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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. BARE FEET
SHOES OF PA, INC., Defendant.

CIVIL ACTION NO. 2:04-cv-03788-MAM

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

2004 U.S. Dist. Ct. Pleadings 3788; 2004 U.S. Dist. Ct. Pleadings LEXIS 6095

August 11, 2004

Complaint

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(FAX).

TITLE: COMPLAINT

TEXT: JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and to provide appropriate relief to LaTanya Garner and Gail Watson who were adversely affected by such practices. As articulated with greater particularity in Paragraph 7 below, the Commission alleges that during Ms. Garner's employment she was sexually harassed on a daily basis by Defendant's Manager Yehouda Udi Sharabi when he subjected her to unwelcome inappropriate sexual comments and sexual gestures which created a sexually hostile work environment. The Commission alleges that although [**2] Ms. Garner complained to the Store Manager, Mr. Sharabi, that his sexually offensive comments and sexually derogatory behavior were unwelcome, and insisted that he stop the offensive conduct, Mr. Sharabi continued to sexually harass her.

The Commission also alleges that Ms. Watson was similarly subjected to a sexually hostile work environment by Defendant's Managers Yehouda Udi Sharabi and Mamoun Kabbadj when Mr. [*2] Kabbadj repeatedly stared at her breasts and watched her undress; and, when Mr. Sharabi regularly stared at her breasts and followed her closely around

the store. The Commission further alleges that Ms. Watson was constructively discharged because she could no longer withstand Defendant's sexual harassment. As a result of the sexual harassment against both Ms. Garner and Ms. Watson, they suffered damages, including emotional distress damages. In addition, Ms. Watson suffered lost wages.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, [**3] 42 U.S.C. § 2000e-5(f) and (3) ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Bare Feet Shoes of PA, Inc. ("Bare Feet") (the "Employer"), has continuously been doing business in the State of Pennsylvania, and the City of Wyncote, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer [*3] engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and [**4] (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, LaTanya Garner filed a charge with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least December 2002, Defendant Employer has engaged in unlawful employment practices at its Wyncote, Pennsylvania, by unlawfully subjecting LaTanya Garner to a hostile work environment based on her sex, female, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). These unlawful practices include, but are not limited to, the following:

(a) On or about December 10, 2002, Ms. Garner began her employment with Defendant as a Sales Associate, and remained in this position until on or about January 17, 2003.

(b) Throughout Ms. Garner's employment, she was regularly subjected to unwelcome sexually offensive comments and sexually charged remarks about her body by Defendant's male Store Manager, and her direct supervisor, Yehouda Udi Sharabi.

(c) Mr. Sharabi created a sexually hostile work environment by frequently making indecent comments about [**5] Ms. Garner's breasts. On at least five occasions, Mr. Sharabi commented on Ms. Garner's breasts, and asked "Are your nipples hard . . . are you happy to see me?" Ms. Garner found these comments highly inappropriate and sexually offensive.

(d) Mr. Sharabi also made regular comments about Ms. Garner's lips, and frequently asked her, "Are you wearing that for me (referring to her lipstick)?" and, "I like the way that looks on your lips."

[*4] (e) Ms. Garner unequivocally and repeatedly informed Mr. Sharabi that his comments were offensive and unwelcome, but he persisted with this inappropriate and harassing conduct.

(f) Despite Ms. Garner's complaints to Mr. Sharabi about his harassing behavior, on several occasions, Mr. Sharabi followed Ms. Garner to the restroom and asked if he could accompany her. Ms. Garner feared Mr. Sharabi's behavior because she believed that he would try to assault her.

(g) Mr. Sharabi also made sexually offensive comments to Ms. Garner alluding to derogatory sexual acts. On several occasions when Ms. Garner was bending down, retrieving hangers or anti-shoplifting sensors, Mr. Sharabi made sexually suggestive comments such as, "Are you down there for [*6] me?", and "Is that why you're bending down for me?"

