

FILED

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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

UNITED STATES EQUAL)
EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
KMART CORPORATION)
)
Defendant.)
_____)

CASE NO. 6:01cv-1133-ORL-28-DAB

COMPLAINT IN INTERVENTION OF LISA WILLIAMS

Intervenor, LISA WILLIAMS, by and through undersigned counsel, files this complaint as party-plaintiff, as authorized by Rule 24 of the Florida Rules of Civil Procedure.

NATURE OF THE CLAIM

1. LISA WILLIAMS alleges that she was subjected to sexual harassment, sex discrimination and demoted in retaliation for making an internal complaint about the sexual harassment and sex discrimination which are in violation of her rights secured by Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* and § 760.01 *et seq.*, Florida Statutes.

2. Further WILLIAMS sues for state tort claims of assault and battery, invasion of privacy, intentional infliction of emotional distress, and negligent supervision and retention.

PARTIES

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3. Plaintiff, the Equal Employment Opportunity Commission (hereinafter EEOC) is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII OF THE Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*

4. Intervenor, LISA WILLIAMS (hereinafter WILLIAMS), a citizen of the United States and a resident of Orange County Florida, is a former employee of the Defendant, KMART CORPORATION, at the store located at North Hiawasse Road in Orlando, Florida, from approximately January 5, 2000 through the summer of 2000.

5. KMART is incorporated in Michigan and has its principal place of business in Michigan. Defendant operates retail sales stores in the state of Florida, including the Orlando store where WILLIAMS was employed.

6. At all material times to this complaint, KMART engaged in commerce or in activities affecting commerce.

7. KMART employed 500 or more employees for each working day in each of 20 or more calendar weeks during the time period relevant to this complaint.

JURISDICTION

8. This Court has jurisdiction pursuant to 28 U. S. C. § 1331 and 42 U. S. C. §2000e-5(f)(3). The Court has supplemental jurisdiction pursuant to 28 U. S. C. §1367(a) over the state law claims.

9. WILLIAMS' Title VII claim is 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.

10. WILLIAMS' state law claims are permissive and brought pursuant to Rule 24(b) of

the Federal Rules of Civil Procedure and pursuant to leave of Court.

CONDITIONS PRECEDENT

11. WILLIAMS filed two separate charges of discrimination and retaliation. One charge was filed with the EEOC and one was filed independently and separately with the Florida Commission on Human Relations.

12. WILLIAMS has satisfied all conditions precedent to filing her Title VII and FCRA claims.

FACTS

13. On January 5, 2000, WILLIAMS began working for KMART in the Lay Away Department.

14. Shortly after she began working at the North Hiawasse Store, a fellow employee by the name of Joseph Haywood (hereinafter Haywood) began hugging her in a way that allowed him to get a lingering feel of her breasts.

15. Sometime during the last two weeks of April, 2000, Haywood came up behind WILLIAMS while she was working.

16. While standing behind her, Haywood shoved his erect penis up against her buttocks.

17. WILLIAMS ran from the area crying and went to the management office to report the incidents.

18. At the manager's office, the secretary paged Anthony Thomas, a supervisor, to figure out what to do with WILLIAMS complaint.

19. Another employee, who was present in the office at the time, said "Joseph does

that to all the girls.”

20. When Anthony Thomas arrived at the management office, he refused to address the WILLIAMS' complaint of sexual harassment and left the office.

21. Later, Anthony Thomas approached WILLIAMS two different times and tried to convince her to drop the charges of harassment.

22. When WILLIAMS said she would not let the matter drop, Anthony Thomas made derogatory comments toward her and subsequently treated her in a hostile manner.

23. In or about the last half of April, WILLIAMS reported the sexual assault to the company's "1-800" number that she found in a break room.

24. On May 12, 2000, less than 30 days after reporting the sexual assault, management demoted WILLIAMS to another job and moved her from day time hours to night time hours. Management also cut her time from 40 hours per week to less than 20 hours per week.

25. Management also reprimanded her for false and pretextual reasons after she reported the sexual assault.

26. KMART had both actual and constructive knowledge of the sexually harassing conduct of Haywood since the conduct was so pervasive, obvious, flagrant, rampant or of continued duration.

27. KMART had both actual and constructive knowledge that Anthony Thomas was also engaging in sexually harassing conduct toward other female employees.

28. Yet KMART retained Anthony Thomas as a manager who was expected to respond to WILLIAMS' report of a sexual assault by Haywood. KMART also allowed

Anthony Thomas to treat WILLIAMS in a retaliatory fashion because she insisted in reporting the sexual assault.

