

Marissa Pittman

DC-17-04458

SCHARNBERG, WILLIAM M., § IN THE DISTRICT COURT
Plaintiff, §
v. § DALLAS COUNTY, TEXAS
THE DALLAS OPERA, §
Defendant. § JUDICIAL DISTRICT
JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL PETITION

Plaintiff, William M. Scharnberg (“Scharnberg” or “Plaintiff”), by counsel, files this Original Petition against Defendant The Dallas Opera (“Opera” or “Defendant”) and for causes of action respectfully shows the Court as follows:

I.

DISCOVERY PLAN AND DISCLOSURE REQUEST

1. Discovery is intended to be conducted under Level 2 of TEX. R. CIV. P. 190.
 2. Pursuant to Rule 194, you are requested to disclose, within (50) days of service of this Petition and request, the information or material described in Rule 194.2(a)-(l) of the Texas Rules of Civil Procedure.

II.

CLAIM FOR RELIEF

3. Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000.

III.

THE PARTIES

4. Plaintiff Scharnberg is a citizen of the United States who resides at 201 Wellington Oaks Ct., Denton TX 76210. The last three digits of the Plaintiff's driver's license are 641. The last three digits of the Plaintiff's Social Security number are 390.

5. Defendant The Dallas Opera is a Texas Domestic Nonprofit Corporation, with its principal address at 2403 Flora Street, Suite 500, Dallas Texas 75201. The Dallas Opera is qualified to transact business in the state of Texas and can be served by serving its registered agent, Keith Cerny, Winspear Opera House, 2403 Flora Street, Suite 500, Dallas, Texas 75201.

IV.

JURISDICTION AND VENUE

6. Jurisdiction is proper in the state district court for Dallas County, Texas pursuant to the Texas Commission on Human Rights Act ("TCHRA").

7. Defendant is an employer within the meaning of the Texas Human Rights Act.

8. Venue is proper in Dallas, Dallas County, Texas, pursuant to Texas Civil Practice and Remedies Code §15.001 and §15.002 by virtue of the fact that all or a substantial part of the facts giving rise to Plaintiff's cause of action accrued in Dallas County, Texas.

9. On or about August 8, 2016, Plaintiff filed a charge alleging age discrimination, hostile environment and retaliation with the EEOC and Texas Workforce Commission in Dallas, Texas, which was filed within 180 days of the latest discriminatory act. More than 180 days has passed since Plaintiff filed his original charge and this Court has jurisdiction over the

allegations and causes of action raised in this Petition. On March 14, 2017, the Texas Workforce Commission issued a Notice of Right to File a Civil Action, a copy of which is attached as *Exhibit A* hereto and is incorporated herein by reference.

V.

FACTUAL ALLEGATIONS

10. Plaintiff began working for Defendant The Dallas Opera in September 1985 as principal horn. Plaintiff enjoyed a successful career as principal horn with the opera for almost 30 years.

11. Keith Cerny joined The Dallas Opera in 2010 as General Director and CEO in 2010, and according to the The Dallas Opera website “set out to transform [this] dowager duchess [of a company] into a blooming, energetic youth.” This has been accomplished by systematically replacing older accomplished musicians with much younger players.

12. Emmanuel Villaume (“Villaume”) became a conductor for The Dallas Opera in 2014, at which time he engaged in a pattern and practice of replacing older experienced musicians with much younger inexperienced players.

13. On June 16, 2014, Villaume gave Plaintiff his first written warning that he had ever received in his 30 year career as principal horn. At the end of the 2014-15 season, Plaintiff received notice that he would be terminated. He appealed this decision, and his appeal was unanimously granted, overturning the termination decision, so that Plaintiff played during the next season. On May 12, 2016, however, Plaintiff was terminated.

14. While Plaintiff was allegedly terminated for his playing style, such termination

reason had previously been overturned by the players committee, and was untrue. In fact, Plaintiff was terminated because of his age, 67. Plaintiff was replaced by a player in his twenties.

