

IN THE UNITED STATES DISTRICT COURT
 FOR THE MIDDLE DISTRICT OF FLORIDA
 FT. MYERS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO:
v.)	2:05-CV-460-FTM-29-SPC
)	
GARGIULO, INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	INJUNCTIVE RELIEF
)	SOUGHT
_____)	

PLAINTIFF EEOC’S AMENDED COMPLAINT

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 retaliation, and to provide appropriate relief to Solange Marcelin (“Ms. Marcelin”), Viergela Jean-Francois (“Ms. Jean-Francois”), Carmelia Pierre (“Ms. Pierre”), Changolia Julien (“Ms. Julien”), Loundy Saint-Hilaire (“Ms. Saint-Hilaire”) and any other similarly situated individuals who were adversely affected by such practices. As stated with greater particularity below, the Commission alleges that Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, Ms. Saint-Hilaire, and other similarly situated individuals were discriminated against on the basis of their sex, subjected to a sexually hostile work environment, and retaliated against at Defendant’s place of business in Immokalee, Florida for rejecting their supervisor’s unwelcome sexual advances and/or for complaining to management about the sexual harassment.

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 Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) 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 Middle District of Florida, Ft. Myers Division.

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 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Gargiulo, Inc. (the “Employer”), has continuously been a Delaware corporation doing business in the State of Florida and the City of Immokalee, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer 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 (h).

CONDITIONS PRECEDENT

6. More than thirty days prior to the institution of this lawsuit, Ms. Marcelin,

Ms. Jean-Francois, Ms. Pierre, Ms. Julien, and Ms. Saint-Hilaire filed charges with the Commission alleging violations of Title VII by Defendant Employer.

7. All conditions precedent to the institution of this lawsuit have been fulfilled.

COUNT I:

SEXUAL HARASSMENT AND DISCRIMINATION IN VIOLATION OF TITLE VII

8. Plaintiff incorporates the allegations in paragraphs 1-7 by reference

9. This is a civil action for sex discrimination under 42 U.S.C. § 2000e-2(a) of Title VII.

10. Solange Marcelin was employed by Defendant at its Immokalee, Florida facility as a tomato grader for nine seasons beginning in 1994.

11. Viergela Jean-Francois was employed by Defendant at its Immokalee, Florida facility as a tomato grader for four seasons beginning in 2000.

12. Loundy Saint-Hilaire was employed by Defendant at its Immokalee, Florida facility as a tomato grader for three seasons beginning in 2001.

13. Changolia Julien was employed by Defendant at its Immokalee, Florida facility as a tomato grader for three seasons beginning in 2001.

14. Carmellia Pierre was employed by Defendant at its Immokalee, Florida facility as a tomato grader for two seasons beginning in 2002.

15. Since at least November 2003, Defendant Employer has engaged in unlawful employment practices at its Immokalee facility, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a).

16. Specifically, Defendant subjected Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals to sexual discrimination in the form of sexual harassment and a hostile work environment.

17. Defendant employed Sony Constant at its Immokalee facility.

18. Since at least November of 2003, Sony Constant was the immediate supervisor of Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals.

19. While acting in a supervisory capacity for the Defendant, Sony Constant subjected Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals to unwelcome conduct of a sexual nature including but not limited to: repeated unwelcome sexual advances, requests for sex, sexual propositions, offensive sexual remarks, and physical contact with their bodies; such as pressing his genitals against their buttocks and grabbing their buttocks.

20. The unwelcome physical and verbal conduct of a sexual nature Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals were subjected to by Sony Constant was sufficiently severe and pervasive to constitute an intimidating hostile and offensive work environment.

21. The unwelcome physical and verbal conduct of a sexual nature Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals were subjected to by Sony Constant resulted in tangible employment actions being taken against them.

22. Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms.

Pierre and any other similarly situated individuals rejected Sony Constant's sexual advances and propositions and as a result were 1) suspended without pay; 2) were subjected to adverse terms and conditions of employment in the form of unfavorable seating assignments; 3) were threatened with job termination; and/or 4) were terminated; and/or 5) were not re-hired by the Defendant for the Fall 2004 Season.

23. The effect of the practices complained of in paragraphs 15-23 above has been to deprive Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals of equal employment opportunities and otherwise adversely affect their status as an employee because of their sex.

24. The unlawful employment practices complained of in paragraphs 15-23 above were intentional.

25. The unlawful employment practices complained of in paragraphs 15-23 above were done with malice or with reckless indifference to the federally protected rights of Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals.

