with Mr. Wiercinski about what you know?

23 A I had a deposition, so, and Mr. Adam was in front of me.
24 So he knows everything, every word I said. There was not
25 between me and Adam. It's just in front of -- on other people.

1 So I guess I don't know if you consider this as a conversation
2 with Adam about the case.

3 Q Is your testimony that Mr. Wiercinski has not offered you
4 any compensation now or in the future for your testimony?

5 (Through the interpreter.)

6 A No, no, never.

7 MR. DANIEL KAISER: Can I have a moment, your Honor?

8 THE COURT: Yes.

9 MR. DANIEL KAISER: That's all I have. Thank you,
10 your Honor.

11 THE COURT: Any redirect?

12 MR. MORIARTY: Yes, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. MORIARTY:

15 Q Sir, just a very brief follow-up on the questions you were
16 just asked. Mr. Kaiser pointed to part of your deposition
17 testimony, from your previous testimony. You pointed to a part
18 where you said Adam did not complain.

19 Now, just prior to that testimony in your deposition
20 you stated -- and this is on page 60, line 8 -- it would be at
21 the end of lunch when we would be -- when we were being
22 evaluated. I would be standing behind Adam. So it was his
23 turn, and Zbozien would look at him and he would say, no, I'm
24 not going to account for that stupid Jew.

25 Now, my question is: When you mentioned a little bit

1 later on in your deposition testimony that Adam didn't complain
2 to you about specific incidents, was that the incident you were
3 referring to?

4 A Yes, yes. That was this incident as well as the other,
5 the same as his wage, and also he didn't like the other
6 incident of throwing coins on the floor.

7 Q But Adam did complain to you about other specific
8 incidents of discrimination, correct?

9 A I remember him complaining to me about the wage, the
10 money, the little money that he makes, and about that incident
11 that you just mentioned about, about calling him stupid Jew.

12 MR. MORIARTY: Okay. No further questions.

13 THE COURT: Anything else?

14 MR. DANIEL KAISER: No, your Honor.

15 THE COURT: Okay. You are excused.

16 Call your next witness.

17 MR. BLIT: The plaintiff calls Jaroslaw Ubowski.

18 THE CLERK: Please stand here. Raise your right hand.

19 THE WITNESS: Thank you.

20 THE CLERK: Please stand here. Please raise your
21 right hand.

1 JAROSLAW UBOWSKI, called as a witness, having been
2 first duly sworn/affirmed, was examined and
3 proceeded to testify as follows:

4 (Through the interpreter.)

5 THE WITNESS: Yes.

6 THE CLERK: Please be seated. Please state your full
7 name and spell it for the record.

8 THE WITNESS: My name is Jaroslaw Ubowski,
9 J-A-R-O-S-L-A-W U-B-O-W-S-K-I.

10 THE COURT: Please proceed.

11 DIRECT EXAMINATION

12 BY MR. BLIT:

13 Q Good morning, sir.

14 A Good morning.

15 Q I understand that you were previously employed by the
16 defendant Mangia 57.

17 Is that correct?

18 A Yes.

19 Q What were your dates of employment?

20 A Monday through Thursday from 11 o'clock until 10:00 p.m.,
21 and Friday 11:00 to 3:00, usually. Because sometimes, you
22 know, I stay Friday, you know, also a little bit more.

23 Q Do you remember what years you worked there?

24 A I started working there in 1999, in October.

25 THE INTERPRETER: I'm sorry '93, in October.

MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

1 Q What year did you stop working there?

2 A (In English) 2004, around December 17.

3 Q Why did you stop working there?

4 A I was sick.

5 Q Are you still sick with that same illness?

6 A Yes.

7 Q Did you know Adam before working with the defendants?

8 A No.

9 Q Did you meet Adam while working at the defendant
10 Mangia 57?

11 A Yes. We befriended one another.

12 Q Are you Jewish?

13 A No.

14 Q What religion are you?

15 A I'm a Catholic.

16 Q Who is Artur Zbozien?

17 A He was our dispatcher for night deliveries.

18 Q Did you ever witness Artur Zbozien make any discriminatory
19 comments to Adam?

20 A Yes.

21 Q What did you hear?

22 A I heard him being called all those disparaging names, like
23 stupid Jew, stinking Jew. And I saw incident when Zbozien
24 threw pennies at Adam and there was -- well, I can call it
25 Zbozien's group at employer, people who were closer to him; and

1 I called, I saw, and I heard all those people using the name
2 expressions, the same words, calling Adam names.

3 I myself was kind of persecuted by Artur Zbozien
4 because I was friendly with Adam.

5 Q Did Artur ever say anything to you for being friends with
6 Adam?

7 A You mean Adam or Artur?

8 Q I'm sorry. Did Artur ever try and bribe you not to be
9 friends with Adam?

10 A Well, yes. He at some point during the lunch he saw me
11 talking to Adam, and then he called me for face-to-face
12 conversation, during which he just tried to persuade me to quit
13 my friendship with Adam; and he said if I wouldn't I will be
14 earning less, and he said that he would pay particular
15 attention to it.

16 So at that point I refused. I just told him that it
17 was my personal matter and I didn't want him to get involved in
18 that kind of a behavior because, well, basically I don't like
19 when people are stepping with their shoes into my private life.

20 Q As a result of your refusal to stop being friends with
21 Adam, were you punished?

22 A Yes. He managed to give me four invoices. Those invoices
23 were found on me. They were from four different people, other
24 delivery boys. And it was insane because I would have to reach
25 into four different jackets and actually pull those invoices

1 and keep them on me.

2 And at that point I was the most experienced
3 deliveryman among all of those and I knew how the system
4 worked. So I wouldn't be doing that.

5 On the other hand, I believe that those invoices of
6 stealing, of which I was accused, were actually artificial
7 creations in order to fulfill some kind of accounts which
8 existed or maybe not.

9 THE COURT: Excuse me. There is no question pending.
10 Put your next question.

11 MR. BLIT: Okay.

12 Q Did you have a discussion with Artur Zbozien where he told
13 you what type of people he hates?

14 THE COURT: I think you can answer that yes or no.

15 A Yes.

16 Q What type of people did he tell you that he hates?

17 A He called me about a half hour earlier than usual to go to
18 the cashier and settle the account. On my way there -- it was
19 downstairs -- I heard him again cursing at Adam. So I stopped
20 for a moment and I just said, listen, Artur, I don't believe
21 you are as racist, you know, as your words are indicating; and
22 he said yes, I am. I hate Jews and niggers.

23 Q Did you ever sue Mangia 57?

24 A Yes.

25 Q What happened with that? I'm sorry. What happened with

1 that case?

2 A We settled.

3 Q Are you happy about that?

4 A Yeah.

5 THE COURT: Pardon?

6 THE WITNESS: Yes.

7 Q At any time prior to today did Adam ever offer you any
8 money to testify on his behalf?

9 A No.

10 Q Did Adam ever ask you to lie for him?

11 A No.

12 Q Are you here today pursuant to a subpoena from my office?

13 A Yes.

14 MR. BLIT: No further questions. Thank you.

15 THE COURT: Mr. Kaiser.

16 MR. DANIEL KAISER: Thank you.

17 CROSS-EXAMINATION

18 BY MR. DANIEL KAISER:

19 Q Mr. Ubowski, you testified that Mr. Zbozien told you in
20 this exchange who he hated.

21 Do you recall that testimony?

22 A Yes.

23 Q And you said that he used the N word, correct, he used the
24 N word?

25 A And you mean what?

1 Q He said he hates Jews and niggers, is that what he said?

2 A Yes.

3 Q And that's not something you would forget, when you hear a
4 word like that, correct?

5 A Well, I believe you, correct. You hear things like that
6 very infrequently.

7 Q And that's why on direct when you were asked to recount
8 the conversation you were very specific to say, he said I hate
9 Jews and niggers, correct?

10 A Yes.

11 Q He didn't say to you I hate Jews and blacks, for example,
12 because the N word would be something that would stick out in
13 your memory, correct?

14 A Probably.

15 Q Do you recall giving sworn testimony in this case earlier,
16 in a deposition?

17 A Yes.

18 Q And on page 64 do you recall giving this answer to this
19 question?

20 "Question: What did he say to you in response, if
21 anything?

22 "Answer: He said that he simply hates the Jews and
23 blacks and I'm getting involved with a Jew."

24 Why is it, Mr. Ubowski, since that was such a
25 startling part of that exchange, when you were under oath on

1 December 22, 2010 you would not have recounted that he used
2 such a vile word as nigger?

3 A No, no. It's written.

4 Q What?

5 A It's written, earlier, in my testimony. Maybe you lost
6 something simply.

7 Q I lost something, you testified to that?

8 A Of course I testified.

9 Q Well, I have your whole transcript here, and I don't think
10 that you did testify to that word anywhere in your sworn
11 testimony.

12 A Well, were you deposing me, ever?

13 Q I didn't take your deposition, but another lawyer did.

14 A I cannot be responsible for somebody else's mistakes.

15 Q But you can be responsible for your own sworn words,
16 correct?

17 A I always spoke under the oath using those two words,
18 Jewish and niggers.

19 Q So if it's not in your testimony it's because they didn't
20 hear you correctly; is that correct?

21 A I don't know if it's correct. Simply I am encountering
22 something like that first time in my life.

23 Q Did Mr. Adam Wiercinski ever complain to you about the
24 anti-Semitism?

25 THE COURT: Can you answer that yes or no? Do you

1 understand the question?

2 THE WITNESS: Yes.

3 THE COURT: Answer it yes or no, did he ever complain
4 to you.

5 A Yes, he did complain. Obviously he did. He was really
6 depressed. He was very sorry that there are people who
7 actually are persecuting him for being.

8 Q How many times did he complain to you about anti-Semitism?

9 A (In English) Few times.

10 Q Do you recall providing this answer to this question at
11 your deposition, on page 73?

12 "Question: Did Adam ever complain to you about
13 Zbozien calling him names directly?

14 "Answer: You mean Zbozien called Adam?

15 "Question: Meaning that Adam got called names
16 directly by Zbozien that Adam complained to you about.

17 "Answer: No, no."

18 MR. BLIT: Note my objection.

19 THE COURT: I don't know what you're objecting to, but
20 it's overruled. You think there is some discrepancy in the
21 transcript, you can redirect.

22 MR. BLIT: Okay.

23 THE COURT: Excuse me. I take it, Mr. Kaiser, was it
24 your question, was that your answer to that question?

25 MR. DANIEL KAISER: Yes.

1 Q Was that your answer to that question?

2 A Can you repeat it again?

3 Q Would you like me to read the testimony to you again?

4 THE COURT: Reread the question is what he is asking,
5 and his answer.

6 Q I'm going to reread it.

7 "Question: But did Adam ever complain to you about
8 Zbozien calling him names directly?

9 "Answer: You mean Zbozien called Adam?

10 "Question: Meaning that Adam got called names
11 directly by Zbozien that Adam complained to you about.

12 "Answer: No, no."

13 A That he didn't call him names?

14 Q You just testified, Mr. Uowski, that Adam complained to
15 you about the anti-Semitism, but you testified at your
16 deposition that he never complained to you about the
17 anti-Semitism. So which is it?

18 MR. BLIT: Objection.

19 THE COURT: Overruled.

20 MR. BLIT: It's a mischaracterization of testimony.

21 THE COURT: Please move on, Mr. Kaiser. Move on,
22 please.

23 MR. DANIEL KAISER: All right.

24 BY MR. DANIEL KAISER:

25 Q Did you know Mr. Wiercinski's religion?

1 A Generally speaking, no.

2 Q So you are not aware that he was Jewish?

3 A Well, at some point I assumed that he was, hearing the
4 names he was being called; but I am just a person who is not
5 really asking certain questions without being told first.

6 Q Were you at some point -- was it your testimony that you
7 were accused of stealing by Mangia?

8 A No.

9 Q I thought I may have misheard, something about invoices?

10 A Well, invoices, yes, but it wasn't Mangia. It was
11 Zbozien.

12 Q Are you currently employed?

13 A No.

14 Q And when was the last time you were employed?

15 A At Mangia.

16 Q So that was how many years ago?

17 A Nine.

18 Q Do you receive -- how do you support yourself? Do you
19 receive public assistance?

20 A Social security. I receive social security disability.

21 Q Is it your testimony that Mr. Wiercinski has not offered
22 you any future compensation in return for your testimony?

23 A He did not offer.

24 Q Have you ever spoken directly to Mr. Wiercinski about your
25 testimony?

1 A No.

2 MR. DANIEL KAISER: Can I have just one second, your
3 Honor?

4 (Pause.)

