

FILED

JUL 03 2001

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Date

Time

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

CIVIL ACTION

NORSTAN APPAREL SHOPS, INC.
26EAJ

FILE NO 8:01-cv-379-T-

Defendant,

COMPLAINT OF PLAINTIFF INTERVENOR

COMES NOW Plaintiff , Glenda Herring, who sues defendant NORSTAN
APPARELL,INC. and alleges:

INTRODUCTION

1.The plaintiff is a white, college educated, female who has held substantial retail
managerial positions. The plaintiff was wrongfully terminated from a
management position by the defendant, Norstan Apparel, Inc. a New York based
apparel conglomerate, who operates retail clothing stores located in malls in
Tampa, Florida, and throughout the United States called Fashion Cents.

2. Plaintiff, Glenda Herring, and her husband reported to upper management at Norstan Apparel incidents of sexual harassment that she personally witnessed and other incidents that were reported to her by young employees at the retail store. Management retaliated against Mrs. Herring for making the reports of sexual harassment by wrongfully terminating her employment.

JURISDICTION

3. This action is one for Intervention as of right granted by Federal Statute, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(f)(1),

4. This action asserts claims of employment discrimination under Title VII of the Civil Rights Act of 1964 and Title 1 of the Civil Rights act of 1991 and the Florida Civil Rights Act of 1992, F.S. 760.01-760.11 and F.S. 509.092.

5. The Plaintiff has complied with the conditions precedent required, and exhausted her Federal and State administrative remedies.

6. The Florida state claims in this action are brought under this Court's authority to exercise pendent jurisdiction over state law claims asserted herein.

VENUE

7. The Plaintiff at the time of the action was a citizen of Hillsborough County, Florida and submits herself to the jurisdiction of this Court.

8. The plaintiff Glenda Herring at all times relevant to this matter resided in the state of Florida and submits herself to the pendent jurisdiction of this court

STATEMENT OF CLAIMS

COUNT 1

9. The plaintiff incorporates by reference paragraphs 1-8 as if the same were fully set out herein and in addition alleges:

10. The intervenor adopts and incorporates by reference the following sections of the Plaintiffs Complaint in the original action attached hereto as Exhibit A:

11. Paragraphs 1,2,3,4,5,6,7a-e,8,9,10, C,D,E,F,G.

COUNT TWO

CONSPIRACY

12. The plaintiff incorporates by reference paragraphs 1-11 as if the same were fully set out herein and in addition alleges:

13. Plaintiff alleges a conspiracy existed between local and regional Managers of Norstan. Two or more persons collaborated and acted together to intentionally misrepresent the facts surrounding the plaintiff's employment record with Norstan.

14. Under information and belief at least two Norstan managers collaborated and acted in concert to further the plan to accomplish and coerce a legal act by illegal means.

15. Alternatively, at least two Norstan managers conspired to commit an illegal act intended to harm the plaintiff.

16. The act of conspiracy against the plaintiff was done with malice and reckless indifference to the plaintiffs legal rights.

17. The conspiracy existed to coerce the plaintiff to do an act that would be detrimental to the plaintiff and beneficial to the corporation.

18. The two conspired to intimidate the plaintiff, lock the plaintiff in, and coerce the plaintiff into resigning, dropping all sexual harassment charges or signing false documents that exonerated the corporation of any wrong doing.

19. This was done by developing plans to exert undue influence and use duress to influence the plaintiff.

20. The conspiracy was committed for the purpose of depriving the plaintiff, directly or indirectly of equal protection under the law or of equal privileges and immunities under the law.

22. The conspiracy was done for the purpose of eliciting a false statement from the plaintiff exonerating the Corporation and managers of wrongful employment practices.

23. The plaintiff suffered an injury as a result of the conspiracy.

COUNT THREE

CONSTRUCTIVE FRAUD

24. The plaintiff incorporates by reference paragraphs 1-23 as if the same were fully set out herein and in addition alleges:

25. Management who held a fiduciary position of trust as plaintiff's supervisors, intentionally coerced the plaintiff by means of deception to sign false statements regarding her employment history.