COUNT II:

RETALIATION IN VIOLATION OF TITLE VII

26. Plaintiff incorporates the allegations in paragraphs 1-26 by reference.

27. This is a civil action for retaliation under 42 U.S.C. § 2000e-3(a) of Title VII.

28. Ms. Jean-Francois engaged in protected activity by rejecting supervisor Sony Constant's sexual advances. Defendant retaliated against Ms. Jean-Francois for

rejecting Sony Constant's sexual advances by suspending her without pay, subjecting her to unfavorable seating assignments, and failing to re-hire her for the 2004 season.

29. Ms. Pierre engaged in protected activity by rejecting supervisor Sony Constant's sexual advances. Defendant retaliated against Ms. Pierre for rejecting Sony Constant's sexual advances by suspending her without pay, subjecting her to unfavorable seating assignments, and terminating her employment on or about March 26, 2004 by refusing to allow her to come back to work after sick leave.

30. Ms. Saint-Hilaire engaged in protected activity by rejecting supervisor Sony Constant's sexual advances. Defendant retaliated against Ms. Saint-Hilaire for rejecting Sony Constant's sexual advances by suspending her without pay, subjecting her to unfavorable seating assignments, and failing to re-hire her for the 2004 season.

31. Ms. Marcelin engaged in protected activity by rejecting supervisor Sony Constant's sexual advances. Defendant retaliated against Ms. Marcelin for rejecting Sony Constant's sexual advances by suspending her without pay, subjecting her to unfavorable seating assignments, terminating her employment and failing to re-hire her for the 2004 season.

32. In 2004, Ms. Marcelin engaged in additional protected activity by complaining about supervisor Sony Constant's sexual advances on more than one occasion to Flor Garcia, Diana Trevino, and packing house manager Joe Black. Shortly after her complaints, Defendant retaliated against Ms. Marcelin by terminating her employment on or about March 3, 2004.

33. After she was terminated, Ms. Marcelin nonetheless reapplied to work for

Defendant for the Fall 2004 season. Defendant further retaliated against Ms. Marcelin for her complaint by failing to re-hire her for the Fall 2004 season.

34. Ms. Julien engaged in protected activity by rejecting supervisor Sony Constant's sexual advances. Defendant retaliated against Ms. Julien for rejecting Sony Constant's sexual advances by suspending her without pay, subjecting her to unfavorable seating assignments, and terminating her employment.

35. Ms. Julien engaged in additional protected activity by complaining about supervisor Sony Constant's sexual advances and Constant's retaliatory actions of suspending her without pay to packing house manager Joe Black. After the first complaint, Joe Black allowed Ms. Julien to return to work. About a month thereafter, Constant's sexual advances and retaliatory actions towards Ms. Julien resumed and she again complained to Joe Black and also complained to Lorraine Hatchet. Shortly thereafter, Defendant retaliated against Ms. Julien by terminating her employment on or about April 16, 2004.

36. Defendant retaliated against other similarly situated individuals for rejecting Sony Constant's sexual advances and/or in retaliation for their complaints regarding sexual harassment.

37. The effect of the practices complained of in paragraphs 28-36 above has been to deprive Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals of equal employment opportunities and otherwise adversely affect their status as an employee because of their sex.

38. The unlawful employment practices complained of in paragraphs 28-36

above were intentional.

39. The unlawful employment practices complained of in paragraphs 28-36 above were done with malice or with reckless indifference to the federally protected rights of Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Julien and Ms. Pierre and any other similarly situated individuals.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

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

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for victims of sexual harassment and retaliation, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, and Ms. Saint-Hilaire and any other similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Employer to make whole Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, and Ms. Saint-Hilaire and any other similarly situated

individuals, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph seven above, in amounts to be determined at trial.

E. Order Defendant Employer to make whole Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, and Ms. Saint-Hilaire and any other similarly situated individuals, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph seven above, including emotional pain, suffering and inconvenience, in amounts to determined at trial.

F. Order Defendant Employer to pay Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, Ms. Saint-Hilaire and any other similarly situated individuals punitive damages for its malicious and reckless conduct described in paragraph seven 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.

JURY TRIAL DEMAND

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 24th, 2006 I electronically filed the foregoing with the Clerk of Court by using CM/ECF system which will send a notice of electronic filing to the following:

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