

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO. 1:04-CV-00623-B
)
BROOKLEY FURNITURE COMPANY, and)
HOWARD MILLER CLOCK COMPANY,)
)
Defendants.)

JANE DOE,)
)
Intervenor-Plaintiff,)
)
vs.)
)
BROOKLEY FURNITURE COMPANY, and)
HOWARD MILLER CLOCK COMPANY,)
)
Intervenor-Defendants.)

FIRST AMENDED COMPLAINT IN INTERVENTION

1. This action arises under the Civil Rights Act of 1964, as amended, and under the laws of the State of Alabama. This court has jurisdiction over this action pursuant to Title 28 U.S.C. §§1331 and 1343. The court has supplemental jurisdiction over Intervenor-Plaintiff's state law claims pursuant to 28 U.S.C. §1367.

2. Intervenor-Plaintiff is a citizen of the State of Alabama.

3. Defendant Brookley Furniture Company is a Michigan corporation which

operates a furniture factory in Mobile County, Alabama (hereafter referred to as “the Mobile Facility”).

4. Defendant Howard Miller Clock Company is a Michigan corporation.

5. At all times relevant to the complaint, Defendant Brookley Furniture Company and Defendant Howard Miller Clock Company (hereafter referred to as “Defendant Employers”) have conducted an integrated enterprise, *to wit*, the Mobile Facility.

6. At all times relevant to the complaint, Defendant Employers employed fifteen or more persons and were engaged in an industry affecting interstate commerce.

7. At all times relevant to the complaint, Intervenor-Plaintiff was employed by the Defendant Employers in the Mobile Facility.

8. At all times relevant to the complaint, Dale Hiser (“Hiser”) was employed by Defendant Employers as the General Manager of the Mobile Facility.

9. At all times relevant to the complaint, Donna Cumbest was employed by the Defendant Employers as the Manager of Human Resources at the Mobile Facility.

10. At all times relevant to the complaint, James Doyle Johnson, Tony Smith and Glen Wilson were employed by Defendant Employers as supervisory employees in the Mobile Facility.

11. Several months after the start of Intervenor-Plaintiff’s employment in the Mobile Facility, General Manager Hiser began making personal remarks to her. Hiser asked Intervenor-Plaintiff whether it was true that her husband was being laid off from his job due to the Kerr-McGee plant closing. General Manager Hiser told Intervenor-Plaintiff that she looked nice and smelled good. Shortly afterwards, General Manager Hiser told Intervenor-Plaintiff “I can eat more pussy than Glen and buy you more stuff.” Intervenor-

Plaintiff told Hiser he should not say things like that and that she was not interested in anything like that.

12. Intervenor-Plaintiff told her supervisor James Doyle Johnson what General Manager Hiser had said to her. Johnson suggested that Intervenor-Plaintiff report the matter to Defendant Employers' Human Resources Department. Intervenor-Plaintiff told Supervisor Johnson that she was scared to tell Human Resources because she believed she would be fired if she reported General Manager Hiser's conduct. Supervisor Johnson did not contradict Intervenor-Plaintiff, or reassure her that she would not be fired for reporting sexual harassment.

13. Despite Intervenor-Plaintiff's asking him to stop, General Manager Hiser continued to make personal, sexual and vulgar remarks to Intervenor-Plaintiff, including repeating often "I want to eat your pussy."

14. When General Manager Hiser made sexual remarks to Intervenor-Plaintiff, he put his hands on her body.

15. Each time General Manager Dale Hiser made sexual remarks to Intervenor-Plaintiff, Intervenor-Plaintiff told him to stop, that she was not interested, that she was a married woman. Intervenor-Plaintiff repeatedly told Dale Hiser that she would not consent to his sexual demands, but, each time, Hiser replied that she did not have a choice. Dale Hiser told Intervenor-Plaintiff that he would fire her if she did not consent to his sexual demands. General Manager Dale Hiser told Intervenor-Plaintiff that he did not need a reason to fire her, that he could fire her at any time.

