

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

EQUAL EMPLOYMENT OPPORTUNITY)	CIVIL ACTION NOS:
COMMISSION,)	1:08 CV 01542
)	1:08 CV 01326
<i>Plaintiff,</i>)	1:06 CV 02337
)	
and)	AMENDED COMPLAINT OF
)	PLAINTIFF-INTERVENOR
DEAN OKAFOR,)	
10085 CHEYENNE TRAIL, #202)	
PARMA HEIGHTS, OHIO 44130,)	(JURY TRIAL DEMANDED)
)	
<i>Plaintiff-Intervenor,</i>)	
)	
-v-)	
)	
SPITZER MANAGEMENT, INC.)	
)	
and)	
)	
SPITZER MOTOR CITY, INC.)	
)	
and)	
)	
REX DAVIDSON,)	
13001 BROOK PARK ROAD)	
BROOK PARK, OHIO 44142)	
)	
and)	
)	
MITCHELL MINCY)	
13001 BROOK PARK ROAD)	
BROOK PARK, OHIO 44142)	
<i>Defendants.</i>)	

NATURE OF THE ACTION - PRELIMINARY STATEMENT

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended [“Title VII”], the Civil Rights Act of 1991, and 42 U.S.C. §1981 (Civil Rights Act of 1870) for injunctive and declaratory relief and money damages for Defendants’ violations of the rights of Plaintiff-Intervenor to be free of discrimination, including harassment, and retaliation. Plaintiff-Intervenor also seeks relief under Chapter 4112 of the Ohio Revised

Code and Ohio common law.

2. Plaintiff-Intervenor has been denied terms, conditions and privileges of employment because of race, national origin, and/or in retaliation for activity protected by state and federal law.

JURISDICTION AND VENUE

3. This action is instituted and authorized by under §706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-et seq. and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981(a), and 42 U.S.C. §1981. Supplemental state claims are brought under Ohio Revised Code §4112 and the common law of Ohio.
4. Jurisdiction of this Court to hear and determine the claims is based on 28 U.S.C. §1331 and 28 U.S.C. §1343. The Court has supplemental jurisdiction over Plaintiff-Intervenor's state law claims pursuant to 28 U.S.C. §1367(a).
5. A declaratory judgment is sought pursuant to 28 U.S.C. §§2201 and 2202, and O.R.C. §2721.02.
6. Intervention is proper, as a matter of right, pursuant to Rule 24(a)(1), FEDERAL RULES OF CIVIL PROCEDURE and Title VII, 42 U.S.C. § 2000e-5(f)(1).
7. Intervention was timely sought and granted to Dean Okafor and Hakim Nurridin. This Amended Complaint is filed in accordance with the court's Order of April 30, 2009 in case no. 1:06 CV 02337, Northern District of Ohio.
8. Venue is proper as the unlawful discrimination and employment practices alleged below were committed in the Northern District of Ohio.

PARTIES

Plaintiff and Plaintiff-Intervenor

9. Plaintiff EEOC is an agency of the United States authorized to bring a civil action under Title VII.
10. Plaintiff-Intervenor, Dean Okafor, ("Plaintiff-Intervenor Okafor" or "Okafor") is an African-American resident of Cuyahoga County, Ohio, who was employed by Defendants during the relevant time. Plaintiff-Intervenor Okafor filed timely charges of discrimination alleging violations of Title VII by Defendants.
11. Plaintiff-Intervenor is an aggrieved party within the meaning of Title VII; the conditions

precedent to bringing and maintaining this action under Title VII have been satisfied.

12. Plaintiff-Intervenor, as an aggrieved individual, has the right to intervene pursuant to Rule 24(a)(1), FEDERAL RULES OF CIVIL PROCEDURE, and §2000e-5 of Title VII.