5 MR. DANIEL KAISER: That's all I have, your Honor.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. BLIT:

9 Q Mr. Ubowski, when you took the deposition with the
10 defendants on this case that he was referring to earlier, did
11 you have a translator with you?

12 THE INTERPRETER: Interpreter.

13 Q Interpreter?

14 A Yes.

15 Q Did you ever review -- did the defendant ever give you a
16 copy of this transcript?

17 A I don't remember.

18 Q Were you ever given an opportunity to read the transcript?

19 A I don't remember.

20 Q Were you ever given the opportunity to sign the
21 transcript?

22 A It's possible that when I testified?

23 Q After you testified.

24 A I don't remember.

25 Q Was it clear to you what type of people Mr. Zbozien hated?

1 A Yes.

2 MR. BLIT: Thank you. No further questions.

3 MR. DANIEL KAISER: Nothing further, your Honor.

4 THE COURT: Thanks. You are excused.

5 Do you have another witness?

6 MR. BLIT: No, not at this time.

7 THE COURT: Pardon?

8 MR. BLIT: We have --

9 THE COURT: Are you resting?

10 MR. BLIT: No. We have a deposition transcript to
11 read in.

12 THE COURT: Pardon?

13 MR. BLIT: We have unavailable witnesses that we
14 served with subpoenas that didn't --

15 THE COURT: You have unavailable witnesses?

16 MR. BLIT: Yes, your Honor.

17 THE COURT: Who are they?

18 MR. BLIT: Nothing further. We are going to rest,
19 your Honor.

20 THE COURT: All right. The plaintiff rests. I think
21 I told you that there will come a point in this trial when you
22 will hear an announcement that the plaintiff rests, and I told
23 you we will take a very brief recess at that point. It's the
24 mid-morning recess time anyway. So why don't you take the
25 opportunity to stretch your legs for a couple of minutes, and

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1 we will resume in about eight minutes. Okay.

2 (Jury exits.)

3 THE COURT: Mr. Kaiser.

4 MR. DANIEL KAISER: Yeah. Just a motion, your Honor,
5 and then we will be prepared to begin our case.

6 THE COURT: That's why I took --

7 MR. DANIEL KAISER: Our witnesses, we believe they are
8 here.

9 THE COURT: I take it you are going to proceed with
10 your case.

11 MR. DANIEL KAISER: Yes, your Honor.

12 THE COURT: And I took a recess because I thought that
13 perhaps you want to make a motion.

14 MR. DANIEL KAISER: Yes, your Honor, I do.

15 THE COURT: I will hear you.

16 MR. DANIEL KAISER: Your Honor, we move for a directed
17 verdict on the grounds that we don't think that any testimony
18 that came from the plaintiff was at all credible; that there
19 was reason to -- that no reasonable jury could believe the
20 story as was told to him.

21 But really, in particular, your Honor, that in
22 addition to taking the Fifth Amendment on all sorts of
23 questions relating to the social security issue, he took the
24 Fifth Amendment on questions related -- that go to his
25 perception of his alleged misconduct. I asked him specifically

1 why he didn't look for alternative employment during all these
2 years of harassment; and his subjective and objective
3 perception of his comments, critical to his claim, he took the
4 Fifth Amendment. He said I refuse to answer it on the grounds
5 it may incriminate me.

6 So that very critical state of mind, that inquiry into
7 a very critical state of mind, was a nonanswer from plaintiff;
8 and certainly the inference can be taken that he didn't make
9 any efforts to leave through all of these years of presumably
10 bad conduct that was going on.

11 I just don't think, your Honor, that a reasonable jury
12 can conclude that whatever happened or didn't happen that
13 Mr. Wiercinski, you know, can possibly have experienced that
14 conduct in a way that was subjectively and objectively
15 harassment. And there is all sorts of -- your Honor, I don't
16 want to go into all the details, the different stories of when
17 and how frequently that conduct may have occurred, but that's
18 our directed verdict.

19 THE COURT: Your motion is denied. You are obviously
20 making a motion based on questions of credibility, not
21 questions for the jury.

22 We will resume in about five minutes.

23 MR. DANIEL KAISER: Thank you, your Honor.

24 THE COURT: How many witnesses do you have,
25 Mr. Kaiser?

Ranfranz - Direct/Daniel Kaiser

1 MR. DANIEL KAISER: Five witnesses, your Honor.

2 THE COURT: Will they be available today for the most
3 part?

4 MR. DANIEL KAISER: I believe they will all be
5 available today.

6 THE COURT: So we might finish today?

7 MR. DANIEL KAISER: I think we can.

8 THE COURT: Okay. Fine. We will resume in about five
9 minutes.

10 (Recess.)

11 (Jury enters.)

12 THE COURT: Thank you. The plaintiff has rested. The
13 defendant will now put its case in and will call their
14 witnesses. All right.

15 So, Mr. Kaiser, call your witness.

16 MR. DANIEL KAISER: Robert Ranfranz, I call, your
17 Honor.

18 THE COURT: Pardon?

19 MR. DANIEL KAISER: I call Robert Ranfranz to the
20 stand.

21 THE CLERK: Stand here and raise your right hand.

22 ROBERT RANFRANZ, called as a witness, having been
23 first duly sworn/affirmed, was examined and
24 proceeded to testify as follows:

25 THE WITNESS: I swear.

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1 THE COURT: Please be seated. Please state and spell
2 your full name for the record.

3 THE WITNESS: Robert Ranfranz, R-A-N-F-R-A-N-Z.

4 DIRECT EXAMINATION

5 BY MR. DANIEL KAISER:

6 Q Good afternoon, Mr. Ranfranz.

7 A Good afternoon.

8 Q Are you currently employed?

9 A Yes.

10 Q Where are you employed?

11 A I work for Mangia.

12 Q And what is your current position with Mangia?

13 A I work as director of operations.

14 Q When were you first employed by Mangia?

15 A I start working there in October of 2004.

16 Q What was your first position at Mangia?

17 A I worked as a delivery person, delivery boy.

18 Q I'm sorry. Just keep your voice up.

19 A I work as a delivery person.

20 Q Just describe very generally, Mr. Ranfranz, what your
21 employment history was with Mangia.

22 A When I start in October of 2004 I start working as a
23 delivery person. I did hold that position for five years, more
24 or less, and then I was promoted to become dispatcher. That's
25 the person who sends orders out, and with that promotion I was

1 moved to another location.

2 After three years I became office manager in the
3 corporate office of the same company, and currently I'm working
4 as director of operations, same office.

5 Q Where is that office where you currently work?

6 A It's in the West Village, 62 Greenwich Avenue.

7 THE COURT: Mr. Ranfranz, if you can speak a little
8 more slowly the court reporter will be very grateful.

9 THE WITNESS: Absolutely.

10 THE COURT: Go ahead.

11 Q Mr. Ranfranz, do you know Adam Wiercinski?

12 A Yes, I do.

13 Q Keep your voice up.

14 A Sure. Yes, I do.

15 Q How do you know him?

16 A Well, in the beginning we worked together in the same
17 delivery crew.

18 Q Where was that?

19 A It was in the first location, at 50 West 57th Street.

20 Q Now, for approximately how long did you work with
21 Mr. Wiercinski?

22 A I assume it's -- I mean I work in publications for four
23 years. I'm not sure how long Mr. Wiercinski was working there.

24 Q Mr. Ranfranz, did there come a time when you spoke with
25 Mr. Wiercinski concerning this litigation?

1 A I'm sorry? Can you repeat that question, please.

2 Q Did there come a time when you spoke to Mr. Wiercinski
3 concerning this lawsuit?

4 A Yes. In August of 2007 I received a phone call from
5 Mr. Wiercinski in reference to his idea about the case.

6 Q Where were you when you received this phone call?

7 A I was in Atlantic City. That was a weekend I was away. I
8 went to Atlantic City for the weekend.

9 Q And so when you had this -- it was a telephone call?

10 A It was a telephone call.

11 Q And can you describe what was said to you and what you
12 said to Mr. Wiercinski during this telephone call?

13 A I pick up the phone, and Mr. Wiercinski start asking me if
14 I can speak, if I can talk to him for a second. I said sure, I
15 can. He said he would like to speak to me one to one.

16 I asked him what's the nature of the conversation,
17 what would you like to talk about, and he said to me he is not
18 happy with the way that things are going at Mangia, he is not
19 happy with Mangia, he is not happy with his immediate
20 supervisor, Artur Zbozien; and he said he is thinking about
21 opening a case, suing the company, and he asked me if I will
22 testify for him.

23 He also said that he will offer me thousand or \$2,000
24 as an exchange, and that if he wins the lawsuit we can speak
25 about additional money after the case.

1 Q What did you say in response to this -- Mr. Wiercinski
2 telling you this?

3 A I said -- in the first words I said that I'm not sure, I'm
4 not interested, and this is not the right time to talk about
5 it.

6 Q Why was it not the right time to talk about it?

7 A Well, I was in a restaurant. It was lunchtime, and I was
8 focused on my meal, not the conversation.

9 Q When was this conversation?

10 A When?

11 Q Like what year, what month, if you know?

12 A This was in August 2007. I don't know exactly when. It
13 was August 18. It was easy to figure out for me because that
14 was the week I was in Atlantic City. So tracing my days I
15 could tell exactly what date it was. So it was August 18 of
16 2007.

17 Q Did you ever speak to him again about it?

18 A No, we did not.

19 Q Did you know whether he ever attempted to call you again
20 about it?

21 A No, he did not.

22 Q During the time you worked as a food deliverer, were there
23 occasions when you would -- when the food deliverers would line
24 up to get tips?

25 A Yes, but can you tell me more specifically what you are

1 asking me? I don't understand your question.

2 Q I guess were there times when the food deliverers --
3 Mr. Zbozien would hand out compensation or tips that were owed?

4 A I still -- I'm not sure if I do understand the question.
5 I'm sorry.

6 Q That's okay. Did you -- were you witness to interactions
7 between Mr. Zbozien and Mr. Wiercinski? Let me ask it that
8 way.

9 A If I did see? Yes, I did see.

10 Q Yeah, did you see them interacting with each other?

11 A Sure, of course.

12 Q What were the occasions when you would see them
13 interacting with each other?

14 A When Artur Zbozien, he was the manager, he was kind of
15 like -- he did have high expectations from his own employees,
16 his crew, and his job was -- he was a dispatcher. His job was
17 to send orders out.

18 All the orders, they were assigned to particular times
19 of arrival to the customers. So his job was to make sure that
20 all the bags, all the deliveries were being delivered on time.
21 So obviously sometimes we had a pressure of time to be quick
22 with the actions to deliver food to the customers.

23 Q Go ahead.

24 A Sure. So his interaction with the delivery crew, which
25 includes me and Adam Wiercinski, means to proceed with

1 delivery, pack the food, and leave Mangia and go deliver the
2 food.

3 Q Would you see Mr. Zbozien interacting with Mr. Wiercinski
4 on occasion?

5 A Yes, I did.

6 Q Okay. And did you ever witness Mr. Zbozien directing
7 anti-Semitic remark at Adam?

8 A No.

9 Q Did you have your own work difficulties with Mr. Zbozien?

10 A I did, as much as everybody else. I mean we were just
11 working under pressure of time, but yes, I did.

12 Q You did?

13 A Yes.

14 Q Did you on any occasion, whether directed at
15 Mr. Wiercinski or not, did you ever see Mr. Zbozien or witness
16 him make an anti-Semitic remark, engage in anti-Semitic conduct
17 of any kind?

18 A No.

19 Q For how long have you been a director? I think you said
20 director of operations.

21 A I hold this position for last three years.

22 Q And for those three years you now work in the front
23 office?

24 A Yes.

25 Q Did you within the last year have occasion to hear of any

Ranfranz - Direct/Daniel Kaiser

1 information about the status of the litigation?

2 A Yes. About a year ago I overheard discussion in our
3 office about the Wiercinski case, and the conversation happened
4 between owner and some other employee, which I don't know the
5 people to tell who because I didn't see the person, but I heard
6 the conversation. And I decide to speak to Sasha after he
7 finished about this because I believed that I have some
8 information could be important to the case.

9 Q What did you say to Mr. Muniak at that time?

10 A I said to him that I did have conversation with Adam
11 Wiercinski in 2007.

12 Q And you related to him what you have now testified to?

13 A That is correct.

14 MR. DANIEL KAISER: That's all I have. Thank you.

15 CROSS-EXAMINATION

16 BY MR. MORIARTY:

17 Q Mr. Ranfranz, who promoted you to director of operations?

18 A Sasha Muniak.

19 Q Okay. And Mr. Muniak is your direct supervisor now; isn't
20 that correct?

21 A Yes.

22 Q And Mr. Muniak is responsible for your salary and your
23 continued employment at Mangia 57, correct?

24 A Yes.

25 Q You claim that Mr. Wiercinski asked you to testify on his

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1 behalf, but isn't it true that Sasha Muniak actually
2 specifically asked you to testify on his behalf at this trial?

