

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY :	CIVIL ACTION
COMMISSION, Plaintiff :	NO: 02-CV-6715
:	:
and :	:
LAUREN ELLERSON :	:
Plaintiff - Intervener :	:
vs. :	:
VICTORIA'S SECRET STORES, INC. :	JURY TRIAL DEMANDED
Defendant :	

AMENDED COMPLAINT OF INTERVENER
LAUREN ELLERSON

I. PRELIMINARY STATEMENT

1. In this action, Plaintiff Lauren Ellerson, hereinafter referred to as “Plaintiff”, and or/ “Mrs. Ellerson”, seeks declaratory, injunctive, and equitable relief, liquidated compensatory and punitive damages, costs, and attorney’s fees for the racial and religious discrimination, harassment, retaliation for complaining about said discrimination and physical and psychological injuries caused by Defendant, Victoria’s Secret Stores, Inc., hereinafter referred to as “Defendant”, and/or “Victoria’s Secret”.

II. JURISDICTION

2. This action arises under Title VII, as amended by the Civil Rights Act of 1991, 42 U.S.C. Sec. 2000(e), et seq., and the Pennsylvania Human Relations Act (PHRA), 43 P.S. Sec. 951, et seq.

3. Jurisdiction over the federal claim is invoked pursuant to 28 U.S.C. §451, 1331, 1337 and 1343, and over the state law claims pursuant to 28 U.S.C. §1367.

4. Jurisdiction over the additional claims of religious and racial discrimination is appropriate because Plaintiff's Charge of Discrimination was filed with the Equal Employment Opportunity Commission (EEOC) was filed and time stamped, and was timely cross-filed with the Pennsylvania Human Relations Commission, regarding Ms. Ellerson's treatment by Victoria's Secret in a timely manner following her constructive discharge from that company. On or about August 13, 2002, the EEOC filed a Complaint and demand for jury trial in the Eastern District of Pennsylvania. Plaintiff Lauren Ellerson seeks to intervene in that action to assert her state law claims.

5. Declaratory and injunctive relief is sought pursuant to 28 U.S.C. Sec. 2001 and Sec. 2002, and Title VII, as amended by the Civil Rights Act of 1991 by the EEOC, and Lauren Ellerson seeks such relief under the Pennsylvania Human Relations Act (PHRA), 43 P.S. Sec. 962.

6. Compensatory and punitive damages are available under the Civil Rights Act of 1991, the Pennsylvania Human Relations Act (PHRA), 43 P.S. et. seq., and other damages are sought, including but not limited to, back pay and front pay, and other lost benefits under Title VII as amended by the Civil Rights Act of 1991, and the Pennsylvania Human Relations Act (PHRA), 43 P.S. Sec. 951, et seq.

7. Costs and attorney's fees may be awarded pursuant to Title VII as amended by the Civil Rights Act of 1991, 42 U.S.C. Sec. 200(e)-5(k); Rule 54 of the Federal Rules of Civil Procedure, and the Pennsylvania Human Relations Act (PHRA), 43 P.S. Sec. 962 (c.2).

8. The Honorable Jay C. Waldman of the United States District Court for the Eastern District of Pennsylvania, in an Order dated January 13, 2003 and entered on January 14, 2003,

permitted Plaintiff Lauren Ellerson to intervene as a plaintiff in the above captioned matter.

III. VENUE

9. This action properly lies in the United States District Court for the Eastern District of Pennsylvania, pursuant to 28 U.S.C. Sec.1391(b) because the claim arose in Pennsylvania and was filed by the EEOC in this district.

IV. PARTIES

10. Plaintiff Lauren Ellerson is an adult individual who resides at 6520 Walnut Park Drive, Philadelphia, PA 19120-1032.

11. Defendant Victoria's Secret, Inc. has continuously been, and is now doing business in the State of Pennsylvania, and engages in an industry affecting interstate commerce, and employs more than fifteen (15) regular employees.

V. FACTS

12. Plaintiff Lauren Ellerson incorporates by reference all facts pled in the Complaint filed by the EEOC in this case.

13. More than thirty days prior to the institution of this lawsuit, Lauren Ellerson filed a charge of discrimination with the EEOC alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

14. Since at least December 1999, Defendant Employer has engaged in unlawful employment practices at its Oxford Valley Mall store in Langhorne, Pennsylvania, by subjecting Mrs. Ellerson to a hostile work environment based on her race, which is black, and her religion, which is Baptist, and failing to accommodate Mrs. Ellerson's religious needs. These unlawful practices include, but are not limited to the following:

(a) Mrs. Ellerson was ordered by store manager Evelyn Gibson, and another co-manager, to watch black customers very closely when they entered the store, to consider them to be shoplifters until proven otherwise, and to go outside of the store premises to spot groups of blacks who may enter the store. Store manager Gibson instructed Ms. Ellerson not to report an incident as theft when a white customer disappeared with merchandise, yet required Ms. Ellerson to write up reports on blacks for shoplifting when Ms. Ellerson had not observed any such activity.

