IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

SEP 2 9 2005

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Electrical N. Milby, Clark of Court

Plaintiff,

CIVIL ACTION NO.

v.

H 05-3364

DA FA SHANGHI, INC. d/b/a IHOP

JURY TRIAL DEMANDED

Defendant.

COMPLAINT

This is an action under Title VII of the Civil Rights Act of 1964, as amended, by Title I of the Civil Rights Act of 1991, to correct unlawful employment discrimination on the basis of sex and retaliation and to provide appropriate relief to a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez, who were adversely affected by Defendant Da Fa Shanghi Inc. d/b/a IHOP ("Defendant") unlawful practices. Since at least March 1, 2004, Defendant has subjected its female employees unwelcome comments and touching of a sexual nature and disparate terms, conditions and privileges of employment because of their sex, female. Defendant discharged and constructively discharged females who complained about the sexual harassment. The Commission also brings this action because Defendant destroyed employee records in violation under Title VII.

JURISDICTION AND VENUE

1. Pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345, the United States District Court

has jurisdiction over the subject matter of this civil action. 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, et seq. ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

3. The unlawful employment practices alleged in this complaint were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division. Venue is appropriate in this court.

PARTIES

- 4. Plaintiff, the Equal Employment Opportunity Commission ("EEOC" or "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. § 2000(e)-5(f)(1) and (3).
- 5. Defendant Da Fa Shanghi Inc. d/b/a IHOP ("Defendant") is a corporation doing business in the State of Texas and the City of Houston, and has continuously had at least fifteen (15) employees.
- 6. At all relevant times, Defendant has continuously been doing business in the State of Texas and the City of Baytown and has continuously had at least fifteen employees.
- 7. At all relevant times, Defendant 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).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Delaughter, Johnson,

Hamilton, Wilson; and Mendez filed charges with the Commission charges alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled, including the filing of a timely charge of employment discrimination, and an attempt to conciliate the matter.

- 8. Since at least March 1, 2004, Defendant engaged in unlawful employment practices, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), at its Houston location. Since at least March 1, 2004, Defendant engaged in unlawful employment practices, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), at its Houston location.
- 9. Since at least March 1, 2004, one of Defendant's managers, Mohammad ("Bobby") Khan, subjected a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez, to unwelcome comments and touching of a sexual nature and disparate terms, conditions and privileges of employment because of their sex, female. The conduct included asking them out on dates, attempting to kiss them, touching their breasts and buttocks and forcibly attempting to have them touch his groin area. Khan also offered them money to have sex with him and another woman. The female employee's resisted his sexual advances but had no avenue to complain. Instead, some filed criminal charges against Khan.
- 10. After the females rejected his advances, and in some cases filed criminal complaints, Khan discharged and/or constructively discharged Erica Johnson; Holly Hamilton; and Wendi Wilson.
- 11. Since at least March 1, 2004, Defendant has failed, in violation of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed. Specifically, Defendant

has destroyed all employment records related to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez.

- 12. The effect of the practices complained of in the preceding paragraphs has been to deprive a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez of equal employment opportunities and otherwise adversely affect their status as employees because of their sex, female.
- 13. The effect of the practices complained of in the preceding paragraphs has been to deprive a class of female employees, including but not limited to, Erica Johnson; Holly Hamilton; and Wendi Wilson of equal employment opportunities and otherwise adversely affect their status as employees because they opposed the harassment and filed charges of discrimination.
- 14. The unlawful employment practices of which the Commission complains in the preceding paragraphs were and are intentional.
- 15. The unlawful employment practices complained of in the preceding paragraphs were and are done with malice or reckless indifference to the federally protected rights of a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez.

PRAYER FOR RELIEF

- 16. Wherefore, the Commission respectfully requests that this Court:
- A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of sex;
- B. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns,

and all persons in active concert or participation with it, from engaging in any unlawful retaliation against individuals who oppose employment practices reasonably believed to be unlawful under Title VII, or against individuals who assist, encourage, and/or support others who oppose employment practices reasonably believed to be unlawful under Title VII..

- C. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for applicants and employees regardless of their sex, and which eradicate the effects of its past and present unlawful employment practices;
- D. Order Defendant, to make whole a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez by providing appropriate back pay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of unlawful employment practices, including but not limited to reinstatement, or, in the alternative, to provide front pay.
- E. Order Defendant to make whole a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in the preceding paragraphs.
- F. Order Defendant to make whole a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and

Laura Mendez by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described in the preceding paragraphs, including emotional pain, inconvenience, and humiliation, in amounts to be determined at trail.

- G. Order Defendant, to pay a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez punitive damages for its malicious and reckless conduct, as described above, in an amount to be determined at trial.
- H. Order Defendant to make and preserve all records, in accordance with the provisions of Section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-8(c), relevant to the determination of whether unlawful employment practices have been or are being committed.
- I. Grant such further relief as the Court deems necessary and proper in the public interest.
- J. 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.

Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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(Rev	07/89)

UNITED STATES DISTRICT COURT

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

OF THE FORM.)			•			
I(a) PLAINTIFFS EQUAL EMPLOYMENT OPPORTUNITY COMMISSION			DEFENDANTS DA FA SHANGHI, INC. d/b/a IHOP			
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)			COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT			
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Rudy Sustaita, Senior Trial Attorney EEOC-Houston District Office 1919 Smith Street, 7th Floor Houston, Texas 77002 (713) 209-3400			ATTORNEYS (IN MANDY) 92005 92005 05-3364 Michael N. Milby, Clark of Court			
II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)			III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)			
[x] I U.S. Government Plaintiff (U.S. Government Not a Party) [] 2 U.S. Government Defendant (Indicate Citizenship of Parties in Item III)			PTF DEF Citizen of This State [] 1 [] I Incorporated or Principal Place [] 4 [] 4 of Business In This State Citizen of Another State [] 2 [] 2 Incorporated and Principal Place [] 5 [] 5 of Business in Another State Citizen or Subject of a [] 3 [] 3 Foreign Nation [] 6 [] 6 Foreign Country			
IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a)(1), 2000e-3(a) and 2000e-8(c). The EEOC alleges that Defendant violated Title VII by discriminating on the basis of sex and retaliation. The EEOC also alleges that Defendant violated Title VII by destroying employment related documents. The EEOC seeks appropriate relief for a class of female employees, including but not limited to Mary Delaughter; Erica Johnson; Holly Hamilton; Wendi Wilson; and Laura Mendez, who were adversely affected by Defendant Da Fa Shanghi Inc. d/b/a IHOP ("Defendant") unlawful practices.						
V. NATURE OF SUI	T (PLACE AN x IN ONE BOX O	ONLY)	1	1	Γ	
CONTRACT	Т	ORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
[] 110 Insurance [] 120 Manne [] 130 Miller Act [] 140 Negotable Instrument [] 150 Recovery of Overpayment & Enforcement of Judgment [] 151 Medicare Act [] 152 Recovery of Defaulted Student Loans (Excl Veterans) [] 153 Recovery of Overpayment of Veteran's Benefits [] 160 Stockholders' Suits [] 190 Other Contract [] 195 Co REAL PROPERTY [] 210 Land Condemnation [] 220 Foreclosure [] 230 Rent Lease & Ejectment [] 240 Torts to Land [] 245 Tort Product Lability [] 290 All Other Real Property	PERSONAL INJURY [] 310 Airplane [] 315 Airplane Product Liability [] 320 Assault, Libel & Slander [] 330 Federal Employers' Liability [] 340 Marine [] 345 Marine Product Liability [] 350 Motor Vehicle [] 355 Motor Vehicle Product Liability [] 360 Other Personal Injury CIVIL RIGHTS [] 441 Voting [X] 442 Employment [] 443 Housing/Accommodations [] 444 Welfare [] 440 Other Civil Rights	PERSONAL INJURY [] 362 Personal Injury- Med Malpractice [] 365 Lability [] 368 Asbestos Personal Injury- Product Lability PERSONAL PROPERTY [] 370 Other Fraud [] 371 Truth in Lending [] 380 Other Personal Property Damage [] 385 Property Damage Product	[] 610 Agnoulture [] 620 Other Food & Drug [] 625 Drug Related Serzure of Property 21 USC 881 [] 630 Liquor Laws [] 640 R.R. & Truck [] 650 Aurtune Regs [] 660 Occupational Safety/Health [] 690 LABOR [] 710 Fair Labor Standards Act [] 720 Labor/Mgmi Relations [] 730 Labor/Mgmi Reporting	[] 422 Appeal 28 USC 158 [] 423 Withdrawal 28 USC 157 PROPERTY RIGHTS [] 820 Copyrights [] 830 Patent [] 840 Trademark SOCIAL SECURITY [] 861 IIIA (1395II) [] 862 Black Lung (923) [] 863 DIWC/DIWW (405(g)) [] 864 SSID Tule XVI [] 865 RSI (405(g)) FEDERAL TAX SUITS [] 870 Taxes (U S Plaintiff or U Celendani) [] 871 IRS—Third Party 26 USC 7609	400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 810 Selective Service 850 Securities/Commodities/ Exchange 875 Customer Challenge 875 Customer Challenge 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes 890 Other Statutory Actions	
[X] 1 Original [] 2 Re	CE AN x IN ONE BOX ONLY) emoved from [] 3 Remande te Court Appellate Co	d from [] 4 Reinstated or	nsferred from [] 5 another district [] 6 M (specify) Litigation	Appeal to District fultidistrict [] 7 Judge from Magistrate Judgment		
VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION DEMAND \$ Check YES only if demanded in complaint: COMPLAINT: [] UNDER F.R.C.P. 23 JURY DEMAND: [X] YES [] NO						
VIII. RELATED CASE(S) IF ANY (See instructions) JUDGE DOCKET NUMBER						
DATE 4/29/05	SIGNATURE OF ATTORNEY OF RE	SCORD July 1				