15. The Dallas Opera has engaged in a pattern or practice of terminating or encouraging retirement of older employees and replacing such employees by younger employees as can be seen in the following replacements, among others:

David Williams, principal harp, 65+; replaced by player in 20s

Don Little, principal tuba, 65+; replaced by Jeff Baker, early 30s

Chris Dulin, third horn, 50+; replaced by Katie Wolber, mid 20s

Patrick Moulds, principal double bass, over 45; replaced by younger player

Susan Demetri, concert master, 40+, replaced by a player in 20s

Bill Scharnberg, principal horn, 67; replaced by a player in 20s

VI.

FIRST COUNT

DISCRIMINATION BECAUSE OF AGE

21. The foregoing paragraphs of this Petition are incorporated in this Count by reference as if set forth at length herein.

22. Plaintiff is an individual who is 67 years old, who was discriminated against, written up and fired due to his age. Plaintiff was replaced by a player in his 20s.

23. Plaintiff was qualified to perform the essential functions of principal horn player, and in fact whose playing was vindicated by a vote of other musicians, but was then

terminated because of his age. Upon information and belief, Plaintiff's job duties are being performed by a horn player in his 20s. Age was a motivating factor in the discrimination against Plaintiff and in Plaintiff's discharge.

24. Defendant has intentionally discriminated against Plaintiff because of his age. Defendant has engaged in a pattern and practice of discriminating against Defendant's older employees because of their age, or with age as a motivating factor, and has fostered and maintained a hostile environment.

25. All conditions precedent to filing this action for age discrimination under state law have been met. Plaintiff timely filed his charge of age discrimination and has received a Right to Sue letter from the Texas Workforce Commission.

26. Defendant has engaged in a single continuous course of conduct of discrimination against Plaintiff because of Plaintiff's age.

27. Such discrimination by Defendant against Plaintiff was intentional. Accordingly, Plaintiff is entitled to recover damages from Defendant for back pay, front pay, benefits, future pecuniary losses, emotional pain and suffering, inconvenience, loss of enjoyment of life, other nonpecuniary losses, and compensatory damages. Further, this discrimination was willful. Plaintiff is therefore entitled to recover exemplary damages. Plaintiff is also entitled to recover all costs of Court and attorneys' fees.

VII.

SECOND COUNT

RETALIATION IN VIOLATION OF THE TEXAS LABOR CODE

28. The foregoing paragraphs of this Petition are incorporated in this count by reference as if fully set forth at length herein.

29. Defendant employs at least fifteen (15) employees and is an employer within the meaning of the Texas Labor Code.

30. Defendant has retaliated against Plaintiff by subjecting him to retaliatory acts for reporting a hostile environment, in retaliation for opposing a discriminatory practice, making a charge of discrimination, or assisting or participating in any manner in a discrimination investigation, and by ultimately firing Plaintiff. Defendant has thereby intentionally engaged in unlawful employment practices prohibited by Texas Human Rights Act, Texas Labor Code § 21.05

31. All conditions precedent to filing this action for discrimination under state law have been met. Plaintiff timely filed with the Texas Workforce Commission and Equal Employment Opportunity Commission (“EEOC”) a Charge of Discrimination against Defendant. Plaintiff received a Notice of Right to Sue from the Texas Workforce Commission within 60 days of the filing of this Petition. A copy of the Notice of Right to File a Civil Action from the Texas Workforce Commission is attached as *Exhibit A*.

32. Defendant has engaged in a single continuous course of conduct of retaliation against Plaintiff because of Plaintiff's protected EEOC activity and by subjecting Plaintiff to a hostile environment in order to destroy Plaintiff, his career, and his personal life. Retaliation was a motivating factor and/or but for cause of the harm suffered by Plaintiff.

