

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-00591-LTB-MJW

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

and

BARBARA ARCHER
PROPOSED INTERVENING PLAINTIFF,

v.

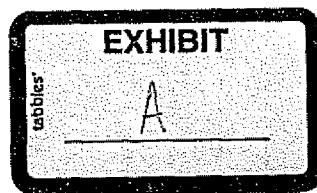
COLORADO BOULEVARD MOTORS, INC., D/B/A MIKE SHAW CHEVROLET, INC.
DEFENDANT.

COMPLAINT OF INTERVENING PLAINTIFF BARBARA ARCHER
AND JURY DEMAND

Intervening Plaintiff, Barbara Archer, through counsel, states for her complaint as follows:

I. JURISDICTION, VENUE, AND NATURE OF CASE

1. The Equal Employment Opportunity Commission has brought suit against Colorado Boulevard Motors, Inc., doing business as Mike Shaw Chevrolet, Inc. ("Mike Shaw Chevrolet") for (1) maintaining a hostile work environment based on gender in violation of 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, and (2) retaliating against employees for complaining about discrimination in violation of Title VII of the Civil Rights Act OF 1964 as amended, 42 U.S.C. § 2000e-3. Ms. Archer is the charging person referred to in the EEOC's complaint and is the person who filed the charge of discrimination with the EEOC.



2. Jurisdiction of this court is proper under 28 U.S.C. §§ 1331, 1337, and 1343. Venue is appropriate here, because the unlawful employment practices at issue here occurred within the jurisdiction of the United States District Court, District of Colorado.
3. All conditions precedent to the filing of this lawsuit have occurred or have otherwise been satisfied.

II. PARTIES

4. Barbara Archer, a female, is a natural person, who was employed by Mike Shaw Chevrolet from approximately May 1998 through October 2003.
5. Mike Shaw Chevrolet is a Colorado Corporation that has continuously and is currently engaged in business in Colorado and continuously and currently employed at least fifteen (15) employees. At all times relevant to this complaint, Shaw Chevrolet has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42. U.S.C. §§ 2000e-(b), (g), and (h).
6. The EEOC is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII, and brought a complaint against Shaw Chevrolet, pursuant to the Sections 706(f)(1) and 706(f)(3) of Title VII, 42 U.S.C. §§ 42.U.S.C. §§ 2000e-5(f)(1)and (3).

STATEMENT OF CLAIMS

First Claim for Relief (Sexual Harassment)

7. Ms. Archer incorporates all previous allegations.

8. At all relevant times, but since at least May 1998 and through at least October 2003, when Ms. Archer separated from Mike Shaw Chevrolet, Mike Shaw Chevrolet engaged in unlawful employment practices at its automobile dealership located at 1080 South Colorado Boulevard, Glendale, Colorado, in violation of section 703(a) of Title VII, 42, U.S.C. §2000E-2(a). Specifically, Mike Shaw Chevrolet allowed its employees, including but not limited to top-level management employees, to wit, General Manager Dan Johnson (“Johnson”) and Sales Managers Tom Marsh (“Marsh”), Clay Collins (“Collins”), and Kenneth Gregory (“Gregory”) to sexually harass Ms. Archer and other female employees.
9. The unlawful sexual harassment to which Ms. Archer was exposed was partially physical in nature and included, but was not limited to the following:
 - a. groping and attempting to grope the breasts and buttocks of female employees;
 - b. sniffing female employees’ necks;
 - c. slapping female employee’s buttocks; and
 - d. playing “spin the bottle” and engaging in heavy kissing, oral sex, and other sexual conduct at office functions.
10. The unlawful sexual harassment to which Ms. Archer was exposed was partially verbal in nature, and included, but was not limited to the following acts:
 - a. referring to female employees as either “bitches”, “party girls”, or both on a regular basis, both at the work place and at office functions;
 - b. asking female employees if their nipples were hard;
 - c. discussing genitals and sexual activity, including the use of stuffed animals to demonstrate various sexual positions;

- d. permitting company demonstrator vehicles to be used for sexual activities, including oral sex; and
 - e. simulating sexual intercourse with and in the presence of Ms. Archer and other Mike Shaw Chevrolet employees.
11. The offensive sexual conduct described above was sufficiently severe or pervasive as to alter the terms and conditions of Ms. Archers' employment.
 12. The offensive sexual conduct in the workplace initiated and participated in by Mike Shaw Chevrolet employees, including managerial level employees, constitutes sexual harassment.
 13. The sexual harassment perpetrated by Mike Shaw Chevrolet created a hostile work environment based on gender.
 14. Mike Shaw Chevrolet was aware of the sexual harassment and that some of its managers and employees had participated in the harassment.
 15. Mike Shaw Chevrolet failed to take reasonable measures to prevent and promptly correct sexual harassment in the workplace, and by its actions, or inactions, violated its own sexual harassment policy.
 16. Mike Shaw Chevrolet engaged in a pattern or practice of tolerating a sexually hostile work environment.
 17. The unlawful employment practices described above were intentional and were done with malice or with reckless indifference to Ms. Archer's federally protected rights.
 18. As a result of the sexual harassment by Mike Shaw Chevrolet, its managers, and its employees, and as a result of Mike Shaw Chevrolet's failure to respond promptly and adequately to employee complaints of sexual harassment pursuant to its sexual

harassment policies and procedures, Ms. Archer has been deprived of equal employment opportunities.