26. Plaintiff who relied on the managers position of authority and trust was coerced under duress into signing statements known to her to be false accounts.

27. The plaintiff was disturbed by the threat to terminated her employment or force her resignation while held against her will in the locked managers office. Plaintiff became excessively nervous and distraught at the false accusations levied at her.

28. The plaintiff alleges unequal bargaining power and duress in the inducement and undue influence in obtaining a fraudulent employment termination report.

COUNT FOUR

FALSE IMPRISONMENT

29. The plaintiff incorporates by reference paragraphs 1-28 as if the same were fully set out herein and in addition alleges:

30. Norstan managers completely confined the plaintiff when the managers compelled the plaintiff to accompany them for a personnel interrogation.

31. Three Norstan managers, two regional managers, who came into Tampa to visit the plaintiff and set her up for the interrogation, were acting in their capacity of agent of Norstan Corp. Inc.

32. Such was the procedure they adopted on behalf of the employer to either secure a resignation, or if that failed, to terminate the plaintiff's employment.

33. The three managers ordered the plaintiff to leave the sales floor, and forced the plaintiff employee to go through the back stock room and into the manager's office in the rear of the store.
34. After the plaintiff entered the office the three Norstan managers immediately locked the door, the only exit to the room.
35. The plaintiff did not want to be locked in a room with the three managers. She was very intimidated by them and became frightened.
36. The managers tried to coerce the plaintiff to resign her employment as store manager.
37. They maligned her, insulted her, and intentionally intimidated her, and reduced her to tears.
38. They indicated that after she resigned she would be free to leave the store.
39. The plaintiff was unlawfully held against her will. The three managers detained the plaintiff for an excessive time.
40. The plaintiff once asked to leave to go to the bathroom, but the managers refused to let her leave the room alone.
41. One manager accompanied the plaintiff to the restroom and waited outside the until the plaintiff opened the bathroom door, then escorted the plaintiff back into the interrogation room.
42. After a lengthy time in the locked room, the managers fired the plaintiff.

43. The Norstan managers asked the plaintiff to fill out an employee termination report. The plaintiff did so.
44. When the managers read the plaintiff's report, which included her claims of a sexual harassment, they tore the report up, threw it in the trash and wrote their own version.
45. They demanded the plaintiff sign the report the managers drafted.
46. The plaintiff's release from the room was contingent upon her signing the termination documents prepared by the Norstan Managers. Immediately after the plaintiff signed the document the managers released her.

COUNT FIVE

DEFAMATION

47. The plaintiff incorporates by reference paragraphs 1-46 as if the same were fully set out herein and in addition alleges:

48. Manager Monica Barr, an agent and employee of the corporate defendant, while acting within the scope of her employment, made false and defamatory statements regarding the plaintiff's work or business practices that were published to others.

49. Publication was by written word and verbal communication.

50. The remarks were prejudicial to the plaintiff in her profession and trade.

51. Others relied upon the false statements about the plaintiff's work and acted in a manner detrimental to the plaintiff.

52. The Norstan managers had a business relationship with the plaintiff and gave notice to third parties of the dissolution of the relationship and that notice contained false and misleading information designed to impugn the reputation of the plaintiff and injuriously affected the plaintiff.

53. Such charges falsely imply that the plaintiff was unfit for the retail managers profession either by innuendo or directly.

54. The plaintiff suffered damage to her reputation and suffered mental anguish as a proximate cause of the defendants' malicious acts.

55. Such acts were done with the intent to do harm to the plaintiff, and with reckless disregard for the truth.

56. Any privilege which may have applied to some of the statements is forfeited by the Defendants whose motives were actuated by common law malice.