29. KMART knew of and tolerated the sexual harassment by Haywood and retaliation by Anthony Thomas.

30. KMART also failed to conduct an investigation into WILLIAMS report of sexual harassment.

31. The foregoing unlawful practices alleged above were done with malice and reckless indifference to the federally protected rights of WILLIAMS.

32. As a direct and proximate result of KMART's conduct described in paragraphs 14 through 31 above, WILLIAMS suffered degradation, humiliation, mental anguish, loss of the capacity for the enjoyment of life, and loss of earnings and benefits.

COUNT I: SEXUAL HARASSMENT
(Title VII and FCRA)

33. WILLIAMS incorporates by reference the allegations stated at paragraphs 7 through 11 of the Plaintiff's EEOC complaint and paragraphs three (3) through 32 above.

34. KMART's discriminatory employment practices as alleged above resulted in WILLIAMS subjection to sexual harassment and a sexually offensive and hostile work environment.

35. KMART deprived WILLIAMS of her right to be free from sex discrimination and sexual harassment, rights secured by Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, Florida Statutes.

WHEREFORE, WILLIAMS demands judgment against KMART as follows, pursuant

to Title VII and the FCRA:

- a. Directing KMART to make WILLIAMS whole for all losses of wages, benefits, seniority, and all other terms and conditions of employment from the date she was demoted, with interest;
- b. Ordering KMART to place WILLIAMS in the position she would have had absent its unlawful discrimination, or, in the alternative, front pay and benefits;
- c. Restoring WILLIAMS with credits of all other employee benefits she would have received but for KMART's unlawful discrimination;
- d. Awarding WILLIAMS compensatory and punitive damages pursuant to the Civil Rights Act of 1991 and §760.11(5), Florida Statutes;
- e. Issuing a Declaratory Judgment that KMART's practices are violative of WILLIAMS' 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 KMART 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 WILLIAMS costs and reasonable attorney's fees, pursuant to 42 U. S. C. § 2000e-5(k) and § 760.11(5), Florida Statutes, and
- h. Granting any other relief deemed appropriate by the Court.

COUNT II: RETALIATION
(Title VII and FCRA)

36. WILLIAMS incorporates by reference the allegations stated at paragraphs 7 through 11 of the Plaintiff's EEOC complaint and paragraphs three (3) through 32 above.

37. KMART's discriminatory employment practices as alleged above resulted in WILLIAMS being subjected to retaliation for complaining of sexual harassment and a sexually offensive and hostile work environment. KMART's demotion of WILLIAMS deprived her 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 § 760.01 *et seq.*, Florida Statutes.

WHEREFORE, WILLIAMS demands judgment against KMART as follows, pursuant to Title VII and the FCRA:

- a. Directing KMART to make WILLIAMS whole for all losses of wages, benefits, seniority, and all other terms and conditions of employment from the date she was demoted, with interest;
- b. Ordering KMART to place WILLIAMS in the position she would have had absent its unlawful discrimination, or, in the alternative, front pay and benefits;
- c. Restoring WILLIAMS with credits of all other employee benefits she would have received but for KMART's unlawful discrimination;
- d. Awarding WILLIAMS compensatory and punitive damages pursuant to the Civil Rights Act of 1991 and §760.11(5), Florida Statutes;
- e. Issuing a Declaratory Judgment that KMART's practices are violative of WILLIAMS' 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 KMART 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 WILLIAMS costs and reasonable attorney's fees, pursuant to 42 U. S. C. § 2000e-5(k) and § 760.11(5), Florida Statutes, and

h. Granting any other relief deemed appropriate by the Court.

COUNT III: BATTERY

38. WILLIAMS incorporates and realleges paragraphs 4, 5, 7, 9, and 10 of the Plaintiff's EEOC complaint and paragraphs 4, 5, 8, 10, 13 through 32 above.

39. Haywood, made intentional physical advances by making sexual physical contact with WILLIAMS in an uninvited, unwanted and unauthorized manner.

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

41. Since KMART knew or should have known of Haywood's propensity to commit the acts described herein, by its inaction, KMART ratified the acts of Haywood and, as a result, is liable for said action.

WHEREFORE, WILLIAMS 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

42. WILLIAMS incorporates and realleges paragraphs 4, 5, 7, 9, and 10 of the Plaintiff's EEOC complaint and paragraphs 4, 5, 8, 10, 13 - 32, and 39 through 41 above.