(b) In the presence of the store manager, Ms. Ellerson was accused by a bra specialist of “trying to be white”, and was spoken to in the slang known as “ebonics” as though Ms. Ellerson would understand this “street” language. Store manager Gibson also spoke to Ms. Ellerson in “ebonics.”

(c) The store manager and another co-manager instructed Ms. Ellerson that they did not hire applicants from a particular local high school because they are “race mixers.”

(d) Co-workers asked Mrs. Ellerson if her hair was real, and one co-manager tugged at her hair while asking if Mrs. Ellerson had hair extensions; in addition, co-workers commented about blacks “looking alike” and being afraid of water; in addition, in response to a comment made by a black customer, an employee expressed displeasure at the way “you people” talk. At a closed door session to which Mrs. Ellerson was invited by Ms. Gibson, a co-manager continued a conversation with Ms. Gibson in front of Mrs. Ellerson containing statements that blacks claim racial discrimination whenever something goes against them, and this statement was not addressed or corrected by the store manager.

(e) When Ms. Ellerson reported to store manager Gibson that racially derogatory

remarks were made that were upsetting to her, Ms. Gibson shrugged or laughed and took no action to correct the situation.

(f) Employees left notes in Mrs. Ellerson's purse calling her "Dum Dum" and "Bitch", took away her keys so that Mrs. Ellerson could not find them, and called her "lackey" and "flunky."

(g) Upon her hire, Ms. Ellerson was assured by Defendant Employer's District Director, Alexis Black, that Defendant Employer could accommodate her need to attend church on Sundays and that she would only have to work one Sunday a month. However, Mrs. Ellerson was continuously scheduled to work two or three Sundays a month.

(h) Mrs. Ellerson complained to store manager Gibson about the scheduling, and requested that she at least have the third Sunday of each month off so that she could receive communion. Gibson ignored this request and continued to schedule Ellerson on Sundays, including the third Sunday of the month.

(i) Defendant employer's Co-Manager Jackie Addis referred to Mrs. Ellerson as "Christian girlfriend", and store manager Gibson informed Mrs. Ellerson that an applicant who had left a voice mail message at the store saying "God bless and Godspeed" would not be hired, since "[w]e don't want another religious person. You are enough."

(j) Alexis Black, District Manager, proclaimed at a meeting at the Langhorne store that if any employee had a problem at the store, they should not come to her but should solve the problems themselves within the store; this comment discouraged Mrs. Ellerson from reporting to Ms. Black about the hostile work environment.

(k) Mrs. Ellerson complained to the Vice President, Michael Bender, about the

harassment, and about the employees not following safety rules.

(l) After the phone call to Bender, District Director Black called a store meeting but she asked Mrs. Ellerson to arrive an hour later than everyone else. The meeting focused solely on the failure to follow safety rules and did not address Ms. Ellerson's complaints of discrimination.

(m) On or about April 4, 2001, Defendant's Loss Prevention and Control Investigator came to the store to investigate Mrs. Ellerson's allegations; however, during the investigation, the harassment worsened. A co-manager asked Mrs. Ellerson, "What other Victoria's Secret stories are you going to tell?" Mrs. Ellerson was never informed of the results of the investigation.

(n) Creation of a hostile work environment for Mrs. Ellerson based on her race, her religion and in retaliation for complaining to Victoria's Secret management about the unlawful and discriminatory practices and safety issues.

(o) On or about April 12, 2001, Mrs. Ellerson took disability leave because she was unable to continue working due to major depression and anxiety, caused by the hostile work environment.

(p) Defendant's creation of a hostile work environment led to Mrs. Ellerson's actual and/or constructive discharge from Victoria's Secret.

15. The effects of the practices complained of in paragraph 14(a)-(p) above have been to deprive Lauren Ellerson of equal employment opportunities and adversely effect her status as an employee because of her race, which is black, and her religion, which is Baptist.

16. The unlawful employment practices complained of in paragraph 14(a)-(p) were

intentional.

17. The unlawful employment practices complained of in paragraph 14(a)-(p) were done with malice or reckless indifference to the federally protected rights of Lauren Ellerson.

