

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-cv-01385-EWN-BNB

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

TAMMY LANE, MICHAEL GALASSO, and
CALVIN REED,

Intervenor Plaintiffs,

vs.

OLDCASTLE SW GROUP, INC. d/b/a UNITED COMPANIES OF MESA COUNTY, a
Colorado corporation

Defendant.

COMPLAINT IN INTERVENTION AND JURY DEMAND

The Intervenor Plaintiffs, Tammy Lane, Michael Galasso and Calvin Reed, by and through their counsel, for their complaint against Defendant Oldcastle SW Group, Inc. d/b/a United Companies of Mesa County (“Oldcastle”), allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1337, 1343 and 1345.

2. This action is authorized and instituted pursuant to Sections 703(a), 704, 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. §§ 2000e-2(a), 2000e-3, 2000e-5(f)(1), 2000e5(f)(3), Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a, and The Americans With Disabilities Act of 1990 (the “ADA”), as amended, 42 U.S.C. § 12101 *et. seq.*

3. Intervenor Plaintiffs timely filed Charges of Discrimination with the EEOC, and all procedural prerequisites for the filing of this suit have been met.

4. On March 20, 2008, the EEOC issued its determinations finding that Intervenor Plaintiffs and a class of similarly situated employees were discriminated against and retaliated against in violation of Title VII and that Mr. Galasso was discriminated against in violation of the ADA.

PARTIES

5. Intervenor Plaintiff Tammy Lane is and was at all times relevant hereto a resident of the State of Colorado.

6. Intervenor Plaintiff Michael Galasso is and was at all times relevant hereto a resident of the State of Colorado.

7. Intervenor Plaintiff Calvin Reed is and was at all times relevant hereto a resident of the State of Colorado

8. At all relevant times, Defendant has continuously been and is now doing business in the State of Colorado and has continuously had at least fifteen (15) employees.

9. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Title VII and the ADA.

10. At all relevant times, Defendant was the employer of Intervenor Plaintiffs within the meaning of both Title VII and the ADA.

GENERAL ALLEGATIONS

11. The following individuals are referred to throughout the allegations which follow:

a. Brian Cross was the Plant Manager employed by Defendant to manage the Montrose Plant, at which each of the Intervenor Plaintiffs was employed.

b. Ron Arellano was employed by Defendant as its Redi-Mix Manager, responsible for overall management of concrete production.

c. Ty Ducray was employed by Defendant as the Assistant Redi-Mix Manager, taking over as Redi-Mix Manager upon Mr. Arellano's retirement in April 2005.

d. Jake Pimentel was hired by Defendant as the concrete batchman in the spring of 2003. He performed dispatching and other duties.

e. Paul McGehee was Defendant's equal employment opportunity officer.

Tammy Lane

12. Intervenor Plaintiff Tammy Lane, who is female, worked for Defendant at its Montrose Plant for seven years.

13. Throughout her employment with Defendant, Ms. Lane was subjected to discrimination and a hostile work environment because she is a female. Mr. Cross told Ms. Lane's coworkers that he only hired Ms. Lane because he could not find enough male drivers and that he only hoped Ms. Lane would make it through the summer, implying that he doubted she

would. Mr. Cross also told Ms. Lane's coworkers that women should not work at the plant and that one "shouldn't hire a woman to do a man's job."

14. Mr. Arellano told Ms. Lane that she needed to "be a man" about her job, and that she needed to "grow a set of balls" if she wanted to stay in her job. On one occasion, a driver overheard Messrs. Arellano and Ducray refer to Ms. Lane as a "stupid bitch."

15. In approximately 2001, Ms. Lane was promoted to Plant Manger after Mr. Cross was demoted due to anger management issues. However, because Ms. Lane is a female, most of the male employees refused to take direction from her. Because Ms. Lane did not receive any support from Mr. Arellano, she was reassigned to Quality Control after only three weeks as Plant Manager, and Mr. Arellano promoted Mr. Cross back into the Plant Manager position.

