

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
and)	
)	
CINDY JOHNSTON,)	Case No. 04-0726-CV-DW
)	
Plaintiff/Intervenor,)	
)	
v.)	
)	
GARDEN CITY PLASTICS EQUIPMENT)	
AND SUPPLY CO., INC., and)	
PLASTIC PACKAGING CONCEPTS, INC.,)	
)	
Defendants.)	

PLAINTIFF’S FIRST AMENDED COMPLAINT IN INTERVENTION

Plaintiff/Intervenor Cindy Johnston (“plaintiff”), pursuant to Rules 24(a), 24(b) and 24(c) of the Federal Rules of Civil Procedure, brings this First Amended Complaint in intervention of right for legal and equitable relief to redress the injustices done to her by defendants Garden City Plastics Equipment and Supply Co., Inc. and Plastic Packaging Concepts, Inc. (“defendants”).

Jurisdiction and Venue

1. The Court has jurisdiction over this controversy pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345, as well as 42 U.S.C. § 2000e-5(f).

2. The Court has jurisdiction over defendants because the unlawful employment practices alleged in this Complaint were committed in Cass County, Missouri, which lies within the Western District of Missouri. In addition, defendants have sufficient minimum contacts with the Western District of Missouri and the State of Missouri.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to plaintiff's claims occurred in Cass County, Missouri, which lies within this District.

Parties

4. Plaintiff is a female citizen of the United States, residing in Cass County, Missouri.

5. Defendants are corporations formed under the laws of Missouri and with principle places of business in Missouri. At all relevant times defendants were authorized to conduct business in the State of Missouri and were doing business in the State of Missouri.

6. Defendants are "employers" within the meaning of Section 701(b) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII").

7. Defendants currently employ, and during all relevant times have employed, 15 or more persons.

8. Defendants, although nominally separate entities, are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a single employer. In other words, defendants are not what they appear to be, but in truth are simply divisions or departments of a single enterprise.

9. Defendants have chosen to handle jointly important aspects of their employer-employee relationships, and are therefore the joint employers of each of their employees, including plaintiff.

10. Defendants maintain a substantial interrelation of operations. This is evidenced by, among other things, the fact that defendants share common premises, use a common mailing address, share office and storage space, use the same office equipment, use the same facsimile machine and facsimile line, share employees between themselves, aggregate their employees for the purpose of obtaining group employment benefits such as health and life insurance, use the same personnel manuals, use the same payroll system, host joint functions for their employees, and observe the same work holidays.

11. Defendants have common management between themselves. Ron and Judy Meins are the sole directors and officers of both defendant corporations. Ron and Judy Meins are also the top managers of both corporations, and all important business decisions for both corporations are made by Ron and/or Judy Meins.

12. Defendants have centralized control of labor relations between themselves. Ron and Judy Meins are the sole people who develop personnel policies for each defendant. Substantially identical personnel manuals and employment forms are used by both defendants. Employees of both defendants are trained together regarding employment issues, including the sexual harassment policy that is common to both defendants. In addition, defendants aggregate themselves into a single entity for the purpose of obtaining and providing employee benefits such as group health insurance and group life insurance.

13. Defendants have common ownership and/or financial control. Ron and Judy Meins collectively own 100% of the stock of both defendants. No one outside the Meins family owns any stock or exercises financial control of any kind over either defendant.

14. Defendants conduct and/or maintain, and/or during all relevant times conducted and/or maintained, a place of business, at 104 Lake Street, Garden City, Missouri 64747.

15. Defendants employed plaintiff at their place of business from approximately June 2002 until approximately January 2003.

Administrative Procedures

16. On or about February 4, 2003, plaintiff timely filed with the Equal Employment Opportunity Commission (“EEOC”) and the Missouri Human Rights Commission (“MHRC”) a charge of discrimination against defendants on the basis of sex (sexual harassment) (attached as Exhibit A and incorporated herein by reference).

17. After a reasonable investigation, the EEOC issued a Determination finding reasonable cause to believe that defendants violated Title VII of the Civil Rights Act, as amended.

18. After finding probable cause and attempting conciliation, the EEOC properly initiated litigation based on plaintiff’s charge of sexual harassment.

19. The aforesaid charge of discrimination provided the EEOC and the MHRC sufficient opportunity to investigate the full scope of the controversy between the parties and, accordingly, the sweep of this judicial complaint may be and is as broad as the scope of an EEOC investigation that could reasonably be expected to have grown out of the charge of discrimination.

