

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NO.: 6:05-cv-1452-ORL-28KRS

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

FREDERICK RIVERS, CARLTON C. SMALL,  
SEYMOUR S. SMALL, SYLVESTER A. COLE, JR.,  
and RICKEY WILLIAMS,

Plaintiffs/Intervenors,

v.

FLTVT, LLC f/k/a MAGIC TOYOTA  
d/b/a DAVID MAUS TOYOTA,

Defendant.

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**PLAINTIFFS/INTERVENORS', FREDERICK RIVERS, CARLTON C. SMALL,  
SEYMOUR S. SMALL, SYLVESTER A. COLE, JR., AND RICKEY WILLIAMS,  
VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs/Intervenors, FREDERICK RIVERS, CARLTON C. SMALL, SEYMOUR S. SMALL, SYLVESTER A. COLE, JR., and RICKEY WILLIAMS (hereinafter referred to as "RIVERS," "C. SMALL," "S. SMALL," "COLE" and "WILLIAMS"), by and through their undersigned attorneys, hereby sue Defendant, FLTVT, LLC f/k/a MAGIC TOYOTA d/b/a DAVID MAUS TOYOTA, a Florida limited liability company (hereinafter referred to as "MAGIC") for racial (black) discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et. seq., as amended by the Civil Rights Act of 1991, 42 U.S.C. 1981 (collectively, "Title VII"), the Florida Civil Rights Act of 1992, Florida Statutes Section 760.01, et. seq. (the "FCRA") and for defamation by COLE and in support thereof allege the following:

INTRODUCTION

1. This action is brought to remedy unlawful employment practices wherein RIVERS, C. SMALL, S. SMALL, COLE and WILLIAMS were terminated and/or demoted because of their status as African Americans in a plan devised, executed and implemented by MAGIC. COLE alleges defamation against MAGIC. The legal basis for this action is Title VII and FCRA.

JURISDICTION, VENUE AND PARTIES

2. This action arises, in part, under Title VII. This Court has original jurisdiction to grant relief pursuant to 28 U.S.C. §§1332(9)1 and 1343(3) and (4). This Court is vested with jurisdiction to order an injunction, front pay, back pay or any other equitable relief as may be proper, and compensatory and punitive damages, attorney's fees and costs pursuant to 42 U.S.C. §2000e-5(g). This action also arises, in part, under FCRA. Section 760.01 et. seq. COLE's defamation claim stems from the unlawful discrimination leveled against him by MAGIC and subsequent conduct. Plaintiffs/Intervenors are entitled to supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. §1367(a) as the state and federal claims share a common nucleus of operative facts.

3. Plaintiff, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (hereafter referred to as "EEOC") made a finding of discrimination against MAGIC and filed suit in its own right on behalf of RIVERS, C. SMALL, S. SMALL and COLE and "similarly situated individuals" to wit, WILLIAMS, giving them the right to intervene as Plaintiffs. Accordingly, RIVERS, C. SMALL, S. SMALL, COLE and WILLIAMS bring their claims as intervening plaintiffs.

4. Venue is proper in the Orlando Division of the Middle District of Florida pursuant to 28 U.S.C. §1391(a) and (c) because the unlawful employment practices were committed within this judicial district.

5. Plaintiffs/Intervenors are individuals who at all times material hereto resided in the following respective Florida counties: RIVERS resided in Orange county; C. SMALL resided in Orange county; S. SMALL resided in Orange county; COLE resided in Orange county; and, WILLIAMS resided in Orange county during their employment with MAGIC.

6. At all times material herein, Plaintiffs/Intervenors were employed by MAGIC in the following respective capacities: RIVERS--new car sales manager; C. SMALL--assistant sales manager; S. SMALL--assistant sales manager; COLE--finance manager; and, WILLIAMS--assistant sales manager. All such Plaintiffs/Intervenors were employed by MAGIC located in Longwood, Seminole County, Florida.

7. At all times relevant concerning this action, Defendant, FLTVT, LLC, has continuously been a Florida limited liability company doing business in the State of Florida and MAGIC was located in the city of Longwood, and has continuously had at least fifteen (15) employees.

8. At all relevant times concerning this action, MAGIC had continuously been an “employer” engaged in an industry affecting commerce within the meaning of Title VII, 42 U.S.C. §§2000e-5(b), (g) and (h), and Florida Statute Section 760.02(7).