16. Beginning immediately after his hire, Mr. Pimental constantly used foul language and ridiculed Ms. Lane in front of her coworkers, including calling her a "cunt," and a "fat fucking lazy cunt." Although they were supposed to work together, Mr. Pimentel repeatedly refused to work with Ms. Lane, creating excessive work for Ms. Lane and interfering with her ability to perform her duties. When Ms. Lane attempted to talk with Mr. Pimental about their work issues, Mr. Pimental yelled at her on the phone, "I don't care, they can suck my balls, they are not getting any more fucking trucks." Mr. Pimental never spoke to male employees in this manner.

17. On numerous occasions, Ms. Lane complained to Mr. Cross about Mr. Pimental's harassment and gender discrimination. Mr. Cross's responses to Ms. Lane's complaints included hanging up on her and attempting to make excuses for Mr. Pimental, claiming that it was typical construction lingo, and that Ms. Lane "had better get used to it."

18. On August 11, 2004, Ms. Lane complained to Mr. Arellano of the hostile work environment and gender discrimination. Ms. Lane identified several co-workers, including Mr. Galasso, Mr. Reed, and Dave Uhlenberg, who witnessed Mr. Pimental's discrimination against and harassment of Ms. Lane.

19. Following Ms. Lane's complaints, Mr. McGehee came to the Montrose Plant to meet with Ms. Lane, the witnesses she had identified, and Mr. Arellano.

20. Following Mr. McGehee's meeting, Ms. Lane met with Mr. Arellano to express her concern about retaliatory behavior toward herself and her witnesses. Mr. Arellano responded to Ms. Lane that her witnesses were "trouble causing, cry baby, mother fuckers," and that he wanted to fire all three of them right then.

21. Following Ms. Lane's complaints of discrimination and hostile work environment, the discriminatory environment did not improve. The foul language seemed to be more prevalent, and Ms. Lane and her witnesses were retaliated against. Mr. Galasso and Mr. Reed were fired in December 2004 and Ms. Lane was fired in January 2005, all ostensibly as "layoffs".

22. On March 16, 2005, Ms. Lane was brought back from the purported layoff; however, her work was constantly scrutinized and her work environment was increasingly hostile. On April 26, 2006, she was terminated without any reasonable justification.

Michael Galasso

23. Intervenor Plaintiff Michael Galasso worked for Defendant at its Montrose Plant for two years.

24. In 2003, Mr. Galasso was diagnosed as having Fibromyalgia, which in his instances is complicated by lower-extremity edema. Mr. Galasso suffers from severe and pervasive pain as a result of his condition. Mr. Galasso is substantially impaired with respect to major life activities, including sleeping, walking, sitting, and performing manual tasks.

25. After Mr. Galasso informed Defendant of his diagnosis, Mr. Pimental started accusing him of not performing his job appropriately. In addition, Defendant first cut Mr. Galasso's overtime, allowing another driver to work his overtime, and then gave Mr. Galasso an excessive number of hours, all tactics in trying to force Mr. Galasso to leave.

26. In September 2004, Mr. Galasso witnessed male employees and managers make crude and inappropriate remarks about Ms. Lane. For example, he heard Mr. Cross tell Mr. Arellano that that they "should not have hired a woman to do a man's job." The two of them then joked back and forth, placing the blame for her hire on each other. Mr. Galasso also heard Mr. Pimentel call Ms. Lane a "lazy, fat, bitch, cunt." Mr. Galasso informed Ms. Lane that he had overheard these comments and agreed to support Ms. Lane in her complaint of sex harassment.

27. Mr. Galasso was called into a meeting with Mr. McGehee, who was investigating complaints of sex discrimination and harassment made by Ms. Lane. Immediately following the meeting, Mr. Galasso expressed his concerns of retaliation to Mr. McGehee and Mr. Arellano. He specifically told them that he had overheard Mr. Pimental tell Mr. Cross that "If something doesn't happen to those guys [Mr. Galasso and Ms. Lane's other witnesses] by winter, I'm out of here."

