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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES EQUAL EMPLOYMENT) Case No. 6:01-cv-1133-Orl-28DAB
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
vs.)
)
KMART CORPORATION,)
)
Defendant.)
/

COMPLAINT IN INTERVENTION OF Y'SHEENA McCOY
[Jury Trial Demand]

Intervenor, Y'SHEENA McCOY, by and through her undersigned counsel, files this complaint as party-plaintiff, pursuant to Rule 24 of the Federal Rules of Civil Procedure.

I. NATURE OF THE CLAIM

1. In this action, Y'SHEENA McCOY alleges that she was subjected to sexual harassment and sex discrimination. Furthermore, Intervenor alleges that she was discharged in retaliation for making an internal complaint about the sexual harassment and sex discrimination.

Specifically, McCOY seeks redress against Defendant Kmart for these discriminatory employment practices in violation of her rights secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and the Florida Civil Rights Act, §760.01 et seq., Florida Statutes. Additionally, McCOY brings state tort claims for battery, assault, intentional infliction of emotional distress, invasion of privacy, and negligent supervision and retention.

II. JURISDICTION

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, and 42 U.S.C. §2000e-5(F)(3). This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a) over McCOY's state law claims.

3. McCOY's Title VII claims are brought as of right pursuant to Rule 24(a)(1) of the Federal Rules of Civil Procedure and 42 U.S.C. §2000e-5(f)(1) and pursuant to leave of Court.

4. McCOY's state law claims are permissive claims brought pursuant to leave of Court and Rule 24(b).

III. PARTIES

5. Intervenor Y'SHEENA McCOY, a citizen of the United States and a resident of Orange County, Florida, is a former employee of the Defendant, KMART CORPORATION, at Defendant's store located at North Hiawasse Road in Orlando from approximately April 1999 to August 1999.

6. Defendant KMART CORPORATION is a corporation organized under the laws of the State of Michigan. Defendant operates retail sales stores which do business in Florida, including the store located in Orlando, Florida at which McCOY was employed.

a. Defendant is now and at all material times has been engaged in commerce or an activity affecting commerce.

b. Defendant employed 500 or more employees for each working day in each of 20 or more calendar weeks in the relevant years.

IV. CONDITIONS PRECEDENT

7. a. Intervenor McCOY filed an administrative charge of discrimination with the Equal Employment Opportunity Commission, which was cross-filed with the Florida Commission on Human Relations.
- b. Intervenor McCOY has satisfied all conditions precedent to filing her Title VII and FCRA claims.

V. FACTS

8. On April 10, 1999, Intervenor McCOY began working for Defendant while she was seventeen years old and attending high school.
9. Intervenor McCOY worked for Defendant as part-time employee in the evenings as a floor clerk and cashier.
10. Throughout her employment with Defendant, Intervenor McCOY was subjected to a hostile work environment, unwelcome sexual harassment, and discrimination on account of her sex, female.
11. Intervenor McCOY was subjected to ongoing and pervasive, sexually offensive, unwelcome, and intentional conduct by Anthony Thomas, who was McCOY's direct supervisor. These actions included the unwelcome touching of her body and being subjected to unwelcome sexually oriented and explicit comments and actions during and after working hours on an ongoing and repeated basis.
12. Intervenor McCOY repeatedly indicated to Anthony Thomas that such remarks and touching were not welcomed by her.

13. McCOY suffered from emotional and physical problems related to the stress caused by the sexual harassment by Thomas. As a result, McCOY had to seek medical assistance and lost time at work.

14. In about late July 1999, McCOY complained to another manager about the unwelcome sexual harassment by Thomas. That manager set up a meeting with another manager for Intervenor to complain further up the company management chain of command; however, that meeting never took place, due to no fault of McCOY.

15. In retaliation for McCOY's internal complaint, she was subjected to retaliation by her supervisor, Anthony Thomas, and other employees and managers of the company by being unfairly disciplined and terminated from her employment.

16. Within one month of McCOY's complaint to management, she was terminated from her employment by Defendant.

17. The reprimand leading to her termination was written by Thomas.

18. The person who actually notified McCOY of her termination was the manager with whom she was supposed to meet to further report the sexual harassment by Thomas.

19. The reason given by Defendant for McCOY's termination is untrue and pretextual.

20. At all times she was employed by the Defendant, McCOY performed her work responsibilities in a satisfactory manner.

21. The sexual harassment and discrimination by Anthony Thomas created an intimidating, hostile and offensive work environment.