9. At all times material hereto, V.T., Inc., a foreign corporation, was the parent company and owner of FLTVT, LLC. MAGIC is now doing business as “David Maus Toyota.” At all times material hereto, FLTVT, LLC, owned both MAGIC and David Maus Toyota.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

10. On or about September 19, 2003, C. SMALL filed a charge of discrimination with the EEOC. This charge was amended on November 14, 2003. C. SMALL filed a charge of discrimination with the Florida Commission on Human Relations (hereinafter referred to as "FCHR") on or about November 20, 2003. This charge was filed within 300 days after the unlawful employment practice occurred. MAGIC's practice is in violation of Title VII of the Civil Rights Act of 1964 and continued to occur up until May 5, 2003 when C. SMALL left MAGIC's employment. These occurrences are sufficient to satisfy the jurisdictional prerequisites. (42 U.S.C. Section 2000e-5(d)).

11. RIVERS, S. SMALL and COLE filed charges of discrimination with the EEOC on or about October 30, 2003, and with the FCHR on November 20, 2003. These charges were filed within 300 days after the unlawful employment practice occurred. MAGIC's practice is in violation of Title VII of the Civil Rights Act of 1964 and continued to occur up until May 5, 2003 when RIVERS, S. SMALL and COLE left MAGIC's employment. These occurrences are sufficient to satisfy the jurisdictional prerequisites. (42 U.S.C.A. Section 2000e-5(d)).

12. On or about March 23, 2005, the EEOC issued to RIVERS, C. SMALL, S. SMALL and COLE letters of determination with respect to such charge of discrimination which are attached hereto as Composite Exhibit "A." RIVERS, C. SMALL, S. SMALL and COLE have complied with all administrative requirements prior to bringing suit.

13. On or about May 5, 2004, WILLIAMS filed a charge of discrimination with the FCHR.

14. On or about April 6, 2005, the FCHR issued to WILLIAMS a determination cause letter with respect to such charge as discrimination and therefore he has complied with all administrative requirements prior to bringing suit.

15. The EEOC, in its action, identify WILLIAMS as a similarly situated individual. Pursuant to 42 U.S.C. 2000e-5(f)(1), the person or persons aggrieved have the right to intervene in a civil action brought by the EEOC. As an aggrieved party, WILLIAMS, therefore has the right to assert his Federal and state claims herein as a Plaintiff/Intervenor.

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

16. MAGIC is a Florida limited liability company with a principal address located in Shawnee Mission, Kansas.

17. At all times material hereto, FLTVT, LLC owned, operated and did business as MAGIC located at 2925 North Highway 17-92, Longwood, Seminole County, Florida.

18. At all times material hereto, V.T., Inc. was the parent company and owner of FLTVT, LLC.

19. At all times material hereto, MAGIC was in the business of selling and servicing new and used motor vehicles.

20. At all times material hereto, WILLIAMS was an assistant sales manager.

21. The name, "MAGIC TOYOTA," is no longer in use for the automobile dealership owned and operated by FLTVT, LLC. at 2925 North Highway 17-92, Longwood, Seminole County, Florida. The current name of this dealership is "David Maus Toyota."

22. At all times material hereto, MAGIC had at least fifteen (15) employees.

23. David Maus is the current General Manager of David Maus Toyota, f/k/a MAGIC TOYOTA. In May of 2003, Bryan Penniman was the General Manager of MAGIC.

24. All conditions precedent to filing this action have been performed, have occurred or have been waived.

25. RIVERS, C. SMALL, S. SMALL, COLE and WILLIAMS have engaged the services of legal counsel and are obligated to pay legal counsel their attorney's fees and costs incurred in the prosecution of this action.

26. At all times material hereto, the racial discrimination leveled against Plaintiffs/Intervenors was done by MAGIC or MAGIC's white management staff acting within the course and scope of their employment with MAGIC and with MAGIC's and V.T., Inc.'s knowledge, consent, approval and encouragement.

COUNT I  
(VIOLATION OF TITLE VII - RACE DISCRIMINATION)

27. Plaintiffs/Intervenors reallege paragraphs one (1) through twenty-six (26) above as if fully set forth herein.

28. Plaintiffs/Intervenors bring this action pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e-5(g), for damages to compensate them for the economic loss and other damages caused by MAGIC's unlawful employment practices committed against Plaintiffs/Intervenors because they were African-American.

