

JUN 12 2007

CHRIS R. JOHNSON, CLERK

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS ^{BY}
FORT SMITH DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PLAINTIFF

VS. CASE NO.: 06-2058

MENA SDI, L.L.C. DEFENDANT

GINA HIRSCH INTERVENOR

COMPLAINT IN INTERVENTION

COMES NOW, the Intervenor, Gina Hirsch, by and through her attorney, Michael Hamby, P.A., and for her Complaint in Intervention would state:

PARTIES

1. Plaintiff, the Equal Employment Opportunity commission, ("the Commission") is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII of the Civil Rights Act of 1964 and Title I of the civil Rights Act of 1991.
2. At all relevant times, Defendant, Mena SDI, LLC d/b/a Sonic Drive In ("Defendant Employer"), was a corporation doing business in the State of Arkansas and in the City of Mena and has continuously had at least fifteen (15) employees.
3. At all relevant times, Defendant Employer has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g), and (h) of Title VII. 42 USC §§2000e-(b), (g), and (h).
4. At all relevant times, Intervenor, Gina Hirsch, was an employee of Mena SDI, LLC d/b/a Sonic Drive-In.

JURISDICTION AND VENUE

5. Jurisdiction of this Court is invoked pursuant to 28 USC §§451, 1331, 1337, 1343, and 1345. This is an action which seeks relief under Title VII of the Civil Rights Act of 1964 ("Title VII"),

42 USC §§ 2000e, and the Civil Rightst Act of 1991.

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

STATEMENT OF CLAIMS

7. More than thirty (30) days prior to the institution of this lawsuit, Gina R. Hirsch filed a charge of discrimination with the Commission alleging violations of Title VII by Defendant Employer including sexual harassment, retaliation, and discharge. During the course of the investigation, allegations of sexual harassment towards former female employees were discovered. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. From on or about December of 2003 and continuing, Defendant Employer has engaged in unlawful employment practices at its facility in Mena, Arkansas, in violation of §703(a) of Title VII, as amended, 42 U.S.C. §200e-2(a). The unlawful practices include, but are not limited to, sexual harassment of Ms. Hirsch by the male Night Manager.

9. On or about August of 2004, Ms. Hirsch reported the harassment to the Day Manager. On or about September 15, 2004, Ms. Hirsch reported the harassment to the owner. The harassment included, but was not limited to, sexual touching and remarks and requests for sexual favors. In addition to the sexual harassment, Ms. Hirsch was also physically assaulted by the Night Manager.

10. The effect of the practices complained of above has been to deprive Ms. Hirsch of equal employment opportunities and otherwise adversely affect her status as an employee.

11. The unlawful employment practices complained of above were and are intentional.12. Defendant Employer at all relevant times acted with malice or reckless indifference to the federally protected rights of Ms. Hirsch.

COUNT II

13. From on or around December of 2003 and continuing, Defendant Employer has engaged in unlawful employment practices at its facility in Mena, Arkansas, in violation of §703(a) of Title VII, as amended, 42 U.S.C. §2000e-2(a). The unlawful practices include, but are not limited to, the Night Manager sexually harassing Gina Hirsch as well as previous and current female employees because of their sex.

14. The effect of the practices complained of above has been to deprive Gina Hirsch and previous and current employees of equal employment opportunities and otherwise adversely affect their status as employees.

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

16. Defendant Employer at all relevant times acted with malice or reckless indifference to the federally protected rights of Gina Hirsch and previous and current female employees.

COUNT III

17. Since at least December of 2003, Defendant Employer has engaged in unlawful employment practices at its facility in Mena, Arkansas, in violation of §703(a) of Title VII, as amended, 42 U.S.C. §2000e-2(a) and §704 of Title VII, as amended, 42 U.S.C. §2000c-3. The unlawful practice includes discharging or constructively discharging Ms. Hirsch in retaliation for reporting sexual harassment.

18. On or about September 15, 2004, after reporting the sexual harassment and physical assault, Ms. Hirsch was informed that she had been removed from the schedule.

19. The effect of the practices complained of above has been to deprive her of her federally protected rights and equal employment opportunities and otherwise adversely affect her status of employment.

20. The unlawful employment practices complained of above were and are intentional.

21. Defendant Employer at all relevant times acted with malice or reckless indifference to the federally protected rights of Ms. Hirsch.

COUNT IV

22. Prior to December of 2003, Defendant Employer has engaged in unlawful employment practices at its facility in Mena, Arkansas, in violation of §703(a) of Title VII, as amended, 42 U.S.C. §2000e-2(a). The unlawful practices include, but are not limited to failure to prevent the sexual harassment of female employees. Ms. Hirsch reported the Night Manager's sexual conduct to the Day Manager as indicated in Defendant Employer's policy but the Day Manager failed to take any action to end the sexual harassment.

23. The effect of the practices complained of above has been to deprive female employees of equal employment opportunities and otherwise adversely affect their status as employees.

24. The unlawful employment practices complained of above were and are intentional.

25. Defendant Employer at all relevant times acted with malice or reckless indifference to the federally protected rights of female employees.

PRAYER FOR RELIEF

COUNTS I, II, III, and IV

A. Order the Defendant Employer to make whole Gina Hirsch who was subjected to the Defendant's practices of discrimination by providing appropriate back pay with pre-judgment interest, in an amount to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, placement in that position.

B. Order the Defendant Employer to make whole Gina Hirsch who was subject to the

Defendant's practices of discrimination by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including relocation expenses, job search expenses, and medical expenses in an amount to be determined at trial.

C. Order Defendant Employer to make whole Gina Hirsch who was subject to the Defendant's practices of discrimination by providing compensation for past and future non pecuniary losses resulting from the unlawful practices complained of including emotional pain, suffering, embarrassment, inconvenience, loss of enjoyment of life and humiliation, in an amount to be determined at trial.

D. Order Defendant Employer to pay Gina Hirsch who was subject to Defendant's practice of discrimination punitive damages for its malicious and/or reckless conduct, in an amount to be determined at trial.

E. Order Defendant Employer to pay Gina Hirsch all the relief to which she is entitled for Defendant's illegal acts of discharging her.

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

G. Award Gina Hirsch her court costs and attorney's fees.

JURY TRIAL DEMAND

Gina Hirsch requests a jury trial on all questions of fact raised by her Complaint

Respectfully Submitted,
Michael Hamby

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By: 

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CERTIFICATE OF SERVICE

I, Michael Hamby, do certify that on this 17th day of June, 2007, a copy of the above foregoing pleading was made available by placing on the ECF filing system for all attorneys listed below to view:

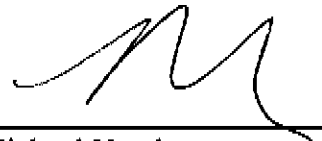
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