

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
)	
Plaintiff,)	
)	
and ALLESHA COLLINS,)	
)	
Intervenor Plaintiff,)	
v.)	CAUSE NO: 1:05-cv-0970 DHF-WTL
)	
DAVIS HOMES, LLC,)	
)	
Defendant.)	

**INTERVENOR PLAINTIFF'S FIRST AMENDED COMPLAINT
AND DEMAND FOR TRIAL BY JURY**

I. Introduction.

1. Intervenor Plaintiff, Allesha Collins (hereinafter "Collins") intervenes as a Party Plaintiff in the unlawful retaliation claim brought by Plaintiff Equal Employment Opportunity Commission ("EEOC") against her former employer Defendant Davis Homes, LLC ("Defendant"). Collins also asserts claims of race discrimination in employment against Defendant under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., as amended ("Title VII"), and §1981 of the Civil Rights Act of 1866 ("Section 1981"). Collins also asserts a claim for unpaid commission, liquidated damages and attorney fees against Defendant under the wage claim statutes Indiana Code §§22-2-9-2 and 22-2-5-2.

II. Parties.

2. Collins, at all times relevant to this action, resided within the geographical boundaries for the Southern District of Indiana.

3. Defendant, at all times relevant, an Indiana corporation that has continuously done business within the geographical boundaries for the Southern District of Indiana.

III. Jurisdiction and Venue.

4. Collins satisfied her obligation to exhaust administrative remedies in pursuit of claims of race discrimination in violation of Title VII, having timely filed a charge of discrimination (EEOC Charge No. 240-2004-04842) with the United States Equal Employment Opportunity Commission alleging race discrimination in her employment. Having received the appropriate *Dismissal and Notice of Rights*, Collins filed her original complaint within ninety (90) days of her receipt thereof.

5. Collins' state law claim arises from the same common nucleus of operative facts, and are so related to her federal law claims that they form a single case and controversy under Article III of the United States Constitution. Pursuant to IC §22-2-9-4(b) Collins has the appropriate statutory authorization to pursue her wage claims in a private action having received the appropriate referral from the Indiana Department of Labor and Attorney General dated July 7, 2005. [See Exhibit "A" attached hereto.]

6. Defendant is an "employer" as that term is defined by 42 U.S.C. §2000-e(b).

7. Collins, at all times relevant to this action, was an "employee" as that term is defined by 42 U.S.C. §2000-e(f).

8. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, 28 U.S.C. §1343, 28 U.S.C. §1367, 42 U.S.C. §1981 and 42 U.S.C. §2000e-5.

9. All events, transactions and occurrences concerning this action having arisen within the geographical environs of the Southern District of Indiana, venue is proper in the Court pursuant to 28 U.S.C. §1391.

IV. Factual Allegations.

10. Collins is an African-American female, who commenced her employment with

Defendant in or about November, 2002 as a Commissioned Sales Representative.

11. At all times relevant, Collins met or exceeded Defendant's legitimate expectations of performance.

12. Notwithstanding her performance, Collins was summarily terminated on or about March 29, 2004. Defendant had no basis for terminating Collins' employment and provided her with no reason for the decision. As such, Defendant's proffered reasons for its termination of Collins are a pretext for unlawful discrimination in violation of Title VII and Section 1981.

13. Similarly-situated employees who are not African-American were not subjected to similar treatment.

14. Subsequent to her termination, Defendant failed to promptly pay Collins outstanding and earned commissions that were due and owing. Defendant does not similarly delay or deny payment of such commissions to non-African-Americans.

15. Defendant refused to promptly pay Collins her outstanding and earned commissions that were due and owing in retaliation for Collins having previously complained of race discrimination. Similarly situated employees who have not engaged in such previous protected activity are not subjected to this same adverse treatment.

16. Defendant's failure to pay Collins her earned and outstanding commissions subsequent to the termination of her employment is a violation of the Indiana Wage Claim Statute.

V. Legal Allegations.

COUNT 1: Violations of Title VII (Race Discrimination)

17. Collins hereby incorporate by reference the allegations outlined in paragraphs one (1) through sixteen (16) of this Complaint, as if the same were set forth at length herein.

18. Defendant denied Collins the same privileges, terms, and conditions of the employment relationship as those afforded to similarly-situated non-African American individuals when it summarily terminated her employment for no reason. Any subsequent reasons advanced by Defendant for taking this action against Collins are a pretext for unlawful race discrimination.

19. Defendant's unlawful action toward Collins was intentional and was done with reckless indifference to the federally protected rights of Collins in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*.

20. Collins has suffered harm and injury resulting from Defendant's unlawful actions.

COUNT 2: Violations of 42 U.S.C. §1981 (Race Discrimination)

21. Collins hereby incorporates by reference the allegations outlined in paragraphs one (1) through twenty (20) of this Complaint, as if the same were set forth at length herein.

22. Collins' employment relationship with Defendant was contractual in nature.

23. Defendant denied Collins the same privileges, terms, and conditions of the employment relationship as those afforded to similarly-situated non-African American individuals when it summarily terminated her employment for no reason. Any subsequent reasons advanced by Defendant for taking this action against Collins are a pretext for unlawful race discrimination.

24. Defendant's actions were willful, intentional and were taken with reckless indifference for Collins' civil rights and in violation of the Civil Rights Act of 1866, 42 U.S.C. §1981.

25. Collins has suffered harm and injury resulting from Defendant's unlawful actions.

COUNT 3: Violation of 42 U.S.C. §1981 (Race Discrimination)

26. Collins hereby incorporates by reference the allegations outlined in paragraphs one (1) through twenty-five (25) of this Complaint, as if the same were set forth at length herein.

