

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )	Case No. 1:03CV2023
COMMISSION, )	
)	
Plaintiff, )	JUDGE KATHLEEN McDONALD
)	O'MALLEY
)	
and )	
)	
)	COMPLAINT OF INTERVENOR
MOLLY BARON )	<u>MOLLY BARON</u>
3271 W. 52 <sup>nd</sup> Street )	(Jury Demand Endorsed Hereon)
Cleveland, Ohio 44102-5843, )	
)	
Intervenor-Plaintiff, )	
)	
)	
vs. )	
)	
S & Z TOOL & DYE CO., INC. )	
3180 Berea Road )	
Cleveland, Ohio 44111-1501 )	
)	
Defendant. )	
_____ )	

PRELIMINARY STATEMENT

1.1 This is an action for a declaratory judgment, preliminary and permanent injunctive relief, legal and equitable relief, and damages for Defendant’s wrongful actions and inactions stemming from Defendant’s policy, pattern and practice of failing to hire female employees in general, and specifically failing to hire Intervenor-Plaintiff Molly Baron (“Baron”) because of her gender, female.

1.2 Intervenor-Plaintiff Baron, through her specific allegations below, alleges that Defendant’s wrongful actions and inactions entitle her to both legal and equitable relief under

Title VII of the Civil Rights Act of 1964, as amended, 42 United States Code §§ 2000e *et.seq.*, 42 U.S.C. § 2000e-2(c), and 2000e-5[k], as well as under the pendent state claim enumerated below pursuant to 28 U.S.C. § 1367.

1.3 Intervenor-Plaintiff Baron alleges that Defendant's wrongful actions and inactions entitle her to relief as a direct and proximate result of the negligent and/or intentional actions and/or inactions and/or due to the wanton and/or reckless disregard by Defendant of its responsibility to ensure that Baron's rights under both federal and/or Ohio law to equal employment opportunity were preserved.

#### JURISDICTION AND VENUE

1.4 Federal question jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331 (A), 28 U.S.C. § 1343 (4), and 42 U.S.C. §§ 2000e-5(f)(1) and (3), as well as 42 U.S.C. § 2000e-2(c).

1.5 Supplemental and/or "pendant" jurisdiction is invoked pursuant to 28 U.S.C. § 1367.

1.6 The actions and/or inactions alleged herein took place or were carried out in the Northern District of Ohio and Cuyahoga County, Ohio.

#### PARTIES

1.7 Intervenor-Plaintiff, Baron is a female citizen of the United States and a resident of the city of Cleveland, Cuyahoga County, Ohio.

1.8 Defendant S & Z Tool & Dye Co., Inc. ("S&Z"), located at 3180 Berea Road, Cleveland, Ohio 44111-150, has a current staff of approximately 375 employees. It's current president is one Mr. Morris Burrows. S&Z provides precision machining, stamping and tool manufacturing services. [See: <http://www.plantfloor.com/oh/sztooldiecompany.htm> ]. It is amenable to this Court's jurisdiction not only under its supplemental jurisdiction pursuant to 28 U.S.C. § 1367

jurisdiction, but also under Title VII.

1.9 At all relevant times, S&Z, an Ohio Corporation, has continuously been doing business in the State of Ohio and the City of Cleveland, and has continuously had at least 15 employees.

1.10 At all relevant times, S&Z has continuously been an employer engaged in an industry affecting commerce within the meaning of § 701 (b)(g) and (h) of Title VII, 42 U.S.C. § 2000e(b), (g) and (h).

### STATEMENT OF CLAIMS

#### FIRST CAUSE OF ACTION--TITLE VII CLAIMS

##### A. EXHAUSTION OF ADMINISTRATIVE REMEDIES

###### CHARGE NO. 220A00045

1.11 Intervenor-Plaintiff Baron hereby reasserts the foregoing allegations and incorporates them by reference as if fully set forth herein.

1.12 On or about October 7, 1999, Baron filed a timely charge of discrimination with the Equal Employment Opportunity Commission (hereinafter referred to as "EEOC"), EEOC No. 220A00045, alleging sex discrimination.

