

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	§	
COMMISSION,	§	
	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO. 9:06cv226
	§	
NATIONAL VISION, INC.	§	JUDGE HEARTFIELD
d/b/a THE VISION CENTER,	§	
	§	
Defendant	§	

PLAINTIFFS-INTERVENORS' ORIGINAL COMPLAINT

NOW COME Plaintiffs-Intervenors Lisa Arriola, Charlinda Wells, Martha Padilla and Tiffany McIntee, complaining of Defendant National Vision, Inc. d/b/a The Vision Center and Defendant Dr. S. J. Charendoff. In support of this claim, Plaintiffs-Intervenors submit the following:

I

Introduction

1. Plaintiffs-Intervenors Lisa Arriola ("Arriola"), Charlinda Wells ("Wells"), Martha Padilla ("Padilla"), and Tiffany McIntee ("McIntee") (collectively, the "Plaintiffs-Intervenors") complain of Defendant National Vision, Inc. d/b/a The Vision Center ("Vision Center") and Defendant Dr. S. J. Charendoff ("Charendoff") in this employment discrimination case originally brought by the EEOC. The Plaintiffs-Intervenors are all women and former employees of Vision Center who pursue claims for sex discrimination

(sexual harassment) in employment and retaliation pursuant to Title VII, 42 U.S.C. § 2000e, *et seq.* ("Title VII") against Defendant Vision Center only and common law claims of assault arising out of the same operative facts against Defendant Charendoff only.

2. Plaintiffs-Intervenors were sexually harassed, including common law assaults, by Defendant Charendoff, an optometrist under contract to Vision Center, while they worked at Defendant Vision Center's store known as the WalMart Vision Center located in the WalMart in Lufkin, Texas. Plaintiffs-Intervenors opposed the harassment by seeking protection from their employer, Vision Center, which ignored the reports of harassment for many months and began to retaliate against Plaintiffs-Intervenors by treating them with hostility. When Vision Center received notice that Plaintiffs-Intervenors had reported the sexual harassment to the EEOC, Vision Center increased its campaign of retaliation against the Plaintiffs-Intervenors to punish the Plaintiffs-Intervenors for having opposed the sexual harassment. As a result of these actions, the Plaintiffs were compelled to resign their employment.

3. Plaintiffs-Intervenors seek vindication of their rights guaranteed by Title VII and by the common law of the State of Texas. These Plaintiffs seek the full measure of available relief, including declaratory, equitable, compensatory and punitive remedies, as well as costs, including attorney's fees.

II

Jurisdiction and Venue

4. This Court has jurisdiction over the Plaintiffs-Intervenors' Title VII claims pursuant to 28 U.S.C. § 1343(a)(4), 28 U.S.C. § 1337, and 42 U.S.C. § 2000e-5(f). This court also has jurisdiction over the Plaintiffs-Intervenors' claims pursuant to the common law of the State of Texas pursuant to 28 U.S.C. § 1367.

5. The sexual harassment alleged in this Complaint, including assaults and batteries in violation of Texas common law, occurred within the jurisdiction of the United States District Court for the Eastern District of Texas, Lufkin Division. Venue is therefore appropriate in this Court.

III

Parties

Plaintiffs

6. Plaintiff-Intervenor Arriola is a female citizen of the United States and resident of Angelina County. Arriola is, or was at all relevant times, an employee entitled to the protections of Title VII, including the prohibitions against sexual harassment and retaliation, and to the benefit of the common law of the State of Texas.

7. Plaintiff-Intervenor Wells is a female citizen of the United States and resident of Angelina County. Wells is, or was at all relevant times, an employee entitled to the protections of Title

VII, including the prohibitions against sexual harassment and retaliation, and to the benefit of the common law of the State of Texas.

8. Plaintiff-Intervenor Padilla is a female citizen of the United States and resident of Angelina County. Padilla is, or was at all relevant times, an employee entitled to the protections of Title VII, including the prohibitions against sexual harassment and retaliation, and to the benefit of the common law of the State of Texas.

9. Plaintiff-Intervenor McIntee is a female citizen of the United States and was a resident of Angelina County, and is now a resident of LaCrosse County, Wisconsin. McIntee is, or was at all relevant times, an employee entitled to the protections of Title VII, including the prohibitions against sexual harassment and retaliation, and to the benefit of the common law of the State of Texas.