3 A He asked me if I would said in this trial what I know
4 about, yes, he did.

5 Q Turning to the phone call that you allege that
6 Mr. Wiercinski made to you, you testified that Mr. Wiercinski
7 asked you to testify on his behalf; is that correct?

8 A Can you repeat the question, please.

9 Q You testified that Mr. Wiercinski on that phone call asked
10 you to testify on his behalf; is that correct?

11 A Yes.

12 Q Did Mr. Wiercinski ask you to do anything else in that
13 phone call?

14 A No.

15 Q So Mr. Wiercinski never asked you to testify untruthfully
16 in any way on his behalf, correct?

17 A The only question was if I would testify for him.

18 Q Mr. Wiercinski, if this phone call actually happened,
19 never asked you to say anything specific when you did testify,
20 correct?

21 A No.

22 Q And he never asked you to lie in any way, correct?

23 A No. We didn't talk. He only explained to me the nature
24 of the way -- he said he is not happy the way the company treat
25 him, and he also mentioned to me that he observed that I also

1 had a difficult time with the supervisor Artur Zbozien; and his
2 assumption was that I would be interested in helping him in
3 this case.

4 Q Okay. So on that call in 2007, as far back as 2007,
5 Mr. Wiercinski told you that he felt he was being mistreated by
6 Artur Zbozien; isn't that correct?

7 A Yes, that is correct.

8 Q Okay. Now, let's focus on the end of that phone call.
9 How did that phone call end?

10 A Well, I said to him that this is not the right place to
11 talk because, like I said before, I was in the restaurant, and
12 we should probably talk another time.

13 Q So there was some kind of understanding that there would
14 be a follow-up conversation about his request for you to
15 testify on his behalf, correct?

16 A Well, actually incorrect, because I said it to him before,
17 that I'm not interested in participating in his, you know,
18 question, his request.

19 Q Right, but I'm asking how the conversation ended. At the
20 end of the conversation it's correct that there was some kind
21 of understanding that there would be a follow-up conversation,
22 correct?

23 A Yes.

24 Q Okay. And then in the six-plus years since that
25 conversation there was never any contact by Mr. Wiercinski to

1 yourself about testifying, correct?

2 A Well, we saw each other on the street, but we never talk.

3 MR. MORIARTY: Okay. I have no further questions.

4 THE COURT: Thanks.

5 MR. DANIEL KAISER: No redirect.

6 THE COURT: Thanks. You are excused. Thank you.

7 Call your next witness, please.

8 MR. DANIEL KAISER: The next witness, Zindel

9 Zelmanovitch. We are going to get him in the hallway.

10 THE CLERK: Please come here. Stand here and raise
11 your right hand. Right over here, sir.

12 Please raise your right hand.

13 ZINDEL ZELMANOVITCH, called as a witness, having

14 been first duly sworn/affirmed, was examined

15 and proceeded to testify as follows:

16 THE WITNESS: I affirm, yes.

17 THE CLERK: Please be seated. Please state and spell
18 your full name for the record.

19 THE WITNESS: Zindel Zelmanovitch.

20 THE CLERK: Please spell that.

21 THE WITNESS: Z-I-N-D-E-L, the last name is

22 Z-E-L-M-A-N-O-V-I-T-C-H.

23 THE COURT: Proceed, Mr. Kaiser.

24

25

1 DIRECT EXAMINATION

2 BY MR. DANIEL KAISER:

3 Q Mr. Zelmanovitch, how are you?

4 A Thank you.

5 Q Mr. Zelmanovitch, are you familiar with the company
6 defendant in this case, Mangia?

7 A Yes, I do.

8 Q How are you familiar with Mangia?

9 A I know Mangia since middle of 1985. We are -- at that
10 time I was president of a company called Freshstart Venture
11 Capital, and Mangia had financial dealings with that company.

12 Q Do you know the owner of Mangia?

13 A Yes.

14 Q Who is that?

15 A Sasha Muniak.

16 Q Do you consider Mr. Muniak a friend?

17 A Yes, I do.

18 Q Do you know the plaintiff in this case, Adam Wiercinski?

19 A Yes.

20 Q And when did you first meet Mr. Wiercinski?

21 A Early '80s, when I was working with -- when I was working
22 with refugee resettlement agency in Brooklyn and Adam
23 Wiercinski was a client of the agency. The agency was helping
24 him to resettle in the United States. I was basically his case
25 coordinator.

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1 So I know -- I know Adam more than 25 years.

2 Q Have you -- over that 25 years has Mr. Wiercinski come to
3 you seeking advice?

4 A Yes. I consider myself, through the 25 years, I consider
5 myself that I was his, you know, through the years,
6 relationship developed. So from a case worker I became like a
7 sounding board, like sounding board for him for a little bit,
8 like a mentor to him. He always came to me with any problems
9 he had in his life. Basically my door was opened through all
10 25 years for Adam to come and talk any life problem that he
11 ever had.

12 Q Mr. Zelmanovitch, are you Jewish?

13 A Yes.

14 Q Did there come a time when you learned that Mr. Wiercinski
15 was no longer working at Mangia?

16 A I helped to find a job for Adam. I basically asked
17 Mangia --

18 THE COURT: The question was did there come a time
19 that you learned that he stopped working for Mangia. You can
20 answer that yes or no.

21 THE WITNESS: Yes, yes.

22 Q When did you learn that?

23 A I would say 15, 16 years ago.

24 Q How did you learn that?

25 A He -- Adam came to me basically asking me for a favor, I

1 should contact Sasha Muniak, because he was fired. Because he
2 told me at that time that he went to Canada and without
3 permission and he was fired. And he came to me, he asked me if
4 I can interfere.

5 He knows I have a good relationship with Sasha, that
6 he should be hired back as, you know, to work back to Mangia,
7 and I did.

8 Q So what did you do to get him rehired?

9 A I called Sasha and since, you know, and I ask him to help,
10 you know -- if a Jewish guy comes to me and says help me out,
11 he wants to get a job, I picked up the phone and call him,
12 called Sasha, and said do me a favor, hire the kid back.

13 Q Did they hire him back?

14 A Yes.

15 Q Did Mr. Wiercinski come to you on other occasions about
16 work issues?

17 A Yes, he did.

18 Q Did he come to you on other occasions about Mangia work
19 issues?

20 A Yes, he did.

21 Q Did Mr. Wiercinski speak to you about his compensation?

22 A Yes. He spoke to me that he is involved with a lawsuit,
23 that a group of employees of Mangia are suing Mangia. They
24 have some payroll or wage -- wage dispute issues. And he
25 basically told me that he is one of the group who is involved

1 in it.

2 Q What else did he say to you on that occasion?

3 A It's not only one occasion. We talked about that case
4 many times, but what -- what took me back a little bit was that
5 he basically indicated to me that from all -- and I don't know
6 how many was in the group who was suing Mangia, but all the
7 group that is suing Mangia for wage dispute he is the only one
8 who still works for Mangia.

9 So when I asked him at that time, you know, why do you
10 do that, he said basically I want to get fired. And when I
11 asked the question why do you want to do that, he says,
12 according to him, he will get triple damages. To me that
13 wasn't right to, on his part.

14 But let me add to it, Adam had nothing -- he indicated
15 to me that he had nothing to do -- he had -- he is not against
16 Sasha at all. He felt that the insurance company will cover
17 the awards for him. So he basically told me to stay out, to
18 stay out of that dispute.

19 As a friend who bought -- who knew both of them, who
20 knew Adam and who knew Sasha, I have been volunteered to
21 mediate that. I even volunteered to offer them my conference
22 room. I said, look, I know both you guys 25 years, let me
23 bring you in and let me help you. And Adam told me stay out of
24 it, and I did.

25 Q Do you recall anything else that Mr. Wiercinski said to

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1 you regarding that lawsuit?

2 A He was looking for money. He would have gotten a windfall
3 if that money -- if that thing settled. I even ask him who is
4 paying for the lawyers in that case, and he basically told me
5 somebody is doing it on a contingency basis.

6 Q Did Mr. Wiercinski on any occasion talk to you about
7 issues he had concerning deliveries or other work issues?

8 A Yes. He came and basically asked me that he is not
9 getting -- after he was rehired he complained that he is not
10 getting the routes that pay good tips.

11 It seems to me he was there for a long time. So he
12 knew that certain deliveries to certain buildings or certain
13 companies, people are tipping better than other places. So he
14 came to me if I can interfere with Sasha to get -- to get -- to
15 get the routes that are paying better tips.

16 Q Mr. Zelmanovitch, on any occasion did Mr. Wiercinski
17 communicate to you that he had been subject of anti-Semitism of
18 any kind while he worked at Mangia?

19 A No.

20 Q He never --

21 A Let me state it that if Adam would ever indicate it to me,
22 that Mangia or Sasha expressing anti-Semitism to him, I give
23 you my word I would have involved in that.

24 MR. BLIT: Objection.

25 THE COURT: Overruled.

1 Q Did he ever mention a gentleman by the name of Artur
2 Zbozien?

3 A Who?

4 Q Artur Zbozien.

5 A No.

6 Q So he never told you that Mr. Zbozien directed
7 anti-Semitic remarks to him?

8 A No.

9 Q Did he say anything about his supervisors saying
10 religiously derogatory things to him --

11 A No.

12 Q -- to you?

13 A No.

14 Q If he had come to you, Mr. Zelmanovitch, given your
15 relationship with Mr. Wiercinski, if he had come to you with
16 that kind of information, what would you have done?

17 A I would confront Sasha and confront Mangia, but you have
18 to understand who Sasha and Mangia is. Fifteen years ago Sasha
19 invited me to watch a movie in his office, okay. And the movie
20 was about Baal Shem Tov. Now, imagine, I mean, I almost
21 flipped out. You have here a Catholic guy who paid for -- who
22 paid for a TV crew, cameras to go and make a movie about the
23 Jewish man who started the Hasidic movement in the 1760s in
24 Mezeritch, Ukraine.

25 Now, that, the fact that somebody like Sasha could be

1 anti-Semitic, it's just preposterous.

2 MR. DANIEL KAISER: That's all I have on direct, your
3 Honor.

4 THE COURT: Pardon?

5 MR. DANIEL KAISER: I'm done, your Honor.

6 MR. BLIT: May we take a couple of moments, please?

7 (Pause.)

8 THE COURT: Please proceed.

9 CROSS-EXAMINATION

10 BY MR. BLIT:

11 Q Just briefly, sir, how did you meet Mr. Muniak?

12 A I was work at the time for RAV-TOV. It's a Jewish
13 resettlement agency in Brooklyn.

14 Q Did you become friends outside of work?

15 A I was friendly, yes.

16 Q What do you mean by that? Did you go out for dinner,
17 lunch?

18 A Friends mean that, as I said before, through the years,
19 through the 25 years I became many things to Adam. I became a
20 friend certain period of time, certain period of time a mentor,
21 certain period in 25 years I went through a lot of things --

22 Q I don't mean to cut you off, but my question is with
23 respect to Sasha Muniak, not Adam.

24 A I beg your pardon?

25 Q My question was with regard to Sasha Muniak, not Adam.

1 A I'm sorry. I misunderstood.

2 Q That's okay.

3 A Again, what was the question?

4 Q How often would you socialize with Mr. Muniak in your 25
5 years?

6 A Let me define the word -- the word --

7 Q Sure. I will ask you a different question.

8 Are you guys friends?

9 A Yes.

10 Q How close were you?

11 A If Sasha needs any help, any ideas in the financial world,
12 any feedback about capital markets, structure, he picks up the
13 phone and calls me. And if I need something from him, I pick
14 up the phone and call him.

15 Q What have you needed from him over the years?

16 A The only thing what I needed from him for the past 25
17 years, it was Adam Wiercinski.

18 Q And money, right?

19 A I beg your pardon?

20 Q Did he deliver envelopes? How did Adam come to you -- I'm
21 sorry. Withdrawn.

22 Why did Adam come to see you on occasions?

23 A On occasions, when he had delivery in my neighborhood,
24 let's say Fifth Avenue and 28th Street, he used to call me and
25 says can I stop in. I said yes, why not. He used to walk in

1 with his jacket that says Mangia on the back, with his bag, and
2 then he talked.

3 Give you an example. He had a girlfriend from Canada
4 that he brought in. He needed a job for her, he came to me.
5 He needed a job back to Mangia for himself, he came to me. So
6 anything that Adam wanted to bounce off of me, he did.