22. Prior to receiving McCOY's complaint about Thomas, Defendant had actual or constructive knowledge that Thomas had engaged in sexually harassing conduct with other

female employees.

23. Defendant had actual or constructive knowledge of the sexually harassing conduct of Thomas since the conduct was so pervasive, obvious, flagrant, rampant or a continued duration.

24. Despite having such actual or constructive knowledge, Defendant failed to take any appropriate remedial action.

25. Defendant knew of and tolerated the sexual harassment by Thomas.

26. Moreover, Defendant failed to conduct a proper investigation of McCOY's complaint of sexual harassment.

27. The unlawful practices described above were done with malice and reckless indifference to the federally protected rights of McCOY.

28. As a direct and proximate result of the Defendant's conduct described in paragraphs 10 through 27, McCOY has suffered degradation, humiliation, mental anguish, loss of the capacity for the enjoyment of life, and loss of earnings and benefits.

VI. CLAIMS FOR RELIEF

Count I: Sexual Harassment Claims (Title VII and FCRA)

29. Intervenor McCOY incorporates by reference the allegations stated at paragraphs 7 through 11 of Plaintiff EEOC's complaint and paragraphs 2 through 28 above.

30. Defendant's discriminatory employment practices described above resulted in McCOY being subjected to sexual harassment and a sexually offensive and hostile work environment. Defendant deprived McCOY of her right to be free from sex discrimination and

sexual harassment, a right secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. and the Florida Civil Rights Act, §760.01 et seq., Florida Statutes.

WHEREFORE, based on the foregoing, the Intervenor-Plaintiff Y'SHEENA McCOY demands judgment against the Defendant KMART as follows, pursuant to Title VII and the FCRA:

- a. Directing Defendant to make McCOY whole for all losses of wages, benefits, seniority, and all other terms and conditions of employment from the date she was terminated, with interest;
- b. Ordering Defendant to place McCOY in the position which she would have had, absent Defendant's unlawful discrimination, or, in the alternative, front pay and benefits;
- c. Restoring McCOY with credits of all other employee benefits she would have received but for Defendant's unlawful discrimination;
- d. Awarding McCOY compensatory and punitive damages pursuant to the Civil Rights Act of 1991 and Fla. Stat. §760.11(5);
- e. Issuing a Declaratory Judgment that Defendant's practices are violative of McCOY's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and the Florida Civil Rights Act, §760.01 et seq., Florida Statutes;
- f. Enjoining Defendant from continuing or maintaining the policy, practice, and custom of denying female employees their rights secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and the Florida Civil Rights Act, §760.01 et seq., Florida Statutes;

g. Granting McCOY costs and reasonable attorney's fees, pursuant to 42 U.S.C. §2000e-5(k) and Fla. Stat. §760.11(5); and

h. Granting any other relief as the Court deems appropriate.

Count II: Retaliation
(Title VII and FCRA)

31. Intervenor McCOY incorporates by reference the allegations stated at paragraphs 7 through 11 of Plaintiff EEOC's complaint and paragraphs 2 through 28 above.

32. Defendant's discriminatory employment practices described above resulted in McCOY being subjected to retaliation for having complained of sexual harassment and a sexually offensive and hostile work environment. Defendant's termination of McCOY's employment deprived McCOY of her right to be free from retaliation, a right secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. and the Florida Civil Rights Act, §760.01 et seq., Florida Statutes.

WHEREFORE, based on the foregoing, the Intervenor-Plaintiff Y'SHEENA McCOY demands judgment against the Defendant KMART as follows, pursuant to Title VII and the FCRA:

a. Directing Defendant to make McCOY whole for all losses of wages, benefits, seniority, and all other terms and conditions of employment from the date she was terminated, with interest;

b. Ordering Defendant to place McCOY in the position which she would have had, absent Defendant's unlawful discrimination, or, in the alternative, front pay and benefits;

- c. Restoring McCOY with credits of all other employee benefits she would have received but for Defendant's unlawful discrimination;
- d. Awarding McCOY compensatory and punitive damages pursuant to the Civil Rights Act of 1991 and Fla. Stat. §760.11(5);
- e. Issuing a Declaratory Judgment that Defendant's practices are violative of McCOY's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and the Florida Civil Rights Act, §760.01 et seq., Florida Statutes;
- f. Enjoining Defendant from continuing or maintaining the policy, practice, and custom of denying female employees their rights secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and the Florida Civil Rights Act, §760.01 et seq., Florida Statutes;
- g. Granting McCOY costs and reasonable attorney's fees, pursuant to 42 U.S.C. §2000e-5(k) and Fla. Stat. §760.11(5); and
- h. Granting any other relief as the Court deems appropriate.

