

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

CYNTHIA HUFFMAN,)
WILLA BURKE, AND)
EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff/Plaintiff-Intervenors,)

vs.)

Case No. 01-3144-CV-S-3-ECF

NEW PRIME, INC. d/b/a/ PRIME, INC.,)
ABEL JOSEPH LORMAND,)

JURY TRIAL DEMANDED

and)

SAMUEL TURNER)
Server at:)

2604 Joneboro Ave.)

Dallas, Texas 75228)

Defendants.)

COMPLAINT OF INTERVENOR WILLA BURKE

COMES NOW Plaintiff-Intervenor Willa Burke, by and through her undersigned attorneys,
and for her cause of action against the Defendants states as follows:

PARTIES

1. Plaintiff-Intervenor Willa Burkes is a resident of the State of Missouri, residing in Arbyrd, Dunklin County, Missouri. She has the capacity to sue.

2. Plaintiff Equal Employment Opportunity Commission ("EEOC"), the federal agency charged with the administration, interpretation and enforcement of Title VII, brought the instant action pursuant to § 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). It has the capacity to sue.

3. Plaintiff-Intervenor Cynthia Huffman intervened in this action pursuant to § 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1). She has the capacity to sue.

4. Defendant New Prime, Inc. (hereafter "Prime") is a corporation of the State of Nebraska, with its principal place of business located at 2740 North Mayfair, Springfield, Missouri 65808. Defendant Prime is also registered with the State of Missouri under the name Prime, Inc. and conducts business in the State of Missouri under that name. It has the capacity to be sued.

5. Defendant Abel Joseph Lormand is a resident of the State of Louisiana. He has the capacity to be sued.

6. Defendant Sam Turner ("Turner") is a resident of the State of Texas. He has the capacity to be sued.

JURISDICTION AND VENUE

7. Plaintiff-Intervenor Burke brings her cause of action pursuant to § 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 § 102(d) of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. Plaintiff Burke has the statutory right to intervene in the instant action pursuant to § 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1), and pursuant to F.R.C.P. 24(a)(1), which grants the right to intervene where a statute of the United States confers an unconditional right to intervene. Plaintiff-Intervenor Burke brings her state claims pursuant to Chapter 213 Revised Statutes of Missouri, hereinafter referred to as the Missouri Human Rights Act ("MHRA"). This Court has jurisdiction over Plaintiff-Intervenor Burke's pendent state claims pursuant to 28 U.S.C. § 1367.

8. Defendant Prime is an employer engaged within the meaning of Title VII, § 701(b), (g) and (h), 42 U.S.C. § 2000e-5(b),(g) and (h), and the Missouri Human Rights Act ("MHRA"), Chapter 213 R.S. Mo.

9. Plaintiff-Intervenor Burke filed her charge of discrimination jointly with the EEOC and the Missouri Commission on Human Rights ("MCHR") on or about May 3, 2000.

10. Plaintiff-Intervenor Burke was employed in the State of Missouri by Defendant Prime.

11. Plaintiff-Intervenor Burke received her Right to Sue Letter from MCHR on or about November 16, 2001. See Exhibit 1.

12. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5 and 28 U.S.C. § 1391(b) in that Defendant Prime maintains its principal office in this judicial district, and in that a substantial part of the events or omissions giving rise to Plaintiff-Intervenor Burke's claims occurred in this judicial district.

STATEMENT OF RELEVANT FACTS

15. Defendant Prime, at all relevant times, operated Prime, Inc. in Springfield, Greene County, Missouri, and employed Plaintiff-Intervenor Burke as a truck driver-trainee.

16. Defendant Turner was, at all relevant times, authorized by Defendant Prime to be a truck driver-trainer and was assigned by Defendant Prime to train and supervise of Plaintiff-Intervenor Burke.

17. Beginning on or about December 2, 1999, and continuing through December 6, 1999, Defendant Turner sexually assaulted Plaintiff-Intervenor Burke, and restrained Plaintiff-Intervenor Burke against her will by not allowing her to move about freely through his constant vigil and attention.

18. Beginning on or about December 2, 1999, and continuing through December 6,

1999, Defendant Prime engaged in acts of sexual harassment directed at Plaintiff-Intervenor Burke, including numerous sexually-oriented comments and unwanted physical touchings.

19. These incidents of unwelcome sexual harassment included but were not limited to Defendant Turner requiring Plaintiff-Intervenor Burke to remove her clothing and to engage in unwanted sexual intercourse with Defendant Turner on or about December 2, 1999 and on or about December 6.