7 Q What about envelopes of cash from Mangia, Mr. Muniak, no?

8 A No.

9 Q How would Mr. Muniak pay back the loans?

10 A By check.

11 Q By check, no envelopes of cash?

12 A No.

13 Q So Adam's job was not to bring envelopes of cash to you?

14 A No.

15 Q And Adam told you that the reason he didn't quit and he
16 stayed at Mangia was to get fired and sue, correct?

17 A No. He was basically -- I asked him. He told me that he
18 is the only one from that group that was suing Mangia on wage
19 dispute, he is the only one working. So I asked the question
20 why. And his response was because if they will fire me I will
21 get paid triple damages.

22 Q So you feel he didn't quit so he can get more money
23 because he was fired, right?

24 A I'm just telling you what he told me.

25 Q Are you surprised to learn that he is not suing for being

1 fired?

2 A I believe that was settled.

3 Q Do you know that -- why he is here today?

4 A I think he is suing for Mangia for anti-Semitism.

5 Q Is it for getting fired?

6 A No, I don't know that.

7 Q How do you know he is suing for anti-Semitism?

8 A Sasha told me.

9 Q What else did Sasha tell you?

10 A That -- that Adam filed another lawsuit only by himself,
11 and he is claiming anti-Semitism at Mangia.

12 Q Did you ever go to Mangia?

13 A Yes.

14 Q How often would you go there?

15 A Two, three times a year.

16 Q During those two, three times a year, what would you do?

17 A I would have lunch with some business associates.

18 Q With Adam?

19 A No.

20 Q Why not?

21 A Because he had a job there, what to do.

22 Q Who would you eat lunch with there during those two or
23 three times a week?

24 A A few of the associates. Mangia had a few occasions. So
25 let's say if I had a meeting on 57th I ate at 57; if it was

1 48th, it was 48; if it was 40 Wall Street, it was 40 Wall
2 Street. So if I had a business associate there I met him
3 there.

4 Q Do you know who Artur Zbozien is?

5 A Who?

6 Q Artur Zbozien.

7 A No.

8 Q So it's almost impossible for you to tell if Artur Zbozien
9 ever made any comments directly to Mr. Wiercinski; is that
10 correct?

11 A That's correct.

12 Q Did you observe the workplace at all?

13 A Yes.

14 Q Did you notice whether or not anybody -- so it's fair that
15 you can't testify to whether there was a hostile work
16 environment going on there, from your own observations,
17 correct?

18 A Yes and no. Because when our company Freshstart Venture
19 Capital, that I mentioned before, did a loan to Mangia,
20 Freshstart Venture Capital is government -- government licensed
21 lender. And at that time Sasha Muniak, as the president of the
22 company, has to certify that there is no discrimination in any
23 shape or form in the company.

24 So I, not only myself, but I had some examiners who
25 visited Mangia 57th Street, and never in all these years that

1 the examinations were made never, ever anybody made a complaint
2 that I'm aware of.

3 Q Okay. Who are these examiners? Are they going to be
4 testifying here?

5 A No.

6 Q Now, as far as your dealings with Mangia 57, how much
7 money did you lend Mangia 57?

8 A I would say around \$150,000.

9 Q Quite a large sum of money, correct?

10 A No. It depends on the location of the store, how much is
11 the store producing, sale, income, profits.

12 Q So do you still have business with Mangia 57?

13 A No.

14 Q Was that money paid back?

15 A Yes.

16 Q Did your company have checks for that payback?

17 A Yes.

18 Q You have no idea why envelopes of cash were being
19 delivered to you, do you?

20 A No. I said no.

21 MR. BLIT: I nothing further, your Honor.

22 THE COURT: I'm sorry?

23 MR. BLIT: Nothing further.

24 THE COURT: Thanks. Anything further?

25 MR. DANIEL KAISER: No, your Honor.

1 THE COURT: All right. You are excused. Thank you
2 very much.

3 THE WITNESS: Thank you.

4 THE COURT: Do you have another short witness?

5 MR. DANIEL KAISER: Not a short. Could we begin?

6 THE COURT: All right. Why don't we recess for lunch
7 then, and we will resume at 2 o'clock.

8 Have a good lunch. Don't discuss the case. I will
9 see you at 2 o'clock. Thank you very much.

10 (Jury exits.)

11 THE COURT: So you have three more witnesses, do you?

12 MR. DANIEL KAISER: We have three more witnesses, your
13 Honor.

14 THE COURT: Okay.

15 MR. DANIEL KAISER: I think we should be able to
16 complete this today.

17 THE COURT: All right. Who are they?

18 MR. DANIEL KAISER: Artur Zbozien, Margaret Cymanow,
19 and Ross Furman.

20 THE COURT: All right. We will resume at 2 o'clock.

21 (Lunch recess.)

22 MR. BLIT: Are we going to have a charging conference?

23 THE COURT: What?

24 MR. BLIT: A charging conference.

25 THE COURT: We will. Let me give you a copy of the

1 charge which I prepared. You can look at it. Here is a copy.
2 Give one to Mr. Kaiser and give one to Mr. Blit and Mr. Kaiser
3 as well.

4 That's a proposed charge. If you want to look at it
5 now, it may save us a little time later.

6 MR. BLIT: And the jury questionnaire?

7 THE COURT: Pardon?

8 MR. BLIT: The jury sheet, the verdict sheet?

9 THE COURT: I will get to that at the appropriate
10 time.

11 (Lunch recess.)

12 (Continued on the next page.)

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Zbozien - Direct/Daniel Kaiser

1 A F T E R N O O N S E S S I O N

2 (In open court.)

3 (Jury enters.)

4 THE COURT: Thank you. Mr. Kaiser, call your next
5 witness.

6 MR. DANIEL KAISER: Your Honor, I call Artur Zbozien.

7 (Witness sworn.)

8 THE CLERK: Please be seated. Please state and spell
9 your full name for the record.

10 THE WITNESS: Artur Zbozien.

11 THE CLERK: Spell it, please.

12 THE WITNESS: A-r-t-u-r Z-b-o-z-i-e-n.

13 THE COURT: Mr. Kaiser, go ahead.

14 ARTUR ZBOZIEN, called by the Defense, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. DANIEL KAISER:

18 Q Mr. Zbozien, good afternoon.

19 A Good afternoon.

20 Q When did you come to the United States?

21 A I came in 1997.

22 Q And currently, are you a United States citizen?

23 A Yes, I am.

24 Q And where did you come from?

25 A Poland.

SB

OCR

RMR

CRR

1 Q Do you currently work for Mangia?

2 A Excuse me?

3 Q Do you currently work for Mangia?

4 A Yes, I do. I work at Mangia 23rd Street location.

5 Q How long have you worked at Mangia?

6 A For almost 16 years.

7 Q And describe generally your work history with Mangia.

8 A Can you repeat that, please?

9 Q Your work history with Mangia.

10 A I started when I came to the United States. I started
11 working at Mangia 57th Street for a couple of years, and then I
12 worked at Mangia Wall Street, and now I'm working at Mangia
13 23rd Street location.

14 Q And what is currently your position?

15 A I work as an evening dispatcher.

16 Q And as an evening dispatcher, who do you report to?

17 A I report to my supervisors. In this case, it's the
18 catering manager.

19 Q Who is that?

20 A It's Robert Bazgier.

21 Q What are -- just generally, as an evening dispatcher, what
22 are your job responsibilities?

23 A I'm responsible for making sure that everything is
24 delivered on time, that everything is prepared for all the
25 deliveries. And I'm responsible for checking orders for the

1 next day, to make the orders for the stuff that we need for
2 deliveries. And I have to close the day, check out the papers,
3 check people out, and close the day.

4 Q When you say "check people out," what do you mean by that?

5 A It's -- you're checking from all the deliveries they make
6 throughout the day, counting them out and giving the money for
7 the tips they make.

8 Q So you're describing activity that you have, your
9 interactions with the food deliverers?

10 A Yes.

11 Q Do you know who Margaret Cymanow is?

12 A Yes, I know. She was -- she is -- she was my manager from
13 Mangia.

14 Q And did you report to her at any point in time?

15 A No. I reported to my supervisors.

16 Q So there was no point in your work history that you
17 reported directly to Margaret?

18 A No.

19 Q Describe, Mr. Zbozien, the physical work environment, your
20 physical work environment.

21 A We work -- at Mangia 57, we were working in lower level at
22 the location. And there's a small space. There's plenty of
23 people, delivery people packing the orders, making deliveries,
24 coming and going out. And there's people who prepare those
25 deliveries and packing them and sending them out.

1 Q Now, this is -- did Mangia have a basement?

2 A Yes. That's the basement.

3 Q And so you just described the basement area?

4 A Yes.

5 Q And were there -- during the time -- during the hours that
6 you worked in the basement, how many people were down there,
7 how many Mangia employees?

8 A There was probably around 50, 60 people.

9 Q And did you work at any other location within Mangia?

10 A Yes, I did.

11 Q Where?

12 A I worked in Mangia Wall Street, and I'm currently working
13 Mangia 23rd Street.

14 Q I mean other than the basement, did you work, for example,
15 in the kitchen or other work locations?

16 A The evening deliveries were sent from the restaurant
17 upstairs.

18 Q And how long have you been an evening dispatcher?

19 A Since -- probably since like 2001 or 2.

20 Q Mr. Zbozien, do you know the plaintiff in this litigation,
21 Adam Wiercinski?

22 A Yes, I do.

23 Q When did you first meet Mr. Wiercinski?

24 A I met him probably 1999, when he came to work at the
25 Mangia 57th Street location.

Zbozien - Direct/Daniel Kaiser

1 Q And when he came to work as a food deliverer?

2 A Yes, he did.

3 Q And how was your relationship with him at that time?

4 A At the time, the relationship was very good. We talked
5 about sports. We hang out. We went once with a couple of
6 people to the restaurant in Seaport, and he was helping me with
7 looking for the apartment in his neighborhood. So I think it
8 was very good.

9 Q Did there come a point when the relationship began to
10 deteriorate?

11 A Yes, it did.

12 Q First, my first question is, about when did that happen?

13 A It happened like probably two, three years after he
14 started working at Mangia 57th Street.

15 Q And why did it happen? Describe the circumstances of
16 that.

17 A One day, he approached me and asked me to place a gambling
18 bet for him. And I agreed to it because we were -- we had a
19 good relationship. And I explained to him that if we lose, he
20 have to pay me money about a week time.

21 And after this, unfortunately, we lost. And when the
22 time come, I asked him to give me the money for the loss. And
23 he give me a very hard time to give me money back, but
24 eventually he did. And from that, I saw that he's not really
25 an honest person.

SB

OCR

RMR

CRR

1 Q So how did you begin to behave with respect to him?

2 A Can you repeat that?

3 Q After you saw -- you said you saw that he was not an
4 honest person, how did you begin to behave with respect to him?

5 A I just started like -- my relationship came -- like was
6 come to the -- on the professional level.

7 Q Meaning you tried to keep it on a professional level?

8 A Yes.

9 Q Did there come a time when Mr. Wiercinski disappeared from
10 his shift?

11 A Yes, he did, many times.

12 Q Well, can you explain one of those instances?

13 A Yes. One of the incidents, when he was gone, Mr.
14 Wiercinski was gone for almost two hours. When he came back, I
15 asked him about his whereabouts, and he started yelling,
16 cursing and be aggressive towards me, and he told me that this
17 is not my business to ask him.

18 Q And what happened after that?

19 A After that, I didn't say anything, because I knew that he
20 had good connection with the owner. I didn't want to get in
21 trouble, so I didn't say anything. I went straight to my
22 supervisor and explained the whole situation.

23 Q When you say "good connection with the owner," are you
24 referring to Sasha Muniak?

25 A Yes.

1 Q But you went and complained to who?

2 A I went to complain to my supervisor, Monika Ptaszek at the
3 time, because she was the only one that was at this time with
4 Mangia.

5 Q And what was her position?

6 A She was -- she was a manager for the whole Mangia 57th
7 Street location.

8 Q What did you say to her?

9 A I explained to her the whole situation, told her what
10 happened in front of everybody that was downstairs. And that's
11 it. I just explained the whole situation.

12 Q And did she provide you any advice?

13 A She said -- she told me that it is good that I came to
14 her. And she told me -- because nobody was there, so she told
15 me that next day she will talk to Margaret Cymanow about it.

16 Q Did you hear anything further about that?

17 A From Monika or --

18 Q Monika.

19 A No.

20 Q Now, Mr. Zbozien, did there come a time when Mr.
21 Wiercinski complained about you?

22 A I heard that he -- I assume that he was making complaints
23 about me.

24 Q Did Margaret Cymanow come to you about it?

25 A Yes, she did. She told me that he was complaining about

1 me.

