

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION)

Plaintiff,)

vs.)

JOHN Q. HAMMONS HOTELS, Inc. and)
JOHN Q. HAMMONS HOTELS L.P. d/b/a)
EMBASSY SUITES COLUMBIA)
ATRIUM HOTEL,)

Defendant/s.)

STEPHON ALEXANDER SCOTT)

Plaintiff/ Intervener,)

vs.)

JOHN Q. HAMMONS HOTELS, Inc. and)
JOHN Q. HAMMONS HOTELS L.P. d/b/a)
EMBASSY SUITES COLUMBIA)
ATRIUM HOTEL,)

Defendant/s.)

Civil Action No.: 3: 04 22067 22

FILED

DEC 10 2004

LARRY W. PROPEL, CLERK
COLUMBIA, SC

**COMPLAINT OF STEHPON A. SCOTT
PLAINTIFF**

Plaintiff/Intervener, Stephon A. Scott, by and through his undersigned attorney, for his Complaint, avers as follows:

INTRODUCTION

1. This is a complaint authorized and instituted pursuant to the common law of the State of South Carolina, South Carolina Statutory Law, Federal Civil Rights Act of 1964, as amended (herein "Title VII"), 42 U. S. C. §2000 *et. seq.*, the thirteenth amendment to the United States Constitution, 42 U. S. C. §1981.

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PARTIES

2. Plaintiff/intervener (hereinafter "Scott" and/or "Plaintiff") is a black citizen of the United States and, at all times relevant herein, was a resident of the County of Richland, and State of South Carolina. Plaintiff is currently a resident of the State of South Carolina.
3. Upon information and belief, John Q. Hammons, Inc. and John Q. Hammons L. P. D/B/A Embassy Suites Atrium Hotel, (hereinafter together referred to as "Hammons" or Defendant), is a corporation/s incorporated in one of the states of the United States and transacts business in the state of South Carolina. Defendant is an employer under 42 U. S. C. §2000e. Said Defendant employs in excess of 500 employees for purposes of damages recoverable pursuant to 42 U. S. C. §1981a.

JURISDICTION AND VENUE

5. The unlawful conduct alleged in this Complaint was committed in Richland County, South Carolina.
6. Plaintiff has motioned to intervene in this lawsuit brought by the Equal Employment Opportunity Commission (hereinafter "EEOC") pursuant to 42 U.S.C. e-5(f) as amended. Plaintiff has therefore satisfied all private, administrative and judicial prerequisites to the institution of this Complaint.
7. Jurisdiction and venue are proper in this Court under the following statutes: 28 U.S.C. §1391 (b); 42 U. S. C. §2000e, *et. seq.*, 42 U.S.C. e-5(f), Section 15-7-10 et seq. Of the Code of Laws for South Carolina.

FACTUAL BACKGROUND

8. Plaintiff (Scott) incorporates the allegations of fact as set forth in the Complaint filed by the Equal Employment Opportunity Commission (hereinafter "EEOC") within paragraphs 7-12 as if set forth verbatim herein.
9. Plaintiff was an employee with Defendant as a bartender/waiter and worked as an employee of Defendant for approximately, eight (8) years. During his tenure, Plaintiff Scott was considered to be one of the best employees and civic and other groups requiring bartenders

and doing business with the Defendant would ask for him personally.

