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U.S EEOC v. Lakemont Homes, et al.

Judge Edward C. Reed Jr.

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U.S EEOC v. Lakemont Homes, et al.

Keywords

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26
27 **UNITED STATES DISTRICT COURT**
28 **DISTRICT OF NEVADA**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

} Case No.: 3:09-cv-00335 ECR VPC

Plaintiff,

CONSENT DECREE;

ORDER

vs.

LAKEMONT HOMES, INC.;
LAKEMONT HOMES NEVADA,
INC.; and Does 1-10 Inclusive,

Defendant(s).

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I.

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC" or the "Commission") and Lakemont Homes, Inc. and Lakemont Homes Nevada, Inc. (referred to as "Defendants") agree to the entry of this Consent Decree to resolve the EEOC's Complaint, filed under Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e et seq. ("Title VII"): Case No. 3:09-cv-00335 ECR VPC (the "Action"). The EEOC's Complaint alleges that Elizabeth Michelle Blackburn, and other similarly situated individuals (herein after collectively referred to as "Claimants") were subject to unlawful employment practices on the basis of their sex (female) and retaliation. The Commission alleged that Claimants were subjected to sexual harassment and retaliation after engaging in protected activity in violation of Title VII during their employment with Defendants.

Defendants and the Silverado Companies, described herein, deny the allegations contained in the EEOC's Complaint and deny the allegations of successor liability, and nothing contained in this Consent Decree shall be construed as an admission of any liability or wrongdoing on the part of Defendants or the Silverado Companies. The parties also acknowledge that the resolution of all issues by this Consent Decree is a compromise and settlement of disputed claims.

II.

PURPOSES AND SCOPE OF THE CONSENT DECREE

A. The Parties to this Consent Decree ("Decree") are the EEOC, the Defendants, and Silverado Homes, Inc. and Silverado Homes Nevada, Inc (collectively referred to herein as the "Silverado Companies.")

B. This Decree shall be binding on and enforceable against the Lakemont Companies with the exception of Sections IX, X and XI.

1 C. This Decree shall be binding on and enforceable against the Silverado
2 Companies and their successors only as expressly stated in Sections VII, IX, X, XI
3 and XIII of the Decree.

4 D. For purposes of this Decree, the term "successor" shall be defined as
5 either a purchaser of any of the Silverado Companies, or a purchaser of the
6 majority of the ownership or assets of any of the Silverado Companies, which
7 purchaser continues substantially the same operations of that Party, with
8 substantially the same employees in substantially the same properties or locations.

9 E. The Parties have entered into the Decree for the following purposes:

- 10 1. To provide monetary and injunctive relief as stated herein;
- 11 2. To ensure that the Silverado Companies' employment practices
12 comply with Title VII;
- 13 3. To resolve all issues between them arising out of this action; and
- 14 4. To avoid expensive and protracted costs incident to this litigation.

15 F. The geographic scope of this Decree includes the Silverado
16 Companies' facilities located Northern Nevada and Northern California.

17 III.

18 RELEASE OF CLAIMS

19 A. This Decree fully and completely resolves between Defendants and
20 the EEOC all claims that are raised by the EEOC on its own behalf, and on behalf
21 of the Claimants, against Defendants in the Action, the EEOC Charge of
22 discrimination underlying this action (Charge #34B-2005-01090C) and all
23 damages claimed by the EEOC therein. Each of the Claimants has executed a
24 separate Release, agreed upon by the parties, releasing Defendants, the Silverado
25 Companies and their agents and representatives from any and all claims asserted in
26 the Action and provided a W-9.

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1 B. Nothing in this Decree shall be construed to preclude any party from
2 bringing suit to enforce this Decree in the event that any party fails to perform the
3 promises and representations contained here.

4 C. Nothing in this Decree shall be construed to limit or reduce
5 Defendants' obligation to comply fully with any applicable Title VII or any other
6 federal employment statutes.

7 D. This Decree in no way affects the EEOC's right to bring, investigate
8 or litigate other charges that may be in existence or may later arise against
9 Defendants in accordance with standard EEOC procedures.