2 Q What did Margaret Cymanow tell you?

3 A That he complain about my behavior towards...

4 Q And specifically, did she tell you why?

5 A About the incident that was -- took place, and that I'm
6 mistreating him, something like that, so forth.

7 Q And did she give you -- were there any instructions from
8 her?

9 A After the incident, she told me that there's -- they need
10 somebody on Mangia Wall Street. So she want to move me there
11 because of the incident, because she didn't -- she told me that
12 we don't need any incident like this in the workplace.

13 Q So she transferred you?

14 A Yes, she did transfer me to Wall Street for a month or
15 two.

16 Q Now, did Ms. Cymanow tell you that he was complaining
17 about your anti-Semitic conduct of any kind?

18 A No, she never did.

19 Q Did you learn at some point that there was a complaint he
20 made about anti-Semitism?

21 A I just heard from the rumors. And when I did -- after
22 they did testimony, I read the whole accusations, and that's
23 when I really found out about this.

24 Q So you heard at the time there were rumors that he had
25 complained of anti-Semitism?

1 A There was rumors, yes.

2 Q Do you know where you heard that from?

3 A I heard something like -- I don't know. I don't remember
4 who specifically told me about this. But there were people
5 that I work with.

6 Q After you were transferred, were you transferred again?

7 A Yes, I was. I was transferred back to Mangia 57th Street.

8 Q And when was that?

9 A That was after I think a month or two after they
10 transferred me to the Wall Street location.

11 Q After you were transferred back, did your level of contact
12 with Mr. Wiercinski change in any way?

13 A After what I assumed happened and those things, I only
14 limited our work to the professional level.

15 Q Did you try to limit your contacts with him?

16 A After what happened, yes.

17 Q Now, in this litigation, Mr. Wiercinski has accused you in
18 particular of anti-Semitic conduct. My question to you is,
19 have you on any occasion directed an anti-Semitic remark
20 against Mr. Wiercinski?

21 A No, I never did.

22 Q Did you call him a dirty Jew on any occasion?

23 A No.

24 Q Did you throw pennies on him on any occasion?

25 A No, I did not.

1 Q Did you call him a stupid Jew?

2 A No.

3 Q Did you call him a fucking Jew?

4 A No.

5 Q Any anti-Semitic remark on any occasion did you direct at
6 Mr. Wiercinski?

7 A No, I never did.

8 Q At any time, did you instruct other employees of Mangia
9 not to speak to Mr. Wiercinski?

10 A No. I wasn't instruct to -- to tell anybody about -- to
11 limit his contact with him.

12 Q Did you have the authority, Mr. Zbozien, to hire or fire
13 at Mangia?

14 A No, I never did.

15 Q During the time that you were at Mangia, did you direct --
16 did you make anti-Semitic remarks towards any Mangia employees?

17 A No, I never did.

18 Q At some point during Mr. Wiercinski's Mangia employment,
19 at some point did you regard him as a friend?

20 A Yes, I did.

21 Q When was that?

22 A In the beginning of our work together, when he was --
23 start working at Mangia 57th Street.

24 Q And when did that end?

25 A After the incident, the gambling incident that we had.

1 Q The gambling incident?

2 A Yes.

3 Q Thank you, Mr. Zbozien.

4 A Thank you.

5 THE COURT: Go on, Mr. Blit.

6 CROSS-EXAMINATION

7 BY MR. BLIT:

8 Q So you testified that Adam wasn't an honest person because
9 he paid you back for the gambling; correct?

10 A No. I said that he gave me very hard time. He didn't
11 want to pay his debt. That's why I said that he wasn't an
12 honest person.

13 Q But he, in fact, paid you back?

14 A Yes, he did, later on.

15 Q So was he honest after he paid you back?

16 A It didn't look at this time when this happened.

17 Q But he paid you back; right?

18 A Yes, he did.

19 Q So now that he paid you back, he's an honest person;
20 right?

21 A I don't know if you can say that.

22 Q Why not?

23 A Because he was giving me a very hard time to give me the
24 money.

25 Q But he paid you back; right?

1 A Yes, he did.

2 Q Okay. You testified you confronted him about coming back
3 two hours late; correct? Disappearing for two hours?

4 A Yes.

5 Q And what right did you have to ask him that?

6 A Because I -- that was my job. Because I have to overlook
7 every delivery person, and especially on a time when we're
8 busy. I need people to send with deliveries and I have to
9 count on everybody. So when somebody disappears for two hours,
10 this is not the way it's supposed to be.

11 Q And who gave you that authority to do that?

12 A It's my position that gives me this authority, because I
13 have to make sure that everything's going to be delivered on
14 time.

15 Q So you were Adam's supervisor?

16 A At the time, yes.

17 Q As the dispatcher, you would determine who delivers what
18 food to what company; correct?

19 A Yes.

20 Q How many times have you spoken with your attorneys before
21 testifying here today?

22 A I think it was two or three times.

23 Q And when were those two or three times?

24 A It was two weeks ago and last week. So it was two times.

25 Q And you testified at deposition for this case; correct?

1 A No.

2 Q Oh, I'm sorry, excuse me. You testified at the Division
3 of Human Rights for this case; correct?

4 A Human -- no, I did not.

5 Q Did you give an affidavit to the Division of Human Rights?

6 A For Human Rights?

7 Q Yes.

8 A I did affidavit, but I don't know if it was for actually
9 this what you're referring to.

10 Q The document -- you prepared a document; correct?

11 A Yes.

12 Q Did your attorneys write it for you or did you write it?

13 A I did.

14 Q Who typed it?

15 A The attorneys at this time.

16 Q And are you here pursuant to a subpoena?

17 A Excuse me?

18 Q Are you here pursuant to a subpoena?

19 A I don't understand what you're saying.

20 Q Did you receive any legal documents that commanded you to
21 be here today?

22 A No, I did not.

23 Q How did you know to come here?

24 THE COURT: I'm sorry?

25 BY MR. BLIT:

1 Q How did you know to come here?

2 A I was told to come here to testify.

3 Q And who told you that?

4 A My boss, Sasha Muniak.

5 Q And he owns the company; right?

6 A Yes, he does.

7 Q You don't want to let him down, do you?

8 A I do my best, try to work as hard as I can and be honest.

9 Q And if you testify here today that you, in fact, did make
10 anti-Semitic remarks, do you expect to be fired?

11 A I don't know. That's not true. I didn't make any
12 anti-Semitic comments, never.

13 Q I understand what your testimony is, but I'm asking you
14 whether if you testified here today that you made anti-Semitic
15 remarks --

16 MR. DANIEL KAISER: Objection.

17 THE COURT: Sustained. Sustained.

18 Q Do you know if you would have been fired had you -- if you
19 testified here today that you made anti-Semitic remarks?

20 MR. DANIEL KAISER: Objection, Your Honor.

21 THE COURT: Sustained.

22 Q If you testify here today that you made anti-Semitic
23 remarks, would you cost the company a lot of money?

24 MR. DANIEL KAISER: Objection, Your Honor.

25 THE COURT: Sustained.

1 Q You testified you knew that Adam made -- claimed that you
2 made anti-Semitic remarks to him; correct?

3 A Yes.

4 Q And you testified it was a rumor?

5 A Yes, I did.

6 Q And, in fact, this is the first time you've ever said
7 something like that; correct?

8 A I don't know what you mean. I testified that I heard --
9 first, there was rumors. And then I learned from -- when I was
10 giving the affidavit testimony about the accusations he made
11 about me.

12 Q Earlier you told me that you submitted an affidavit to
13 Division of Human Rights; right?

14 A I did make the affidavit, but I don't know where it was
15 going to.

16 Q Okay. I'm going to show you on the screen right now a
17 copy of the affidavit that your attorneys provided me that you
18 submitted to the Division of Human Rights. Do you see that on
19 your screen?

20 A Yes, I can see.

21 Q Is that the document you submitted?

22 A Yes.

23 MR. DANIEL KAISER: Your Honor, is he introducing
24 this into evidence, the affidavit?

25 MR. BLIT: It's not on the screen yet.

1 THE CLERK: Well, I don't want to show it to the jury
2 if it's not.

3 MR. BLIT: No.

4 Q And on the document, do you see your name? It says:
5 "Artur Zbozien, being duly sworn, deposes and says." Do you
6 see that?

7 A Yes.

8 Q Does that mean you swore to tell the truth in this
9 document?

10 A Yes.

11 Q Turn to the last page. You signed this; right?

12 A Yes.

13 Q And that's your name?

14 A Yes.

15 Q That's your signature?

16 A Yes.

17 Q And that was before a notary; correct?

18 A Yes.

19 MR. BLIT: I'm going to ask that this be marked as
20 Plaintiff's Exhibit 1 and introduced into evidence.

21 MR. DANIEL KAISER: I object, Your Honor. It's prior
22 testimony. I don't know what --

23 THE COURT: What's the purpose of it?

24 MR. BLIT: It's a prior sworn statement, an affidavit.

25 THE COURT: What about it?

1 MR. BLIT: And he just testified that it's a true and
2 accurate copy of his affidavit. I'm just about to ask a
3 question.

4 THE COURT: Come on up, Mr. Blit.

5 (Continued on the next page.)
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1 (Sidebar conference.)

2 THE COURT: Is this a prior inconsistent statement?

3 MR. BLIT: It's a prior inconsistent statement.

4 THE COURT: What's the inconsistency?

5 MR. BLIT: There's nothing in here that says it was a
6 rumor.

7 MR. DANIEL KAISER: He doesn't say how he learned it.
8 He could have learned from the rumor.

9 THE COURT: You mean the word "rumor" isn't there?

10 MR. BLIT: It says down there -- I'm sorry -- the
11 supervisor told him.

12 THE COURT: Is it your view that because the word
13 "rumor" isn't in there, is that what your inconsistency is?

14 MR. BLIT: Yes.

15 THE COURT: But when he says, "I later learned in
16 response to this incident," what does that mean for you?

17 MR. BLIT: It means that because the next sentence
18 specifically states that it was a supervisor.

19 THE COURT: Well, he did testify to that just now.

20 MR. BLIT: No, he didn't say that a supervisor told
21 him about the rumor.

22 THE COURT: I'll allow it.

23 (End of sidebar conference.)

24 (Continued on the next page.)

25

1 (In open court.)

2 THE COURT: We'll mark that as Defendant's A. Go on,
3 Mr. Blit.

4 (So marked as Plaintiff's Exhibit 1.)

5 Q But, in fact, you were told about this by Ms. Cymanow;
6 correct?

7 A Yes.

8 Q So are you lying now or were you lying to your attorney?

9 A No, I'm not lying. I'm just telling the truth.

10 Q Well, earlier you told me it was based upon a rumor. Now
11 you're telling me you were told this by your supervisor.

12 A That was based on the rumor. And the supervisor told me
13 about the complaints Mr. Wiercinski is making about me.

14 Q So what was the rumor?

15 A It was that he went and complained about me.

16 Q But you, in fact, know it wasn't a rumor, it was true;
17 correct?

18 A Later I found out it was true.

19 Q Did any manager at Mangia ever ask you if you used
20 anti-Semitic remarks to Adam?

21 A No, never.

22 Q But the supervisors knew that he made a complaint that you
23 did; correct?

24 A Yes. But no anti-Semitic comments that I made.

25 Q But you knew the manager knew about the anti-Semitic

1 comments that were alleged that you made; correct?

2 A I believe so, later that I found out.

3 Q Do you know if you would have been fired if you admitted
4 to making anti-Semitic remarks when they asked you back when
5 you were -- during this -- before your transfer?

6 MR. DANIEL KAISER: Objection.

7 THE COURT: Sustained.

8 Q Were there any written warnings or complaints given to
9 Adam for showing back up to work two hours late?

10 A No, I don't think so.

11 Q Do you know if he was put on any type of performance
12 improvement plan?

13 A Excuse me?

14 Q Was he put on any improvement plans for not showing up on
15 time?

16 A I don't know anything about it.

17 Q Do you know if he was disciplined?

18 A Probably somebody was talking to him about this.

19 Q I asked if you know.

20 A No, I don't.

21 Q Are you being paid by Mangia to be here today?

22 A No, I'm not.

23 Q You're not receiving a salary today?

24 A I don't know.

25 Q Did anybody tell you you would not be paid for today?

1 A No.

2 Q So, as far as you know, you're being paid for today;
3 correct?

4 MR. DANIEL KAISER: Objection, Your Honor.

5 THE COURT: Sustained. Move on, Mr. Blit.

6 MR. BLIT: Nothing further.

7 MR. DANIEL KAISER: I just have a couple, one or two
8 questions, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. DANIEL KAISER:

11 Q I think there may have been some confusion, so I just want
12 to straighten one thing out, Mr. Zbozien. When Ms. Cymanow
13 came to you to tell you about Artur Zbozien's complaint, did
14 she at that time tell you that there was any anti-Semitism?