1.13 Shortly after June 18, 2001, Baron received a letter of DETERMINATION from the EEOC, finding that there was reasonable cause to believe that she and other females as a class were discriminated against due to sex when they were denied hire into general laborer positions at S&Z in violation of Title VII.

1.14 This same June 18, 2001 determination letter received by Baron from the EEOC further found that S&Z failed to hire Blacks and Hispanics due to their race and national origin, and that S&Z violated EEOC's testing and record keeping provisions in violation of Title VII and the

Uniform Guidelines in Employee Selection Procedures (“UGESP”) at 29 CFR §§ 1607.7 and 1607.4.

1.15 Shortly after October 16, 2001, Baron received an AMENDED letter of DETERMINATION from the EEOC, finding that S&Z denies hire to females as a class into all job titles (with the exception of receptionist and secretarial positions) and that S&Z denies hire to Black persons and Hispanic Persons as a class, without exception, and that each of these practices has been going on continuously since at least January 1, 1990. This same AMENDED letter of determination made the following additional findings: (1) that S&Z has failed to maintain applications and other employment records in violation of Title VII and 29 CFR § 1601.14 as well as 29 CFR §§ 1607.4 and 1607.15 regarding failing to maintain required records that would reveal the impact of S&Z’s employment tests and selection procedures as pertains to race, sex, ethnic group and validity (or lack thereof); (2) that S&Z’s use of employment tests violates Title VII and the UGESP; (3) that S&Z illegally adopted a practice of refusing to promote/hire persons who could not speak English, constituting national origin discrimination; (4) and that S&Z illegally requires female employees to inform them of their pregnancy status and particulars, in violation of Title VII and the Pregnancy Discrimination Act.

1.16 Because the EEOC has filed suit – on September 30, 2003 – on behalf of the United States of America, and because Baron has not received a right to sue letter, Baron now seeks to intervene, as of right, on her own behalf, in the action already filed by the EEOC.

**B. UNLAWFUL EMPLOYMENT PRACTICES/FACTS**

1.17 Intervenor-Plaintiff Baron hereby reasserts the foregoing allegations and incorporates them by reference as if fully set forth herein.

1.18 Intervenor-Plaintiff Baron sought employment with S&Z as a laborer on or about August 15, 1999. Intervenor-Plaintiff Baron claims that S& Z has continuously discriminated against her from August 15, 1999 through the present, by virtue of their denying her equal employment opportunity based upon her gender/sex – female.

1.19 Although Intervenor-Plaintiff Baron returned several times to S&Z asking about the status of her employment application, she was never apprized of its status at any point in time by any person connected to S&Z.

1.20 As a direct and proximate result of the above-described actions and/or inactions, Baron has suffered and will continue to suffer from depression, anger, resentment, and the like.

1.21 Baron states that as a direct and proximate result of the intentional and malicious and/or wanton and reckless actions and/or inactions of the Defendant that she has suffered severe and significant emotional distress, anxiety and anguish, and will continue to suffer from this emotional distress into the indefinite future.

1.23 These actions and/or inactions by Defendants were based on Intervenor-Plaintiff Baron's sex, female, in violation of 42 U.S.C. § 2000e et seq.

1.24 Intervenor-Plaintiff Baron was qualified to hold the position(s) for which she applied with S&Z and for which she was rejected for the discriminatory reason that she is female.

1.25 Males continued to be hired for position(s) for which Intervenor-Plaintiff Baron applied and was qualified for the discriminatory reason that she is female.

PENDENT STATE CLAIM

SECOND CAUSE OF ACTION--OHIO SEX/GENDER  
DISCRIMINATION O.R.C. § 4112.99

2.1 Intervenor-Plaintiff Baron restates and realleges each and every prior paragraph of this complaint, as if it were fully restated herein.