10 **IV.**

11 **EFFECTIVE DATE AND DURATION OF DECREE**

12 A. The provisions and agreements contained herein are effective
13 immediately upon the date which this Decree is entered by the Court (the
14 "Effective Date.")

15 B. Except as otherwise provided herein, the Decree shall remain in effect
16 for three (3) years after the Effective Date.

17 C. Nothing contained herein is intended to impose any liability or
18 obligation upon 1) any purchaser of the assets, which does not constitute a
19 "successor" as defined in Section II.D. of this Decree, of either Defendant or
20 Silverado Companies, or 2) the officers, directors or shareholders of either
21 Defendant or Silverado Companies, or 3) any other businesses owned by the
22 shareholders of Defendants or Silverado Companies, with the exception of the
23 Silverado Companies, as expressly set forth herein.

24 **V.**

25 **MODIFICATION AND SEVERABILITY**

26 A. This Decree constitutes the complete understanding of the Parties with
27 respect to the matters contained here. No waiver, modification, or amendment of
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1 any provision of this Decree will be effective unless made in writing and signed by
2 an authorized representative of each of the Parties.

3 B. If one or more provisions of the Decree are rendered unlawful or
4 unenforceable, the Parties shall make good faith efforts to agree upon appropriate
5 amendments to this Decree to effectuate the purposes of the Decree. In any event,
6 the remaining provisions will remain in full force and effect, unless the purposes of
7 the Decree cannot, despite the Parties' reasonable efforts, be achieved.

8 C. By mutual agreement of the Parties, this Decree may be amended or
9 modified in writing in the interests of justice and fairness to effectuate the
10 provisions of this Decree.

11 **VI.**
12 **JURISDICTION**

13 A. This Court has jurisdiction over the Parties and the subject matter of
14 this lawsuit. The Complaint asserts claims that, if proven, would authorize the
15 Court to grant the equitable relief set forth in this Decree. This Decree conforms
16 with the Federal Rules of Civil Procedure and Title VII, and is not in derogation of
17 the rights or privileges of any person.

18 B. The Court shall retain jurisdiction of this action during the duration of
19 the Decree for the purposes of monitoring and entering all orders, judgments, and
20 decrees that may be necessary to implement the relief provided here.

21 **VII.**
22 **COMPLIANCE AND DISPUTE RESOLUTION**

23 A. The Parties agree that if the EEOC has reason to believe that
24 Defendants or the Silverado Companies have failed to comply with any provision
25 of this Consent Decree, the EEOC may petition or may bring an action before this
26 Court to enforce the Decree. Prior to initiating such petition or action, the EEOC
27 will notify Defendants' legal counsel of record and the Silverado Companies, in
28 writing, of the nature of the dispute. Such notice shall specify the particular

1 provision(s) that the EEOC believes has/have been breached. Absent a showing by
2 either party that the delay will cause irreparable harm, Defendants and the
3 Silverado Companies shall have sixty (60) days from receipt of the EEOC's notice
4 of the alleged breach to attempt to resolve or cure the breach.

5 B. The Parties agree to cooperate with each other and use their
6 reasonable efforts to resolve any dispute referenced in the EEOC notice.

7 C. After sixty (60) days have passed with no resolution or agreement to
8 extend the time further, the EEOC may petition or bring an action before this Court
9 for compliance with this Decree. The EEOC may seek all available relief,
10 including, but not limited to, an extension of the terms of the Decree for such
11 period of time as the Defendants and the Silverado Companies are shown to be in
12 breach of the Decree.

13 **VIII.**

14 **MONETARY RELIEF**

15 A. In settlement of all monetary claims of the EEOC's case, the
16 Defendants shall cause to be paid a total of Two Hundred Sixty Seven Thousand
17 (\$267,000.00) dollars. The settlement monies shall be distributed as follows:

18 B. Defendants shall cause to be paid a total of Two Hundred Sixty Four
19 Thousand (\$264,000.00) to the Claimants.

20 i. The EEOC has sole discretion to allocate the specific settlement
21 monetary amounts for each identified Claimant in this case. The EEOC shall
22 provide Defendants a list identifying all the EEOC's Claimants, the specific
23 amounts to be paid each Claimant, each Claimant's current mailing address, and
24 relevant identifying information, ("Distribution List").

