

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION ^{BR}
CIVIL ACTION No.: 5-02-CV-129-~~BO~~(3)

*U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,*

Plaintiff,

v.

SAMPSON-BLADEN OIL CO., INC.,

Defendant,

and

ROYAL KATZENBERGER,

Intervenor-Plaintiff

v.

SAMPSON-BLADEN OIL CO., INC.,

Defendant.

FILED
Nov 18, '02
DAVID W. DANIEL, CLERK
US DISTRICT COURT, EDNC

Complaint of Intervenor

NOW COMES Royal Katzenberger, Intervenor-Plaintiff, serving his motion to intervene contemporaneously with this Complaint pursuant to the provisions of Fed. R. Civ. P. 24(a); and Intervenor-Plaintiff, complaining of the Defendant, Sampson-Bladen Oil Co., Inc., alleges and says:

PRELIMINARY STATEMENT

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1991 and an action seeking remedies and relief for denial of an violation of fundamental, constitutional rights or the Intervenor-Plaintiff who was adversely affected by such practices committed by the Defendant, Sampson-Bladen Oil Co., Inc., as well as tort claims premised on State law, including claims for wrongful

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discharge and infliction of emotional distress.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §2000(e)-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981 and the Constitutional, statutory and common law of the State of North Carolina.
2. The employment practices and torts alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of North Carolina.
3. Defendant, Sampson-Bladen Oil Co., Inc. acted under color of State law, including the common law of the State.

PARTIES

4. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and instituted this action pursuant the terms of Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3) and the Constitutional and common law of the State of North Carolina.
5. The Defendant, Sampson-Bladen Oil Co. (“Defendant” or “Sampson-Bladen”), is and has been at all times relevant to the Intervenor-Plaintiff’s claims been a North

Carolina corporation doing business in Hope Mills, North Carolina, among other places, and, upon information and belief, has continuously had more than fifteen employees.

6. Royal Katzenberger (“Intervenor-Plaintiff”), is and has been a citizen of the United States and a resident within the Eastern District of North Carolina and, at the times relevant to his claims, was a qualified individual with a positive HIV status.
7. At all times relevant to the Intervenor-Plaintiff’s claims, Sampson-Bladen has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. §12111(5), and Section 101(7) of the ADA, 42 U.S.C. §12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§2000e(g) and (h).
8. At all times relevant to the Intervenor-Plaintiff’s claims, Sampson -Bladen has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. §12111(2) and the provisions of N.C. GEN.STAT. §§ 143- 422.2..

FACTS

9. On or about May 15, 2000, Intervenor-Plaintiff was hired by Sampson-Bladen to work at one of its Citgo Lube locations located in Hope Mills, North Carolina.
10. Citgo Lube stores engage in the business of performing oil changes and minor mechanical services on automobiles for its customers.
11. At the time Intervenor-Plaintiff was hired by Sampson-Bladen, Intervenor-Plaintiff was placed on a ninety (90) day probationary period during which time he would be considered a temporary employee, but that after thirty (30) days of employment Intervenor-Plaintiff would be eligible for medical and dental benefits through Sampson-Bladen.

12. Once Intervenor-Plaintiff had been employed with Sampson-Bladen for more than thirty (30) days, Intervenor-Plaintiff contacted the principal office of Sampson-Bladen located in Clinton, North Carolina for the purpose of instituting health and dental benefits. During this contact with the main office of Sampson-Bladen disclosed information related to his health which was sensitive and confidential in nature, specifically, that he was HIV positive.
13. On or about June 30, 2000, John Clark, the owner at the location of Sampson-Bladen where Intervenor-Plaintiff was employed, informed Intervenor-Plaintiff that he was no longer permitted to drive the customer's vehicles into the bay area and, further, that he would be required to wipe down any tools which he used with bleach at the end of the day.
14. On or about July 1, 2000, Intervenor-Plaintiff learned that Brian Tysinger, the supervisor at the location of Sampson-Bladen where Intervenor-Plaintiff was employed, had disclosed Intervenor-Plaintiff's HIV status to other employees of Sampson-Bladen.
15. On or about July 2, 2000 when Intervenor-Plaintiff arrived at work it was readily apparent that all of the tools had been sprayed down with bleach.
16. On or about July 7 and 10, 2000, Intervenor-Plaintiff was required to wipe down all of the tools that he had used during the day with bleach.
17. No other employees of Sampson-Bladen were required to wipe down any tools they had used with bleach.
18. On August 15, 2000, the ninetieth day of Intervenor-Plaintiff's employment with Sampson-Bladen, Intervenor-Plaintiff's employment was terminated without cause.

