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EEOC v. Salisbury Motor Company, Inc.

Judge James A. Beaty

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EEOC v. Salisbury Motor Company, Inc.

Keywords

EEOC, Salisbury Motor Company, Inc., 1:09CV750, Consent Decree, Race, African American, Disparate Treatment, Hostile Work Environment, Retaliation, Constructive Discharge, Termination, Terms and Conditions, Automotive, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	CIVIL ACTION NO. 1:09CV750
)	
)	
Plaintiff,)	
)	
v.)	
)	CONSENT DECREE
SALISBURY MOTOR COMPANY, INC.,)	
)	
)	
Defendant.)	
<hr style="width: 45%; margin-left: 0;"/>)	

The Equal Employment Opportunity Commission (the “Commission”) instituted this action pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(f)(1) and (3) (“Title VII”), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Commission’s complaint alleged that Defendant Salisbury Motor Company, Inc. discriminated against Glenn Bailey by subjecting him to racial harassment that created a racially hostile work environment and to different terms and conditions of employment because of his race, African-American. The Commission’s complaint further alleged that as a result of the racial harassment and other race-based discrimination, Bailey was forced to resign. Finally, the Commission alleged that Defendant terminated Bailey in retaliation for his complaints about what he reasonably perceived to be racial harassment and racial discrimination. The Defendant denies the material allegations of the Commission’s complaint.

The Commission and Defendant, Salisbury Motor Company, Inc. (the “Defendant”), hereby stipulate to jurisdiction of the Court over the parties and agree that the subject matter of this action is properly before the Court.

The parties have advised this Court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of Title VII will be promoted and effectuated by the entry of the Consent Decree; and (3) this Consent Decree resolves all matters in controversy between the parties as provided in paragraphs 1 through 16 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant shall not discriminate against any person on the basis of race under Title VII by subjecting him or her to racial harassment which includes a racially hostile work environment, or different terms and conditions of employment on the basis of race.

2. Defendant shall not discriminate or retaliate against any person because of opposition to any practice made unlawful under Title VII of the Civil Rights Act of 1964 or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding or hearing under that statute.

3. Monetary And Non-Monetary Damages Paid To Glenn Bailey.

The Parties agree to settle this case for \$45,663, all of which are compensatory damages. This settlement includes two components: a monetary payment of \$25,000 and a vehicle valued at the remaining amount of \$20,663. The settlement is further described as follows:

a. Defendant shall pay Glenn Bailey, the total monetary sum of Twenty Five Thousand Dollars (\$25,000.00) in settlement of the claims raised in this action. Defendant shall make payment by issuing a check payable to Glenn Bailey. Payment shall be made within fifteen (15) days after the Court approves this Consent Decree, and Defendant shall mail the

check to Glenn Bailey at an address provided by the Commission. Within ten (10) days after the check has been sent, Defendant shall mail to Lynette A. Barnes, Regional Attorney, Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte N.C., 28202, a copy of the check and proof of its delivery to Glenn Bailey.

b. As part of the settlement of this litigation, Defendant shall deliver to Glenn Bailey the 2006 Mercedes C230, Vin Number WDBRF52H56A909584 (the "Vehicle"), currently located at Defendant's dealership. Defendant shall deliver said Vehicle to Glenn Bailey at the Law Office of Klutz, Reamer, Hayes, Randolph, Adkins & Carter, LLP, 129 N. Main Street, Salisbury, North Carolina, 28145, within two (2) business days after the Court enters the Consent Decree. Upon delivery of the Vehicle, Defendant shall provide Glenn Bailey with the following documents: (1) North Carolina inspection record; (2) Defendant's service records of the Vehicle while the Vehicle has been in possession of Defendant; (3) service records from prior ownership of Vehicle if such records are in Defendant's possession; and (4) the Defendant's internal checklist of the Vehicle upon Defendant's first acquisition of the Vehicle. Defendant shall be solely responsible for the costs of all taxes, title, and license billed or incurred on the Vehicle, in the amount of \$663.00. Glenn Bailey is responsible for insuring the Vehicle prior to Defendant's application for tags and title.

c. All payments or transfers by Defendant to Glenn Bailey shall be reported on an IRS form 1099. Neither the EEOC nor Defendant make any representation, or assume any responsibility for any tax liability, assessments, interest, penalties and/or costs that Bailey may or may not incur on such payments under local, state and/or federal law.