Defendants

13. At all relevant times, Defendant Spitzer Management, Inc. has been a domestic for-profit corporation doing business in Ohio.
14. At all relevant times, Defendant Spitzer Motor City, Inc., has been a domestic for-profit corporation doing business in Ohio.
15. At all relevant times, Defendant Employers, described in paragraphs 14 and 15 above, have been employers within the meaning of Title VII and Chapter 4112 of the Ohio Revised Code, jointly employing Plaintiff-Intervenor, and acting through their managers, supervisors, employees, and other agents.
16. Defendants, Rex Davidson (“Davidson”) and Mitchell Mincy (“Mincy”), are supervisors and/or managers of Defendants, had input into, furthered, and/or participated in the acts complained of here. Davidson and Mincy are also “employers” individually in the meaning of Chapter 4112, separate and apart from the Spitzer Defendants.
17. Defendants are “persons” within the meaning of Chapter 4112 of the Ohio Revised Code.

STATEMENT OF THE CLAIM

COUNT I - DISCRIMINATION AND RETALIATION IN VIOLATION OF TITLE VII

18. More than thirty days prior to the institution of this lawsuit, Mr. Okafor filed a charge of discrimination with the Commission alleging violations of Title VII by Defendant Spitzer Motor City, Inc. All conditions precedent to the institution of this lawsuit have been fulfilled.
19. Since at least 2005, and continuing through the present, Defendant Employers have engaged in unlawful employment practices in violation of Title VII. The alleged unlawful practices include, but are not limited to:
 - (a) Subjecting Plaintiff-Intervenor to different terms and conditions of employment on the basis of his race, Black, and national origin, Nigerian, and because he filed charges of discrimination against Defendants’ Spitzer Motor City, Inc. dealership, alleging discrimination and retaliation.
 - (b) Subjecting Mr. Okafor to a pattern of unlawful retaliation after the Commission filed suit against Defendants based upon their charges of discrimination.

(c) The unlawful race discrimination and retaliation consisted of, among other things, mocking Mr. Okafor because he filed a charge of discrimination with the EEOC, telling employees to stay away from Mr. Okafor because he is “poison,” treating Mr. Okafor differently than other salespersons with respect to the assignment of customers, the handling of sales and commissions and unfairly singling Mr. Okafor out for disciplinary action, harassing and humiliating Mr. Okafor, and terminating both plaintiff-intervenors because they filed charges of discrimination and retaliation. Defendants failed to take prompt appropriate corrective action despite receiving notice of the unlawful harassment.

(d) Filing a lawsuit in Cuyahoga County Common Pleas Court, Case No. CV 08 671018, against Plaintiff-Intervenor based on the charges of discrimination he filed and other protected activity in which he engaged, for the purpose of intimidating and harassing Plaintiff-Intervenor, causing him to incur legal fees and costs, and to discourage him from pursuing his legal rights.

20. The effect of the practices complained of above has been to deprive Mr. Okafor of equal employment opportunities and otherwise adversely affect his status as an employee due to impermissible consideration of race, national origin, and retaliation, in violation of Title VII.
21. The unlawful practices complained of above were intentional, carried out by and/or a direct result of the actions of Defendants and their management officials.
22. The unlawful employment practices complained of above were undertaken with malice and/or reckless indifference to the federally protected rights of Mr. Okafor.

COUNT II – DISCRIMINATION AND RETALIATION IN VIOLATION OF 42 U.S.C. § 1981

23. Plaintiff-Intervenor reasserts the foregoing allegations and incorporates them by reference as if fully set forth herein.
24. All of the actions articulated above violate the Civil Rights Acts of 1866 and 1870, embodied in 42 U.S.C. § 1981, which guarantees that all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.
25. This statute further indicates that the phrase “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. This statute protects these rights against impairment by non-governmental discrimination and impairment under color of State law.
26. These actions by Defendants were based on Plaintiff-Intervenor’s race, and/or national origin, and/or in retaliation for having participated in protected activity, all of which is in clear violation of 42 U.S.C. §1981.
27. As a direct and proximate result of Defendants’ conduct, Plaintiff-Intervenor has suffered and will continue to suffer damages including economic and non-economic compensatory losses and injuries.
28. Defendants’ conduct was willful, wanton, malicious and/or in reckless disregard of Plaintiff-Intervenor’s rights.

