

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARTELL WAITE,

Civil Action

Plaintiff,

No.

vs.

CHAMPION WINDOWS
MANUFACTURING, INC., d/b/a
CHAMPION WINDOWS OF PITTSBURGH

Defendant.

Jury Trial Demanded

CIVIL COMPLAINT

Plaintiff Martell Waite, by undersigned counsel, files this civil complaint.

I. Jurisdiction

1. The Jurisdiction of this Court is invoked pursuant to Section 1 of the Civil Rights Act of 1866, 42 U.S.C. §1981 and 28 U.S.C §§1343(a)(3) and (a)(4) and 1331.

II. The Parties

2. Plaintiff, Martell Waite, is an African American who resides at 27 Verona Road, Pittsburgh, PA 15235.

3. Defendant, Champion Windows Manufacturing, Inc. d/b/a Champion Windows of Pittsburgh is a corporation with its principal place of business in the Western District of Pennsylvania at 4700 Campbells Run Road, Pittsburgh, PA 15205. At all times relevant Defendant was Waite's employer.

III. Factual Background

4. Waite worked for Defendant from August 2005 and was fired January 27, 2007

effective January 19, 2007. Defendant hired Waite as a Helper.

5. When Waite began his employment with Defendant, Defendant's employee, Dan Sabol, referred to Waite as "boy." Defendant's supervisors were aware Sabol referred to Waite as "boy."

6. In June 2006, Defendant promoted Waite to Lead Installer.

7. In August 2006, Defendant's employee, Michael Duggins, said he was "the technician not the nigger." Duggins said this in the presence of both Waite and Waite's supervisor, David Swartzwelder.

8. When Waite confronted and complained to Swartzwelder about Duggins' use of the word, "nigger," Swartzwelder replied, "I know you've heard that word before."

9. In September 2006, Waite complained to Swartzwelder about being treated differently than similarly situated white Lead Installers. Swartzwelder threatened to fire Waite unless he "backed-off."

10. Thereafter, Waite informed his regional Human Resources Director of the "nigger" comment; how he was being treated differently than similarly-situated co-workers because of his race; and his intention to complain to Defendant's corporate office. Defendant's Human Resources Director advised Waite not to mention race in his complaint to Defendant's corporate office.

11. In September 2006, Waite sent a complaint/letter to Defendant's corporate office in Cincinnati.

12. Waite was demoted from Lead Installer to Helper in December 2006.

13. In December 2006, Waite sent a second complaint/letter to Defendant's corporate office in Cincinnati, in which Waite said Defendant treated him differently because of his color.

14. Defendant fired Waite on January 27, 2007, effective January 19, 2007, which was the last day Waite worked.

Count I
42 U.S.C. §1981

15. Plaintiff incorporates by reference the allegations in Paragraph 1 to 14.

16. Defendant demoted and fired Waite because of his race.

17. Defendant also demoted and fired Waite in retaliation for complaining of racial discrimination.

18. Defendant's actions in demoting and firing Waite because of his race, and in retaliation for complaining of race discrimination, deprived Waite of the same right to make and enforce contracts as is enjoyed by white citizens in violation of the Civil Rights Act of 1866, 42 U.S.C. §1981.

19. Defendant's demotion and discharge of Waite was undertaken with reckless indifference to Plaintiff's federally protected right to make and enforce contracts irrespective of his race and/or his opposition to race discrimination.

20. As a direct and proximate result of Defendant's discriminatory and retaliatory treatment, Waite was demoted in December 2006, and fired from his job January 27, 2007 effective January 19, 2007 and suffered the following injuries.

- a. Great mental anguish and emotional strain;
- b. Loss of income and benefits; and
- c. Humiliation and inconvenience.

WHEREFORE, Plaintiff demands judgment against Defendant pursuant to 42 U.S.C. §1981

as follows:

- a. That Defendant be permanently enjoined from discriminating against Waite or retaliating against Waite because of his race or because he opposed race discrimination;
- b. That Defendant be ordered to re-employ Waite to the position occupied on January 19, 2007, together with all benefits incident thereto, including but not limited to wages, benefits, training and seniority;
- c. That Defendant be required to compensate Waite for the full value of wages and benefits he would have received had it not been for Defendant's illegal treatment, with interest thereon until the date Waite is offered re-employment into a position substantially equivalent to the one Waite occupied on January 19, 2007 ;
- d. That Waite be awarded compensatory and punitive damages in an amount to be determined at trial;
- e. That Waite be awarded against Defendant the costs and expenses of this litigation, and a reasonable attorney's fee; and
- f. That Waite be awarded such further relief as this Court deems to be just and proper.

Respectfully submitted,

Ogg, Cordes, Murphy & Ignelzi

/S/ Samuel J. Cordes

Samuel J. Cordes

Tiffany R. Waskowicz

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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Martell Waite
(b) County of Residence of First Listed Plaintiff Allegheny
(c) Attorney's (Firm Name, Address, and Telephone Number)
Samuel J. Cordes, Tiffany R. Waskowicz, Ogg, Cordes, Murphy & Ignelzi, 245 Fort Pitt Boulevard, Pittsburgh, PA 15222 (412) 471-8500

DEFENDANTS
Champion Windows Manufacturing, Inc., d/b/a Champion Windows of Pittsburgh
County of Residence of First Listed Defendant Allegheny
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
TORTS: PERSONAL INJURY (310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury), PERSONAL INJURY (362 Personal Injury - Med. Malpractice, 365 Personal Injury - Product Liability, 368 Asbestos Personal Injury Product Liability, 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability)
PRISONER PETITIONS: 510 Motions to Vacate Sentence, Habeas Corpus (530 General, 535 Death Penalty, 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition)
FORFEITURE/PENALTY: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Laws, 640 R.R. & Truck, 650 Airline Regs., 660 Occupational Safety/Health, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 730 Labor/Mgmt. Reporting & Disclosure Act, 740 Railway Labor Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 810 Selective Service, 850 Securities/Commodities/Exchange, 875 Customer Challenge 12 USC 3410, 890 Other Statutory Actions, 891 Agricultural Acts, 892 Economic Stabilization Act, 893 Environmental Matters, 894 Energy Allocation Act, 895 Freedom of Information Act, 900 Appeal of Fee Determination Under Equal Access to Justice, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. §1981
Brief description of cause:
Defendant demoted and then fired Plaintiff because of his race and in retaliation for complaining of race discrimination.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE
DOCKET NUMBER

DATE: 09/25/07
SIGNATURE OF ATTORNEY OF RECORD: /S/ Samuel J. Cordes

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

JS 44AREVISED OCTOBER, 1993

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (_____ Erie _____ Johnstown _____ X _____ Pittsburgh) calendar.

ERIE CALENDAR - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang

- 1. _____ or Warren, OR any plaintiff or defendant resides in one of said counties.
- 2. JOHNSTOWN CALENDAR - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
- 3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
- 4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

- 1. _____ This case is related to Number _____ Judge _____.
- 2. X This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

- 1. () Antitrust and Securities Act Cases
- 2. () Labor-Management Relations
- 3. () Habeas Corpus
- 4. (X) Civil Rights
- 5. () Patent, Copyright, and Trademark
- 6. () Eminent Domain
- 7. () All other federal question cases
- 8. () All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
- 9. () Insurance indemnity, contract and other diversity cases.
- 10. () Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: 09/25/07

/S/ Samuel J. Cordes

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.