4. Within ten (10) days of the entry of this decree by the Court, Defendant shall eliminate from the employment records of Glenn Bailey any and all documents, entries, or

references of any kind relating to the facts and circumstances which led to the filing of EEOC Charge Number 430-2008-03468 and the subsequent lawsuit. Within fifteen (15) days of the entry of this decree by the Court, Defendant shall report compliance with this provision to the Commission.

5. Defendant shall provide Glenn Bailey with a letter of reference. A copy of that letter is attached as Exhibit A. Should Defendant be contacted via telephone by any potential employer of Bailey's asking for a reference, Defendant should provide a copy of the Letter of Reference via mail or facsimile to the potential employer no less than two (2) business days after being contacted. Furthermore, while on the telephone with the potential employer, Defendant should not state anything other than what is contained in the reference letter. Within two (2) business days of the entry of this decree by the Court, the original, signed letter of reference shall be provided to Glenn Bailey, and Glenn Bailey is free to disseminate the letter to potential employers.

6. Within thirty (30) days of the entry of this decree by the Court, Defendant shall revise its current harassment policy (currently titled: "Sexual and Other Unlawful Harassment"), to include but not be limited to the following: an explanation of the requirements of the federal equal employment opportunity laws, including Title VII and its prohibition against racial harassment, racial discrimination, and different terms and conditions of employment based on race; procedures for reporting discrimination; and procedures for investigating complaints of discrimination. Defendant shall distribute the revised policy to all current employees within 30 days. Within forty-five (45) days of the entry of this decree, Defendant shall report compliance to the Commission. During the term of this Consent Decree, Defendant shall also distribute the policy to all new employees and review it with them at the time of hire.

7. During the term of this Consent Decree, Defendant shall post a copy of the policy described in paragraph 6, *supra*, in its facility in Salisbury, North Carolina in a place where it is visible to employees. If the policy becomes defaced or unreadable, Defendant shall replace it by posting another copy of the policy within five (5) business days from the date the policy becomes defaced or unreadable. Thirty-five (35) days after the Consent Decree is entered, Defendant will post the policy and notify the Commission that it has been posted.

8. During the term of this Consent Decree, Defendant shall provide an annual training program to all of its owners, directors, managers, supervisors and employees at its facility in Salisbury, North Carolina. Each training program shall include an explanation of the requirements of Title VII, and its prohibition against race discrimination, racial harassment and retaliation in the workplace. Each training program shall also include an explanation of Defendant's policy referenced in paragraph 6 above.

The first training program shall be completed within one hundred (100) days after entry of the Consent Decree by the Court. Thirty (30) days after the entry of the Consent Decree, Defendant shall provide the Commission with the name and credentials of the proposed trainer, the proposed agenda, and proposed training materials (*hereinafter* "Proposed Training Packet") for the training program. The Commission shall review the Proposed Training Packet provided by the Defendant and notify Defendant in writing by facsimile sent to Donald Clement IV at facsimile number (704) 636-3668 of any objections to the proposed trainer, proposed agenda and/or proposed training materials within twenty (20) days of receipt thereof. The parties shall then negotiate for a period not to exceed ten (10) days with respect to the Commission's objections. The parties agree that if an agreement cannot be reached concerning the Commission's objections within the stated timeframe, the matter can be submitted to the Court

for resolution by either party within ten (10) days after the period for negotiations has ended.

Within ten (10) days after completion of each training program, Defendant shall certify to the Commission that the Commission-approved training was undertaken and shall provide the Commission with a roster of all employees in attendance.