25 ii. Defendants or their representative shall prepare and distribute
26 Form 1099 and W-9 or equivalent form(s) to the Claimants, and make the
27 appropriate reports to the Internal Revenue Service and other tax authorities.

28 iii. Within thirty (30) days of the Court's approval of this Decree,

Defendants shall cause to be sent a check, cashier's check or money order to each of the Claimants via certified mail, return receipt requested.

iv. Within ten (10) business days of the mailing of each and every settlement check, Defendants' shall cause to be submitted a copy of each check and related correspondence to the Regional Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4 Floor, Los Angeles, CA 90012.

C. Defendants will cause to be paid Three Thousand (\$3,000) dollars dedicated for training as set forth in Section IX (F).

IX.

GENERAL INJUNCTIVE RELIEF

A. Non-Discrimination

The Silverado Companies and their successors, as that term is defined in Section II.D above, are hereby enjoined from: (a) harassing or tolerating harassment against persons on the basis of sex in the terms and conditions of employment; (b) engaging in or being a party to any action, policy or practice that is intended or is known to them to have the effect of harassing or intimidating any employee on the basis of sex; and (c) creating, facilitating or permitting, the existence of a work environment that is hostile to female employees.

B. Retaliation

The Silverado Companies and their successors, as that term is defined in Section II.D. above, are hereby are enjoined from engaging in, implementing or permitting any action, policy or practice with the purpose of retaliating against any former employee or applicant of Defendants, or either of them, because he or she has in the past, or during the term of this Decree: (a) opposed any practice made unlawful under Title VII; (b) filed a charge of discrimination alleging such practice; (c) testified or participated in any manner in any investigation (including

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1 without limitation, any internal investigation undertaken by Defendants),
2 proceeding in connection with this case and/or relating to any claim of a Title VII
3 violation; (d) was identified as a possible witness or claimant in this action; (e)
4 asserted any rights under this Decree; or (f) sought or received any relief in
5 accordance with this Decree.

6 C. Designation of Internal EEO Compliance Officer

7 The Silverado Companies have designated Tom Evancie to serve as the in
8 house EEO Compliance Officer ("EEO Officer") for their Companies. The EEO
9 Officer duties shall include:

10 1. Ensuring that the Silverado Companies' discrimination and
11 retaliation policy and reporting procedure comply with Sections IX (D) and (E) of
12 the Decree;

13 2. Ensuring that the Silverado Companies' employees, including
14 management and human resources employees, receive training in accordance with
15 Section IX (F) of this Decree, for the duration of this Decree.

16 3. Ensuring that the Silverado Companies' procedures for
17 complaints of discrimination, harassment and retaliation comply with their
18 obligations under Title VII and this Decree;

19 4. Monitoring any investigation of any complaint of gender
20 discrimination, sexual harassment, and/or retaliation to ensure compliance with
21 Title VII and this Decree;

22 5. Ensuring proper communications with complainants regarding
23 the complaint procedure, status of the complaint, status of the investigation, results
24 of the investigation, and any remedial action taken; and

25 6. Ensuring that the Silverado Companies' disciplinary policies
26 hold employees and managers accountable for engaging in conduct prohibited
27 under Title VII or this Decree.
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1 D. Revision of Anti-Harassment Policy and Complaint Procedure for
2 Sex-Based Discrimination, Harassment and Any Subsequent
3 Retaliation

4 The Silverado Companies have reviewed and revised their policies against
5 and complaint procedures for sexual/sex-based discrimination, harassment and
6 retaliation. The policies and complaint procedures include to the EEOC's
7 satisfaction:

8 a. a clear explanation of prohibited conduct: sexual / sex-based
9 discrimination, harassment, and retaliation;

10 b. an assurance that employees who make complaints of sexual /
11 sex-based discrimination and harassment or provide information related to such
12 complaints will be protected from retaliation;