28. Approximately ten days after the meeting with Mr. McGehee, Mr. Arellano called a meeting with Mr. Galasso and Ms. Lane's other witnesses, Mr. Reed and David Uhlenberg. At

this meeting, Mr. Arellano accused the witnesses of “conspiring” and “stirring the pot,” and he called them “trouble makers.” Mr. Galasso, Mr. Reed and Mr. Uhlenberg were told that they better “shut up” or “there would be severe hardships around here.”

29. In October 2004, Mr. Galasso was diagnosed with cellulitis, an infection in his lower leg, and was hospitalized and under a doctor’s care. Because of the cellulitis, Mr. Galasso was on FMLA leave from October 13, 2004 through December 29, 2004. On December 15, 2004, when Mr. Galasso called Mr. Cross and told him that he would be returning to work in two weeks, Mr. Cross told Mr. Galasso that “it doesn’t matter; Defendant has decided to eliminate your job.” Mr. Galasso didn’t hear anything further and, on December 29, 2004, left Mr. McGehee a voice mail telling him that he was released to return to work.

30. Two hours later, Mr. Galasso received a facsimile from Defendant telling him he was laid off. The stated reason for termination was a pretext. Less-qualified employees were retained at the time Mr. Galasso was terminated, and a new employee was hired to replace Mr. Galasso.

Calvin Reed

31. Intervenor Plaintiff Calvin Reed worked for Defendant for eleven years.

32. Mr. Reed performed his duties satisfactorily, and when he was terminated he had the most seniority of all the Mixer Drivers employed at Defendant’s Montrose Plant.

33. During his employment with Defendant, Mr. Reed witnessed male employees and managers harass and discriminate against Intervenor Plaintiff Tammy Lane simply because she is female. For example, Mr. Reed heard Mr. Cross, state that women should not be in this job, and he heard him tell Ms. Lane that she “needed to grow a set of balls if you are going to stay in this

job.” Mr. Reed also observed male employees speak about her and to her in a degrading fashion and refuse to work with her.

34. In September 2004, Mr. Reed overheard Mr. Pimentel scream at Ms. Lane over the phone: “I don’t care, they can suck my balls, they are not getting any more fucking trucks.” Mr. Pimentel did not speak like this to the male employees. Mr. Reed reported this conversation to Ms. Lane and encouraged her to object to the treatment she was receiving.

35. Mr. Reed was named as a witness in Ms. Lane’s subsequent complaint of harassment and discrimination, and he was called into a meeting with Mr. McGehee, who was investigating Ms. Lane’s complaints. Immediately following the meeting, Mr. Reed expressed his concerns of retaliation to Mr. McGehee and Mr. Arellano.

36. Approximately ten days after the meeting with Mr. McGehee, Mr. Arellano called a meeting with Mr. Reed and Ms. Lane’s other witnesses, Mr. Galasso and David Uhlenberg. At this meeting, Mr. Arellano accused Mr. Reed, Mr. Galasso and Mr. Uhlenberg of “conspiring” and “stirring the pot,” and he called them “trouble makers.” Mr. Reed, Mr. Galasso and Mr. Uhlenberg were told that they better “shut up” or “there would be severe hardships around here.”

37. Shortly thereafter, in December 2004, Defendant informed Mr. Reed that, although he was the most senior mixer driver and had no previous write ups or disciplinary actions, he was being laid off.

38. The stated reason for termination was a pretext. Less-qualified employees were retained at the time Mr. Reed was terminated, and a new employee was hired to replace Mr. Reed.

