

**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
Plaintiff,)	1:06 CV 02337
)	
and)	AMENDED COMPLAINT OF
)	PLAINTIFF-INTERVENORS
DEAN OKAFOR,)	
)	(JURY TRIAL DEMANDED)
and)	
)	
HAKIM NURIDDIN,)	
)	
Plaintiff-Intervenors,)	
)	
-v-)	
)	
SPITZER MANAGEMENT, INC.)	
)	
and)	
)	
SPITZER MOTOR CITY, INC.)	
)	
and)	
)	
REX DAVIDSON,)	
)	
and)	
)	
MITCHELL MINCY)	
)	
Defendants,)	
)	
and)	
)	
ALAN SPITZER)	
150 East Bridge Street)	
Elyria, OH 44035)	
)	
New Party Defendant.)	

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-Intervenors to be free of discrimination, including harassment, and retaliation. Plaintiff-Intervenors also seek relief under Chapter 4112 of the Ohio Revised Code and Ohio common law.
2. Plaintiff-Intervenors have 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-Intervenors' 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 is timely sought.

8. Venue is proper as the unlawful discrimination and employment practices alleged below were committed in the Northern District of Ohio.

PARTIES

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 Nigerian and a 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, Hakim Nuriddin, ("Plaintiff-Intervenor Nuriddin" or "Nuriddin") is an African-American resident of Cuyahoga County, Ohio, who was employed by Defendants during the relevant time. Plaintiff-Intervenor Nuriddin filed timely charges of discrimination alleging violations of Title VII by Defendants.
12. Plaintiff-Intervenors are aggrieved parties within the meaning of Title VII; the conditions precedent to bringing and maintaining this action under Title VII have been satisfied.
13. Plaintiff-Intervenors, as aggrieved individuals, have the right to intervene pursuant to Rule 24(a)(1), Federal Rules of Civil Procedure, and §2000e-5 of Title VII.
14. At all relevant times, Defendant Spitzer Management, Inc. has been a domestic for-profit corporation doing business in Ohio.
15. At all relevant times, Defendant Motor City, Inc., has been a domestic for-profit corporation doing business in Ohio.
16. At all relevant times, Defendant Spitzer Management, Inc. and Defendant Motor City, Inc., have been engaged in a joint enterprise and jointly employed Plaintiff-Intervenors.

17. 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 and act through their managers, supervisors, employees, and other agents.
18. 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.
19. New Party Defendant, Alan Spitzer, is the President of Defendant Motor City and Defendant Spitzer Management, Inc., and at all relevant time was a supervisor and/or manager of Defendants, who had input into, furthered, authorized, ordered, participated in and/or ratified some or all of the acts complained of here. New Party Defendant Alan Spitzer is an "employer" within the meaning of Chapter 4112.
20. 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

21. More than thirty days prior to the institution of this lawsuit, Mr. Nuriddin and Mr. Okafor each 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.
22. 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 Mr. Nuriddin to different terms and conditions of employment on the basis of Mr. Nuriddin's race, Black, and Mr. Okafor's national origin, Nigerian, and because they filed charges of discrimination against Defendants' Spitzer Motor City, Inc. dealership, alleging discrimination and retaliation.
- (b) Subjecting Mr. Okafor and Mr. Nuriddin 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, harassing and humiliating Mr. Nuriddin, demoting Mr. Nuriddin, cutting his pay and work hours, falsely accusing Mr. Nuriddin of engaging in improper conduct in the workplace, threatening Mr. Nuriddin with discharge, 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-Intervenors based on the charges of discrimination they filed and other protected activity in which they engaged, for the purpose of intimidating and harassing Plaintiff-Intervenors, causing them to incur legal fees and costs, and to discourage them from pursuing their legal rights.

23. The effect of the practices complained of above has been to deprive Mr. Nuriddin and Mr. Okafor of equal employment opportunities and otherwise adversely affect their status as employees due to impermissible consideration of race, national origin, and retaliation, in violation of Title VII.
24. 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.
25. The unlawful employment practices complained of above were undertaken with malice and/or reckless indifference to the federally protected rights of Mr. Nuriddin and Mr. Okafor.

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

26. Plaintiff-Intervenors reassert the foregoing allegations and incorporate them by reference as if fully set forth herein.
27. 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.
28. 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.

29. These actions by Defendants were based on Plaintiff-Intervenors 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.
30. As a direct and proximate result of Defendants' conduct, Plaintiff-Intervenors have suffered and will continue to suffer damages including economic and non-economic compensatory losses and injuries.
31. Defendants' conduct was willful, wanton, malicious and/or in reckless disregard of Plaintiff-Intervenors rights.

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

32. Plaintiff-Intervenors reassert the foregoing allegations and incorporate them by reference as if fully set forth herein.
33. 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.
34. Plaintiff-Intervenors state law claims are so related to the claims over which this court has original jurisdiction, that they form the same case.
35. 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.

36. By engaging in the practices described herein, Defendants deprived Plaintiff-Intervenors of equal employment opportunities and otherwise adversely affected their status as employees and applicants for employment because of race, national origin, and/or in retaliation for engaging in protected activity.
37. As a direct and proximate result of Defendants' conduct, Plaintiff-Intervenors have suffered and will continue to suffer damages including economic and non-economic compensatory losses and injuries.
38. Defendants' conduct was willful, wanton, malicious and/or in reckless disregard of Plaintiff-Intervenors rights.

COUNT IV - ABUSE OF PROCESS

39. Plaintiff-Intervenors reassert the foregoing allegations and incorporate them by reference as if fully set forth herein.
40. Defendant Spitzer Motor City., Inc., filed a legal proceeding against Plaintiff-Intervenors.
41. 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-Intervenors to surrender their legal claims and/or rights; and/or to dissuade Plaintiff-Intervenors 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.
42. Defendants' institution and maintenance of a legal proceeding against the Plaintiff-Intervenors 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-Intervenors 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-Intervenors 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. Nuriddin and 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. Nuriddin and 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. Nuriddin and Mr. Okafor punitive damages for their malicious and reckless conduct described above, in amounts to be determined at trial.
- F. Award Plaintiff-Intervenors pre and post judgment interest on all sums awarded.
- G. Award Plaintiff-Intervenors the costs of this action, including costs and attorneys' fees; and
- H. Grant such other legal and equitable relief as is necessary and proper.

JURY TRIAL DEMANDED

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

Respectfully submitted,

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