16. Intervenor-Plaintiff reported Hiser's conduct to Supervisor Johnson each time it occurred.

17. General Manager Hiser visited Intervenor-Plaintiff's work area frequently. On each visit, Hiser made comments to Intervenor-Plaintiff about wanting to have sexual relations with her. Most often, Dale Hiser told Intervenor-Plaintiff that he wanted to "eat her pussy" or have her "sit on his face" or "sit her pussy on his face."

18. As a result of General Manager Hiser's conduct, Intervenor-Plaintiff became worried, scared and nervous, unable to eat or sleep.

19. On February 14, 2003, General Manager Hiser forced Intervenor-Plaintiff to have sexual relations with him.

20. The next week, General Manager Hiser threatened Intervenor-Plaintiff not to tell anyone what he had done. Hiser continued to make sexual remarks and demands for sex to Intervenor-Plaintiff. He continued to touch Intervenor-Plaintiff.

21. Intervenor-Plaintiff reported Hiser's conduct to Defendant Employers' Human Resources Manager Donna Cumbest on or around Wednesday, March 12, 2003.

22. Thereafter, Intervenor-Plaintiff took an extended leave of absence from work and sought psychiatric care. Intervenor-Plaintiff has been diagnosed with post traumatic stress syndrome. Her treating psychiatrist anticipates that she will not be able to work for the foreseeable future.

23. In January and February, 2003, Brookley Furniture maintained a written sexual harassment policy which directed employees to report sexual harassment to their supervisors.

24. In January and February, 2003, James Doyle Johnson was a person authorized to receive complaints under Brookley Furniture's sexual harassment policy.

25. Intervenor-Plaintiff reported violations of Brookley Furniture's sexual

harassment policy by Hiser to supervisor Johnson more than once.

26. Intervenor-Plaintiff's reports to Supervisor Johnson occurred prior to February 14, 2003.

27. Despite Intervenor-Plaintiff's reports to Supervisor Johnson, Defendant Employers failed to take action to stop Hiser's conduct.

28. General Manager Hiser continued to make sexual comments to Intervenor-Plaintiff and continued to touch Intervenor-Plaintiff after Intervenor-Plaintiff reported his conduct to Supervisor Johnson.

29. Brookley disciplined Supervisor James Doyle Johnson for not reporting Dale Hiser's conduct towards Intervenor-Plaintiff.

30. Brookley Furniture disciplined supervisors Glen Wilson and Tony Smith for not reporting conduct by Dale Hiser towards Intervenor-Plaintiff or other female employees which violated Brookley Furniture's sexual harassment policy.

31. Human Resources Manager Donna Cumbest had actual knowledge, prior to receiving Intervenor-Plaintiff's complaint, that General Manager Hiser violated Defendants' sexual harassment policy by viewing pornographic materials on his computer at work.

32. On or around August 7, 2003, Intervenor-Plaintiff filed a charge of discrimination with the United States Equal Employment Opportunity Commission ("the Commission") which is attached hereto as Exhibit A.

33. On or around January 27, 2004, following an investigation into the merits of Intervenor-Plaintiff's case, the Commission issued a Letter of Determination, a copy of which is attached hereto as Exhibit B. The Commission found cause to believe that discrimination had occurred. Subsequent attempts at conciliation were unsuccessful.

34. On or around September 28, 2004, the Commission filed this suit, seeking relief for Intervenor-Plaintiff and other employees.

35. On or around September 28, 2004, Defendants terminated Intervenor-Plaintiff from her employment at Brookley Furniture.

First Claim For Relief
42 U.S.C. §2000e5
Sexual Harassment

36. Intervenor-Plaintiff incorporates by reference each of the foregoing allegations of fact as though fully set forth herein.

37. Defendant Employers created or condoned a sexually discriminatory "hostile" or "abusive" work environment for Intervenor-Plaintiff, and in so doing discriminated against Intervenor-Plaintiff with respect to her compensation, terms, conditions or privileges of employment because of her sex.

38. Defendants threatened affected tangible aspects of the terms, conditions or privileges of her employment unless she acquiesced in the harassment.