13 c. a clearly described complaint process for sexual / sex-based
14 discrimination, harassment, and retaliation that provides accessible avenues of
15 complaint against co-workers, including the complainant's supervisors, that allows
16 for complaints to be initiated verbally, although it may require that the substance of
17 the complaint be recorded later in writing;

18 d. an assurance that the Silverado Companies will protect the
19 confidentiality of discrimination complaints to the extent possible from being
20 disclosed to those who do not need to know;

21 e. a complaint process that provides a prompt, thorough, and
22 impartial investigation;

23 f. a requirement that any employee in a supervisory position who
24 receives a complaint of harassment, whether formal or informal, written or verbal,
25 report such complaint to the EEO Compliance Officer within 24 hours of
26 receiving said complaint;

27 g. an assurance that the Silverado Companies' disciplinary
28 policies hold employees, managers, supervisors and human resources accountable

1 for failing to take appropriate action or for engaging in conduct prohibited under
2 this Decree;

3 h. a procedure for communicating with the complainant in writing
4 regarding the status of the complaint / investigation, results of the investigation,
5 and if any remedial action was taken; and

6 i. assurance that the Silverado Companies will take immediate
7 and appropriate corrective action when it determines that sex-based discrimination,
8 harassment or any subsequent retaliation has occurred.

9 E. Distribution of Policies Against and Complaint Procedures for Sexual
10 Harassment and Any Subsequent Retaliation

11 1. Within sixty (60) days of the Effective Date, the Silverado
12 Companies shall distribute their policy against and complaint procedure for sexual
13 / sex-based discrimination, harassment, and retaliation to all of their employees at
14 all of their facilities in Nevada and/or California during the term of the Decree.

15 2. All new employees hired by the Silverado Companies for the
16 duration of this Decree shall receive within thirty (30) days of hire the policy
17 against and complaint procedure for sexual / sex-based discrimination, harassment,
18 and retaliation.

19 3. For the term of this Decree, all employees promoted from non
20 managerial to managerial positions with the Silverado Companies shall receive,
21 within thirty days of promotion, any company policies and procedures of against
22 and about sexual / sex-based discrimination, harassment, and retaliation applicable
23 to managerial employees.

24 F. Training

25 1. Within six (6) months after the Effective Date, the Silverado
26 Companies, with the assistance of the EEO Compliance Officer, if necessary, shall
27 ensure that all employees are provided with a live, in-person, EEOC Customer
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1 Specific Training session of two (2) hours in duration about sexual / sex-based
2 discrimination, harassment, and retaliation.

3 2. After the initial trainings described in Paragraph 1 of this
4 section, the Silverado Companies shall conduct annual training (every twelve (12)
5 months thereafter for the term of this Decree) on sexual / sex-based discrimination,
6 harassment, and retaliation for all of their employees. This training requirement
7 may be met by using a video of EEOC Customer Specific Training on these issues
8 concurrent with a live component consisting of the EEO Compliance Officer being
9 available to address any questions regarding such video presentation.

10 3. For any employees who miss the scheduled training described
11 in this section, the Silverado Companies shall show a videotape of the scheduled
12 training to these employees within thirty (30) days of the scheduled training.

13 4. All employees required to attend such training shall verify their
14 annual attendance in writing.

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RECORD KEEPING AND REPORTING

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A. Record Keeping

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For the duration of the Decree, the Silverado Companies shall maintain the
following records:

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1. All documents generated in connection with any complaint,
investigation into, or resolution of every complaint of sexual / sex-based
discrimination, harassment, or retaliation and the identities of the parties involved;

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2. All forms acknowledging each employee's receipt of the
revised policy and complaint procedure against sexual / sex-based discrimination,
harassment, and retaliation;

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3. A list of the dates of the training required under this Decree that
shows the names and positions of all attendees for each one; and

1 4. The Silverado Companies shall provide to the Commission
2 upon request all documents generated in connection with any Title VII complaint,
3 investigations, and resolutions. The Commission shall give the Silverado
4 Companies thirty (30) days notice of any request for documents pursuant to this
5 paragraph.