27. Collins' employment relationship with Defendant was contractual in nature.

28. Defendant denied Collins the same privileges, terms, and conditions of the employment relationship as those afforded to similarly-situated non-African American individuals when it refused to pay her earned commissions subsequent to her discharge of her employment.

29. Defendant's actions were willful, intentional and were taken with reckless indifference for Collins' civil rights and in violation of the Civil Rights Act of 1866, 42 U.S.C. §1981.

30. Collins has suffered harm and injury resulting from Defendant's unlawful actions.

COUNT 4: Violation of 42 U.S.C. §1981 (Retaliation)

31. Collins hereby incorporates by reference the allegations outlined in paragraphs one (1) through thirty (30) of this Complaint, as if the same were set forth at length herein.

32. Collins' employment relationship with Defendant was contractual in nature.

33. Defendant denied Collins the same privileges, terms, and conditions of the employment relationship as those afforded to similarly-situated non-African American individuals when it refused to pay her earned commissions subsequent to her discharge of her employment.

34. Defendant's actions were willful, intentional and were taken with reckless indifference for Collins' civil rights and in violation of the Civil Rights Act of 1866, 42 U.S.C. §1981.

35. Collins has suffered harm and injury resulting from Defendant's unlawful actions.

COUNT 5: Violation of the Indiana Wage Claim Statute

36. Collins hereby incorporates by reference the allegations outlined in paragraphs one (1) through thirty-five (35) of this Complaint, as if the same were set forth at length herein.

37. Subsequent to her discharge of employment Defendant has failed to pay the earned and outstanding commissions owed to Collins.

38. Defendant's failure to pay the amount due and owing to Collins is in violation of the Indiana Wage Claim Statute, I.C. §22-2-9-2.

39. As a result of Defendant's unlawful actions, Collins has suffered harm and injury.

VI. Requested Relief.

WHEREFORE, Intervenor Plaintiff, Allesha Collins, by counsel, respectfully requests that this Court enter judgment in her favor and award the following relief:

1. Enjoin Defendant from further discrimination based on race.
2. Order Defendant to pay to Collins the wages, benefits, compensation, and all monetary loss suffered as a result of Defendant's unlawful acts, in an amount that will make her whole;
3. Order Defendant to reinstate Collins or award her front pay in lieu thereof;
4. Order Defendant to pay to Collins compensatory and punitive damages;
5. Order Defendant to pay to Collins liquidated damages and attorney fees for Defendant's intentional violation of the Indiana Wage Claim Statute, IC 22-2-5-2;
6. Order Defendant to pay to Collins pre- and post-judgment interest on all sums recoverable;
7. Order Defendant to pay Collins' reasonable attorney's fees and costs incurred

as a result of litigating this matter;

7. Order any and all other just relief appropriate under the circumstances.

Respectfully submitted,

/s/ Denise K. LaRue
Denise K. LaRue (#14877-49)

/s/ Jeffrey B. Halbert
Jeffrey B. Halbert (#22727-49)

Attorneys for Plaintiff, Allesha Collins

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DEMAND FOR TRIAL BY JURY

Comes now the Intervenor Plaintiff, Allesha Collins, by counsel, and request a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Denise K. LaRue
Denise K. LaRue (#14877-49)
Jeffrey B. Halbert (#22727-49)
HASKIN LAUTER LARUE & GIBBONS

CERTIFICATE OF SERVICE

_____The undersigned hereby certifies that a true and accurate copy of the foregoing document was electronically filed August 26, 2005 as an attachment to Collins' *Motion for Leave to File*

her First Amended Complaint and Demand for Trial by Jury. Parties may access this filing through the Court's electronic filing system. Notice of this filing will be sent to the following counsel of record by operation of the Court's system:

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/s/ Denise K. LaRue
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Indiana

Department of Labor

"Working to make Indiana businesses clean and safe, and wages fair and competitive."

MITCHELL E. DANIELS, Jr., GOVERNOR
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July 7, 2005

Denise K. LaRue
Haskin, Lauter, LaRue & Gibbons
255 North Alabama Street
Indianapolis, IN 46204-2131

Re: Allesha Collins v. Davis Homes, LLC

Dear Ms. LaRue:

As you are aware, the Indiana Department of Labor is not authorized to take assignments of wage claims for more than \$800.00 according to Ind. Code § 22-2-9-5. Therefore, on behalf of the Indiana Office of the Attorney General and the Indiana Department of Labor, we are referring this claim for appropriate legal action pursuant to Ind. Code § 22-2-9-4 and Ind. Code § 4-6-5-3. The Office of the Attorney General has made no finding as to any issues that might be construed as having been raised by this complaint.

You have represented that you are an attorney admitted to the practice of law in Indiana and in good standing. In addition, you represented that you have no conflicts of interest in the above-referenced matter, and further represented that the claimant is not a state employee. Thus, we are authorizing you pursuant to Ind. Code § 22-2-9-4 to represent the individual plaintiff in this action.

With regard to the recovery of damages and attorneys fees, please note Ind. Code § 22-2-5-2. This provision permits the recovery of liquidated damages in the amount of ten percent (10%) for each day the amount due to the claimant remains unpaid, not exceeding double the amount of wages due; and the recovery of reasonable attorneys' fees.

If you are able to accept this claim, we ask that you pursue the action diligently and report to the Office of the Attorney General on the results. Please follow the instruction and complete the form, detailing the results of the claim, that may be found on the website for the Indiana Office of the Attorney General, www.state.in.us/attorneygeneral. The completed form may be either submitted electronically or by U.S. Mail. If, however, you cannot accept this claim, please notify me at once at (317) 232-2676. Please contact me with any questions or concerns.

Sincerely,

Michele Gibson, Director
Wage and Hour Division