

U.S. DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

'04 FEB 12 P3:26

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Plaintiff,
and

SUZANNE T. WHITTY,

Plaintiff-Intervenor,
vs.

MOUNT CARMEL, LLC,

BENEDICTINE HEALTH SYSTEM, INC.,

RICHARD J. RAU, and

JOHN DOE,

Defendants.

Civil Case No. 03-C-0898

**PLAINTIFF-INTERVENOR'S
COMPLAINT**

Jury Trial Demand

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII") and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a to correct unlawful employment practices based on retaliation and to make whole Suzanne Whitty ("Whitty"), who has been aggrieved by those unlawful employment practices. Mount Carmel, LLC ("Mount Carmel") and Benedictine Health Services, Inc. ("Benedictine") discriminated against Whitty when they terminated her employment as an assistant administrator and caused her to lose further employment opportunities in retaliation for her opposition to sexual harassment and her participation in an investigation of sexual harassment claims. This is also an action in accordance with

common law to redress unjustifiable interferences with Whitty's employment and career that occurred on account of Whitty's performance of her duties. Richard J. Rau ("Rau") and John Doe ("Doe") intentionally interfered in Whitty's employment and career without justification and outside the scope of their duties, and their interferences were ratified by Mount Carmel and Benedictine.

JURISDICTION AND VENUE

1. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1345, and 1367. This action is authorized and instituted pursuant to Section 706 (f) (1) and (3) of Title VII, 42 U.S.C. § 2000e-5 (f) (1) and (3), Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, and the common law of Wisconsin and/or Minnesota.

2. The employment practices hereafter alleged to be unlawful were committed within the jurisdiction of the Eastern District of Wisconsin.

PARTIES

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

4. Plaintiff-Intervenor Suzanne Whitty is a citizen and resident of Wisconsin and of the United States, who resides at 1245 Riverton Drive, City of Mukwonago, State of Wisconsin.

5. At all relevant times Mount Carmel has been a Wisconsin limited liability corporation located in Greenfield, Wisconsin, and has been continuously engaged in the

business of providing nursing home care, and has continuously had and does now have at least fifteen (15) employees.

6. At all relevant times Benedictine has been a Minnesota corporation located in Duluth, Minnesota, and has been continuously engaged in the business of providing health care and nursing home care, and has continuously had and does now have at least fifteen (15) employees.

7. At all relevant times Mount Carmel and Benedictine have continuously been and are now employers engaged in an industry affecting commerce within the meaning of Section 701 (b), (g) and (h) of Title VII, 42 U.S.C. § 2000e(b), (g) and (h).

8. Rau is a citizen of Wisconsin and of the United States who resides in Milwaukee, Wisconsin but whose residential address is presently unknown; his work address is 5700 N. Layton Ave., Greenfield, WI 53220.

9. Doe is a citizen of Wisconsin and of the United States whose address in Wisconsin is presently unknown. Whitty believes that Doe can be identified by discovery in this proceeding.

STATEMENT OF CLAIMS

10. More than thirty (30) days prior to the institution of this lawsuit, Whitty filed a charge of discrimination with the Commission alleging that Mount Carmel and Benedictine terminated her in retaliation for participating in an investigation of and opposing sexual harassment by Rau. All conditions precedent to the institution of this lawsuit have been fulfilled. Whitty hereby repleads and incorporates by reference into this complaint the allegations of the EEOC complaint filed in this action on September 15, 2003.

11. Since at least May 1999 and continuing, defendants have engaged in unlawful employment practices, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a). These practices include, but are not limited to, retaliating against Whitty, an assistant administrator, after she took part in investigations of management official Rau for sexual harassment which resulted in her termination for opposing sexual harassment and participating in an internal investigation of charges of sexual harassment. In addition, regarding her termination, Rau and Doe interfered with Whitty's employment with Mount Carmel for personal reasons outside the scope of their official duties and without justification.

12. Following Whitty's termination Rau and Doe interfered with her future employment opportunities, and particularly with her prospective employment at Linden Grove Nursing Home in Waukesha, Wisconsin in retaliation for her participation in and opposition to Rau's sexual harassment of Mount Carmel employees. Rau and Doe interfered with Whitty's future employment opportunities for personal reasons, outside the scope of their official duties, and without justification.

13. Mount Carmel and Benedictine ratified the interferences into Whitty's employment and joined in and/or ratified the interferences into Whitty's future employment and career by Rau and Doe.

14. The effect of the practices complained of above has been to deprive Whitty of her career, employment and equal employment opportunities in violation of Sections 704(a) of Title VII, 42 U.S.C. § 2000e-3 and of the common law of Wisconsin and/or Minnesota.

15. The employment practices complained of above in paragraphs 11-13 were intentional.

16. The employment practices complained of above in paragraphs 11-13 were done with malice and/or reckless indifference to the federally and state protected rights of Whitty.

PRAYER FOR RELIEF

WHEREFORE, Whitty respectfully requests that this Court:

1. Grant a permanent injunction enjoining Mount Carmel and Benedictine and their officers, successors, assigns, and all persons in active concert or participation with them from engaging in any employment practices which constitute discrimination and retaliation against employees for activity protected by Title VII;
2. Order defendants Mount Carmel and Benedictine to institute and carry out policies, practices, and programs which eradicate the effects of their past and present unlawful employment practices;
3. Order Mount Carmel and Benedictine to make Whitty whole by providing back pay plus prejudgment interest in amounts to be determined at trial and other affirmative relief necessary to eradicate the effects of their unlawful employment practices, including but not limited to rightful place reinstatement and/or front pay, in the alternative to reinstatement;
4. Order defendants to compensate Whitty by providing compensation for her past, present and future losses, including career economic losses, emotional pain and suffering and reputational harm;

5. Order each defendant to pay Whitty punitive damages for its or his particular malicious and/or reckless conduct, in amounts to be determined particularly to each defendant at trial;

6. Order defendants to pay reasonable costs, including reasonable attorneys' fees;

7. Order such other and further relief as the Court may deem necessary and proper.

JURY TRIAL DEMAND

Whitty requests a jury trial on all questions of fact raised by her complaint.

Date: February 11, 2004



Attorney for Plaintiff-Intervenor

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