

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
ROSWIL, INC. d/b/a RAMEY'S/)
PRICE CUTTER SUPERMARKETS and)
RPCS, Inc.,)
)
Defendants.)
_____)

NO. 06-3287-CV-S-WAK

FIRST AMENDED COMPLAINT

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race and retaliation, and to provide appropriate relief to Sean Mabins who was adversely affected by such practices. The Commission alleges that Sean Mabins, an African-American male, was racially harassed by Store Manager Wes Bragg and then permanently suspended from his employment for complaining about the racial harassment and about sexual harassment to which Bragg was subjecting other employees.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of Missouri, Southwestern Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Roswil, Inc., d/b/a Ramey's/Price Cutter ("Roswil"), has continuously been a Delaware corporation doing business in the State of Missouri and the City of Springfield, and has continuously had at least 15 employees.

5. At all relevant times, Defendant RPCS, Inc. ("RPCS"), has continuously been a Missouri corporation doing business in the State of Missouri and the City of Springfield, and has continuously had at least 15 employees. Hereafter Roswil and RPCS are collectively referred to as "Defendants."

6. At all relevant times, Defendants have continuously been employers engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Sean Mabins filed a charge with the Commission alleging violations of Title VII by Defendant Roswil. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least May 2002, Defendants have engaged in unlawful employment practices at their Springfield, Missouri facility, in violation of Section 703(a)(1) and Section 704(a) of Title VII, 42 U.S.C. § 2000e-2(a)(1) and § 2000e-3(a).

(A) Defendants have violated Section 703(a)(1), 42 U.S.C. § 2000e-2(a)(1) by subjecting Sean Mabins to racial harassment.

(B) Defendants have violated § 704(a), 42 U.S.C. § 2000e-3(a) by retaliating against Sean Mabins by suspending his employment for complaining about racial harassment and sexual harassment.

9. The effect of the practice(s) complained of in paragraph(s) 8(A) and (B) above has been to deprive Sean Mabins of equal employment opportunities and otherwise adversely affect his status as an employee, because of his race and in retaliation for complaining about practices that are unlawful under Title VII.

10. The unlawful employment practices complained of in paragraphs 8(A) and (B) above were intentional.

11. The unlawful employment practices complained of in paragraphs 8(A) and (B) above were done with malice or with reckless indifference to the federally protected rights of Sean Mabins.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in racial harassment and retaliation and any other employment practice that discriminates on the basis of

race.

B. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for African-Americans, and that eradicate the effects of their past and present unlawful employment practices.

C. Order Defendants to make whole Sean Mabins, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of their unlawful employment practices, including but not limited to reinstatement of Sean Mabins.

D. Order Defendants to make whole Sean Mabins, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 8(A) and (B) above in amounts to be determined at trial.

E. Order Defendants to make whole Sean Mabins by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 8(A) and (B) above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Defendants to pay Sean Mabins punitive damages for their malicious and reckless conduct described in paragraphs 8(A) and (B) above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

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