15 A No, she didn't.

16 Q And when you learned that there was an anti-Semitic
17 complaint, did that come from Ms. Cymanow, that information?

18 A No.

19 Q Do you know -- do you remember where it came from?

20 A I -- like I said, I heard the rumors. People were talking
21 that he make such an accusation about me. And later, I found
22 out from the testimony when that was given.

23 Q Thank you.

24 MR. DANIEL KAISER: That's all, Your Honor.

25 THE COURT: Anything further? If not, you're excused.

1 Thank you very much.

2 MR. BLIT: Just one moment, Your Honor, please. Give
3 me one moment, please. (Pause.) Nothing further.

4 THE COURT: You're excused. Call your next witness.

5 MR. DANIEL KAISER: I call Margaret Cymanow to the
6 stand, Your Honor. I call Margaret Cymanow to the stand.

7 (Witness sworn.)

8 THE CLERK: Would you please state and spell your
9 full name for the record.

10 THE COURT: My name is Margaret Cymanow,
11 C-y-m-a-n-o-w.

12 MARGARET CYMANOW, called by the Defense, having been first
13 duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DANIEL KAISER:

16 Q Good afternoon, Ms. Cymanow. Ms. Cymanow, are you
17 currently employed by Mangia?

18 A Yes. I was full-time employee since 2010. Right now, I
19 am doing a part-time consulting job for --

20 THE COURT: Ms. Cymanow, listen to the question and
21 answer it.

22 Yes or no, you are currently employed by Mangia?

23 THE WITNESS: Yes.

24 THE COURT: Okay. Go on, Mr. Kaiser.

25 Q And when did you begin your employment with Mangia?

1 A 1982.

2 Q And, Ms. Cymanow, can you give us an overview of your work
3 history with Mangia?

4 A I started at Mangia as a sandwich maker/contact person,
5 and then I was promoted to supervisor of catering department,
6 and in few years I become general manager of Mangia.

7 Q And, Ms. Cymanow, can you just briefly describe your
8 educational background?

9 A I have a master's degree of physics. Before I came to the
10 States, for four years I taught physics in high school.

11 Q And that was in Poland?

12 A That was in Poland.

13 Q And are you a citizen of the United States?

14 A Yes, I am.

15 Q Do you have a family relationship with the owners of
16 Mangia?

17 A Yes. Sasha Muniak is my brother.

18 Q Describe generally what the responsibilities of your
19 general manager position are.

20 A My responsibility is to ensure the day-to-day operation
21 runs smooth, alongside with managers and head departments.

22 Q And what positions reported to you?

23 A Store managers, catering manager. That's mainly this
24 position.

25 Q In particular, Ms. Cymanow, what were your supervisory

1 responsibilities?

2 A Could you repeat that? I'm sorry. I didn't hear.

3 Q That's okay. What were your supervisory responsibilities
4 as a general manager?

5 A As a general manager? To make sure to run the whole
6 operation, together with managers and chefs, create the menu,
7 make sure everything day-to-day runs smooth.

8 Q Do you know the plaintiff in this lawsuit, Adam
9 Wiercinski?

10 A Yes, I do.

11 Q How did you first come to know Mr. Wiercinski?

12 A In -- around 30 years ago, Mr. Wiercinski, Adam, he was a
13 friend of my husband.

14 Q And did you socialize with Mr. Wiercinski?

15 A Yes, we do. I invite him to my home with any holidays,
16 Christmas, other birthdays. Our family was friends with him.

17 Q And you said he was a friend of your husband's?

18 A Of my husband's, yes, with my husband.

19 Q And are you still married?

20 A No. I am a widow. My husband passed away 18 years ago.

21 Q How did you initially get along with Mr. Wiercinski? How
22 did you get along with Adam?

23 A Good. In general, good.

24 Q What was Adam Wiercinski's job?

25 A He was a delivery person, delivery boy position.

1 Q During the time he was a delivery person, were there any
2 work difficulties with him?

3 A He -- he was okay, but he was always trying to find out
4 how to earn as much money as possible with small effort.

5 Q At some point, did Adam Wiercinski get fired from Mangia?

6 A Yes, I fire him.

7 Q Do you remember when that was?

8 A I really don't know. That was --

9 Q Why did you fire him?

10 A -- years ago. I fire him because, simply, he was lazy,
11 not following rules, try to always find a way not to obey. And
12 also, he extend his vacation time. He expect to be treated
13 special way.

14 Q Did there come a time when he was rehired?

15 A Yes, he was rehire.

16 Q How did that come about? What were the circumstances of
17 his rehire?

18 A Mr. Zelmanovitch come to Sasha. Mr. Zelmanovitch is
19 business associate. Come to Sasha and ask owner of the company
20 to rehire Adam.

21 Q And did you follow that instruction?

22 A Yes, of course.

23 Q Now, Ms. Cymanow, at any time, at any time, did you on any
24 occasion direct an anti-Semitic remark of any kind towards Adam
25 Wiercinski?

1 A Never in my life. My great grandmother is a Jew, was a
2 Jew. Most of her family die in Holocaust. How can I? Never.

3 Q Do you know what yopek is, did you ever hear that, yopek
4 or jopek? You've heard that presumably derogatory word?

5 A That's a Polish word or --

6 Q I think a Polish word. Have you ever heard of it?

7 A Could you repeat this word?

8 Q I'm probably mispronouncing it. Yopek or jopek.

9 A I don't have a clue what that means.

10 Q Have you ever directed an anti-Semitic remark at any
11 Mangia employee?

12 A Never.

13 Q Have you, on any occasion, witnessed a Mangia employee or
14 manager directing an anti-Semitic remark at Adam Wiercinski?

15 A No, no.

16 Q On any occasion, did you witness any Mangia employee or
17 manager directing an anti-Semitic remark at anyone?

18 A No, not ever.

19 Q What would have been -- if Mr. Wiercinski had come to you
20 with a discrimination complaint of any kind, what would have
21 been your responsibilities at Mangia?

22 A I need to get involved if he would come to complain about
23 anti-Semitic remarks, discrimination remarks.

24 Q And how would you do that?

25 A But there's never a cure.

1 Q No, I know. But I'm sort of asking a question about what
2 your responsibilities would have been.

3 A I have to get involved, talk to people, find out what
4 really happened, and follow our rules. We had handbook with
5 everything was marked in there.

6 Q Do you know who Artur Zbozien is?

7 A Yes.

8 Q Who is he?

9 A He's supervisor at Mangia.

10 Q And did on any occasion in particular you notice, witness,
11 observe Mr. Zbozien directing anti-Semitic remarks at Mr.
12 Wiercinski?

13 A No.

14 Q At some point, did Mr. Wiercinski come and complain to you
15 about Mr. Zbozien?

16 A Yes, he did. He come. He complain to me. But his
17 complaint was about money, that he's not making enough money.
18 And mainly, he told me how I can still keep Artur Zbozien in
19 the position as manager, because he's, in Polish word means hom
20 (phonetic). That means like asshole, scumbag, somebody like
21 that.

22 How I keep as manager such a low-class person. That was his --
23 that was his complaint. You say complaint or -- this is what
24 he came to me and talk about Artur Zbozien.

25 Q And did you speak with Mr. Zbozien about that complaint?

1 A About this complaint? No, I did not.

2 Q Did you take any actions with respect to Mr. Zbozien?

3 A When he was talking to -- after he -- I --

4 Q At some point, was he transferred, Mr. Zbozien?

5 A Yes, he was. I transfer him to Wall Street.

6 Q What were the circumstances of you transferring him?

7 A I transfer him because the manager of catering department,
8 Monika, she spoke with me the day before. They had some --

9 MR. BLIT: Objection, Your Honor.

10 THE COURT: Overruled.

11 MR. BLIT: Hearsay.

12 THE COURT: You can answer.

13 A That they had some disagreement upstairs where something
14 was happening there. And also, that was time that at Wall
15 Street location we need a good dispatcher. And Artur was very
16 good dispatcher always, and that's why I transfer him.

17 Q Do you know who a Marian Krajewski is?

18 A Who?

19 Q Marian Krajewski.

20 A Marian. I think I -- yes.

21 Q Now, Ms. -- Marian Krajewski testified earlier on
22 plaintiff's direct case. Do you know whether he was -- when he
23 left, did he resign or was he fired?

24 A Oh, Marian. Yeah, I fire him after quite a while. He
25 worked quite a while.

1 Q Why was he fired?

2 A I fire him because he was stealing.

3 Q Stealing from Mangia?

4 A Stealing from Mangia, yes.

5 Q And you're the one who made the decision?

6 A Yes, I was the one.

7 Q Now, Ms. Cymanow, as a former general manager at Mangia,
8 what do you understand your obligations to have been concerning
9 discrimination generally in the workplace?

10 A Of course, that's so obvious. That every single employee
11 needs to be treated equally.

12 Q And did you carry out those obligations when you were
13 there?

14 A Of course.

15 Q Thank you.

16 THE COURT: Mr. Blit, you can cross-examine.

17 CROSS-EXAMINATION

18 BY MR. BLIT:

19 Q If a manager of Mangia knew of a complaint of
20 discrimination, would you know about it?

21 A Yes.

22 Q And have you ever heard a complaint of anti-Semitism or
23 any type of discrimination?

24 A Never.

25 Q Artur Zbozien testified earlier today that, in fact, a

1 manager did tell him that there were complaints of anti-Semitic
2 or discrimination.

3 A I don't know nothing about -- that, I don't know nothing
4 about.

5 Q Were any actions taken?

6 A Of what?

7 MR. DANIEL KAISER: Objection.

8 BY MR. BLIT:

9 Q Of any type of discrimination complained of by Mr.
10 Wiercinski.

11 A I never heard that Adam Wiercinski was discriminated. How
12 I can take any action?

13 Q The owner of this company is your brother; correct?

14 A Yes, it is.

15 Q You would never go against your brother, would you?

16 A Excuse me?

17 MR. DANIEL KAISER: Objection, Your Honor.

18 BY MR. BLIT:

19 Q Would you ever go against your brother?

20 MR. DANIEL KAISER: Objection, Your Honor.

21 THE COURT: I'll allow it. Do you understand the
22 question?

23 A Not really.

24 Q Well, would you ever testify to hurt your brother?

25 A If I would testify -- when I testified, I testify the

1 truth. That's why I took oath.

2 Q My question to you is, if the truth hurt your brother or
3 your brother's business --

4 MR. DANIEL KAISER: Objection.

5 Q -- would you testify?

6 A I will testify my truth because I respect myself. I
7 testify the truth.

8 Q Over your brother?

9 A Over my brother.

10 Q You, in fact, terminated Mr. Wiercinski for visiting a
11 sick relative; correct?

12 A No.

13 Q Was he visiting a sick relative at one point when you
14 terminated him?

15 A No. So that when I heard about sick relative, that was I
16 think second time or first time. I don't remember exactly
17 when.

18 Q So, essentially --

19 A But he extend, extremely extend his off time.

20 Q Visiting a sick relative; correct?

21 A I am not aware of that.

22 Q So you're not aware that he was visiting a sick relative?

23 A I heard that he's going to Poland to visit I think sick
24 mother or brother. I don't know.

25 Q Mother or brother, that's a relative; right?

1 A Yes.

2 Q Okay. So you knew that he was visiting a sick relative.
3 Come on.

4 A Yes.

5 Q And you fired him; correct? You fired him for visiting a
6 sick relative in Poland, yes or no?

7 A I fire him because he was not doing his job well.

8 Q Which one is it? You told us earlier that it was because
9 he took extra time off. Now it's because he wasn't doing his
10 job well.

11 MR. DANIEL KAISER: Objection, Your Honor, he's
12 mischaracterizing the testimony.

13 Q Which one is the truth?

14 THE COURT: Excuse me, Mr. Blit, keep your voice down.
15 You don't have to shout here.

16 Q Don't lie to the jury.

17 THE COURT: I sustain an objection. Go on. Move on.

18 MR. BLIT: Nothing further.

19 THE COURT: Anything further of this witness?

20 MR. DANIEL KAISER: No, Your Honor.

21 THE COURT: Thank you. You're excused, Ms. Cymanow.
22 Do you have another witness, Mr. Kaiser?

23 MR. DANIEL KAISER: One more, Your Honor.

24 THE COURT: Please.

25 MR. DANIEL KAISER: Your Honor, we call Ross Furman

1 to the stand.

2 (Witness sworn.)