39. As a result of Defendants' intentional and unlawful conduct, Intervenor-Plaintiff suffered and continues to suffer emotional pain, inconvenience, mental anguish, loss of enjoyment of life, loss of income and loss of employment benefits.

40. Defendants acted with malice or with reckless indifference to Intervenor-Plaintiff's federally protected rights.

WHEREFORE, Intervenor-Plaintiff demands the removal of all unfavorable material related to this matter from Intervenor-Plaintiff's personnel files, back pay, interest, front pay, compensatory and punitive damages, costs and attorneys' fees.

Second Claim For Relief
42 U.S.C. §2000e5
Wrongful Termination

41. Intervenor-Plaintiff incorporates by reference each of the foregoing allegations of fact as though fully set forth herein.

42. Defendants terminated Intervenor-Plaintiff's employment in September 2003 when she was medically unable to work because of the sexual harassment she had experienced.

43. As a result of Defendants' intentional and unlawful conduct, Intervenor-Plaintiff suffered and continues to suffer emotional pain, inconvenience, mental anguish, loss of enjoyment of life, loss of income and loss of employment benefits.

44. Defendants acted with malice or with reckless indifference to Intervenor-Plaintiff's federally protected rights.

WHEREFORE, Intervenor-Plaintiff demands the removal of all unfavorable material related to this matter from Intervenor-Plaintiff's personnel files, back pay, interest, front pay, compensatory and punitive damages, costs and attorneys' fees.

Third Claim For Relief
42 U.S.C. §2000e5
Constructive Discharge

45. Intervenor-Plaintiff incorporates by reference each of the foregoing allegations of fact as though fully set forth herein.

46. Intervenor -Plaintiff left her employment at Brookley Furniture because her working conditions were so intolerable that any reasonable person in her position would leave work to escape the harassment.

47. As a result of Defendants' intentional and unlawful conduct, Intervenor-

Plaintiff suffered and continues to suffer emotional pain, inconvenience, mental anguish, loss of enjoyment of life, loss of income and loss of employment benefits.

48. Defendants acted with malice or with reckless indifference to Intervenor-Plaintiff's federally protected rights.

WHEREFORE, Intervenor-Plaintiff demands the removal of all unfavorable material related to this matter from Intervenor-Plaintiff's personnel files, back pay, interest, front pay, compensatory and punitive damages, costs and attorneys' fees.

**Fourth Claim For Relief
Assault and Battery**

49. Intervenor-Plaintiff incorporates by reference each of the foregoing allegations of fact as though fully set forth herein.

50. General Manager Hiser committed several assaults and batteries on Intervenor-Plaintiff by touching Intervenor-Plaintiff's person in a rude, offensive, lewd, and abusive manner. Said assaults and batteries were accompanied by circumstances of ill-motive and aggravation.

51. As a proximate result of said assaults and batteries, Intervenor-Plaintiff suffered and continues to suffer physical, mental and emotional pain and distress.

52. Defendant Employers are responsible for General Manager Hiser's conduct.

WHEREFORE, Intervenor-Plaintiff demands compensatory and punitive damages in excess of the jurisdictional amount and the costs of this action from defendants.

**Fifth Claim For Relief
Invasion Of Privacy**

53. Intervenor-Plaintiff incorporates by reference each of the foregoing allegations of fact as though fully set forth herein.

54. During Intervenor-Plaintiff's employment, General Manager Hiser intentionally intruded upon Intervenor-Plaintiff's physical solitude and seclusion.

55. As a proximate result of Hiser's conduct, Intervenor-Plaintiff suffered and continues to suffer physical and mental pain and distress.

56. Defendant Employers are responsible for General Manager Hiser's conduct.

WHEREFORE, Intervenor-Plaintiff demands compensatory and punitive damages in excess of the jurisdictional amount and the costs of this action from defendants.

**Sixth Claim For Relief
Intentional Infliction of Emotional Distress**

57. Intervenor-Plaintiff incorporates by reference each of the foregoing allegations of fact as though fully set forth herein.