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

Defendants

11. Defendant, National Vision, Inc. d/b/a The Vision Center ("Vision Center") is a corporation doing business as the WalMart Vision Center in the WalMart store at 2500 Daniel McCall Drive, Lufkin Texas 75904, and has continuously had at least 15 employees. Vision Center, acts by and through its managers, agents, officials and employees, may be served by serving its registered agent for service of process, The Prentice-Hall Corporation System, 701 Brazos Street, Suite 1050, Austin TX 78701.

12. Defendant Charendoff, apparently an optometrist, is an individual subject to the common law of Texas who still works at Vision Center's Lufkin WalMart location, 2500 McCall Drive, Lufkin Texas 75904, where he can be served.

IV

Exhaustion of Administrative Remedies

13. Plaintiffs-Intervenors have filed charges of discrimination with the EEOC and satisfied all administrative prerequisites to filing their Title VII claims. The EEOC determined that Vision Center's failure to take prompt corrective action constitutes a violation of Title VII.

V

Federal Causes of Action

For All Plaintiffs-Intervenors:

14. The Plaintiffs-Intervenors were all employees of Defendant Vision Center at its location in the Lufkin, Texas WalMart. While the Plaintiffs-Intervenors were employed, Defendant Vision Center also contracted with Defendant Charendoff to work as an optometrist at the same location.

15. Defendant Charendoff had previously contracted to work at at least one other Vision Center locations, and Vision Center employees had previously complained of his sexual harassment. Despite this history, Vision Center contracted with Charendoff to work with its employees, the Plaintiffs-Intervenors, at the Lufkin, Texas WalMart.

16. Defendant Charendoff sexually harassed the Plaintiffs-Intervenors by making unwelcome sexual comments and suggestions, and/or offensively touching the Plaintiffs-Intervenors.

17. The Plaintiffs-Intervenors reported the sexual harassment, including the offensive touching, to Defendant Vision Center according to its published policy. Defendant Vision Center acknowledged some of the reports and even admitted knowing that Charendoff was a "pervert," but for many months took no significant or meaningful action to end the harassment, protect the Plaintiffs-Intervenors, or even to investigate the harassment. Vision Center

did begin a campaign of retaliatory harassment against the Plaintiffs-Intervenors in response to their persistent opposition to the sexual harassment.

18. The Plaintiffs-Intervenors reported the sexual harassment to the EEOC after Vision Center had ignored their reports. When Vision Center learned of the proceedings before the EEOC, it ratcheted up its campaign of retaliation against the Plaintiffs-Intervenors, including conducting an unethical and intimidating so-called "investigation," threatening their job security, facilitating hostility toward the Plaintiffs-Intervenors by Defendant Charendoff and others, falsely criticizing their work performance, subjecting Plaintiffs-Intervenors to heightened scrutiny, and/or other retaliatory acts.

19. As a result of Defendants' actions complained of above, Plaintiffs-Intervenors were reasonably compelled to quit to protect their own safety and well-being, constituting constructive discharge.

20. Defendant Vision Center's actions and omissions described herein caused each Plaintiff-Intervenor to suffer lost pay and compensation as well as emotional distress, for which Vision Center is liable to each Plaintiff-Intervenor.

21. Defendant Vision Center's actions and omissions described herein were willful, malicious and in reckless disregard of each Plaintiff-Intervenor's rights, making appropriate awards of

punitive damages.

22. Defendant Vision Center's actions and omissions described herein constitute violations of Title VII, which creates a cause of action for redress.

For Plaintiff-Intervenor Arriola:

23. Arriola was employed as the Store Manager of Defendant's WalMart Vision Center in the Lufkin, Texas store when, since about November 2003, the Vision Center contracted with Defendant Charendoff to also work at that store.

24. Since on or about December 2003, Defendant Charendoff began to sexually harass Arriola and the other women employees at the store.

25. Specifically, Defendant Charendoff made unwelcome sexual comments to Arriola, including, describing movie sex scenes, offering to "take care" of her when her husband traveled, and inviting her to sit on his lap, among other things. On each occasion Arriola made it obvious that the sexual remarks were unwelcome.