3 THE CLERK: Please state and spell your full name for
4 the record.

5 THE WITNESS: Ross Scott D. Furman.

6 THE COURT: Spell your last name.

7 THE WITNESS: Furman, F-u-r-m-a-n.

8 THE COURT: Go on, Mr. Kaiser.

9 ROSS SCOTT D. FURMAN, called by the Defense, having been
10 first duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. DANIEL KAISER:

14 Q Mr. Furman, are you currently employed?

15 A Yes, I'm currently employed. Not at Mangia, but I'm
16 currently employed, yes.

17 Q Where are you employed?

18 A Eatery Restaurant, 53rd and 9th.

19 Q Just come up a little bit to the microphone.

20 A Sure. Sorry.

21 Q In what position?

22 A I'm the restaurant manager there.

23 Q At some point, were you employed by Mangia?

24 A Yes.

25 Q And when were you employed by Mangia?

1 A I was employed by Mangia from 2004 to 2011. I did also
2 work at Mangia from 1990 -- the summer of 1999 -- '98,
3 actually, sorry.

4 Q And when did you leave Mangia's employ?

5 A August of 2011.

6 Q And what was your position at the time you left Mangia?

7 A I was one of the general managers there.

8 Q Just give a very brief overview of your work history with
9 Mangia, what positions you held and when.

10 A When I started in 2004, I was the catering operator. Then
11 I was promoted to 57th Street store manager. Then I went to
12 23rd Street store manager. Then I went to -- I believe back to
13 48th Street. And then I went to 23rd Street general manager,
14 followed by Wall Street general manager, too.

15 Q Mr. Furman, what is your religious background?

16 A I am Jewish.

17 Q Do you observe the Jewish holidays?

18 A Yes, I do.

19 Q At the time you worked at Mangia, were you open about your
20 religion?

21 A Yes.

22 Q And when you worked at Mangia, did you take the Jewish
23 holidays off?

24 A Yes, I did request it if it fell during the workweek.

25 Q Do you know who Margaret Cymanow is?

1 A Yes, I do.

2 Q And how long have you known Margaret Cymanow?

3 A Well, as a boss, I knew her since 2004, but I have been
4 family friends with Sasha Muniak since I was four years old.
5 So about 29 years. So I probably met Margaret when I was five
6 or six, something like that. We used to spend Christmases
7 together, ski trips together, holidays, things like that.
8 Summer in the Hamptons.

9 Q Do you know who Mr. Wiercinski is?

10 A Yes.

11 Q How do you know him?

12 A I was working with him in 2000 -- the end of 2004, I
13 believe is when I went to 57th Street. That's when I met him.

14 Q Do you know who Artur Zbozien is?

15 A Yes.

16 Q And how do you know him?

17 A I met him around 2004, the same time, when I went to 57th
18 Street.

19 Q And how frequently would you interact with Mr. Wiercinski
20 when you were at 57th Street?

21 A On occasion, we would talk about sports. I know he was a
22 Ranger fan. And he -- we'd always talk about horse --
23 horseback riding or horse betting. You know, I would say
24 always around I would say during the times when he would be
25 leaving, I would talk to him, basically around 3, 4 o'clock in

1 the afternoon.

2 Q And how did you get along with him?

3 A No problems whatsoever.

4 Q Artur Zbozien, how did you get along with him?

5 A No problems whatsoever either.

6 Q Did you ever witness Artur Zbozien making an anti-Semitic
7 remark in your presence?

8 A No, sir.

9 Q In particular, did you witness him making any anti-Semitic
10 remarks to Adam Wiercinski?

11 A No.

12 Q Was there a time of the day when the food deliverers would
13 get paid moneys or compensation?

14 A Yes. Usually around 2, 3, maybe 4 at the latest. Usually
15 when I would say the lunch shift is closing. So around 3,
16 3:30, 3:00, something like that, they would all line up right
17 by the catering register.

18 Q Okay. Were you around for those times?

19 A On occasion, yes.

20 Q And what were your responsibilities during those times
21 when you were around?

22 A Well, I mean, most of that was done downstairs, so I
23 either was going to talk to one of the catering managers, Darek
24 or even Artur, about what was going on later that night for a
25 delivery or for catering-wise.

1 I also could be going downstairs because the money center or,
2 you know, where we kept all of our change was next to that
3 area. So I would -- I would be in that area on occasion you
4 could say, yes.

5 Q During those times, did you on any occasion hear any
6 anti-Semitic remarks made either to Mr. Wiercinski or anyone
7 else?

8 A No, never.

9 Q Were any anti-Semitic remarks ever made to you, as a Jew
10 working at Mangia?

11 A No, never.

12 Q Did you on any occasion hear Margaret Cymanow make any
13 anti-Semitic remarks of any kind?

14 A No.

15 Q Did Adam Wiercinski -- you said that you would from time
16 to time talk to Adam about various things that were going on in
17 his life?

18 A Uh-huh.

19 Q Is that true?

20 A Yes. Yes.

21 Q Did Mr. Wiercinski on -- and did Mr. Wiercinski know you
22 were Jewish?

23 A Yes. That definitely came up. We talked about how we
24 were both Jewish, yes.

25 Q And did you talk about the holidays, for example?

1 A Yes.

2 Q Did he on any occasion -- during these communications you
3 had with him, did Adam Wiercinski on any occasion complain to
4 you, complain to you about his treatment, that he was being --
5 that he was being subjected to anti-Semitism while at Mangia?

6 A No.

7 Q That never occurred?

8 A No.

9 Q Did he ever ask you to intercede for him or to speak to
10 Sasha Muniak for him concerning his treatment by Mr. Zbozien?

11 A No.

12 Q Did he know that you had a friendship with Sasha Muniak?

13 A Yes. Yes, he did. Because he commented how he knew my
14 father through Mangia parties, you know, even before I started
15 working at Mangia.

16 Q And did he ever ask you to use that friendship to help
17 him, you know, to intercede for him because of anti-Semitism?

18 A No.

19 Q As a manager at Mangia, what would have been your
20 responsibilities if you heard an anti-Semitic complaint made to
21 you?

22 A I would have to bring it to my authorities, my people,
23 Margaret, Sasha, and I would have to do investigating myself,
24 and research.

25 Q Did any of that ever happen?

1 A No.

2 Q And you said you resigned your employment?

3 A Yes, in August of 2011.

4 Q And was that to pursue a new opportunity?

5 A Pursuing the current job I'm at right now.

6 Q Do you know who Robert Bazgier is?

7 A Yes.

8 Q Who is he?

9 A He's one of the other catering managers, catering
10 employees, you could say, at 57th Street.

11 Q And did you ever hear him make any anti-Semitic remarks?

12 A No, never.

13 Q Thank you.

14 THE COURT: Who is going to inquire?

15 CROSS-EXAMINATION

16 BY MR. MORIARTY:

17 Q Mr. Furman, just so I can understand, there were two
18 levels at Mangia 57, an upstairs and a downstairs; correct?

19 A Technically, you could say there's three levels.

20 Q What were those three levels?

21 A Downstairs would be one of the main kitchens, the catering
22 department.

23 Upstairs would be the market. Our second floor, the
24 ground floor, however you want to call it, would be market.
25 There would be also somewhat of a kitchen in the back.

1 And then on the third floor, the mezzanine level, you
2 could say, was the sit-down restaurant, another kitchen, and
3 Margaret's office, catering office now, too.

4 Q And the location where Mr. Wiercinski would work would
5 have been in the basement at the bottom; correct?

6 A Yes.

7 Q That's where the catering department is; correct?

8 A Yes.

9 Q And isn't it true that your responsibilities, for the most
10 part, anyway, had you in the upper two levels of Mangia and not
11 in the basement?

12 A I would say -- mostly on the first floor, but, as I said,
13 most things I had to get done was to go downstairs and get
14 stuff.

15 Q But your job more or less was to manage the restaurant
16 part of Mangia; correct?

17 A The market part, yes.

18 Q So you weren't in the basement on a regular basis;
19 correct?

20 A As the store manager, no. But before I was the store
21 manager, I was catering operator at 57th Street, too.

22 Q Okay. Well, let's just say in any given day if you're at
23 work for eight hours, would you be in the basement for seven
24 hours or seven minutes or --

25 A Probably an hour, hour and a half.

1 Q So for at least seven hours a day, you weren't able to
2 observe Mr. Wiercinski and Mr. Zbozien; correct?

3 A That is correct.

4 Q Mr. Zbozien wasn't your supervisor; correct?

5 A No.

6 Q In fact, you were probably over Mr. Zbozien in the
7 organizational hierarchy?

8 A Yes. Yeah, you could say that, possibly.

9 Q So it would be highly unlikely for Mr. Zbozien to make
10 negative comments to you, given that you were more or less his
11 boss; correct?

12 A Yes, you could say that.

13 Q But Mr. Wiercinski was under Mr. Zbozien, as far as you
14 understand the organizational hierarchy; correct?

15 A Yes.

16 Q And you stated that you're friends with Mr. Muniak;
17 correct?

18 A Yes. I've known him since I was four years old.

19 Q And you say you go to the Hamptons with Mr. Muniak;
20 correct?

21 A Yes. In the past, yes.

22 Q And do you go on vacations with Mr. Muniak?

23 A Yes. We would always go on ski vacations. He was there
24 for my 13th birthday. You know, summer vacations, things like
25 that.

1 MR. MORIARTY: I have no further questions.

2 THE COURT: Anything further, Mr. Kaiser?

3 MR. DANIEL KAISER: No, Your Honor.

4 THE COURT: Thanks. You're excused.

5 THE WITNESS: Thank you.

6 THE COURT: Do you have another witness?

7 MR. DANIEL KAISER: That's it, Your Honor. Defense
8 rests.

9 THE COURT: Defense resting? Both sides resting?

10 MR. BLIT: Yes, Your Honor.

11 THE COURT: All right. You've heard the announcement.
12 Both sides have rested. What remains is for the lawyers to sum
13 up. And I think we've got time to do that. Why don't we take
14 a brief recess at this point.

15 (Jury exits.)

16 THE COURT: Any motions anybody wants to make? You're
17 renewing your motion, Mr. Kaiser?

18 MR. DANIEL KAISER: We do, Your Honor.

19 THE COURT: That's denied. Why don't we have a
20 charging conference, and we can proceed with summations. I
21 think we can do that. I don't think you'll need two hours to
22 sum up, do you? Both of you?

23 MR. BLIT: I prefer to do it tomorrow.

24 THE COURT: How much time do you need?

25 MR. DANIEL KAISER: I would -- Your Honor, I'm happy

1 to do that, but I would -- my preference would be first thing
2 tomorrow morning sum up.

3 THE COURT: All right. Why don't we see how much time
4 we need for a charging conference. Let's get by that first.
5 Sit down. I gave each of you a copy of the jury charge which I
6 prepared.

7 I think, for the most part, it incorporates just about
8 everything that I've been asked by both of you, in substance.
9 I think I've incorporated more of the plaintiff's charges than
10 I have of yours. I don't know whether you prepared those or
11 whether it was the lawyer who preceded you.

12 MR. DANIEL KAISER: I think it was before me, but I
13 don't recall at this point.

14 THE COURT: And I don't know whether the charges were
15 prepared by Mr. Blit's firm or whether they were prepared by
16 Mr. Warshawsky. I would imagine they were prepared by
17 Mr. Warshawsky. Is there anything in those charges that you
18 want to take exception to or hear about?

19 MR. BLIT: Yes, Your Honor. On page 12, by the first
20 element, I ask that "or" be inserted between "offensive,
21 insulting, humiliating or intimidating."

22 THE COURT: I'm sorry?

23 MR. BLIT: An "or" placed between them. Instead of
24 reading: "To mean unwanted conduct that is offensive,
25 insulting, humiliating, intimidating," there should be an "or"

1 between all those words.

2 THE COURT: Let me see if I understand you. First,
3 the first element, understanding -- unwelcome -- let's see.

4 MR. BLIT: Yes, unwelcome --

5 THE COURT: On page 12, are you?

6 MR. BLIT: Page 12.

7 THE COURT: The top of the page, the first --

8 MR. BLIT: Page 12, first element.

9 THE COURT: "Let me explain those elements to you,
10 each of which must be proved by a preponderance of the
11 evidence." The first element is self-explanatory. I'm trying
12 to explain what unwelcome harassment means, and it means
13 unwanted conduct that is offensive, insulting, humiliating,
14 intimidating. You want me to put an "or" between each of
15 those?

16 MR. BLIT: Yes.

17 THE COURT: Do you have any problem with that?

18 MR. DANIEL KAISER: I think it's clear as it's
19 written, Your Honor, but...

20 THE COURT: What else?

21 MR. BLIT: The third element, section B. There should
22 be -- I believe there should be a period after -- on the
23 second-to-last line, after "persons" there should be a period,
24 and "who heard and saw that conduct" should be crossed out.