Count III: Battery

33. McCOY incorporates and realleges paragraphs 4, 5, 7, 9, 10 of Plaintiff EEOC's Complaint and paragraphs 2, 4, 5, 6, and 8 through 28 above.

34. Anthony Thomas, in his capacity as McCOY's supervisor, made intentional physical advances by repeatedly touching and making physical contact with Plaintiff in an uninvited, unwanted and unauthorized manner.

35. As a direct and proximate result of the intentional and offensive contact by

Thomas with Intervenor's person, Intervenor McCOY suffered great damage to both her physical and mental well-being, and therefore seeks redress from this Court.

36. The tortious conduct of Thomas was committed within the course and scope of his employment as a manager for Defendant, and in furtherance of both the interest of Thomas and Defendant. Since Defendant knew or should have known of Thomas's propensity to commit the acts described herein, by its inaction, Defendant ratified the acts of Thomas and, as a result, is liable for said actions.

WHEREFORE, Intervenor McCOY seeks compensatory damages, punitive damages, prejudgment interest, declaratory relief, attorney's fees and costs, and such other relief as the Court deems just.

Count IV: Assault

37. McCOY incorporates and realleges paragraphs 4, 5, 7, 9, 10 of Plaintiff EEOC's Complaint and paragraphs 2, 4, 5, 6, 8 through 28, and 34 through 36 above.

38. Through its employee, Anthony Thomas, Defendant engaged in conduct which resulted in Intervenor McCOY being placed in fear of being subjected to intentional and unauthorized physical contact by Thomas.

39. As a direct and proximate result of Thomas's placing Intervenor McCOY in fear of intentional immediate offensive contact with Intervenor's person, McCOY suffered great damage to both her physical and mental well-being, and therefore seeks redress from this Court.

WHEREFORE, Intervenor McCOY seeks compensatory damages, punitive damages, prejudgment interest, declaratory relief, attorney's fees and costs, and such other relief as the

Court deems just.

Count V: Intentional Infliction of Emotional Distress

40. McCOY incorporates and realleges paragraphs 4, 5, 7, 9, 10 of Plaintiff EEOC's Complaint and paragraphs 2, 4, 5, 6, 8 through 28, 34 through 36, and 38 above.

41. Defendant engaged in the conduct described above which resulted in Intervenor McCOY being subjected to extreme emotional distress.

42. During the period when Intervenor McCOY was employed by Defendant, Thomas acted intentionally and in a manner calculated to inflict severe emotional distress on McCOY. The actions of Thomas, as described herein, were so outrageous as to be beyond all bounds of decency.

43. Thomas' actions were intentionally taken, with great indifference for Intervenor's emotional well-being. His actions were of a nature calculated to cause severe mental damage to Intervenor, so that malice can be reasonably implied from them.

44. The extreme and outrageous character of Thomas's conduct arises in part from his position as supervisor over McCOY, which afforded him authority over McCOY and gave him the direct power to affect McCOY's interests.

45. Moreover, the extreme and outrageous character of Thomas's conduct arises in part from the fact that he engaged in these actions toward McCOY despite his knowledge that she was a minor, under the age of eighteen.

46. As a direct and proximate result of Defendant's actions, Intervenor McCOY has been deeply disturbed and humiliated, and has suffered great loss of self-esteem. The mental

shock and hurt of Intervenor has been intense, aggravated, and prolonged, and she therefore seeks redress from this Court.

WHEREFORE, Intervenor McCOY seeks compensatory damages, punitive damages, prejudgment interest, declaratory relief, attorney's fees and costs, and such other relief as the Court deems just.

Count VI: Invasion of Privacy

47. McCOY incorporates and realleges paragraphs 4, 5, 7, 9, 10 of Plaintiff EEOC's Complaint and paragraphs 2, 4, 5, 6, 8 through 28, 34 through 36, and 38 above.

48. Thomas invaded Intervenor McCOY's privacy by intruding into Intervenor's solitude in an offensive and objectionable manner which would cause mental distress and injury to a reasonable person having ordinary dealings and sensibilities.

49. In addition to the conduct already described, Thomas asked McCOY intrusive questions about her personal life, including seeking intimate details about her relationship with her boyfriend.

