

FILED

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

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U.S. DISTRICT COURT
H.D. OF ALABAMA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

R & J Enterprises, d/b/a)
International House of)
Pancakes, AJM Inc., d/b/a)
International House of Pancakes, and)
Strategic Outsourcing, Inc.)

Defendants.)

dc
CIVIL ACTION NUMBER:
CV-02-C-2314-S

COMPLAINT-IN-INTERVENTION

COME NOW the Plaintiff-Intervenors, Quontae Bolton (“Bolton”), Carolyn Burrell (“Burrell”), Peggy Sherman (“Sherman”), and Enica Daniels (“Daniels”) (hereinafter referred to collectively as “Plaintiff-Intervenors”), and bring the present action against the Defendants by stating as follows:

I. JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 1343(4), 2201, 2202, and 42 U.S.C. § 2000e et seq. This is a suit authorized and instituted pursuant to Title VII of the Act of Congress known as the “Civil Rights Act of 1964,” as amended, including the “Civil Rights Act of 1991”. The jurisdiction of this court is invoked to secure protection of and redress deprivation of rights secured by 42 U.S.C. § 2000e et seq., providing for injunctive and other relief against gender discrimination, racial discrimination, sexual harassment and retaliation.

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2. The Plaintiff-Intervenors have fulfilled all conditions precedent to the institution of this action under Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended by the "Civil Rights Act of 1991", 42 U.S.C. § 2000e et seq. Plaintiff-Intervenors Bolton, Burrell, Daniels, and Sherman timely filed charges of discrimination alleging sexually hostile work environments, gender discrimination, racial discrimination and retaliation within 180 days of the last discriminatory act. The EEOC filed the present suit on behalf of a class of females, including the Plaintiff-Intervenors Bolton, Burrell, Sherman and Daniels based upon their EEOC charges. Plaintiff-Intervenors have, pursuant to both Rule 24(a) of the F.R.C.P. and § 706(f)(1) of Title VII of the Civil Rights Act of 1964, a statutory right to pursue their individual claims in this action. Plaintiff-Intervenors have filed a Motion to Intervene in this action.

II. PARTIES

3. Plaintiff-Intervenors Bolton, Burrell, Daniels and Sherman are females who were or are employed by the Defendants at its IHOP restaurant location on Crestwood Boulevard, Birmingham, Alabama at all times relevant hereto.

4. Defendants, R&J Enterprises, and AJM, Inc, both d/b/a International House of Pancakes (IHOP) are subject to suit under Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended by the "Civil Rights Act of 1991", 42 U.S.C. Section 2000(e) et seq. At all times relevant hereto, the Defendants were the employer or joint employer of the Plaintiff-Intervenors. All Defendants employ at least (15) persons.

5. Defendant Strategic Outsourcing, Inc.(SOI), is an employer and employee leasing agency. Defendant SOI was the employer and/or joint employer or acted as the agent for the employer of the Plaintiff-Intervenors in this action at all times relevant hereto. SOI is subject to

suit under Title VII of the Act of Congress known as the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991.

III. CAUSES OF ACTION

A. Hostile Environment

6. The Plaintiff-Intervenors re-allege and incorporate by reference paragraphs 1-5 of the Complaint in Intervention above, and also realleges and incorporate by reference the allegations contained in the original complaint filed by the EEOC in this action.

7. There existed at all times relevant hereto, at the Crestwood location of the Defendants, a sexually hostile work environment which discriminated against females because of their gender. This hostile work environment included, but was not limited to, unwanted and unwelcomed physical contact by one or more male supervisors, (e.g. Ken Horne); sexually suggestive language and statements, discriminatory work assignments and shift assignments based on one's lack of opposition to harassment; Defendants' failure to take corrective action when complaints were made concerning all of the above actions; and finally a policy of retaliating against any employee who complained about or opposed unlawful employment practices.

8. Systemic discrimination existed at the Defendants' workplace against females as a result of the policies and procedures being followed and implemented by the Defendants. The Defendants did not act in good faith in response to any complaints about discriminatory behavior. In fact, the Defendants failed on numerous occasions to investigate or take appropriate corrective actions against persons they knew were engaging in the types of behavior described above.

9. The above-described actions on the part of the Defendants constitute a violation of

Title VII of the Act of Congress known as the “Civil Rights Act of 1964,” as amended, including the “Civil Rights Act of 1991”, 42 U.S.C. §2000(e) et seq.,

10. The Plaintiff-Intervenors have suffered embarrassment, humiliation, financial hardship, mental distress, emotional pain and anguish as a consequence of the Defendants’ unlawful discriminatory conduct.

11. The wrongful conduct of Defendants described above was carried out with malice and/or reckless indifference to the federally protected rights of Plaintiff-Intervenors, thereby entitling Plaintiff-Intervenors to punitive damages.

B. Sexual Harassment

12. The Plaintiff-Intervenors re-allege and incorporate by reference paragraphs 1-11 above with the same force and effect as if fully set out in specific detail herein below.

13. Plaintiff-Intervenors Bolton, Burrell, Sherman and Daniels were subjected to sexual harassment during their employment by, among others, Kenneth Horne (“Horne”), a white male and the General Manager at this location.