FIRST CLAIM FOR RELIEF

(Asserted by Ms. Lane - Gender Discrimination in Employment / Sexual Harassment)

39. Intervenor Plaintiffs incorporate by reference paragraphs 1 through 38 of this Complaint.

40. Since at least 2001, Defendant has denied equal employment opportunities to Ms. Lane, in violation of section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), by subjecting Ms. Lane to different terms and conditions of employment than her male co-workers, by maintaining a work environment hostile to women, and by terminating her employment.

41. The effect of the discriminatory practices complained of herein has been to deprive Ms. Lane of equal employment opportunities and otherwise adversely affect her status based on her gender.

42. The unlawful and discriminatory practices complained of herein were intentional.

43. The discriminatory practices complained of herein were done with malice or with reckless indifference to Ms. Lane's federally protected rights.

SECOND CLAIM FOR RELIEF

(Asserted by Each Intervenor Plaintiff – Retaliation in Violation of Title VII)

44. Intervenor Plaintiffs incorporate by reference paragraphs 1 through 43 of this Complaint.

45. During their employment with Defendant, Ms. Lane, Mr. Reed and Mr. Galasso engaged in protected activity under §704 of Title VII, 42 U.S.C. §2000e-4(a), by opposing unlawful discriminatory and retaliatory employment practices.

46. Defendant, acting through its managers and supervisors, retaliated against Ms. Lane, Mr. Reed, Mr. Galasso because of their protected activity.

47. As a result of Defendant's unlawful retaliation, Ms. Lane, Mr. Reed, Mr. Galasso have suffered damages in amounts to be proven at trial, including but not limited to backpay, front pay, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

48. Defendant's retaliatory actions complained of herein were intentional.

49. Defendant's retaliatory actions complained of herein were done with malice or with reckless indifference to the federally protected rights of Intervenor Plaintiffs.

THIRD CLAIM FOR RELIEF
(Asserted by Mr. Galasso – Discrimination Based on Disability)

50. Intervenor Plaintiffs incorporate by reference paragraphs 1 through 49 of this Complaint.

51. Mr. Galasso is a "qualified individual with a disability" as defined by the ADA.

52. At all times relevant hereto Defendant perceived Mr. Galasso as an individual with a disability.

53. Defendant took an adverse action against Mr. Galasso by treating him less favorably than similarly-situated non-disabled employees with respect to overtime hours and by terminating his employment.

54. Mr. Galasso's disability and/or perceived disability was a factor in Defendant's decision to take the foregoing adverse employment actions against him, and Defendant would not have taken those adverse employment actions against Mr. Galasso but-for Mr. Galasso's disability and/or perceived disability.

55. As a result of Defendant's unlawful discrimination, Mr. Galasso has suffered damages in amounts to be proven at trial, including but not limited to backpay, front pay, future

pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

56. Defendant's discriminatory actions complained of herein were intentional.

57. Defendant's discriminatory actions complained of herein were done with malice or with reckless indifference to the federally protected rights of Mr. Galasso.

WHEREFORE, Intervenor Plaintiffs respectfully request that the Court grant them the following relief:

1. Back pay and actual damages in an amount to be shown at trial to compensate them for lost wages, benefits, and employment opportunities;
2. Front pay in an amount to be shown at trial;
3. Compensatory and punitive damages;
4. Reasonable attorneys' fees and costs of this litigation as provided under Title VII and the ADA;
6. Pre-judgment and post-judgment interest and costs of this action together with reasonable expert witness fees as provided by law;
7. Permanent injunctions restraining these violations of Title VII and the ADA; and
8. Such other and further relief as this Court deems necessary and proper.

JURY TRIAL DEMAND

Intervenor Plaintiffs respectfully request a jury trial on all questions of fact raised by this complaint.

Respectfully submitted this 14th day of October 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October 2008, I electronically filed the foregoing **COMPLAINT IN INTERVENTION AND JURY DEMAND** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email address:

Nancy Weeks
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Nancy.Weeks@eeoc.gov

And that service was made by e-mail and U.S. Mail to:

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