58. During Intervenor-Plaintiff's employment, General Manager Hiser made unwelcome sexual advances to the Intervenor-Plaintiff. Hiser threatened Plaintiff that she had no choice but to have sex with him or she would be fired.

59. Intervenor-Plaintiff rebuffed all such advances, but Hiser's conduct continued.

60. Intervenor-Plaintiff reported General Manager Hiser's conduct to Defendant Employers according to Defendant Employers' written policy for reporting sexual harassment.

61. Defendant Employers had actual knowledge that General Manager Hiser had engaged in, or was engaging in, similar conduct towards other employees.

62. Despite Plaintiff's reports, and despite having actual knowledge that General Manager Hiser had violated its sexual harassment policy, Defendant Employers took no action to stop Hiser from committing future violations.

63. Even after Intervenor-Plaintiff's complaint to management, General Manager Hiser continued to make unwelcome sexual advances to Intervenor-Plaintiff and ultimately forced Intervenor-Plaintiff to engage in sexual relations with him.

64. As a proximate result of General Manager Hiser's intentional conduct, Intervenor-Plaintiff suffered and continues to suffer physical, mental and emotional pain and distress.

65. Defendant Employers ratified General Manager Hiser's conduct.

WHEREFORE, Intervenor-Plaintiff demands compensatory and punitive damages in excess of the jurisdictional amount and the costs of this action from defendants.

**Seventh Claim For Relief
Negligence Or Wantonness In Hiring Or Training Or Supervising Management
Employees Or Responding To Notice of Their Unfitness**

66. Intervenor-Plaintiff incorporates by reference each of the foregoing allegations of fact as though fully set forth herein.

67. Defendant Employers owed a duty to their employees to exercise reasonable care to provide a safe working environment, including one free from sexual harassment, assault and battery, invasion of privacy and intentional infliction of emotional distress.

68. Defendant Employers knew, or in the exercise of reasonable care should have known, that General Manager Dale Hiser engaged in sexual harassment, assault and battery, invasion of privacy and intentional infliction of emotional distress towards female employees, including Intervenor-Plaintiff.

69. Supervisor James Doyle Johnson had actual knowledge that General Manager Dale Hiser violated Brookley Furniture's sexual harassment policy by his

comments and conduct towards Intervenor-Plaintiff.

70. Supervisor Glen Wilson had actual knowledge that General Manager Hiser violated Brookley Furniture's sexual harassment policy by his comments and conduct towards Intervenor-Plaintiff or towards female employees of Brookley Furniture other than Intervenor-Plaintiff.

71. Supervisor Tony Smith had actual knowledge that General Manager Hiser violated Brookley Furniture's sexual harassment policy by, *inter alia*, his comments and conduct towards female employees of Brookley Furniture.

72. Human Resources Manager Donna Cumbest had actual knowledge, prior to receiving Intervenor-Plaintiff's complaint, that General Manager Hiser violated Defendants' sexual harassment policy by viewing pornographic materials on his computer at work.

73. Human Resources Manager Donna Cumbest had actual knowledge, prior to receiving Intervenor-Plaintiff's complaint, that General Manager Hiser violated Defendants' sexual harassment policy by his comments or conduct to female employees.

74. Defendant breached its duty of care by negligently, recklessly or wantonly hiring or failing to train or supervise its supervisors and management employees so as to prevent the harm that occurred in this case, or by negligently, recklessly or wantonly responding, or failing to respond, to notice of improper conduct by its supervisors and management employees.

75. As a proximate result of Defendants' negligence, recklessness and/or wantonness, Intervenor-Plaintiff suffered and continues to suffer emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, loss of income and loss

of benefits.

WHEREFORE, Intervenor-Plaintiff demands compensatory and punitive damages in excess of the jurisdictional amount and the costs of this action from defendants.

/s/ Cecily L. Kaffer
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INTERVENOR-PLAINTIFF DEMANDS TRIAL BY JURY

/s/ Cecily L. Kaffer
CECILY L. KAFFER

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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