

DEC 21 2005
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEPUTY CLERK

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JAN 13 2006

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

Civil Action No.

SA05CA0965 RFV

Complaint
Jury Trial Demand

Intervenor-Plaintiff,

vs.

Defendant

A. PARTIES

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administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by 42 U.S.C. § 2000 e-5 (f)(1) and (3). Alicia Mansel is authorized to bring this intervention pursuant to 42 U.S.C. § 2000 e-5 (f) (1).

3. At all relevant times, Defendant, Builders Gypsum Supply, L.L.P, f/d/b/a/ Builders Gypsum Supply Co., Inc. (Builders Gypsum) has continuously been a Texas Corporation doing business in the State of Texas and has continuously had at least fifteen (15) employees.
4. At all relevant times, Defendant Builders Gypsum has continuously been an employer 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).

B. THE ORIGINAL LAWSUIT

5. This is an action under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of sex, female, and retaliation. This action is also being brought to provide appropriate relief of Alicia Mansel and a class of similarly situated females who were adversely affected by such practices. The EEOC alleges that

Builders Gypsum Supply, L.L.P., f/d/b/a Builders Gypsum Supply Co., Inc., subjected Alicia Mansel and a class of similarly situated females to sexual harassment in violation of Section 703(a) of Title VII, and retaliated against Alicia Mansel by, among other things, discharging her for complaining of this sexual harassment in violation of Section 704(a) of Title VII. In addition, Alicia Mansel joins the Commission in alleging that a class of similarly situated females were similarly retaliated against and/or forced to quit their employment because their conditions of employment became intolerable due to the sexual harassment.

C. ASSAULT OR BATTERY OF ALICIA MANSEL

6. In the course of Defendant Builders Gypsum Supply engaging in sexual harassment as described above, Alicia Mansel alleges that agents and supervisors of Alicia Mansel engaged in unwelcome touching of her body, including her breasts, entering the women's restroom at the facility, locking the door and turning off the lights, while Ms. Mansel was in the restroom.
7. The assault or battery alleged herein arose out of the same facts and circumstances that give rise to the claims of sexual harassment made by both the EEOC and Alicia Mansel.

D. JURISDICTION AND VENUE

8. 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. §2000 e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 52 U.S.C. § 1981a.

9. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Western District of Texas, San Antonio, Division.
10. The assault or battery alleged by Alicia Mansel in this complaint arises out of the same facts and circumstances that give rise to the Original suit. Under 42 USC § 2000 e-5 (f)(1). Ms. Mansel has the absolute right to intervene in the civil action brought by the EEOC. Her claims for assault or battery and attorneys fees are particular to her and may not be pressed in the original suit by the EEOC. The Court, therefore, has jurisdiction to resolve state common law claim of assault or battery and claims for attorneys fees for service performed by her attorney at all stages of this matter because these claims are inextricably intertwined with claims of sexual harassment set out in the original suit. The Court may exercise its pendant jurisdiction to hear the assault or battery claims and Mansel's claims for attorney fees which, are claims and causes of action not made by the EEOC in the original suit.

E. STATEMENT OF CLAIMS

11. More than thirty days prior to the institution of the lawsuit, Alicia Mansel filed a charge with the Commission alleging violations of Title VII by Defendant Builders Gypsum. All conditions precedent to the institution of this lawsuit have been fulfilled.

12. Since at least August, 2002, Defendant Builders Gypsum engaged in unlawful employment practices at its San Antonio, Texas, facility, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000 e-2 (a) and Section 704(a) of Title VII, 42 U.S.C. § 2000 e-3(a) including the following
 - a. Subjecting Alicia Mansel and a class of similarly situated females to a hostile work environment based on their sex, female, through inappropriate sexual touching; loud, sexually crude and physically intimidating tirades directed at their gender, including sexually imbued gestures, sounds and innuendos; and then failing to take any prompt and effective remedial action after becoming aware of this conduct;

 - b. Retaliating against Alicia Mansel by, among other things, discharging her for complaining about the sexual harassment; and,

 - c. Similarly retaliating against a class of similarly situated females and/or constructively discharging them by making their conditions of

employment so intolerable due to the sexual harassment and/or retaliation that they felt forced to resign.

13. The effect of the practices complained of in paragraph twelve above has been to deprive Alicia Mansel and a class of similarly situated females of equal employment opportunities and to otherwise adversely affect their status as employees because of their sex, female, and in retaliation for opposing such unlawful practices.