FIRST CAUSE OF ACTION

(Racial and Religious Discrimination Under Title VII 42 U.S.C. 2000)

18. Plaintiff Lauren Ellerson hereby incorporates Paragraphs 1 through 17 as if fully set forth herein.

19. By the actions of its employees and managers which are set forth in the foregoing paragraphs of this Complaint, Defendant unlawfully harassed, discriminated against, and retaliated against Plaintiff Lauren Ellerson on the basis of her race and religion in violation of Title VII.

20. Defendant maliciously, intentionally and with extreme indifference to the civil rights of plaintiff Lauren Ellerson, allowed its employees to act in such a manner when it knew or should have known, that such actions would discriminate against the plaintiff because of her race and religious beliefs, and created a hostile working environment for plaintiff.

21. Defendant on the basis of race and religious beliefs, discriminated against plaintiff in her work assignments and work environment.

22. Defendant on the basis of race and religious beliefs, discriminated against plaintiff by having discharged and/or constructively discharged her employment.

SECOND CAUSE OF ACTION

(Racial and Religious Discrimination under 43 P.S. Sec. 955(a))

23. Plaintiff hereby incorporates by reference Paragraphs 1 through 22 herein as

though fully set forth at length.

24. By the actions of its employees and management which are set forth in the foregoing paragraphs of the Complaint, Defendant unlawfully harassed and discriminated against Plaintiff on the basis of race and religion, and retaliated against her for her complaints in violation of 43 P.S. Sec. 953, 955(a) and 955(d).

25. Defendant knew, or should have known, that such actions would create a hostile working environment for Plaintiff.

26. Such harassing and discriminatory actions by Defendant on the basis of race and religious practices created a hostile work environment, and ultimately caused the termination of Plaintiff's employment with Defendant.

THIRD CAUSE OF ACTION

(Retaliation under Title VII)

27. Plaintiff Lauren Ellerson hereby incorporates by reference, Paragraphs 1 through 26 above as though fully set forth at length herein.

28. By the actions of its employees and management which are set forth in the foregoing paragraphs of this Complaint, Defendant unlawfully harassed and discriminated against Plaintiff on the basis of her race and religion, and retaliated against her for reporting those incidents, and for engaging in protected activity in violation of 43 P.S. 955(a) and 955(d) and Title VII, 42 U.S.C. Sec. 2000, et seq.

29. Defendant knew, or should have known, that such actions would create a hostile working environment for Plaintiff and would cause her great physical and emotional harm.

30. Defendant's actions caused the Plaintiff physical damage, emotional damage, and

severe economic loss, including, but not limited to, her actual and/or constructive discharge from Victoria's Secret.

VI. PRAYER FOR RELIEF:

WHEREFORE, Plaintiff Lauren Ellerson respectfully requests that this Honorable Court:

- (a) Declare Defendant Victoria's Secret's conduct to be in violation of Plaintiffs' rights;
- (b) Enjoin Defendant Victoria's Secret from engaging in such conduct in the future;
- (c) Award Plaintiff Lauren Ellerson equitable relief of back pay and benefits up to the date of the reinstatement and front pay and benefits accrual;
- (d) Award Plaintiff Lauren Ellerson compensatory damages to which she is entitled for past and future pecuniary losses, emotional pain and suffering, physical pain and suffering, inconvenience, loss of enjoyment of life, damages for breach of contract, and any other compensatory damages;
- (e) Award Plaintiff Lauren Ellerson punitive damages to which she proves herself entitled;
- (f) Award Plaintiff's attorney's fees and costs, and
- (g) Grant such other relief as may be deemed just and proper.

VII. JURY DEMAND

31. Plaintiff Lauren Ellerson demands a trial by jury with a panel consisting of twelve with alternates.

Respectfully submitted,

McELDREW & FULLAM, P.C.

BY _____

JAMES J. McELDREW, III, ESQUIRE
ERIC L. YOUNG, ESQUIRE
Attorneys for Plaintiff Lauren Ellerson

DATE: February 5, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February 2003, a true and correct copy of the within Amended Complaint of Intervener Lauren Ellerson was served upon the parties listed below by U.S. First Class Mail:

Equal Employment Opportunity Commission
c/o Cynthia A. Locke, Esquire
21 South 5th Street, Suite 400
Philadelphia, PA 19106

Heather A. Steinmiller, Esquire
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One Logan Square
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MCELDREW & FULLAM, P.C.

BY: _____
ERIC L. YOUNG