14. Horne engaged in sexually harassing misconduct directed toward female employees, and the Defendants were on notice of Horne’s behavior. Horne, a supervisor, dated subordinates; subjected females to unwanted and unwelcomed physical contact, including rubbing up against and tickling female employees. According to its own sexual harassment policy, the Defendants should have terminated Horne, yet Defendant’s did not suspend, counsel or take disciplinary actions against Horne as their so-called “harassment policy” required, for many months. Horne was allowed to hire, fire, discipline and reassign employees during his employment by Defendants. Horne was allowed to investigate complaints of discrimination and

sexual harassment alleged against him.

15. Said Plaintiff-Intervenors have suffered embarrassment, humiliation, financial hardship, mental distress, emotional pain and anguish as a consequence of the Defendants' unlawful conduct.

16. The wrongful conduct of Defendants described above was carried out with malice and/or reckless indifference to the federally protected rights of Plaintiff-Intervenors, thereby entitling Plaintiff-Intervenors to punitive damages.

C. Retaliation

17. The Plaintiff-Intervenors re-allege and incorporate by reference paragraphs 1-16 above with the same force and effect as if fully set out in specific detail herein below.

18. The Defendants engaged in numerous acts of retaliation against employees who complained about discriminatory or harassing behavior.

19. Each Plaintiff-Intervenor, was subjected to one or more adverse employment actions after complaining about or opposing various forms of discrimination or harassment. These adverse actions included reductions in scheduled work hours, reassignment to different shifts, reassignment to different jobs, reassignment to less desirable sections with less opportunity to earn tips, and ultimately, discharge or constructive discharge.

20. The adverse actions taken against each Plaintiff-Intervenor were in retaliation for making good faith complaints of discrimination and harassment, or for opposing unlawful employment practices, and any proffered reasons to the contrary are pretextual.

21. The wrongful conduct of the Defendants described above was carried out with malice and/or reckless indifference to the federally protected rights of Plaintiff-Intervenors,

thereby entitling Plaintiff-Intervenors to punitive damages.

22. Said Plaintiff-Intervenors have suffered embarrassment, humiliation, financial hardship, mental distress, emotional pain and anguish as a consequence of the Defendants' unlawful discriminatory and/or retaliatory conduct.

D. Disparate Treatment

23. The Plaintiff-Intervenors reallege and incorporate by reference paragraphs 1-22 above with the same force and effect as if fully set out in specific detail herein below.

24. Plaintiff-Intervenors allege that they were discharged or constructively discharged, or that disciplinary actions taken against them were carried out in a discriminatory and/or retaliatory manner in that even had they engaged in the conduct attributed to them by the Defendants, which they deny, similarly situated male employees or employees who had not opposed Defendants' unlawful practices, or white employees who engaged in the same or similar conduct were not disciplined or discharged.

25. Plaintiffs Burrell, Bolton, and Daniels are African American females, and were each subjected to racially discriminatory work assignments, disciplinary actions, demotions, suspensions, constructive discharge, as well as other incidents of racially disparate treatment. Plaintiffs Burrell, Bolton, and Daniels allege they were discriminated against because of their race regarding to the terms and conditions of their employment.

26. The wrongful conduct of Defendants described above was carried out with malice and/or reckless indifference to the federally protected rights of Plaintiff-Intervenors, thereby entitling Plaintiff-Intervenors to punitive damages.

27. Plaintiff-Intervenors have suffered embarrassment, humiliation, financial

hardship, mental distress, emotional pain and anguish as a consequence of the Defendants' unlawful discriminatory conduct.

IV. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff-Intervenors respectfully pray that this Court assume jurisdiction of this action and after trial:

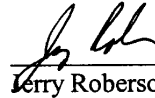
(A) Issue a declaratory judgment that the employment policies and practices, conditions, and customs of the Defendants are violative of the rights of the Plaintiff-Intervenors as secured by Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, including the "Civil Rights Act of 1991", 42 U.S.C. §2000(e) et seq.

(B) Grant the Plaintiff-Intervenors a permanent injunction enjoining the Defendants, its agents, successors, employees, attorneys and those acting in concert with the Defendants and at the Defendants' request from continuing to violate Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, including the "Civil Rights Act of 1991", 42 U.S.C. §2000(e) et seq.

(C) Enter an Order requiring the Defendants to make the Plaintiff-Intervenors whole by awarding them the position they would have occupied in the absence of gender discrimination, racial discrimination, sexual harassment and retaliation, back-pay (plus interest), declaratory and injunctive relief, nominal damages, compensatory and punitive damages, lost seniority and benefits.

(D) The Plaintiff-Intervenors further pray for such other relief and benefits as the cause of justice may require, including, but not limited to, an award of costs, attorney's fees and expenses.

Respectfully submitted,



Jerry Roberson (ASB-8283-071J)
Attorney for Plaintiff - Intervenors

OF COUNSEL:

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JURY DEMAND

Plaintiff-Intervenors hereby demand trial by struck jury.



OF COUNSEL

CERTIFICATE OF SERVICE


I hereby certify that I have served counsel for all parties to this action with a copy of the foregoing document by depositing same in the United States mail, properly addressed with postage thereon pre-paid, on this the 3rd day of March, 2003.

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