FIRST CLAIM FOR RELIEF

19. Each of the allegations contained in each of the preceding paragraphs of this Complaint of Intervenor-Plaintiff are adopted and incorporated herein by reference as if fully set forth verbatim.
20. More than thirty days prior to Plaintiff commencing this action, Intervenor-Plaintiff filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Sampson-Bladen and all other conditions precedent to the filing of this action were fulfilled in a timely manner.
21. Since at least May 15, 2000, Sampson-Bladen has engaged in unlawful employment practices at its Hope Mills, North Carolina facility by discriminating against a qualified individual with a disability, in violation of Sections 102(a) and (d) of title I of the ADA, 42 U.S.C. §§12112(a) and (d). More specifically, Sampson-Bladen unlawfully disclosed the confidential medical information or history of Intervenor-Plaintiff, subjected him to discriminatory terms and conditions of employment, and discharged Intervenor-Plaintiff because he is an individual with a disability.
22. The effect of the practices complained of herein has been to deprive Intervenor-Plaintiff of equal employment opportunities and to otherwise adversely affect his employment status because of his disability.
23. The unlawful employment practices complained of herein were intentional.
24. The unlawful employment practices complained of herein were done with malice or with reckless indifference to the federally protected rights of Intervenor-Plaintiff.

SECOND CLAIM FOR RELIEF

25. Each of the allegations contained in each of the preceding paragraphs of this Complaint of Intervenor-Plaintiff are adopted and incorporated herein by reference as if fully set forth verbatim.
26. Sampson-Bladen breached its duties to the Intervenor-Plaintiff and violated the rights of the Intervenor-Plaintiff and failed to recognize and to adequately preserve the rights of Intervenor-Plaintiff, and the actions and/or inactions of Sampson-Bladen routinely created an intimidating and offensive work atmosphere.
27. Sampson-Bladen knew or should have known that its actions created an intimidating and offensive work atmosphere.
28. Sampson-Bladen failed to exercise reasonable care to protect the Intervenor-Plaintiff from discrimination and unlawful employment practices and therefore breached its duty of providing a workplace free of harassment and discrimination.
29. As a direct and proximate result of defendant's breach, Intervenor-Plaintiff has suffered emotional distress.
30. The conduct of the Sampson-Bladen by and through its agents and employees as described herein, was extreme and outrageous and was beyond the bounds usually tolerated by a decent society. This conduct was intended to cause and did cause Intervenor-Plaintiff to suffer severe emotional distress.

THIRD CLAIM FOR RELIEF

31. The Intervenor-Plaintiff-Plaintiff hereby incorporates and adopts by reference the allegations in each of the preceding paragraphs of the Intervenor-Plaintiff-Plaintiffs' complaint.
32. The Plaintiff is informed and believes, and therefore alleges, that the acts and

conduct of the Defendant, Sampson-Bladen, as herein alleged, were performed and effected under color of law of the State of North Carolina.

33. Defendant, Sampson-Bladen, acting under color of state law deprived Plaintiff of rights provided under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments by subjecting the Intervenor-Plaintiff-Plaintiff to an intimidating, harassing and offensive work atmosphere and ultimately in terminating Intervenor-Plaintiff-Plaintiff's employment without just cause and otherwise causing harm and damage to the Intervenor-Plaintiff-Plaintiff.
34. Defendant, Sampson-Bladen had a legal duty to establish, enforce, direct, supervise and control policies, customs, practices, usages, and procedures to be used by its agents and employees and had responsibility for establishing, enforcing, directing, supervising and controlling policies, customs, practices, usages, and procedures of its agents and employees.
35. Acting pursuant to that obligation, but not in proper furtherance of it, Defendant, Sampson-Bladen, by various acts of omission and commission fostered and encouraged an atmosphere of intimidation, harassment and an offensive work environment which represents the policy, practice, custom usage and procedure of the Defendant, Sampson-Bladen.
36. The Defendant, Sampson-Bladen, is liable for the damages and injuries done to Plaintiff for the constitutional deprivations described in herein with consequent damages and other injuries directly inflicted by its employees because their actions and conduct was pursuant to a policy or custom established, allowed, ratified or maintained by Defendant, Sampson-Bladen.
37. The actions and conduct of the Defendants, as alleged herein, deprived the

Plaintiff of rights secured by the United States Constitution, *inter alia*:

- a. The right to freedom of association as secured by the First Amendment to the United States Constitution;
 - b. The right to be free from a deprivation of life, liberty, or property without due process of law, as secured by the Fifth and Fourteenth Amendments to the Constitution.
38. Based upon the forgoing, the Plaintiff is entitled to the recovery of damages from Defendant, Sampson-Bladen.

FOURTH CLAIM FOR RELIEF

39. Each of the allegations contained in each of the preceding paragraphs of this Complaint of Intervenor-Plaintiff are adopted and incorporated herein by reference as if fully set forth verbatim.
40. Defendant engaged in the wrongful conduct alleged in this complaint.
41. It was reasonably foreseeable that such conduct would cause the Intervenor-Plaintiff severe emotional distress or mental anguish.
42. The conduct did in fact cause the plaintiff severe emotional distress.
43. But for such conduct, Defendant would not have been injured in the manner and to the extent injured, and, therefore, Defendant's conduct caused injury and damage to Intervenor-Plaintiff.