COUNT SIX

NEGLIGENT HIRING AND TRAINING

57. The plaintiff incorporates by reference paragraphs 1-56 as if the same were fully set out herein and in addition alleges:

58. The defendant, a large national apparel company, had an implied and express duty to provide its employees a work place free of discriminatory employment practice.

59. Defendant's duty requires hiring qualified and properly trained supervisor's to uphold the state, and federal employment and civil rights laws. Defendant negligently breached that duty to hire and train qualified employees.

60. Defendant's management training program is inadequate.

61. Hiring of former bar tenders without adequate training to manage minor sales clerks is a breach of that duty of care that a reasonable person would expect.

62. The defendant's negligent hiring and training caused injury to the plaintiff who seeks relief as a result of the breach of duty.

COUNT SEVEN

NEGLIGENT SUPERVISION

63. The plaintiff incorporates by reference paragraphs 1-62 as if the same were fully set out herein and in addition alleges:

64. Defendant had a duty to properly supervise its employees to prevent discriminatory employment practices.

65. Defendant failed to supervise its managers and supervisors in the proper handling of employment discrimination complaints.

66. As a result of defendant's negligence the plaintiff suffered damage and seeks relief.

67. Defendant had a duty to take prompt and effective remedial action to eliminate discriminatory employment practices.

68. Defendant failed to take effective remedial action to eliminate the discriminatory employment practices against the plaintiff or the coworkers who were minors working under the supervision of the plaintiff.
69. As a result the plaintiff was injured and seeks relief from this Court.

COUNT EIGHT

NEGLIGENT RETENTION

70. The plaintiff incorporates by reference paragraphs 1-69 as if the same were fully set out herein and in addition alleges:
71. Employer had a duty to keep the work place in compliance with Federal and State law.
72. The employer however, failed in that duty when it continued the employment of Rick Moyers and Monica Barr after Monica Barr ignored several complaints concerning the inappropriate sexual touching and comments from her manager trainee Ricardo Moyers.
73. The known harasser, Ricardo Moyers, was not reprimanded for sexual harassment, but promoted to a full managers position.

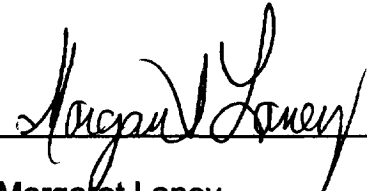
FIRST CLAIM FOR RELIEF

74. Plaintiff demands judgment for damages against the defendant and thereby request the Court:

- a. declare the Defendants actions were discriminatory and retaliatory, violated Title VII of the Civil Rights Act of 1964 as amended,
- b. declare that the Defendant violated Florida Civil Right Act of 1992 and other laws of the state of Florida.
- c. order defendant to pay the Plaintiff damages in an amount to be proven in this action to compensate plaintiff for harm suffered in accordance with the time table that would have operated but for the retaliation and violations of applicable law to present day; order damages to include, interest, and include not be limited to , lost wages, lost opportunity, lost retirement benefits, lost vacation benefits, lost medical expenses, severe emotional distress and other damages available for willful and intentional misconduct.
- d. Grant such other legal and equitable relief as the court deems appropriate.
- e. maintain jurisdiction over this matter until all remedial action has been taken by defendant.
- f. Order defendant to pay a reasonable attorney's fee, and cost for this action and for expenses at the administrative level.

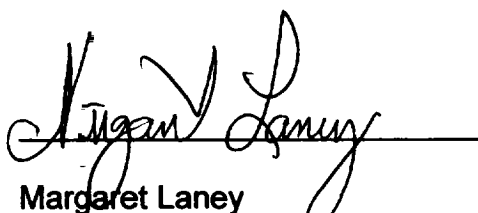
DEMAND FOR JURY TRIAL

PLAINTIFF demands a TRIAL BY JURY.



Margaret Laney
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Tampa, Florida 33609

The undersigned certifies that a copy of this motion and complaint of intervention has been furnished to the attorneys on the attached list by regular mail on June 27, 2001.

A handwritten signature in black ink, appearing to read "Margaret Laney", is written over a horizontal line.