29. On or about May 5, 2003, RIVERS, C. SMALL, COLE AND WILLIAMS were terminated from their positions at MAGIC for the alleged, but false, reason of reduction in force of MAGIC's management staff.

30. On or about May 5, 2003 S. SMALL was demoted from his position as assistant sales manager to the position of salesman for the alleged, but false reason of reduction in force of MAGIC's management staff.

31. Despite MAGIC's false claim that it had valid economic reasons to reduce the size of its African-American management staff, Plaintiffs/Intervenors positions were filled by lesser-qualified Caucasian employees.

32. MAGIC was not in fact experiencing any economic difficulties as of May 5, 2003 and its assertion that this was the reason for terminating or demoting Plaintiffs/Intervenors was a pretext and attempt to disguise MAGIC's true intent and motive to eliminate from its management staff all African-Americans.

33. All of the Plaintiffs/Intervenors had satisfactory performance at MAGIC and extensive experience in the automobile sales business. None of the Plaintiffs/Intervenors had breached any of MAGIC's rules, policies or procedures justifying their termination or demotion.

34. The use of racial epithets and slurs, as well as racially-oriented jokes, was prevalent at MAGIC during the time all of the Plaintiffs/Intervenors worked there and created a hostile work environment for Plaintiffs/Intervenors.

35. The actions of MAGIC and/or its agents, employees, managers, supervisors and/or shareholders were willful, wanton, intentional and performed with malice or with reckless indifference to RIVERS', C. SMALL's, S. SMALL's, COLE's and WILLIAMS' federally protected rights entitling them to compensatory and punitive damages pursuant to 42 U.S.C. 2000e-5(g) to punish MAGIC for its actions and deter it and others from taking such actions in the future.

36. As a direct, proximate and foreseeable result of MAGIC's actions, RIVERS, C. SMALL, S. SMALL, COLE and WILLIAMS have suffered past and future pecuniary losses, back pay, front pay, out-of-pocket losses, medical expenses, emotional pain, suffering, inconvenience, loss of enjoyment of life and humiliation.

DEMAND FOR RELIEF

**WHEREFORE**, Plaintiffs/Intervenors, RIVERS, C. SMALL, S. SMALL, COLE and WILLIAMS, respectfully demand judgment against MAGIC for back pay, front pay in lieu of reinstatement, compensatory damages, prejudgment interest, punitive damages, attorney's fees, costs of this action and any such other relief this Court deems just and proper.

COUNT II  
(VIOLATION OF FCRA - RACE DISCRIMINATION)

37. Plaintiffs/Intervenors reallege paragraphs one (1) through thirty-six (36) above as if fully set forth herein.

38. On or about May 5, 2003, RIVERS, C. SMALL, COLE and WILLIAMS were terminated from their positions at MAGIC for the alleged, but false, reason of reduction in force of MAGIC's management staff.

39. On or about May 5, 2003, S. SMALL was demoted from his position as assistant sales manager to the position of salesman for the alleged but false reason of reduction in force of MAGIC's management staff.

40. Despite MAGIC's false claim that it had valid economic reasons to reduce the size of its African-American management staff, Plaintiffs/Intervenors positions were filled by lesser-qualified Caucasian employees.

41. MAGIC was not in fact experiencing any economic difficulties as of May 5, 2003 and its assertion that this was the reason for terminating or demoting Plaintiffs/Intervenors was a pretext and attempt to disguise MAGIC's true intent and motive, to eliminate from its management staff all African-Americans.

42. All of the Plaintiffs/Intervenors had satisfactory performance records at MAGIC and extensive experience in the automobile sales business. None of the Plaintiffs/Intervenors had



breached any of MAGIC's rules, policies or procedures justifying their termination or demotion.

43. The use of racial epithets and slurs, as well as racially-oriented jokes, was prevalent at MAGIC during the time all of the Plaintiffs/Intervenors worked there and created a hostile work environment for Plaintiffs/Intervenors.

44. As a direct and proximate result of MAGIC's demotion of S. SMALL, he suffered racial discrimination with respect to his compensation and benefits and the terms, conditions and privileges of his employment.