20. The unlawful conduct alleged above was unwelcome and offensive to Plaintiff-Intervenor Burke and would be found by a reasonable person to be unwelcome and offensive.

21. The unlawful conduct alleged above was sufficiently severe or pervasive to create a hostile working environment for Plaintiff-Intervenor Burke which altered the terms or conditions of her employment, and Defendant Prime failed to take adequate corrective or remedial action in response to such unlawful conduct, in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), and the MHRA.

22. Defendant Prime constructively discharged Plaintiff-Intervenor Burke on or about December 6, 1999 by creating intolerable working conditions for Plaintiff-Intervenor Burke, in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), and the MHRA.

23. As a result of the actions alleged above, Plaintiff-Intervenor Burke has suffered and will continue to suffer emotional distress, loss of enjoyment of life, loss of reputation, humiliation, prolonged incapacity to work, and inconvenience.

24. As a result of the actions alleged above, Plaintiff-Intervenor Burke has incurred and continues to incur counseling and medical expenses.

COUNTS I AND II

TITLE VII - SEXUAL HARASSMENT AND CONSTRUCTIVE DISCHARGE

DEFENDANT PRIME

25. Plaintiff-Intervenor Burke incorporates and re-alleges Paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. By the unlawful acts alleged above, Defendant Prime has violated Title VII.

27. As a direct and proximate result of Defendant Prime's unlawful acts, Plaintiff-Intervenor Burke has sustained and is reasonably likely to sustain in the future irreparable harm in the form of pecuniary and nonpecuniary losses, including but not limited to, lost wages and benefits, emotional pain, suffering, inconvenience, humiliation, loss of enjoyment of life, loss of reputation, medical and counseling expenses, and attorneys' fees and expenses.

28. Defendant Prime acted with malice or with reckless indifference to Plaintiff-Intervenor Burke's right not to be discriminated against, thus making appropriate an award of punitive damages to punish the Defendant Prime and to deter the Defendant Prime and others from like conduct. Such malice or reckless indifference is part of a pattern of conduct engaged in by Defendant Prime on prior, similar occasions.

WHEREFORE, Plaintiff-Intervenor Burke prays that this Court enter judgment pursuant to Title VII in her favor and against Defendant Prime and enter an order:

- a. Declaring all acts in violation of Title VII;
- b. Enjoining and permanently restraining Defendant Prime from continued violations of Title VII;
- c. Directing Defendant Prime to take such affirmative action as is necessary to ensure that the effects of these unlawful practices are eliminated and do not continue to affect Plaintiff-Intervenor Burke's employment opportunities;
- d. Requiring Defendant Prime to compensate, reimburse, and make whole Plaintiff-

Intervenor Burke for the full value of all pecuniary and nonpecuniary damages she has sustained in the past, and is reasonably certain to sustain in the future, including, but not limited to, any and all back pay and benefits, medical and counseling expenses, offensive touching, embarrassment, humiliation, loss enjoyment of life, potential loss of reputation, and all consequent damages;

COUNTS III and IV

MHRA – SEXUAL HARASSMENT AND CONSTRUCTIVE DISCHARGE DEFENDANT PRIME

29. Plaintiff-Intervenor Burke incorporates and re-alleges Paragraphs 1 through 24 of this Complaint as if fully set forth herein.

30. By the unlawful acts alleged above, Defendant Prime has violated the Missouri Human Rights Act.

31. As a direct and proximate result of Defendant Prime's unlawful acts, Plaintiff-Intervenor Burke has sustained and is reasonably likely to sustain in the future irreparable harm in the form of pecuniary and nonpecuniary losses, including but not limited to, lost wages and benefits, emotional pain, suffering, inconvenience, humiliation, loss of enjoyment of life, loss of reputation, medical and counseling expenses, and attorneys' fees and expenses.

32. Defendant Prime acted with malice or with reckless indifference to Plaintiff-Intervenor Burke's right not to be discriminated against, thus making appropriate an award of punitive damages to punish the Defendant Prime and to deter the Defendant Prime and others from like conduct. Such malice or reckless indifference is part of a pattern of conduct engaged in by Defendant Prime on prior, similar occasions.