Each subsequent training program shall be conducted at approximately one-year intervals. For each subsequent training program, Defendant shall provide the Commission with a Proposed Training Packet, as defined above (*hereinafter* "Second Proposed Training Packet"), approximately four (4) months prior to the training program occurring. If the Second Proposed Training Packet does not differ in any respect from the Proposed Training Packet previously approved by the Commission or ordered by the court, Defendant may use the Second Proposed Training Packet (including trainer, agenda and materials), without further approval from the Commission. However, if the Second Proposed Training Packet differs in any way from the one approved by the Commission or ordered by the court, Defendant shall identify the differences when it submits the Second Proposed Training Packet to the Commission. The Commission shall then review the Second Proposed Training Packet and notify Defendant in writing by facsimile sent to Donald Clement IV at facsimile number (704) 636-3668 of any objections to the Second Proposed Training Packet within twenty (20) days of receipt thereof. The parties shall then negotiate for a period not to exceed ten (10) days with respect to the Commission's objections. The parties agree that if an agreement cannot be reached concerning the Commission's objections within the stated timeframe, the matter can be submitted to the Court for resolution by either party within ten (10) days after the period for negotiations has ended.

9. Beginning within thirty (30) days after the entry of this Consent Decree by the Court, and continuing throughout the term of this Consent Decree, Defendant shall

conspicuously post the attached Employee Notice, marked Exhibit B, hereby made a part of this Decree, in a place where it is visible to employees at its Salisbury, North Carolina facility. If the Notice becomes defaced or unreadable, Defendant shall replace it by posting another copy of the Notice. Within forty-five (45) days after entry of this Consent Decree, Defendant shall notify the Commission that the Notice has been posted pursuant to this provision.

10. During the term of this Consent Decree, Defendant shall provide the Commission with reports at six (6) month intervals, with the first being due four (4) months after approval by the Court of this Consent Decree. The reports will include the following information:

Retaliation Complaints:

- A. the identities of all individuals who have opposed any practice made unlawful under Title VII of the Civil Rights Act of 1964, or who have filed a charge, given testimony or assistance, or participated in any investigation, proceeding or hearing under the foregoing statute, including by way of identification each person's name, address, telephone number, position, and social security number;
- B. for each individual identified in 10.A. above, explain whether the individual's employment status has changed in any respect (for example, including but not limited to, termination, firing, demotion, promotion, or to part-time from full-time); and
- C. for each individual whose employment status has changed as identified in 10.B. above, a detailed statement explaining why the individual's employment status has changed.

Racial Harassment or Race Discrimination Complaints:

- D. the identities of all individuals who complained of or reported any race-based conduct including but not limited to conduct the individual believed to be race discrimination and/or race harassment or believed to be a violation of Defendant's racial harassment policy (reference in paragraph 6 above), by identifying each individual's name, last known telephone number and address, social security number, and job title;

the name of the individual or individuals who allegedly engaged in the conduct, that was complained about in 10.D. above, as well as a detailed description of the alleged conduct;

- A. a detailed description of what action, if any, Defendant took in response to the report/complaint made in 10.D. above;
- B. for each individual identified in 10.D and 10.E. above, explain whether the individual's employment status has changed in any respect (for example, including but not limited to, termination, firing, demotion, promotion, or to part-time from full-time); and
- C. for each individual whose employment status has changed as identified in 10.D and 10.E. above, a detailed statement explaining why the individual's employment status has changed.

Complaints Regarding Terms and Conditions of Employment based on Race:

- D. the identities of all individuals who complained of or reported any conduct the individual believed to be different terms and conditions of employment based on race by identifying each individual's name, last known telephone number and address, social security number, and job title;
- E. the name of the individual or individuals who allegedly engaged in establishing, creating or enforcing the different terms and conditions of employment based on race that were complained about in 10.I. above, as well as a detailed description of the alleged different terms and conditions of employment;
- F. a detailed description of what action, if any, Defendant took in response to the report/complaint made in 10.I. above
- G. for each individual identified in 10.I. and 10.J. above, explain whether the individual's employment status has changed in any respect (for example, including but not limited to, termination, firing, demotion, promotion, or to part-time from full-time); and
- H. for each individual whose employment status has changed as identified in 10.I. and 10.J. above, a detailed statement explaining why the individual's employment status has changed.