2.2 Ohio Revised Code § 4112.99 provides that "Whoever violates this chapter is subject to a civil action for damages, injunctive relief, or any other appropriate relief." This chapter, i.e. O.R.C. § 4112 *et. seq.*, includes prohibitions against employment discrimination in Ohio as regards, among other bases, sex discrimination in employment. This statute also provides for the granting of compensatory and punitive damages for its violation.

2.3 As a direct and proximate result of Defendant's actions and inactions enumerated above Intervenor-Plaintiff Baron has suffered and will continue to suffer serious emotional distress, anxiety, humiliation, embarrassment, loss of self-esteem, and extreme frustration, all of which entitle Intervenor-Plaintiff Baron to an award of compensatory damages for this distress in a dollar amount as allowed by law and as will be fixed by the jury and be proven at trial.

2.4 As a direct and proximate result of Defendant's actions and inactions enumerated above, Intervenor-Plaintiff Baron has and will continue to lose certain fringe benefits, including, but not limited to, lost income, lost pension benefits, lost medical benefits, lost life insurance benefits, and all other benefits to which Intervenor-Plaintiff Baron would have been entitled, had the actions and inactions complained of herein never occurred, in a dollar amount as allowed by law and as will be fixed by the jury and be proven at trial.

2.5 Defendants have willfully and/or intentionally and/or with callous and reckless indifference, violated Baron's rights under Ohio law prohibiting sex discrimination in employment, so as to entitle Intervenor-Plaintiff Baron to an award of punitive damages in addition to compensatory or any other damages to be awarded, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Intervenor-Plaintiff request the following relief:

- A. An order directing Defendant to establish a work environment free from sex/gender discrimination and all other forms discrimination, including, but not limited to gender discrimination, race discrimination and pregnancy discrimination;
- B. An order granting a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in sex and race discrimination, including sex or race-based denial of hire and any other employment practice which discriminates on the basis of sex or race or pregnancy;
- C. An order directing Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for female and Black persons, and which eradicate the effects and all vestiges of its past and present unlawful employment practices;
- D. An order to make whole Molly Baron by providing her reinstatement with Defendant in an appropriate position, but also all appropriate back – in an amount to be proven at trial – with pre-judgment interest, front pay, and all lost medical, insurance, retirement and all other similar benefits;

E. An order enjoining Defendants and their respective agents, employees or any others in active concert with them, from continuing to discriminate against Intervenor-Plaintiff Baron based on her sex and/or gender or in retaliation for her having sought to protect and/or enforce her federal and state rights to discrimination free employment and employment opportunities;

F. An award of compensatory damages for the extreme mental and emotional distress suffered by Intervenor-Plaintiff Baron as a direct and proximate result of the actions and inactions complained of herein, under Intervenor-Plaintiff Baron's Title VII claim, as well as under Intervenor-Plaintiff Baron's pendent state claim;

G. An award of Punitive damages, under Intervenor-Plaintiff's federal and pendent state claims, in an amount as will be determined by the jury and proven at trial;

H. Prejudgment and post judgment interest on all amounts awarded to the Intervenor-Plaintiff;

I. A declaratory judgment that the practices complained of herein are unlawful and void, and the appropriate injunctive relief to remedy the practices complained of herein;

J. An award to Intervenor-Plaintiff Baron of her reasonable costs and attorneys' fees, under 42 U.S.C. § 1988 and 42 U.S.C. § 2000e-5(k), Ohio Revised Code §§ 4112.02, *et. seq.*, Ohio Revised Code § 4112.99 and all other applicable federal and state fee shifting statutes and common law bases, as well as an award of such enhancement of attorneys' fees as is customary in contingent matters in this court;

K. For such further legal and equitable relief as may be deemed just and fair or to which Intervenor-Plaintiff is or would be entitled under her federal or state claims.



Respectfully submitted,

s/ Dennis J. Niermann

Dennis J. Niermann, Esq. [007988]

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JURY TRIAL DEMAND

A trial by jury is hereby requested on each and every cause of action enumerated in this complaint.

s/ Dennis J. Niermann  
**DENNIS J. NIERMANN**