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INTERVENING PLAINTIFFS EXHIBIT A:

Attached complaint in Civil Action # 8:01 CV 379 T 26 EAT

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

**NORSTAN APPAREL SHOPS, INC.
d/b/a FASHION CENTS**

Defendant.

CIVIL ACTION NO.

8:01-CV-379-T-26 EAJ

COMPLAINT

JURY TRIAL DEMANDED

INJUNCTIVE RELIEF SOUGHT

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of retaliation, and to provide appropriate relief to Glenda Herring who was adversely affected by such practices. As stated with greater particularity in paragraph 7, the Commission alleges that the Defendant Employer retaliated against Mrs. Herring, when she complained to management about the sexual harassment of certain females on her job, by terminating her employment with Norstan Apparel Shops, Inc., d/b/a Fashion Cents.

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 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Middle District of Florida, Tampa Division.

PARTIES

3. 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 VII, and is expressly authorized to bring this action pursuant to Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Norstan Apparel Shops, Inc., d/b/a Fashion Cents ("Defendant"), has continuously been doing business in the State of Florida in the City of Tampa, and has continuously maintained at least 15 employees.

5. At all relevant times Defendant 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).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Glenda Herring filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least May of 1999, Defendant Employer engaged in unlawful employment practices at its Tampa, Florida location in violation of Section 704(a) of Title VII, 42 U.S.C. §2000e-3(a).

- a. On March 9, 1999, Defendant hired Glenda Herring as Store Manager for Defendant's Fashion Cents store at Tampa Bay Center.
- b. On or about May 5, 1999, Defendant hired Ricardo Moyers as a Store

Manager for Fashion Cents and placed Mr. Moyers at the Tampa Bay Center store to train under Glennnda Herring.

- c. Immediately following Mr. Moyers' employment at the Fashion Cents store at Tampa Bay Center, certain female employees at the store complained to Glennnda Herring that Mr. Moyers was engaging in unwelcome conduct of a sexual nature which made the female employees feel uncomfortable about working at Fashion Cents.
- d. Ms. Herring reasonably believed Mr. Moyers' conduct to be unlawful sexual harassment and thereby opposed such conduct by complaining to Defendant's District Manager, Monica Barr.
- e. On May 27, 1999, after complaining to District Manager, Monica Barr, about Mr. Moyers' sexual harassment of certain female employees at the Fashion Cents store, Glennnda Herring was discharged from her employment.

8. The effect of the conduct complained of in paragraph 7 above, has been to deprive Glennnda Herring of equal employment opportunities and to otherwise adversely affect her status as an employee because of her good faith opposition to what she reasonably believed to be an unlawful employment practice.

9. The unlawful employment practices complained of in paragraph 7 above were intentional.

10. The unlawful employment practices complained of in paragraph 7 above were committed with malice and/or with reckless indifference to the federally protected rights of Glennnda Herring.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with the Defendant, from engaging in any employment practice which discriminates on the basis of an employee's opposition to an unlawful employment practice.

B. Order Defendant to institute and carry out policies, practices, and programs which eradicate the effects of its past unlawful employment practices.

C. Order Defendant to make whole Glenda Herring by providing her with appropriate back pay including prejudgment interest, in amounts to be determined at trial, and afford any other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices, including but not limited to reinstatement of Glenda Herring and rightful place promotion and/or front pay.

D. Order Defendant to make whole Glenda Herring by providing her with compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, including but not limited to out of pocket losses in amounts to be determined at trial.

E. Order Defendant to make whole Glenda Herring by providing her with compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including but not limited to emotional pain, suffering, inconvenience, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendant to pay Glenda Herring punitive damages for the malicious and reckless conduct described in paragraph 7 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

GWENDOLYN YOUNG REAMS
Associate General Counsel

DELNER FRANKLIN-THOMAS
Regional Attorney

MICHAEL J. FARRELL
Supervisory Trial Attorney



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