WHEREFORE, Plaintiff-Intervenor Burke prays that this Court enter judgment pursuant to the Missouri Human Rights Act in her favor and against Defendant Prime and enter an order:

- a. Declaring all acts in violation of the Missouri Human Rights Act;
- b. Enjoining and permanently restraining Defendant Prime from continued violations of the Missouri Human Rights Act;
- c. Directing Defendant Prime to take such affirmative action as is necessary to ensure that the effects of these unlawful practices are eliminated and do not continue to affect Plaintiff-Intervenor Burke's employment opportunities;
- d. Requiring Defendant Prime to compensate, reimburse, and make whole Plaintiffs-Intervenor Burke for the full value of all pecuniary and nonpecuniary damages she has sustained in the past, and is reasonably certain to sustain in the future, including, but not limited to, any and all back pay and benefits, medical and counseling expenses, offensive touching, embarrassment, humiliation, loss enjoyment of life, potential loss of reputation, and all consequent damages;
- e. Awarding Plaintiff-Intervenor Burke punitive damages in such amount as will punish the Defendant Prime and deter the Defendant Prime and others from like conduct in the future;
- f. Awarding Plaintiff-Intervenor Burke the costs of this action, prejudgment interest and reasonable attorneys' fees; and
- g. Directing Defendant Prime to provide Plaintiff-Intervenor Burke with a letter of apology from Defendant Prime;
- h. Providing such further and other relief as the Court deems just and proper.

COUNT V

MISSOURI LAW - ASSAULT AND BATTERY DEFENDANT TURNER

33. Plaintiff-Intervenor Burke incorporates and re-alleges Paragraphs 1 through 24 of this Complaint as if fully set forth herein.

34. By the unlawful acts alleged above, Defendant Turner committed assault and battery against Plaintiff-Intervenor Burke in that:

a. Defendant Turner intentionally engaged in unwanted touching and fondling of Plaintiff-Intervenor Burke including two sexual assaults;

b. Defendant Turner thereby caused a physical contact with Plaintiff-Intervenor Burke that was offensive to her;

c. Defendant Turner thereby caused Plaintiff-Intervenor Burke to be in apprehension of an offensive contact or bodily harm; and

d. Such contact would be offensive to a reasonable person.

35. By the unlawful acts alleged above, Plaintiff-Intervenor Burke has suffered and will continue to suffer in the future, indignity, disgrace, humiliation and mortification.

36. The conduct of Defendant Turner as alleged herein was outrageous because of his evil motive or reckless indifference to the rights of Plaintiff-Intervenor Burke, making him subject to an award of punitive damages to punish the Defendant Turner and to deter the Defendant Turner and others from like conduct in the future.

WHEREFORE, Plaintiff-Intervenor Burke prays that this Court enter a judgment in her favor and against Defendant Turner and enter an order:

a. Awarding Plaintiff-Intervenor Burke compensatory damages in such amount as to fairly and reasonably compensate for the damages she has suffered as a result of the conduct of the Defendant Turner;

b. Awarding Plaintiff-Intervenor Burke punitive damages in such sum as is appropriate to punish Defendant turner and to deter Defendant Turner and others from like conduct in the future;

c. Awarding Plaintiff-Intervenor Burke the costs of this action, prejudgment interest and

reasonable attorneys' fees; and

- d. Such further and other relief as the Court deems just and proper.

COUNT VI

FALSE IMPRISONMENT DEFENDANT TURNER

37. Plaintiff-Intervenor Burke incorporates and re-alleges Paragraphs 1 through 24 of this Complaint as if fully set forth herein.

38. By the unlawful acts alleged above, Defendant Turner committed false imprisonment against Plaintiff-Intervenor Burke in Defendant Turner unlawfully restrained Plaintiff-Intervenor Burke against her will by not allowing her to move about freely without his constant vigil and attention.

39. As a result of the actions of Defendant Turner as alleged herein, Plaintiff-Intervenor Burke has suffered, and will continue to suffer in the future, embarrassment, disgrace, humiliation, injury to her feelings and reputation and mental suffering.

40. The conduct of Defendant Turner as alleged herein was outrageous because of his evil motive or reckless indifference to the rights of Plaintiff-Intervenor Burke, making him subject to an award of punitive damages to punish the Defendant Turner and to deter the Defendant Turner and others from like conduct.

WHEREFORE, Plaintiff-Intervenor Burke prays that this Court enter a judgment in her favor and against Defendant Turner and enter an order:

- a. Awarding Plaintiff-Intervenor Burke compensatory damages in such amount as to fairly and reasonably compensate for the damages she has suffered as a result of the conduct of the Defendant Turner;

b. Awarding Plaintiff-Intervenor Burke punitive damages in such sum as is appropriate to punish Defendant turner and to deter Defendant Turner and others from like conduct in the future;

c. Awarding Plaintiff-Intervenor Burke the costs of this action, prejudgment interest and reasonable attorneys' fees; and

d. Such further and other relief as the Court deems just and proper.

Respectfully Submitted,

ROGER G. BROWN AND ASSOCIATES

By /s/Roger G. Brown

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INTERVENOR WILLA BURKE**