43. Through its employee, Haywood, KMART engaged in conduct which resulted in WILLIAMS being placed in fear of being subjected to intentional and unauthorized physical contact by Haywood.

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

WHEREFORE, WILLIAMS 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

45. WILLIAMS incorporates and realleges paragraphs 4, 5, 7, 9 and 10 of the Plaintiff's EEOC complaint and paragraphs 4, 5, 8, 10, 13 - 32, 39 through 41, and 43 above.

46. KMART engaged in the conduct described above which resulted in WILLIAMS being subjected to extreme emotional distress.

47. During the period when WILLIAMS was employed by KMART, Haywood acted intentionally and in a manner calculated to inflict severe emotional distress on WILLIAMS. The actions of Haywood were so outrageous as to be beyond all bounds of decency.

48. Haywood's actions were done intentionally, with great indifference for WILLIAMS emotional well-being. His actions were of a nature calculated to cause severe mental

damage to WILLIAMS so that malice can be reasonably implied from them.

49. The extreme and outrageous character of Haywood's conduct arises in part from his knowledge that KMART would not discipline him for repeatedly pushing his erect penis up against the bodies of the female employees even though KMART knew or should have known of this behavior. This knowledge empowered Haywood to treat the female employees as he pleased.

50. As a direct and proximate result of Defendant's actions, WILLIAMS has suffered humiliation and loss of self-esteem.

WHEREFORE, WILLIAMS 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

51. WILLIAMS incorporates and realleges paragraphs 4, 5, 7, 9 and 10 of the Plaintiff's EEOC complaint and paragraphs 4, 5, 8, 10, 13 - 32, 39 through 41, and 43 above.

52. Haywood invaded WILLIAMS's privacy by intruding into her solitude in an offensive and objectionable manner which would cause mental distress and injury to a reasonable person having ordinary dealings and sensibilities.

53. As a direct and proximate result of Haywood's actions, WILLIAMS was injured and suffered damages to both her physical and mental well-being.

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

the Court deems just.

COUNT VII: NEGLIGENT RETENTION AND SUPERVISION

54. WILLIAMS incorporates and realleges paragraphs 4, 5, 7, 9 and 10 of the Plaintiff's EEOC complaint and paragraphs 4, 5, 8, 10, 13 - 32, 39 through 41, 43, 47 through 49, and 52 above.

55. At all material times to this Complaint in Intervention, KMART continued to employ Haywood, even though it was aware of his continued conduct of making physical sexual assaults upon the female employees.

56. Because of the open and flagrant actions of its employee, Haywood, KMART knew or should have known of his conduct and KMART was negligent in supervising and retaining Haywood's employment with KMART.

57. At all times material herein, Haywood was unsuitable, dangerous and unfit to work in a store where he was allowed to prey on the female employees who could not leave the building to avoid his sexual assaults without risking loss of their jobs.

58. KMART knew or should have known that any female employee, including WILLIAMS, would be subjected to an unreasonable risk of harm from Haywood, yet KMART negligently failed to supervise Haywood and negligently retained him as an employee in its store despite the risk of harm to WILLIAMS and the other female employees.

59. KMART breached its duty to WILLIAMS to sue reasonable care in supervision and retaining male employees, such as Haywood, where KMART knew that Haywood had a propensity to perpetrate assaults and batteries of an indecent sexual nature upon the

female employees and to inflict upon them emotional distress in the manner described herein.

60. As a direct and proximate result of KMART's negligent supervision and retention of Haywood, WILLIAMS was injured and suffered damages to both her physical and mental well-being.

WHEREFORE, WILLIAMS 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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished by U.S. Mail to: Kenneth L. Gillespie, EEOC, Two South Biscayne Boulevard, One Biscayne Tower, Suite 2700, Miami FL 33131, Ron Schirtzer at Foley & Lardner, 111 N. Orange Ave., Suite 1800, Orlando FL 32801 this 3rd day of January 2002.



Carol Swanson, Attorney at Law
Florida Bar No. 867209
LAW OFFICES OF CAROL SWANSON
801 N. Magnolia Avenue, Suite 418
Orlando, FL 32803
Telephone: (407) 841-9955
Facsimile: (407) 425-6976
Counsel for Intervenor Williams

cc: Kathryn S. Pistelli, Esq.
P. O. Box 2231
Orlando FL 32802

Martha Chapman, Esq.
823 Irma Avenue
Orlando FL 32803