COUNT III - DISCRIMINATION AND RETALIATION IN VIOLATION OF OHIO REVISED
CODE § 4112

29. Plaintiff-Intervenor reasserts the foregoing allegations and incorporates them by reference as if fully set forth herein.
30. This Court has supplemental jurisdiction over the state claims asserted herein: the state claims do not raise any novel or complex issues of state law and the state claims do not predominate over the federal claims.
31. Plaintiff-Intervenor’s state law claims are so related to the claims over which this court has original jurisdiction, that they form the same case.

32. By engaging in the practices described herein, Defendants aided, abetted, incited, compelled, or coerced another person in committing unlawful discriminatory practices, obstructed and prevented another person from complying with Ohio laws against discrimination, and/or attempted directly or indirectly to commit an unlawful discriminatory practice in violation of Ohio Revised Code Section 4112.
33. By engaging in the practices described herein, Defendants deprived Plaintiff-Intervenor of equal employment opportunities and otherwise adversely affected his status as an employee and applicant for employment because of race, national origin, and/or in retaliation for engaging in protected activity.
34. As a direct and proximate result of Defendants' conduct, Plaintiff-Intervenor has suffered and will continue to suffer damages including economic and non-economic compensatory losses and injuries.
35. Defendants' conduct was willful, wanton, malicious and/or in reckless disregard of Plaintiff-Intervenor's rights.

COUNT IV - ABUSE OF PROCESS

36. Plaintiff-Intervenor reasserts the foregoing allegations and incorporate them by reference as if fully set forth herein.
37. Defendant Spitzer Motor City., Inc., filed a legal proceeding against Plaintiff-Intervenor.
38. Even if that proceeding was instituted in proper form and with probable cause, the proceeding has been perverted to attempt to accomplish an ulterior purpose for which it was not designed, namely, to force Plaintiff-Intervenor to surrender his legal claims and/or rights; and/or to dissuade Plaintiff-Intervenor and others from engaging in protected activity; and/or opposing Defendants' illegal discriminatory and retaliatory conduct; and/or participating in an investigation conducted by the EEOC.
39. Defendants' institution and maintenance of a legal proceeding against the Plaintiff-Intervenor was done with malice and for an improper purpose, and direct damage has resulted from the wrongful use of process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor respectfully requests that the Court:

- A. Declare the policies and practices of Defendants, as described herein to be unlawful and in violation of state and federal law;
- B. Grant Plaintiff-Intervenor a permanent injunction, prohibiting Defendants from engaging in any policy or practice which discriminates on the basis of race, national origin, or retaliation;
- C. Order Defendant Employers to make whole Mr. Okafor by providing appropriate monetary relief including back-pay and front-pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- D. Order Defendant Employers to make whole Mr. Okafor, and any aggrieved individuals by providing compensation for non-pecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, loss of enjoyment of life and humiliation, in amounts to be proven at trial.
- E. Order Defendant Employers to pay Mr. Okafor punitive damages for their malicious and reckless conduct described above, in amounts to be determined at trial.
- F. Award Plaintiff-Intervenor pre and post judgment interest on all sums awarded;
- G. Award Plaintiff-Intervenor the costs of this action, including costs and attorneys' fees; and
- H. Grant such other legal and equitable relief as is necessary and proper.

Respectfully submitted,

s/Amy S. Glesius
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- and -

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JURY TRIAL DEMANDED

Plaintiff-Intervenors request a jury trial on all questions of fact and claims raised by their
Complaint.

s/Amy S. Glesius
One of the Attorneys

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been filed via the electronic filing system. Notice of filing will be performed by the Court's electronic filing system. Parties may access the document through the electronic filing system.

May 8, 2009

s/Amy S. Glesius