33. Such retaliation by Defendant against Plaintiff was intentional. Accordingly, Plaintiff is entitled to recover damages from Defendant for back pay, front pay, future pecuniary losses, emotional pain and suffering, inconvenience, loss of enjoyment of life and other non-pecuniary losses. Further, this retaliation was done by Defendant with intentional malice or with reckless indifference to Plaintiff's protected rights. Such retaliation constitutes gross, wanton, reckless and/or intentional violation of Plaintiff's rights under the Texas Commission on Human Rights Act. Plaintiff is therefore also entitled to recover punitive damages.

34. Plaintiff is entitled to an award of attorneys' fees and costs under Texas Labor Code § 21.259.

VIII.

ATTORNEYS' FEES

35. The foregoing paragraphs of this Petition are incorporated in this Count by reference as if set forth at length herein.

36. The preparation and filing of this Petition and prosecution of this lawsuit have necessitated the hiring of attorneys. Plaintiff seeks to recover reasonable and necessary attorneys' fees as allowed by law.

IX.

JURY TRIAL DEMANDED

37. PLAINTIFF DEMANDS A TRIAL BY JURY.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that on final trial, Plaintiff have and recover the following relief against Defendant:

- (1) Judgment for actual damages in the amount of past and future lost earnings and benefits and damages to past and future earnings capacity;
- (2) Judgment for back pay and front pay as allowed by law;
- (3) Judgment for past and future pecuniary losses;
- (4) Damages for past and future mental anguish, emotional pain and suffering, inconvenience, loss of enjoyment of life, emotional distress, physical distress, and other nonpecuniary losses;
- (5) Punitive and exemplary damages in an amount to be determined by the trier of fact;
- (6) Prejudgment and post-judgment interest at the maximum legal rate;
- (7) All costs of Court;
- (8) Attorneys' fees;
- (9) Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

KILGORE & KILGORE, PLLC

By: /s/ W.D. Masterson
W. D. MASTERSON
State Bar No. 13184000
wdm@kilgorelaw.com

3109 Carlisle
Dallas, TX 75204-2471
(214) 969-9099 - Telephone
(214) 953-0133 - Fax

ATTORNEYS FOR THE PLAINTIFF
WILLIAM M. SCHARNBERG

Texas Workforce Commission

A Member of Texas Workforce Solutions

Andres Alcantar, Chairman
Commissioner Representing
the Public

Ruth R. Hughs
Commissioner Representing
Employers

Julian Alvarez
Commissioner Representing
Labor

Larry E. Temple
Executive Director

March 14, 2017

William Scharnberg
c/o W. D. Masterson
Kilgore & Kilgore PLLC
3109 Carlisle Street
Dallas, TX 75204-1194

Re: *William Scharnberg v. The Dallas Opera*
EEOC Complaint # 450-2016-03877
CRD/Local Commission Complaint #

The above-referenced case was processed by the United States Equal Employment Opportunity Commission or a local agency. Pursuant to Sections 21.252 and 21.254 of the Texas Labor Code, this notice is to advise you of your right to bring a private civil action in state court in the above-referenced case. YOU HAVE SIXTY (60) DAYS FROM THE RECEIPT OF THIS NOTICE TO FILE THIS CIVIL ACTION.

If your case has been successfully resolved by the U. S. Equal Employment Opportunity Commission or another agency through a voluntary settlement or conciliation agreement, you may be prohibited by the terms of such an agreement from filing a private civil action in state court pursuant to the Texas Commission on Human Rights Act, as amended.

The United States Supreme Court has held in *Kremer v. Chemical Construction Corporation*, 456 U.S. 461 (1982), that a federal district court must generally dismiss a Title VII action involving the same parties and raising the same issues as those raised in a prior state court action under Chapter 21 of the Texas Labor Code. Therefore, filing a lawsuit in state court based on the issuance of this notice of right to file a civil action may prevent you from filing a lawsuit in federal court based on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e - et seq.

Sincerely,

Lowell A. Keig, Director
Civil Rights Division

RETAIN ENVELOPE TO VERIFY DATE RECEIVED

Copy to:
The Dallas Opera
c/o: Keith Cerny
General Manager
2403 Flora Street, Ste 500
Dallas, TX 75201