FIFTH CLAIM FOR RELIEF

39. As an alternative, or hypothetical claim for relief, each of the allegations contained in each of the preceding paragraphs of this Complaint of Intervenor-Plaintiff are adopted and incorporated herein by reference as if fully set forth verbatim, and further, Plaintiff alleges as follows:

40. Defendant engaged in the extreme, outrageous and wrongful conduct alleged in this complaint.
41. Such conduct was wilful and intended to cause the Intervenor-Plaintiff severe emotional distress or mental anguish.
42. The conduct did in fact cause the Intervenor-Plaintiff severe emotional distress.
43. But for such conduct, Defendant would not have been injured in the manner and to the extent injured, and, therefore, Defendant's conduct caused injury and damage to Intervenor-Plaintiff.

SIXTH CLAIM FOR RELIEF

39. Each of the allegations contained in each of the preceding paragraphs of this Complaint of Intervenor-Plaintiff are adopted and incorporated herein by reference as if fully set forth verbatim.
40. Intervenor-Plaintiff is a citizen and resident of North Carolina.
41. Intervenor-Plaintiff has a physical impairment or disability which substantially limits one or more major life activities.
42. The record of such an impairment is or became known to Defendant and Defendant is regarded as having such an impairment.
43. But for sch impairment Defendant would not have discharged or refused employment to Intervenor-Plaintiff.
44. Defendant's actions caused injury and damage to Intervenor-Plaintiff.

SEVENTH CLAIM FOR RELIEF

45. Each of the allegations contained in each of the preceding paragraphs of this Complaint of Intervenor-Plaintiff are adopted and incorporated herein by reference

as if fully set forth verbatim.

46. At the time of the events, transactions or occurrences or series of them alleged in this action, Intervenor-Plaintiff was an at-will employee of Defendant.
47. In violation of the public policy of the State of North Carolina and the United States, Defendant wrongfully discharged Intervenor-Plaintiff, and created a hostile and disparate working environment.
48. The record of such an impairment is or became known to Defendant and Defendant is regarded as having such an impairment.
49. But for such impairment Defendant would not have discharged or refused employment to Intervenor-Plaintiff.
50. Defendant's actions caused injury and damage to Intervenor-Plaintiff.

EIGHTH CLAIM FOR RELIEF

51. Each of the allegations contained in each of the preceding paragraphs of this Complaint of Intervenor-Plaintiff are adopted and incorporated herein by reference as if fully set forth verbatim.
52. The actions and conduct of Defendant Sampson-Bladen described herein was willful, wanton and outrageous conduct.
53. Because of the willful, wanton and outrageous conduct of Sampson-Bladen, Intervenor-Plaintiff is entitled to punitive damages.

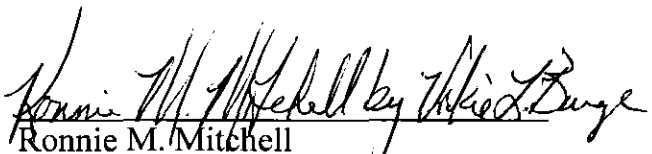
PRAYER FOR RELIEF

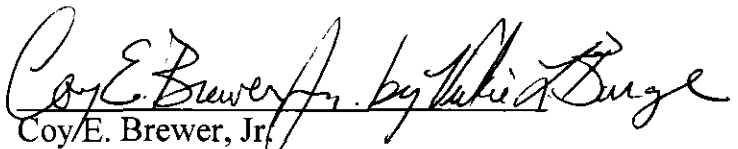
1. That all issues be tried by jury.
2. That the Intervenor-Plaintiff recover from the Defendant Sampson-Bladen Oil Co., Inc. a sum in excess of \$75,000.00 (Seventy Five Thousand Dollars) for compensatory, pecuniary and non pecuniary damages.

3. That the Intervenor-Plaintiff recover punitive damages from the Defendant Sampson-Bladen Oil Co., Inc. in a sum in excess of \$75,000.00 (Seventy Five Thousand Dollars).
4. That all costs of this action be taxed against the Defendant.
5. That Intervenor-Plaintiff be awarded costs and attorneys fees in the manner, amount and fashion as provided by law;
6. For such other and further relief as the Court deems just and proper.

Dated: November 14, 2002

**MITCHELL, BREWER, RICHARDSON,
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Certificate of Service

The undersigned certifies that the undersigned has served a copy of the foregoing document by mailing a copy in a properly addressed, postage paid envelope, deposited in the United States Mail, on the date shown below, addressed as follows:

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Date: NOVEMBER 14, 2002

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