In the event there is no activity to report pursuant to this paragraph, Defendant shall send the Commission a "negative" report indicating no activity. In the event of a report not being timely filed, the Defendant shall submit the report within ten (10) business days from written request from the Commission.

11. The Commission may review compliance with this Consent Decree. As part of such review, the Commission may inspect Defendant's facility, interview employees and examine and copy documents.

12. If anytime during the term of this Decree, the Commission believes that Defendant is in violation of the Consent Decree, the Commission shall give written notice of the alleged violation to Defendant. Defendant shall have ten (10) days in which to investigate and respond to the allegations. Thereafter, the parties shall then have a period of ten (10) days or such additional period as may be agreed upon by them, in which to engage in negotiation regarding such allegations before the Commission exercises any remedy provided by law.

13. The term of this Consent Decree shall be for three (3) years from its entry by the Court.

14. All reports or other documents sent to the Commission by Defendant pursuant to this Decree shall be sent to: Lynette A. Barnes, Regional Attorney, Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte N.C., 28202.

15. Each party shall bear its own costs and attorney's fees.

16. This Court shall retain jurisdiction of this cause for purposes of monitoring compliance with this Consent Decree and entry of such further orders as may be necessary or appropriate.


United States District Judge

June 1, 2010
Date

The parties jointly request that the Court approve and enter the Consent Decree:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff

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General Counsel

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Deputy General Counsel

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ATTORNEYS FOR PLAINTIFF

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ATTORNEYS FOR DEFENDANT

[EMPLOYER'S LETTERHEAD]

To Whom It May Concern:

Mr. Bailey worked, as a detailer and general helper, for Salisbury Motor Company from August 15, 2005 to June 17, 2008. Throughout his employment, Mr. Bailey was a hard-working and dependable employee. Mr. Bailey diligently and consistently performed his work duties at an acceptable level. Mr. Bailey is eligible for re-employment with Salisbury Motor Company.

Regards,

_____ **(signature of Company representative).**

EXHIBIT A

EMPLOYEE NOTICE

1. This Notice is posted pursuant to a settlement between the U.S. Equal Employment Opportunity Commission and Salisbury Motor Company, Inc. in a case of discrimination based on race and retaliation. Specifically, the EEOC alleged that Salisbury Motor Company, Inc. discriminated against Glenn Bailey by subjecting him to a racially hostile work environment because of his race, black, and by subjecting him to different terms and conditions of his employment because of his race, in violation of Title VII of the Civil Rights Act of 1964. The EEOC also alleged that Salisbury Motor Company, Inc. forced Bailey to resign because of the discrimination and/or terminated his employment in retaliation for his complaints about discrimination. Salisbury Motor Company denies it discriminated against Mr. Bailey or that it terminated him in retaliation for engaging in protected activity.

2. Federal law requires that employers not discriminate against any employee or applicant for employment because of the individual's race, color, religion, sex, national origin, age (40 or older) or disability. Federal law also prohibits retaliation against employees because they have opposed unlawful employment discrimination, or because they gave testimony, provided assistance in, or participated in an employment discrimination investigation, proceeding, or hearing, or otherwise asserted their rights under the laws enforced by the EEOC.

3. Salisbury Motor Company will comply with such federal laws in all respects. Furthermore, Salisbury Motor Company will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law, or given testimony, assistance, or participation in any investigation, proceeding, or hearing conducted by the U.S. Equal Employment Opportunity Commission. Salisbury Motor Company encourages its employees to report to the General Manager any instances of real or perceived violations of the law.

4. Salisbury Motor Company wants its employees to know that each employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact their local U.S. Equal Employment Opportunity Commission field office for the purpose of filing a charge of employment discrimination. To locate the nearest field office, contact:

Equal Employment Opportunity Commission
131 M. Street, N.E.
Washington, DC 20507

TEL: 1-800-669-4000
TTY: 1-800-669-6820

This Notice will remain posted for at least three (3) years by agreement with the EEOC. DO NOT REMOVE THIS NOTICE UNTIL: _____, 2013.

EXHIBIT B