6 B. Reporting

7 The Silverado Companies shall provide the following reports to the
8 Commission in writing, by mail, or by facsimile:

9 1. Within six (6) months after the Effective Date and annually
10 thereafter (with the last reporting one month before the end of the Consent Decree)
11 for the term of the Decree, the Silverado Companies shall submit to the
12 Commission the following:

13 a. the signed acknowledgements of the employees who
14 have received a copy of the anti-harassment/ anti-retaliation policies in compliance
15 with the Consent Decree;

16 b. the attendance records or the completed sign-in sheet of
17 the employees who have been trained in compliance with the Consent Decree; and

18 c. a summary report of any investigation into any complaint
19 about sexual / sex-based discrimination, harassment, and/or retaliation for
20 complaining about sexual / sex-based discrimination and/or harassment. The
21 investigation report shall include the following for each complaint during the
22 reporting period:

23 (1) the name, sex and title of the complaining party(ies);

24 (2) the date of the complaint;

25 (3) the name, sex and title of the alleged harasser(s);

26 (4) the name, sex and title of the person(s) who conducted the
27 investigation into the complaint;

28 (5) the nature of the complaint (i.e. comments, acts, pictures, etc.)

1 (6) the date of the commencement and completion of the
2 investigation;

3 (7) a brief description of the investigation (i.e. number of persons
4 interviewed, materials reviewed);

5 (8) the outcome of the investigation and any action taken; and

6 (9) whether previous sex-based discrimination and/or harassment
7 complaints had been made regarding the alleged harasser(s). If so, the
8 report should also include the outcome of the prior investigations.

9 2. All reports under this section shall be directed to: U.S. Equal
10 Employment Opportunity Commission, Attn. Regional Attorney, 255 E. Temple
11 Street, 4th Floor, Los Angeles, CA 90012.

12 **XL**

13 **COSTS OF ADMINISTRATION AND IMPLEMENTATION**
14 **OF THE CONSENT DECREE**

15 The Silverado Companies shall bear all costs associated with their
16 administration and implementation of their obligations under this Decree.

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18 **COSTS AND ATTORNEYS' FEES**

19 Each party shall bear its own costs of suit and attorneys' fees.

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XIII.

21 **MISCELLANEOUS PROVISIONS**

22 A. During the term of this Consent Decree, the Silverado Companies
23 shall provide any potential successor, as that term is defined in Section II.D above,
24 with a copy of this Consent Decree within a reasonable time of not less than thirty
25 (30) days prior to the execution of any agreement for acquisition or assumption of
26 control of the Silverado Companies' facilities and shall simultaneously inform the
27 EEOC of same.

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1 B. During the term of this Consent Decree, the Silverado Companies
2 shall assure that each of its officers, managers and supervisors is aware of any
3 term(s) of this Decree which may be related to his/her job duties.

4 C. Unless otherwise stated, all notices, reports and correspondence
5 required under this Decree shall be delivered to the attention of the Regional
6 Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los
7 Angeles District Office, 255 E. Temple St., 4th Floor, Los Angeles, CA. 90012.

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1 D. The Parties agree to entry of this Decree and judgment subject to final
2 approval by this Court.

3 All parties, through the undersigned, respectfully apply for and consent to
4 the entry of this Consent Decree Order.

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Dated: 10/23/11

U.S. EQUAL EMPLOYMENT
COMMISSION

By: 

Anna Y. Park
Regional Attorney

Michael J. Farrell
Supervisory Trial Attorney

Attorneys for Plaintiff EEOC

Dated: 10/23/11

LAKEMONT HOMES, INC. AND LAKEMONT HOMES
NEVADA, INC.

By: 

Daniel Hayward
Angela M. Bader

Attorneys for Defendants Lakemont
Homes, Inc. and Lakemont Homes
Nevada, Inc.

THE SILVERADO COMPANIES

Dated:

10/23/11

By: 

Authorized Representative for The
Silverado Companies

ORDER GRANTING CONSENT
DECREE

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GOOD CAUSE APPEARING,

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions is HEREBY ORDERED.

IT IS SO ORDERED

Dated:, November 23, 2011.

By

The Honorable Edward C. Reed Jr.
United States District Judge