20. Plaintiff has requested a Notice of Right to Sue from the MHRC.

21. Plaintiff has satisfied all private, administrative, and judicial prerequisites to the institution of this action.

COUNT I

(Violation under Title VII of the Civil Rights Act -- Sexual Harassment – Hostile Work Environment – Constructive Discharge)

22. Paragraphs 1 through 21 above are incorporated herein by reference.

23. Plaintiff is a female.

24. Plaintiff became employed by defendants.
25. During the course of plaintiff's employment with defendants, defendants subjected plaintiff to severe and unwelcome conduct of a sexual nature because of plaintiff's sex.
26. The harassment was sufficiently severe or pervasive that a reasonable person in plaintiff's position would find plaintiff's work environment to be hostile or abusive.
27. Plaintiff believed her work environment to be hostile and abusive. Defendants' conduct adversely affected the terms, conditions and/or privileges of plaintiff's employment with defendants and affected plaintiff's ability to perform her job duties.
28. Plaintiff complained to defendants' management personnel about defendants' conduct, but defendants failed to take proper action.
29. Defendants failed to exercise reasonable care to prevent and correct promptly the sexually harassing behavior.
30. Defendants knew or should have known of the improper conduct, but failed to take prompt and appropriate corrective action to end the harassment of plaintiff.
31. The improper conduct, combined with defendants' failure to correct that conduct, made plaintiff's working conditions intolerable. As a result, plaintiff was forced to resign her employment. Plaintiff's resignation was a reasonably foreseeable result of defendants' actions and/or inactions.
32. As shown by the foregoing, plaintiff suffered intentional discrimination at the hands of defendants during the course of her employment with defendants, based on her gender, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).
33. As a direct and proximate result of defendants' actions and/or inactions, plaintiff has been deprived of income, as well as other monetary and non-monetary benefits.

34. As a further direct and proximate result of defendants' actions and/or inactions, plaintiff has suffered a loss of self-esteem, humiliation, emotional distress and mental anguish, and related compensatory damages.

35. Defendants failed to make good faith efforts to establish and enforce policies to prevent illegal discrimination against its employees, including sexual harassment.

36. Defendants failed to properly train or otherwise inform its supervisors and employees concerning their duties and obligations under the civil rights laws, including Title VII.

37. Defendants' managers responsible for setting or enforcing policy in the area of discrimination were aware of plaintiff's complaints of harassment, but failed to respond to those complaints. Instead, plaintiff was forced to terminate her employment.

38. By failing to take prompt and effective remedial action, and instead forcing plaintiff to terminate her employment, defendants in effect condoned, ratified and/or authorized the harassment of plaintiff.

39. As shown by the foregoing, defendants engaged in these discriminatory practices with malice or with reckless indifference to the federally protected rights of plaintiff. Plaintiff is therefore entitled to an award of punitive damages in an amount sufficient to punish defendants or to deter it and other companies from like conduct in the future.

40. Plaintiff is entitled to recover from defendants reasonable attorneys' fees, as provided in Section 706(k) of Title VII, 42 U.S.C. § 2000e-5(k).

WHEREFORE, plaintiff requests that the Court enter judgment in her favor and against defendants for such damages, actual and nominal, as are fair and reasonable, for her reasonable attorneys' fees and

costs incurred herein, for interest as allowed by law, and for such other and further legal and equitable relief as the Court deems proper.

COUNT II
(Violation under R.S. Mo. 213.010 et seq.
Sexual Harassment -- Hostile Work Environment)

41. Paragraphs 1 through 40 above are incorporated herein by reference.

42. Defendants' actions, omissions and conduct, including the actions, omissions and conduct of its agents/employees, as previously alleged above, constitute violations of the Missouri Human Rights Act, R.S. Mo. 213.010 et seq., in that defendants subjected plaintiff to sexual harassment and a sexually hostile work environment.

43. As previously alleged above, the actions, omissions and conduct of defendants and its agents/employees were done with malice, evil motive and/or reckless indifference to plaintiff's protected rights, and defendants are also vicariously liable for the acts, omissions and conduct of its agents/employees.

44. Defendants are liable under the doctrines of strict liability and/or *respondeat superior* and/or direct liability for its agents' malice, evil motive or reckless indifference to plaintiff's protected rights, and defendants are also liable for its own acts, omissions and conduct, including its malice, evil motive and/or reckless indifference to plaintiff's protected rights.

45. As a direct and proximate result of defendants' actions, omissions and conduct, including, but not limited to, the actions, omissions and conduct of its agents/employees, defendants caused plaintiff to suffer the damages set forth above.

WHEREFORE, based on the foregoing, as to Count II of her Complaint, plaintiff prays for judgment against defendants in an amount to be shown at trial for damages associated with defendants' sexual harassment and discrimination against plaintiff, for compensatory damages, for lost wages and

benefits, for actual damages, for nominal damages, for damages for emotional distress, pain and suffering, inconvenience, mental anguish, embarrassment, humiliation, loss of enjoyment of life and any other nonpecuniary loss plaintiff suffered as a result of defendants' conduct, for pre-judgment interest, for punitive damages, for plaintiff's costs and attorneys' fees, and for such other and further legal, equitable or injunctive relief as this Court deems just and proper.

Jury Demand

Plaintiff hereby requests a trial by jury on all counts and allegations of wrongful conduct alleged in this Complaint in the Western District Court of Missouri at Kansas City.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was served via Notice of Electronic Filing this 9th day of November, 2004, to:

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