26. Defendant Charendoff also offensively and sexually touched Arriola. On several occasions he would rub on her arms, back and shoulders to which she would respond by interrupting her work and moving away, and telling him to stop. On some of those, and other, occasions he would rub his crotch against her, with similar response.

27. Arriola saw and heard reports from the other women employees

that Defendant Charendoff was treating the other women similarly.

28. Consistent with Vision Center policy, Arriola began reporting the sexual harassment to her supervisor, Vision Center's District Manager, in December, 2003. Although Vision Center's District Manager agreed that Charendoff was some kind of a pervert, the District Manager ignored Arriola's many reports, or inconsistently told her he didn't believe it, it was the women's fault, to "handle it" herself, to "be nice" to Charendoff, to leave Charendoff alone, or (sarcastically) to call the police "if it's so bad," among other less-than-helpful responses. He also told her to go get a lawyer because Vision Center would not do anything and that it would do her no good to go over his head. On many occasions he shouted at her. Eventually, the District Manager began failing to even return Arriola's phone calls.

29. When, and because, Arriola persisted in reporting the harassment, Vision Center's District Manager began making false negative comments about her job performance (which was, in fact, very good), threatening her job security, as well as shouting at her and treating her in a hostile manner. As retaliation he also resisted her claims regarding an on-the-job knee injury.

30. Vision Center's actions and omissions, including its tolerating the harassment by Defendant Charendoff, interfered with Arriola's job duties.

31. By mid-September 2004, Vision Center learned that Arriola had filed a charge of discrimination with the EEOC and had retained counsel. Although Arriola's counsel offered to cooperate with any good faith investigation by Vision Center, Vision Center rejected the offer of cooperation and to further retaliate against Arriola insisted that Arriola be subject to questioning, in violation of legal ethics rules.

32. After Arriola asked that Vision Center's questions be put in writing, the District Manager said he could foresee Vision Center firing Arriola down the road. To protect her employment record and because of the stress related to Vision Center's actions, Arriola reasonably felt compelled to resign.

33. The actions and omissions described herein constitute violations of Title VII, which provides Plaintiff-Intervenor Arriola a cause of action.

34. Vision Center's actions and omissions described above caused Arriola to lose valuable compensation and fringe benefits, incur incidental expenses in finding alternative employment, and to suffer mental damages.

For Plaintiff-Intervenor Wells:

35. Plaintiff-Intervenor Wells worked for Defendant National Vision as the Assistant Manager of its store located in the Lufkin, Texas WalMart beginning in about March, 2002. She was working in this capacity in November 2003 when Vision Center contracted with

Defendant Charendoff to work at the same location.

36. By December 2003 Defendant Charendoff began to sexually harass Wells and the other women working for Vision Center at that location. The harassment included unwelcome offensive verbal remarks and inappropriate touching of a sexual nature.

37. Specifically, Defendant Charendoff made unwelcome sexual remarks to Wells, including, describing movie sex scenes, asking Wells to sit on his lap, telling Wells she had nice breasts, offering to "comfort" Wells, recommending that she wear lower-cut shirts and shorter-length skirts to improve store business, and making sexual references to her jewelry, among other things. On each occasion, Wells made it clear that his comments were unwelcome and inappropriate.

38. Defendant Charendoff also offensively and sexually touched Wells, including pressing his crotch against her and rubbing her arms and back when she was trying to work. On each occasion, Wells made it clear that Charendoff's conduct was inappropriate and unwelcome.

39. Plaintiff-Intervenor Wells also saw, and heard reports from other Vision Center women employees, that Charendoff similarly harassed the other women employees.

40. Consistent with Vision Center policy, Wells reported the sexual harassment to her immediate supervisor, Store Manager Arriola, and to the next level supervisor, Vision Center's District

Manager, beginning by December of 2003. Arriola reported the matters to the District Manager as well. The District Manager would take no meaningful corrective action. Instead he said Wells and the other women employees should be nice to Charendoff, while also acknowledging that Charendoff was a pervert, and suggesting that Wells get a lawyer.

41. When Vision Center officials would take no corrective action for months, in September 2004, Wells filed an initial charge of discrimination with the EEOC.