45. The action of MAGIC and/or its agents, employees, managers, supervisors and/or shareholders were willful, wanton, intentional and performed with malice or with reckless indifference to RIVERS', C. SMALL's, S. SMALL's, COLE's and WILLIAMS' protected rights under the FCRA, entitling them to compensatory and punitive damages pursuant to Florida Statutes Section 760.11(5) to punish MAGIC for its actions and deter it, and others. from taking such actions in the future.

46. As a direct, proximate and foreseeable result of MAGIC's actions, RIVERS, C. SMALL, S. SMALL, COLE and WILLIAMS have suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, humiliation and other non-pecuniary and intangible injuries.

#### DEMAND FOR RELIEF

**WHEREFORE**, Plaintiffs/Intervenors, RIVERS, C. SMALL, S. SMALL, COLE and WILLIAMS, demand judgment against MAGIC for back pay, front pay in lieu of reinstatement, compensatory damages, prejudgment interest, punitive damages, attorney's fees, costs of this action and any such other relief as this Court deems just and proper.

COUNT III  
(COMMON LAW DEFAMATION AGAINST MAGIC BY COLE)

47. Plaintiffs/Intervenors reallege paragraphs one (1) through forty-six (46) above as if fully set forth herein.

48. After his May 5, 2003 unlawful termination from MAGIC, COLE attempted to find employment at other automobile dealerships, but was unsuccessful.

49. COLE learned that the general manager and/or other employees under the management and control of the general manager at MAGIC had “put the word out” that COLE had been terminated because he had allegedly forged finance documents and was guilty of forgery which allegations are false.

50. This false and malicious defamatory per sé statement, to wit: forging finance documents, was communicated to third parties such as car dealerships in Central Florida by the general manager and/or other agents, employees or servants of MAGIC with the specific intention of black-balling COLE making it difficult for him to find employment and destroying his career and reputation in the Central Florida automotive industry.

51. The actions of MAGIC and/or its agents, employees, managers, supervisors and/or shareholders were willful, wanton, intentional and performed with malice or reckless indifference to COLE’s rights under the common law of Florida not to be accused falsely of committing the crime of forgery entitling COLE to punitive damages.

52. As a direct, proximate and foreseeable result of this defamatory statement falsely accusing COLE of the crime of forgery which he did not commit was communicated to third parties, the reputation of COLE was harmed in the community at large and the automobile sales community in particular such that it deterred other automobile dealerships from hiring COLE.

DEMAND FOR RELIEF

**WHEREFORE**, Plaintiffs/Intervenors, COLE, demands judgment against MAGIC for mental anguish, outrage, anxiety about his future and ability to support himself, harm to his employability and earning capacity, reputation, embarrassment among his co-workers, loss of past and future income and compensatory and punitive damages allowed by law and any other such relief as this Court deems just and proper. To the extent that COLE is required under applicable law to present a proffer to the Court prior to making a plea for relief under Count III that includes a claim for punitive damages against MAGIC, COLE expressly reserves the right to present same at such time as deemed reasonable and appropriate by the Court.

DEMAND FOR JURY TRIAL ON ALL COUNTS

Plaintiffs/Intervenors, FREDERICK RIVERS, CARLTON C. SMALL, SEYMOUR S. SMALL, SYLVESTER A. COLE, JR., and RICKEY WILLIAMS, request a trial by jury on each Count of this Verified Intervenors Complaint on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing was provided by electronic transmission this 9<sup>th</sup> day of January, 2005 to Lauren Dreilinger, Esquire, U.S. Equal Employment Opportunity Commission, Miami District Office, One Biscayne Tower, Suite 2700, Two Biscayne Boulevard, Miami, Florida 33131; Cheryl A. Cooper, Esquire, U.S. Equal Employment Opportunity Commission, Miami District Office, One Biscayne Tower, Suite 2700, Two Biscayne Boulevard, Miami, Florida 33131; Carlos J. Burruezo, Esquire, Fisher & Phillips, LLP, 300 South Orange Avenue, Suite 1250, Orlando, Florida 32801; James B. Murphy, Jr., Esquire, Shook, Hardy & Bacon, LLP, 100 North Tampa Street, Suite 2900, Tampa, Florida; William C. Martucci, Esquire,

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Respectfully submitted,

/s/ Daniel DeCiccio

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