50. As a direct and proximate result of Thomas' actions, Plaintiff was injured and suffered great damages to both her physical and mental well-being.

WHEREFORE, Intervenor McCOY seeks compensatory damages, punitive damages, prejudgment interest, declaratory relief, attorney's fees and costs, and such other relief as the Court deems just.

Count VIII: Negligent Retention and Supervision

51. McCOY incorporates and realleges paragraphs 4, 5, 7, 9, 10 of Plaintiff EEOC's Complaint and paragraphs 2, 4, 5, 6, 8 through 28, 34 through 36, 38, 42 through 45, 48 and 49 above

52. At all material times to this Complaint in Intervention, Defendant employed Thomas as a manager. Upon information and belief, Thomas is still employed by Defendant as a manager.

53. Because of the open and flagrant actions of its employee, Anthony Thomas, who was Intervenor's Supervisor, Defendant knew or should have known of his conduct and Defendant was negligent in supervising and retaining Mr. Thomas' employment with Defendant.

54. At all times material herein, Thomas was unsuitable, dangerous, and unfit to perform the work required as a manager for Defendant, because he behaved in a professionally inappropriate manner toward his female employee, McCOY, and others, of which Defendant knew or should have known.

55. Defendant knew or should have known that a person in McCOY's position would be subjected to an unreasonable risk of harm from Thomas and negligently failed to supervise Thomas, and negligently retained Thomas as a manager in its store, despite the risk of harm to McCOY and to other female employees.

56. Defendant breached its duty owed to McCOY to use reasonable care in supervising and retaining managers such as Thomas, where Defendant knew that Thomas had the propensity to perpetrate assaults and batteries of an indecent sexual nature upon his female employees and to inflict upon them severe emotional distress in the manner described herein.

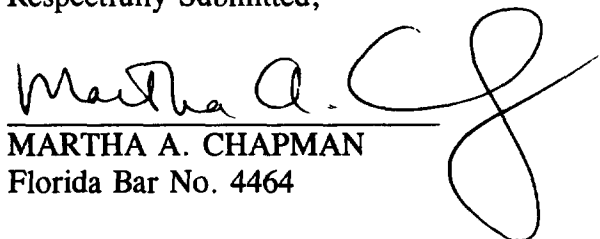
57. As a direct and proximate result of Defendant's negligent supervision and retention of Mr. Thomas, McCoy was injured and suffered great damages to both her physical and mental well-being.

WHEREFORE, Intervenor McCOY seeks compensatory damages, punitive damages, prejudgment interest, declaratory relief, attorney's fees and costs, and such other relief as the Court deems just.

VII. REQUEST FOR JURY TRIAL

McCOY requests a trial by jury on all issues so triable.

Respectfully Submitted,


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ATTORNEYS FOR INTERVENOR MCCOY

DATE: December 20, 2001

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

vs.

Case No. 6:01-cv-1133-Orl-28DAB

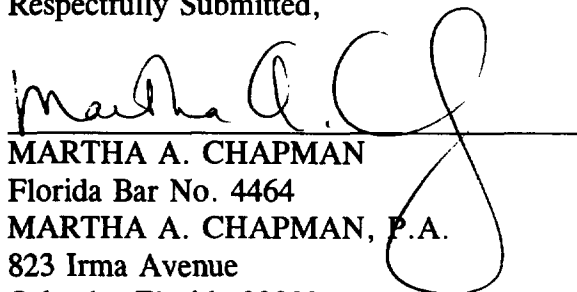
KMART CORPORATION,

Defendant.

CERTIFICATE OF SERVICE

21st
I hereby certify that a true and correct copy of the foregoing Motion to Intervene was sent via U.S. Mail this 20th day of December, 2001 to: counsel for Plaintiff EEOC, Kenneth L. Gillespie, Equal Employment Opportunity Commission, Two South Biscayne Boulevard, One Biscayne Tower, Suite 2700, Miami, Florida 33131; counsel for Defendant, Ron Schirtzer, Foley & Lardner, 111 North Orange Avenue, Suite 1800, Orlando, Florida 32801; counsel for intervenors Anderson, Brown, and Valdez, Kathryn S. Piscatelli, Egan, Lev & Siwica, P.A., Post Office Box 2231 Orlando, FL 32802; and counsel for intervenor Lisa Williams, Carol Swanson, 801 North Magnolia Avenue, Suite 301, Orlando, Florida 32803.

Respectfully Submitted,



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DATE: December 20, 2001
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