42. Vision Center did take retaliatory action against Wells for persisting in her opposition to the sexual harassment, and the retaliatory action escalated after Vision Center learned of her EEOC charge. The District Manager and Vision Center became openly hostile to Wells, questioning her work performance (which was, in fact, quite good), subjecting her to an intimidating unethical custodial investigation, threatening to fire her, calling her a thief, threatening her with insubordination, and withholding a bonus, among other things.

43. Among other retaliatory acts, Vision Center assigned Wells a new Store Manager and supervisor who was incompetent, crude and hostile to Wells, as part of the effort to drive Wells out of her job.

44. Vision Center's actions and omissions complained of herein, including Defendant Charendoff's conduct in harassing Plaintiff-

Intervenor Wells, interfered with Wells' work and caused her considerable anxiety.

45. Because of the actions and inactions complained of above, Plaintiff-Intervenor Wells reasonably felt compelled to resign from WalMart Vision Center in March of 2005.

46. The actions and omissions described herein constitute violations of Title VII, which provides Plaintiff-Intervenor Wells a cause of action.

47. Vision Center's actions and omissions described above caused Wells to lose valuable compensation and fringe benefits, incur incidental expenses in finding alternative employment, and to suffer mental damages.

For Plaintiff-Intervenor Martha Padilla:

48. Plaintiff-Intervenor Padilla worked for Defendant Vision Center as a Sales Associate at the Lufkin, Texas WalMart store from approximately May, 2003. She was working in this capacity in November 2003 when Vision Center contracted with Defendant Charendoff to work at the same location.

49. By December 2003 Defendant Charendoff began to sexually harass Padilla and the other women working for Vision Center at that location. The harassment included unwelcome offensive verbal remarks and inappropriate touching.

50. Specifically, Charendoff made unwelcome sexual remarks to Padilla, including asking her if she had sex with older men,

offering to comfort her, and commenting on Plaintiff-Intervenor Wells' breasts, among other things. On each occasion Padilla made it clear that the comments were unwelcome and inappropriate. This conduct made it more difficult for Padilla to work.

51. Charendoff also inappropriately and offensively touched Padilla. Specifically, Charendoff would press and rub his crotch against Padilla. On each such occasion, Padilla would indicate that the conduct was offensive and unwelcome.

52. Plaintiff-Intervenor Padilla also saw, and heard reports, that Charendoff similarly sexually harassed, including touching, other women Vision Center employees and that Vision Center would not take corrective action or otherwise protect the women.

53. Beginning in or about December 2003 Padilla reported Charendoff's sexual harassment to her supervisors, Plaintiffs-Intervenors Arriola and Wells, who in turn reported the sexual harassment up the chain of command to their supervisor, Vision Center's District Manager, who would take no corrective action.

54. Vision Center retaliated against Padilla for her opposition to the sexual harassment described above by permitting the same harassment to continue and by making Padilla's working conditions unbearable.

55. After Vision Center learned that Padilla filed a charge of discrimination with the EEOC, it ratcheted up the hostility of Padilla's working environment by, among other things, assigning

Padilla a new Store Manager and supervisor who had a history of tolerating (if not being friends with) Defendant Charendoff at another store and who was openly hostile to Padilla. Specifically, the new Store Manager was incompetent, crude and would do things too offensive to describe here, encouraged customers to lodge unfounded complaints against Padilla, and stole from Vision Center in a manner to frame Padilla.

56. As a result of the resulting unbearable working environment, Vision Center essentially forced Padilla to resign in March of 2005.

57. The actions and omissions described herein constitute violations of Title VII, which provides Plaintiff-Intervenor Padilla a cause of action.

58. Vision Center's actions and omissions described above caused Padilla to lose valuable compensation and fringe benefits, incur incidental expenses in finding alternative employment, and to suffer mental damages.

For Plaintiff-Intervenor McIntee:

59. Plaintiff-Intervenor McIntee worked for Defendant National Vision as a Sales Associate at its Lufkin, Texas location from approximately May, 2004, and was required to work with Defendant Charendoff.

60. Under the ruse of conducting an eye exam, Charendoff combed his hands through McIntee's hair. McIntee made it clear the

conduct was unwelcome and offensive.

