

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
MAY 1 2 1999

JAMES W McCORMACK, CLERK
By: _____ PLAINTIFF
DEP. CLERK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

V. NO. LR-C-99-122

LANDERS AUTO SALES, INC. DEFENDANT

STEVEN HART INTERVENOR

COMPLAINT IN INTERVENTION

Intervenor Steven Hart herewith brings his Complaint in Intervention, pursuant to Rule 24(b), Federal Rules of Civil Procedure, and alleges as follows: that his claims in this intervention have questions of law and fact in common with the primary complaint in this matter.

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 (ADA) and Civil Rights Act of 1991 for redress of unlawful employment practices by Defendant Landers Auto Sales, Inc., on the basis of disability, and to provide appropriate compensatory and punitive damages relief to Steven Hart to redress such violations. As more fully alleged herein, Defendant failed to provide reasonable accommodations to Mr. Hart, demoted him because of his disability, and retaliated against him for engaging in activity protected by the ADA.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, 1345 and 1367. This is an action 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 Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("TVII"), 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(a).

2. The unlawful employment practices alleged below were and are now being committed in the Eastern District of Arkansas, Western Division.

PARTIES

3. On or about February 22, 1999, Plaintiff Equal Employment Opportunity Commission (the "Commission") filed the above-captioned action against Defendant Landers Auto Sales, Inc., seeking redress of discriminatory employment practices against Intervenor Steven Hart in violation of Title I of the Americans with Disabilities Act of 1990 (ADA) and the Civil Rights Act of 1991.

4. Intervenor does hereby adopt and incorporate by reference the allegations of the Complaint filed in this action by the Commission. The factual and legal basis for the allegations of Intervenor herein are, with the exception of the state law claim, set forth below, identical to the factual and legal claims asserted by the Commission in the primary Complaint in this matter.

5. Intervenor is now, and at all times material herein has been, a citizen and resident of Benton, Saline County, Arkansas. At all times material herein, Intervenor Steven Hart has been an employee of Defendant Landers Auto Sales, Inc.

6. At all times material herein, Defendant Landers Auto Sales, Inc., a subsidiary of United Auto Group, Inc. ("defendant employer"), was a corporation doing

business in the State of Arkansas which has continuously employed at least twenty-five (25) employees.

7. At all times material herein, Defendant Employer has continuously been an employer engaged in industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) to the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(d) and (h) of Title VII, 42 U.S.C. §§ 2000(e)(g) and (h).

8. Defendant Employer Landers Auto Sales, Inc. is a covered entity under Section 101(2) to the ADA, 42 U.S.C. § 12111(2).

9. Intervenor Steven Hart has satisfied all procedural prerequisites to maintenance of this Complaint in Intervention, as set forth in paragraph seven of the Commission's primary Complaint in this matter.

10. Since at least January 1, 1998, Defendant Employer has engaged in unlawful employment practices in violation of the ADA Sections 102(a), 102(b)(1), 42 U.S.C. §§ 12112(a) and 12112(b)(1) at its Benton, Arkansas facilities. These unlawful practices include, but are not limited to, Defendant's failure to provide reasonable accommodations to its facilities, demoting Mr. Hart from the position of Wholesale Sales manager (a management position in its Wholesale Parts Warehouse), retaliating against Mr. Hart after he engaged in protected activity and commingling medical and non-medical personnel information.

11. Steven Hart was employed by Defendant as Parts Manager since 1992. In July of 1997, Mr. Hart was in an accident that resulted in quadriplegia. Prior to

returning to work in February of 1998, Mr. Hart requested accommodations to Defendant's facilities to make the workplace accessible. Mr. Hart is in a wheelchair. Mr. Hart made additional requests for accommodations after he returned to work. Defendant ignored his requests until he complained and filed a charge of discrimination.

12. On or about June 8, 1998, Defendant demoted Steven Hart from the position of manager in its Wholesale Parts Warehouse. Mr. Hart was placed in the position in February of 1999; the warehouse started up operations in March of 1998. After a brief period as manager of the Wholesale Parts Warehouse, Mr. Hart was removed from the position and stripped of any management or supervisory responsibilities because of his disability.

13. Steven Hart was subjected to retaliation for engaging in protected activity. The protected activity was seeking reasonable accommodations, complaining to Defendant about his demotion, and filing a charge of discrimination with the Commission.

14. The practices alleged above have effectively deprived Steven Hart, of equal employment opportunities and adversely affected his status as an employee because of Defendant Employer's actions.

15. The unlawful employment practices complained of above were intentional.

16. Defendant Employer, at all relevant times, has been acting with malice or reckless indifference to the federally protected rights of Steven Hart, in violation of the ADA, 42 U.S.C. § 12101 et seq.

STATE CLAIMS

17. In addition to the violations of federal law set forth above, the conduct of Defendant Employer described in paragraphs 10 through 13 above also violates the provisions of Arkansas Code Annotated §§ 16-123-107 and 16-123-108(1987), which provide that covered individuals have a right to secure and hold employment without discrimination on account of disability, and which provide that any such person injured by prohibited discriminatory acts shall have a right to seek compensatory and punitive damages, including litigation costs and reasonable attorney's fees. This court has supplemental jurisdiction of Intervenor's claims under state law, pursuant to 28 U.S.C. § 1367, because such claims are so related to claims in this action within the original jurisdiction of this court that they form part of the same case or controversy under Article III of the United States Constitution.

PRAYER FOR RELIEF

Wherefore, the Intervenor respectfully prays that this Court:

A. Grant a permanent injunction enjoining the Defendant Employer, 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 disability or retaliation for engaging in protected activity.

B. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for qualified individuals with disabilities and other individuals covered by the ADA, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Steven Hart, by providing appropriate back pay with interest, in an amount to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, reinstatement to his rightful place.

D. Order Defendant Employer to make whole Steven Hart, by providing compensation for past and future pecuniary losses, including but not limited to, relocation expenses, job search expenses and medical expenses incurred by Steven Hart, due to the actions of Defendant Employer.

E. Order Defendant Employer to make whole Steven Hart, by providing compensation for non-pecuniary losses, including emotional pain, suffering, loss of enjoyment of life, humiliation, inconvenience, mental anguish, and embarrassment, in amounts to be determined at trial.

F. Order Defendant Employer to pay Steven Hart, punitive damages for its malicious and/or reckless conduct, in an amount to be determined at trial.

G. Award Intervenor attorney's fees and costs.


H. Grant such further relief as the Court deems necessary and proper.

JURY TRIAL DEMAND

Intervenor requests a jury trial on all questions of fact raised by his Complaint in Intervention.

Respectfully submitted,

Kaplan, Brewer & Maxey, P.A.
415 Main Street
Little Rock, AR 72201
(501) 372-0400



SILAS H. BREWER, JR. (65005)

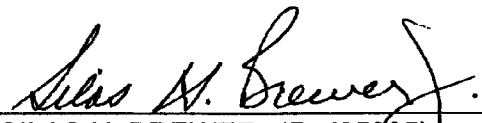
CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was sent by
mail /courier ___ /fax ___ /other _____ this 12 day of May,
1999, to the following:

Mr. Michael Jones
Gilker & Jones
9222 N. Hwy. 71
Mountainburg, AR 72946

Mr. Garland W. Binns, Jr.
Horne, Hollingsworth & Parker
P.O. Box 3363
Little Rock, AR 72203-3363

Katharine W. Kores
Terry Beck
William A. Cash, Jr.
Equal Employment Opportunity Commission
1407 Union Avenue, Suite 621
Memphis, TN 38104



SILAS H. BREWER, JR. (65005)