25 THE COURT: Do you want to be heard on that?

1 MR. DANIEL KAISER: I'm not sure, Your Honor.
2 Subparagraph B?

3 THE COURT: The answer is your request is denied. I
4 think it's perfectly correct, as a matter of law. Anything
5 else?

6 MR. BLIT: Yes, Your Honor. (Pause.)

7 THE COURT: Are you reading it now for the first time?

8 MR. BLIT: No. I just want to see why I crossed it
9 out.

10 THE COURT: Where are you?

11 MR. BLIT: Page 13. There's no -- all the testimony
12 is that it was -- the actions were created by a supervisor, and
13 there was no testimony that they took any corrective actions.
14 So A and B shouldn't even be there. There was no policy and
15 there was no --

16 MR. DANIEL KAISER: Your Honor, she did -- Ms.
17 Cymanow did testify to a policy and did testify to procedures.

18 MR. BLIT: No, she testified to a procedure, but she
19 didn't testify to a policy, and there's no policy in evidence.

20 MR. DANIEL KAISER: She referred -- no, she referred
21 to a policy that she was --

22 THE COURT: Excuse me. Bear with me. The instruction
23 is: "If you find that the plaintiff proved by a preponderance
24 of evidence that his working environment was hostile or
25 abusive, as described in the first element, he must then prove

1 by a preponderance of the evidence that the defendant is liable
2 for it. The test in that event depends upon whether the
3 offensive harassment was created or caused by a supervisor or a
4 coworker. If it was a supervisor who caused/created/was
5 responsible for the hostile environment, the defendant employer
6 will be automatically liable unless it proves by a
7 preponderance of the evidence that it is not liable because it
8 exercised reasonable care."

9 That's if it was a supervisor, if the plaintiff has
10 proved by a preponderance of the evidence that it was a
11 supervisor, then in that event, the rest will follow. If he
12 hasn't proved it was a supervisor, if there was no evidence,
13 then the rest of it is academic. But if he finds -- if he
14 proves that it was a supervisor who caused or created the
15 hostile environment by a preponderance of the evidence, the
16 defendant employer -- what are we talking about now? If it was
17 a supervisor. It's the plaintiff's burden of proof, right?
18 If it was a supervisor who caused/created/was responsible for,
19 the defendant employer will be automatically liable unless it
20 proves. The burden of proof would be upon the defendant to
21 prove if the plaintiff has proved by a preponderance of the
22 evidence that it was a supervisor.

23 MR. BLIT: Okay. If you turn --

24 THE COURT: Whether or not the defendant satisfied its
25 burden of proof will be a matter for the jury to decide.

1 MR. BLIT: With respect to whether it was a coworker
2 or supervisor?

3 THE COURT: There are two different events. If it was
4 a coworker who was responsible for the offensive conduct.

5 MR. BLIT: Right, but there's no allegation it was a
6 coworker. There's no allegation that it was a coworker that
7 committed the discrimination.

8 THE COURT: Well, who was Mr. Bazgier? Was he a
9 coworker?

10 MR. BLIT: Assistant manager.

11 THE COURT: There were an awful lot of names bandied
12 about.

13 MR. DANIEL KAISER: I don't believe he was.

14 THE COURT: Pardon?

15 MR. DANIEL KAISER: He was not assistant manager.

16 THE COURT: I don't think he is a manager at all. I
17 thought the evidence was that Mr. Zbozien, at least that was
18 the testimony on behalf of the plaintiff, he would not want to
19 give the tip to the plaintiff. Personally, he'd get off the
20 seat and he'd have Mr. Bazgier do it. Mr. Bazgier was the same
21 job, as I understand the testimony.

22 MR. CYMBROWITZ: Bazgier was another delivery person.

23 THE COURT: And asked Mr. Bazgier to come and give him
24 the tip. My understanding was that Mr. Bazgier was a coworker.

25 MR. CYMBROWITZ: Yes. That's right.

1 THE COURT: What else?

2 MR. BLIT: That's it.

3 THE COURT: The instruction is correct insofar as the
4 law is concerned. Whether or not the jury finds that the
5 plaintiff satisfied his burden of proof or did not, whether it
6 was a coworker, if the jury says there was no evidence of a
7 coworker, then it's academic.

8 But there were lots of names bandied about, and it
9 wasn't always made clear as to who exactly you were talking
10 about. You had about a half a dozen different Polish names
11 that were -- at least a half a dozen that were referred to
12 during the course of your presentation. Whether one or another
13 was a coworker or a supervisor, I don't know. If the jury has
14 a problem with it, we'll ask a question.

15 MR. BLIT: Okay.

16 THE COURT: Anything else that you have any objection
17 to, Mr. Kaiser?

18 MR. DANIEL KAISER: Just one or two related
19 objections. One, Your Honor, I would generally object to the
20 punitive damages instruction.

21 THE COURT: I'm sorry?

22 MR. DANIEL KAISER: The punitive damages instruction.
23 But, in addition, if the punitive damages instruction is given,
24 my understanding, Your Honor, was punitive damages -- and I was
25 scrounging around to see if I had something on it -- was the

1 burden of proof is clear and convincing. I may be mistaken
2 about that, but I thought. I mean I could research that.

3 THE COURT: Why don't you. You may be right. I'm not
4 sure. You may be right.

5 MR. DANIEL KAISER: I'll look at that.

6 THE COURT: Okay. I'll check that as well.

7 MR. DANIEL KAISER: That's all I have.

8 THE COURT: If it is, I'll make the appropriate
9 change. If there's nothing else, then we'll use it.
10 Now, why don't you take a look at the proposed verdict sheet.
11 I'm sorry I don't have two copies. It's essentially the
12 verdict sheet that was submitted by the plaintiff. Do you have
13 a copy of it?

14 MR. DANIEL KAISER: I don't.

15 THE COURT: Okay. Why don't both of you look it over.
16 I think it was the plaintiff's verdict sheet. While we're
17 doing that, rather than have the jury sitting in the jury room,
18 why don't we bring them in. I'll tell them we're going
19 tomorrow.

20 (Jury enters.)

21 THE COURT: You're only working half a day today. We
22 can't go any further. What remains is, as I told you, the
23 parties will sum up and then I will instruct you with respect
24 to the law. Rather than attempting to do all that between now
25 and about 4:30, quarter of 5, we'll start tomorrow morning and

1 get through probably by noon or thereabouts.

2 So the prediction that this case may take a week, we
3 told you lawyers are bad predictors of time. We'll probably be
4 through tomorrow. Have a good evening. Don't discuss the case
5 amongst yourselves or -- bear in mind what I told you, I guess
6 it was yesterday, about getting on the Internet or Googling and
7 so on. Don't do it.

8 Keep an open mind until tomorrow. You'll have plenty
9 of time to talk about it and think about it. Have a good
10 evening. I'll see you tomorrow. Thanks again in advance for
11 being prompt tomorrow. See you tomorrow.

12 (Jury exits.)

13 (Continued on next page.)

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1 (In open court.)

2 THE COURT: Have you had a chance to look at the
3 verdict sheet?

4 MR. DANIEL KAISER: It looks fine, your Honor.

5 THE COURT: Pardon?

6 MR. DANIEL KAISER: It looks fine, your Honor.

7 MR. BLIT: I would just ask to take out question
8 number two.

9 THE COURT: I don't have it. What's wrong with it?

10 MR. BLIT: It would be basically the Farragher Ellerth
11 defense, which would not apply in this case because the case
12 law basically says no policy that would apply --

13 THE COURT: Pardon?

14 MR. BLIT: There was no official policy.

15 MR. DANIEL KAISER: There is testimony.

16 MR. BLIT: There was no testimony that there was a
17 policy, procedure, or handbook that was provided to any
18 employee. That was never testified to. Whether they had a
19 policy in management, they had their own policy in management
20 that they followed that the employees didn't follow, that
21 doesn't trigger Farragher Ellerth.

22 THE COURT: Excuse me. This instruction says did the
23 defendant prove by a preponderance of the evidence that it
24 exercised reasonable care to prevent and correct promptly the
25 harassing behavior and that the plaintiff unreasonably failed

1 to take advantage of any preventive or corrective opportunity
2 provided by the defendant.

3 Now, your objection is what, that the defendant failed
4 to prevent or correct promptly the harassing behavior?

5 MR. BLIT: No. The plaintiff didn't have a duty to go
6 to the defendant.

7 THE COURT: We are talking about the defendant's
8 burden of proof, right, did the defendant prove by a
9 preponderance of the evidence? If the jury found that it was
10 the supervisor who was responsible for the harassing treatment,
11 the burden of proof would then be on the defendant by way of an
12 affirmative defense to establish that it exercised reasonable
13 care to prevent and correct promptly the harassing behavior and
14 that the plaintiff unreasonably failed to take advantage of any
15 preventive or corrective opportunities provided by the
16 defendant.

17 What's your objection?

18 MR. BLIT: Our position is that the affirmative
19 defense is waived by not having a handbook or a policy.

20 THE COURT: What law is there that requires a handbook
21 or a policy?

22 MR. BLIT: Farragher Ellerth.

23 THE COURT: Isn't it enough that you have a manager or
24 owner testify that were harassing information communicated to
25 me I would immediately take steps to prevent and correct it?

1 MR. BLIT: Because what Farragher Ellerth does is it's
2 saying that if the plaintiff is given a policy or handbook or
3 knows that they can take advantage of it, then only then can a
4 defendant have the ability to use the affirmative defense.

5 THE COURT: Well, Mr. Blit, if you can provide me with
6 some authority for the proposition that a handbook is a
7 prerequisite to the defense that the defendant would have the
8 burden of proving, I will consider it.

9 MR. BLIT: Okay. We will do research then.

10 THE COURT: But it makes no sense to me. But if there
11 is, Ms. Cymanow has testified quite clearly that she would not
12 tolerate, using essentially those words, employees who were not
13 treated equally. It is her aim, her view, as the general
14 manager of Mangia, that all employees would be treated equally.

15 When asked what would her responsibility do or what
16 would her reaction be if she had heard that there was
17 discriminatory conduct, she said she would take action to
18 correct it immediately. She would respond to it.

19 MR. BLIT: Okay.

20 THE COURT: Now, as far as whether Mr. Wiercinski knew
21 about whether he can complain, the fact of the matter is he
22 did. Didn't he?

23 MR. BLIT: Yeah.

24 THE COURT: So he obviously knew that was an
25 alternative that was available.

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I will see you tomorrow morning at 10 o'clock.

MR. DANIEL KAISER: Thank you, your Honor.

THE COURT: How long do you think you are going to take, Mr. Blit? Who is summing up?

MR. BLIT: Yeah, I'm going to sum up.

THE COURT: How long do you think you will be?

MR. BLIT: Not long. Maybe a half hour, not even.

THE COURT: All right. Mr. Kaiser, however much time you need.

MR. DANIEL KAISER: It's 10 o'clock, your Honor?

THE COURT: 10 o'clock.

The only thing with respect to the jury charge is insert the word "or" and we will look into whether it's clear and convincing or a preponderance. That's all we have.

Thank you.

MR. MORIARTY: Thank you.

(Proceedings adjourned to Wednesday, October 23, 2013 at 10:00 a.m.)

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I hereby certify that the foregoing is a true and accurate transcript from my notes in these proceedings.

MICHELE NARDONE, CSR, RPR, CRR - Official Court Reporter

I hereby certify that the foregoing is a true and accurate transcript from my notes in this proceeding.

SHERRY BRYANT, RMR, CRR - Official Court Reporter

MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

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24
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I N D E X

WITNESSES

Krajewski - Direct/Clark	114
Krajewski - Cross/Daniel Kaiser	121
Krajewski - Redirect/Clark	130
Swiderski - Direct/Moriarty	133
Swiderski - Cross/Daniel Kaiser	138
Swiderski - Redirect/Moriarty	147
Uowski - Direct/Blit	149
Uowski - Cross/Daniel Kaiser	153
Uowski - Redirect/Blit	159
Ranfranz - Direct/Daniel Kaiser	163
Ranfranz - Cross/Moriarty	171
Zelmanovitch - Direct/Daniel Kaiser	174
Zelmanovitch - Cross/Blit	180
Zbozien - Direct/Daniel Kaiser	188
Zbozien - Cross/Blit	198
Zbozien - Redirect/Daniel Kaiser	208
Cymanow - Direct/Daniel Kaiser	209
Cymanow - Cross/Blit	216
Furman - Direct/Daniel Kaiser	220
Furman - Cross/Moriarty	226

EXHIBIT

1 207

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