61. Charendoff told McIntee he liked her bare neck. McIntee made it clear that his comments were also unwelcome.

62. Charendoff then became openly hostile to McIntee and humiliated and belittled her in front of others.

63. McIntee reported Charendoff's conduct, described above, to her supervisors, but Vision Center took no corrective action.

64. When Vision Center learned that McIntee reported the harassment to the EEOC by filing a charge of discrimination it further retaliated against her by threatening to fire her, intimidating her, and by insisting on conducting an unethical custodial interrogation of Plaintiff-Intervenor McIntee.

65. As part of its retaliatory efforts, Vision Center assigned a particularly incompetent and crude manager to supervise McIntee. This Manager appeared to be a friend of Charendoff's and hostile to McIntee, which she exhibited in particularly offensive and crude behavior.

66. As a result of the conduct described above, Vision Center made it very stressful and difficult for McIntee to continue working for Vision Center, causing her to resign in December, 2004.

67. The actions and omissions described herein constitute violations of Title VII, which provides Plaintiff-Intervenor McIntee a cause of action.

68. Vision Center's actions and omissions described above caused

McIntee to lose valuable compensation and fringe benefits, incur incidental expenses in finding alternative employment, and to suffer mental damages.

VI

Common Law Causes of Action for Assault by Offensive Physical Contact¹

69. Defendant Charendoff intentionally, knowingly, maliciously and recklessly physically touched and made contact with Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee, as described above.

70. Defendant Charendoff knew, or should have known, that each of the Plaintiffs-Intervenors would regard the contact as offensive.

71. Defendant Charendoff's offensive touching and physical contact with each of the Plaintiffs-Intervenors caused upset and personal indignity to each of the Plaintiffs-Intervenors.

72. Defendant Charendoff's actions described above caused Plaintiffs-Intervenors to suffer mental damages and lost earning capacity and compensation, for which he is liable to each Plaintiff-Intervenor.

73. Defendant Charendoff's actions described above were intentional, malicious and undertaken in reckless disregard of the Plaintiffs-Intervenors' rights, making appropriate an award of punitive damages.

¹The State common law causes of action are against Defendant Charendoff only.

VII

Request for Relief

74. Accordingly, Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee respectfully request that this Court advance this case on the docket and grant the following relief:

1. Grant Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee declaratory judgments, declaring Defendant Vision Center's past practices herein complained of to have violated Plaintiff-Intervenor England's rights in violation of Title VII;
2. Grant Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee declaratory judgments declaring that Defendant Charendoff has assaulted each of them by making offensive contact;
3. Enter judgments against Defendants Vision Center and Charendoff in favor of Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee for full compensatory damages;
4. Enter judgments against Defendant Vision Center and in favor of Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee for equitable relief, including back pay, reinstatement, and/or front pay, including fringe benefits;
5. Enter judgments against Defendant Vision Center and in favor of Plaintiffs-Intervenors Arriola, Wells, Padilla

and McIntee for an amount of punitive damages sufficient to punish and deter Defendant Vision Center from discrimination, harassment and/or retaliation against Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee, and/or others;

6. Enter judgments against Defendant Charendoff and in favor of Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee for an amount of punitive damages sufficient to punish and deter Defendant Charendoff from violating the rights of Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee, and/or others;
7. Grant Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee a trial by jury; and
8. Grant Plaintiffs-Intervenors Arriola, Wells, Padilla and McIntee any and all additional relief to which they appears to be entitled, including a reasonable attorney fee, costs herein expended, pre-judgment interest, and post-judgment interest as provided by law.

Respectfully Submitted,

/s/ TIMOTHY B. GARRIGAN

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CERTIFICATE OF SERVICE

I hereby certify that I have served counsel in this case with a true and correct copy of the foregoing Plaintiffs-Intervenors" Original Complaint by sending same via electronic filing/FAX/U. S. Postage Service prepaid to:

Kathy D. Boutchee, Senior Trial Attorney
Jim Sacher, Regional Attorney
Rose Adewale-Mendes, Supervisory Trial Attorney
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Dr. S. J. Charendoff
WalMart Vision Center
2500 Daniel McCall Drive
Lufkin TX 75901

on this the 11th day of October, 2006.

/s/ TIMOTHY B. GARRIGAN
Timothy B. Garrigan