14. The unlawful employment practices complained of in paragraph twelve above were and are intentional.

15. The unlawful employment practices complained of in paragraph twelve above were and are done with malice or with reckless indifference to the federally protected rights of Alicia Mansel and a class of similarly situated females.

16. The unwelcome touching of Ms. Mansel's body, by agents and supervisors of Defendant Builders Gypsum Supply, including touching her breasts, and locking her in the women's restroom while a male supervisor was in the restroom, constitute assault or battery.

F. PRAYER

WHEREFORE, Plaintiff-Intervenor, Alicia Mansel joins with the Commission and respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendant Builders Gypsum, its officers, successors, assigns, and all persons in active concert or participation with it, from subjecting its female employees to a sexually hostile work environment because of their sex and creating intolerable conditions that force employees to quit, or any other employment practice which discriminates on the basis of sex, female;
- B. Grant a permanent injunction enjoining Builders Gypsum, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any form of retaliation;
- C. Order Defendant, Builders Gypsum to institute and carry out policies, practices, and programs which provide equal employment opportunities and a non-hostile work environment for females, and which eradicate the effects of its past and present unlawful employment practices;
- D. Order Defendant, Builders Gypsum to make whole Alicia Mansel and a class of similarly situated females by providing appropriate back 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, including but not limited to reinstatement of Alicia Mansel and a class of similarly situated

females or front pay in lieu thereof;

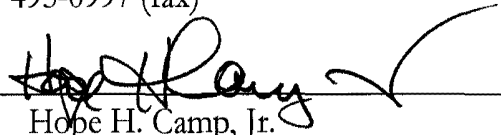
- E. Order Defendant, Builders Gypsum to make whole Alicia Mansel and a class of similarly situated females by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph eleven above, including but not limited to medical expenses and job search expenses, in amounts to be determined at trial;
- F. Order Defendant, Builders Gypsum to make whole Alicia Mansel and a class of similarly situated females by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices described in paragraph eleven above, including but not limited to emotional pain, suffering, inconvenience, mental anguish, depression, humiliation, loss of confidence, loss of enjoyment of life and self esteem and other non-pecuniary losses, in amounts to be determined at trial;
- G. Order Defendant, Builder Gypsum to make whole Alicia Mansel paying damages to Alicia Mansel for the violation of her person while employed by Defendant Builders Gypsum as described in paragraph six above including, but limited to, emotional pain, suffering, inconvenience, mental anguish, depression, humiliation, loss of confidence, loss of enjoyment of life and self esteem and other non-pecuniary losses, in amount to be determined at trial;

- H. Order Defendant, Builder Gypsum to pay Alicia Mansel and a class of similarly situated females punitive damages for its malicious and/or reckless conduct, in an amount to be determined at trial;
- I. Order Defendant, Builders Gypsum to pay Alicia Mansel punitive damages for its malicious and/or reckless conduct as described in paragraph six above in an amount to be determined at trial;
- J. Grant such further relief as the Court deems necessary and proper in the public interest;
- K. Award the Commission its costs in this action;
- L. Award Alicia Mansel reasonable attorneys fees and her costs in this action; and,
- M. Pre and post judgment interest at the maximum amount allowed by law.

Alicia Mansel joins with the Commission in requesting a jury trial on all questions of fact raised by this complaint.

Respectfully submitted,

HOPE H. CAMP, JR., P.C.
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By: 
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ATTORNEY FOR INTERVENOR,
ALICIA MANSEL

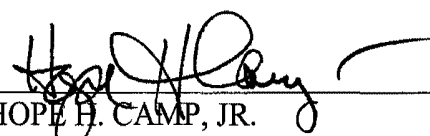
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been on this the 21st day of December 2005, forwarded by way of facsimile and/or regular mail to counsel of record to-wit:

E. Burke Hubner
Holland & Knight, LLP
112 East Pecan Street, Suite 2700
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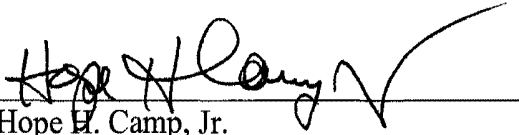
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HOPE H. CAMP, JR.

CERTIFICATE OF CONFERENCE

Intervenor's counsel conferred with the parties' counsel. Counsel for the EEOC does not oppose this intervention. Counsel for the Defendant opposes this intervention on the grounds that he believes "it is not properly formatted" and that as he reads Local Rule CV-7(c)(8) "in that there no legal authorities supporting the motion", as originally presented to him.


Hope H. Camp, Jr.