(h) Ms. Garner continued to inform Mr. Sharabi that his comments were offensive, but he continued to subject her to a sexually hostile work environment. On one occasion when Ms. Garner told Mr. Sharabi that his comments made her very uncomfortable and insisted that he stop, Mr. Sharabi asked Ms. Garner why she wanted him to stop and whether she had a boyfriend.

(i) When Ms. Garner realized that Mr. Sharabi would not cease harassing her, she asked Mr. Sharabi to change her work schedule so they would no longer work the same shift. However, her request was denied.

(j) Although Ms. Garner wanted desperately to report Mr. Sharabi's harassing behavior to Defendant's officials, she did not know to whom to file a complaint. At the onset of her employment, Ms. Garner acknowledged receipt of the employee handbook, but was not allowed to [*5] retain a copy of the handbook and was directed to return the handbook to Defendant.

(k) On January 17, 2003, Ms. Garner resigned from her employment with Defendant.

8. Since at least April 2003, Defendant Employer has engaged in unlawful employment practices at its Wyncote, Pennsylvania, by unlawfully [*7] subjecting Gail Watson to a hostile work environment based on her sex, female, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). These unlawful practices include, but are not limited to, the following:

(a) In or about August 2002, Ms. Watson began her employment with Defendant as a Sales Associate.

(b) In or about April 2003, Ms. Watson resigned from her employment with Defendant as a result of being subjected to a sexually hostile work environment by Defendant's Store Manager, Mamoun Kabbadj. Before Ms. Watson's resignation, Mr. Kabbadj, her direct supervisor, regularly and repeatedly stared at her breasts, constantly inquired about her personal life, and entered the dressing room to watch her change her clothes. As a result of this offensive behavior, Ms. Watson felt compelled to resign.

(c) In or about November 2003, Defendant's Store Manager, Yehouda Udi Sharabi called Ms. Watson and persuaded her to return to work. Ms. Watson returned to work, in hopes that Mr. Kabbadj might have changed his behavior.

(d) Unfortunately, after returning to work for Defendant in or about November 2003, Ms. Sharabi began to sexually harass Ms. [*8] Watson.

(e) Mr. Sharabi regularly stared at Ms. Watson's breasts and followed her around the store.

(f) On several occasions while working late with Mr. Sharabi, he informed Ms. Watson that he prepared a bed for them in the store and asked her to spend the night with him.

(g) Ms. Watson found Mr. Sharabi's behavior sexually offensive and could no longer withstand working in that

environment. As a result of the sexually harassing work environment, Ms. Watson was constructively discharged.

9. The effect of the practices complained of in paragraphs 7(a)-(k) and 8 (a)-(g) above have been to deprive LaTanya Garner and Gail Watson of equal employment opportunities and otherwise adversely affect their status as employees, because of their sex, female.

10. The unlawful employment practices complained of in paragraphs 7(a)-(k) and 8 (a)-(g) above were intentional.

11. The unlawful employment practices complained of in paragraph 7(a)-(k) and 8 (a)-(g) above were done with malice or with reckless indifference to the federally protected rights of LaTanya Garner and Gail Watson, as females.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. [**9] Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in harassment based upon sex and any other employment practice which discriminates on the basis of sex.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for females under Title VII, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole LaTanya Garner and Gail Watson by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and [*7] other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Employer to make whole LaTanya Garner and Gail Watson by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7(a)-(k) and 8(a)-(g) above, in amounts to be determined at trial.

E. Order Defendant Employer to make whole LaTanya Garner and Gail Watson by providing compensation for past and future [**10] nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7(a)-(k) and 8(a)-(g) above, including emotional pain, suffering, depression, anxiety, loss of enjoyment of life and humiliation, embarrassment and loss of life's pleasures, in amounts to be determined at trial.

F. Order Defendant Employer to pay LaTanya Garner and Gail Warner punitive damages for its malicious and reckless conduct described in paragraph 7(a)-(k) and 8(a)-(g) above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

[*8] **JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

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