**Second Claim for Relief
(Retaliation)**

19. Plaintiff incorporates all previous allegations.
20. Since at least 2001, Mike Shaw Chevrolet has engaged in unlawful employment practices at its automotive dealership, in violation of section 704(a) of Title VII, 42 U.S.C. § 2000e-3, by retaliating against Ms. Archer, as well as other employees, for complaining about discrimination or refusing to participate in sexual harassing activities or both.
21. Ms. Archer engaged in protected activities when she opposed the conduct which constituted sexual harassment or which she reasonably believed constituted unlawful sexual harassment, and when she refused to participate in and complained to managers of Mike Shaw Chevrolet about the sexual harassment and the hostile work environment.
22. The retaliatory acts included, but were not limited to:
 - a. managers physically pursuing and assaulting Ms. Archer when she refused to participate in sexual activity at office functions;
 - b. assigning Ms. Archer more difficult work assignments and sales deals because she complained about sexual harassment and refused to participate in sexual activity at the dealership or office functions, while at the same time promoting another female employee after she engaged in oral sex and other sexual activity with the managers;

- c. rewarding a female employee who participated in sexual harassment with vacation time and shorter work weeks, while denying Ms. Archer similar benefits after she complained to management about the sexual harassment;
 - d. after Ms. Archer complained to management about sexual harassment and refused to participate in sexual banter and other conduct that created a hostile work environment, being advised that Mike Shaw Chevrolet's employment decisions would be based on "personal relationships" rather than job performance and merit; and
 - e. while Ms. Archer was employed with Mike Shaw Chevrolet, giving false statements to prospective employers, about Ms. Archer job history or job performance, which statements Mike Shaw Chevrolet knew were false and which were made in retaliation for Ms. Archer complaining about and refusing to participate in sexual harassment and other conduct that created a hostile work environment.
23. Mike Shaw Chevrolet retaliated against Ms. Archer for complaining about the sexual harassment and for refusing to participate in the sexual banter at the dealership.
 24. After Ms. Archer engaged in these protected activities, the sexual harassment and hostile work environment escalated, resulting in the constructive discharge of Ms. Archer.
 25. As a direct result of the practices set forth above, Ms. Archer has been deprived of equal opportunities based on her gender and her exercise of protected activities.
 26. The unlawful employment practices complained of above were intentional.
 27. The unlawful employment practices complained of here were done with malice or reckless indifference to Ms. Archer's federally protected rights.

28. Mike Shaw Chevrolet failed to take reasonable measure to prevent retaliation against Ms. Archer by management.

**Third Claim for Relief
(Discharge/Constructive Discharge)**

29. Ms. Archer incorporates all previous allegations.
30. As described above, Mike Shaw Chevrolet created and condoned a severe and pervasive hostile work environment based on gender and failed to take immediate action to end the hostile work environment, retaliation, and other unlawful employment practices as set forth herein.
31. In October 31, 2003, as a result of the conduct set forth above, Ms. Archer felt she had no choice but to resign from her position as Finance Manager. Her separation constituted a constructive discharge, since Ms. Archer's separation was the result of the intolerable hostile work environment, retaliation, and sexual harassment occurring at Mike Shaw Chevrolet. Although Ms. Archer gave two weeks notice, Mike Shaw Chevrolet terminated her employment that day.
32. The effect of the conduct described above has been to deprive Ms. Archer of equal employment opportunities based on her gender.
33. The unlawful employment practices described above were intentional.
34. The unlawful employment conduct described above were done with malice or with reckless indifference to Ms. Archer's federally protected rights.

PRAYER FOR RELIEF

WHEREFORE, Ms. Archer requests that the Court:

A. Order Defendant to make Ms. Archer whole by providing appropriate back pay to compensate her for lost wages, benefits, and employment opportunities in an amount to be determined at trial, and such further relief as may be necessary to eradicate the effects of Defendant's unlawful employment practices;

B. Order Defendant to pay Ms. Archer front pay in an amount to be determined at trial.

C. Order Defendant to make Ms. Archer whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described herein;

D. Order Defendant to make Ms. Archer whole by compensating her for past, present, and future non-pecuniary losses, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, humiliation, and other emotional distress, in an amount to be determined at trial;

E. Order Defendant to pay Ms. Archer punitive damages for the malicious and reckless conduct described above, in an amount to be determined at trial;

F. Permanently enjoin Defendant from engaging in unlawful employment practices;

G. Require Defendant to institute policies, practices and programs to prevent unlawful employment practices in the future and to eradicate the effects of its past unlawful employment practices, including training of its officers, managers, and employees regarding harassment and retaliation in the workplace;

H. Award Ms. Archer pre-judgment and post-judgment interest in the this action, together with reasonable expert witness fees as provided by law;

I. Award Ms. Archer reasonable attorney fees and costs as provided under Title VII;
and

J. Enter such further relief as Ms. Archer may request or which the court deems reasonable, necessary, or appropriate.

Respectfully Submitted this 14th day of July, 2006.

s/Patrick D. Tooley
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