10. During the time Plaintiff was employed by Defendant, he was subject to racial jokes, hate statements, racial innuendos, racial hostility and disparate treatment based on his race by an agent and primary employee (head chef) of Defendant.
11. Such racially hostile and disparate treatment increased greatly approximately two years prior to his termination and coincided with his promotion to a supervisory position within the waiters and bartenders. The racially motivated harassment began to interfere with Plaintiff's ability to perform his job duties and, prior to his termination, included physical abuse as well as emotional and mental abuse.
12. Within a short period of time, Plaintiff reported such harassment to upper management within the Hotel through the chain of command. Such reports resulted in no action taken and an increase in the racially hostile environment rather than a decrease.
13. On or about December 5, 2001, Plaintiff forwarded a written complaint to a higher level management employee and such letter was discovered the following day by management of the facility. Plaintiff was terminated immediately after the discovery of this complaint regarding his complaint of racial harassment and bias at the facility.
14. Stephon Scott further, during his last several years as an employee with Defendant, noticed that many of Defendant's practices and policies were discriminatory including but not limited to stricter requirements for black patrons regarding complimentary offerings, segregation of patrons, constraint of black patrons regarding amenities and increased identification and other requirements for black patrons versus white guests in addition to providing a lower level of service for black versus white groups renting or using the hotel.
15. Plaintiff notified and complained to managing agents of the Defendant that he could not treat guests or patrons differently due to their race. He was told by a senior manager at the Hotel, within weeks of his termination, that he must continue with the practices as asked and would be disciplined or terminated if he did not.
16. On or about December 7, 2001, after forwarding the racial discrimination complaint to a higher level official within the Company, Plaintiff was threatened with his job and held in a room against his will unless he retracted his complaint.

17. That evening, Defendant's senior managing agent at the facility terminated Plaintiff without notice or cause.

**FOR A FIRST CAUSE OF ACTION
(VIOLATION OF 42 U. S. C. §2000e, Retaliation/Race Discrimination)**

18. Plaintiff incorporates by reference paragraphs 1 through 17 as though fully set forth herein.
19. During all relevant times herein, Plaintiff and Defendant satisfied the Title VII definition of employee and employer.
20. From the time of his employment, Plaintiff was subject to and required to endure a racially hostile environment, racial discrimination and racially motivated disparate treatment.
21. Defendant discriminated against Plaintiff by treating him in a disparate manner, subjecting him to a racially hostile environment, disparate treatment and failed to correct the environment after many reports and complaints to senior management regarding the ongoing situation and environment from Plaintiff and, upon information and belief, other employees of the Defendant.
22. Plaintiff made good faith complaints and opposition to such discrimination he was required to endure, through the chain of command, to increasing levels of management and his last complaint to corporate resulted in immediate termination. Plaintiff's complaints of discrimination and opposition to unlawfully discrimination were made in good faith and designed to notify and end such practices.
23. Defendant terminated Plaintiff as a result of his opposition to discriminatory practices and, upon information and belief, due to his race. Defendant allowed a pervasive and consistently severe hostile environment to exist at the facility and knew or should have known of such racially hostile environment for most of Plaintiff's tenure.
24. Defendant, with constructive knowledge and/or actual knowledge, allowed a severely hostile environment to exist during most of Plaintiff's employment causing Plaintiff severe emotional and mental stress.
25. Defendant by terminating Plaintiff's employment in contradiction to its own express policy and allowing to exist and flourish a racially hostile environment in addition to retaliating

against Plaintiff for opposing such practices, violated the mandates against retaliation and racial discrimination set forth in Title VII.

26. As a direct and proximate result of Defendant's reckless, willful and intentional acts of discriminatory treatment and retaliation, Plaintiff has experienced severe emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, embarrassment, humiliation, increased medical expenses, past, present and future loss of income, and other economic and non-economic damages including direct and consequential damages.
27. Plaintiff has no plain, adequate or complete remedy at law to correct Defendant's unlawful discrimination and seeks injunctive relief as his only means of securing full relief from Defendant's unlawful conduct.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff backpay, with interest thereon, from the date of discharge until the Plaintiff is restored to his former job and benefits;
- B. Order Defendant to reinstate Plaintiff to his former job with the employee benefits attendant to that job;
- C. Award Plaintiff compensatory and punitive damages in an amount to be determined by a jury, but not less than \$300,000 pursuant to 42 U. S. C §1981a for Defendant's discriminatory conduct, race discrimination and retaliation, against him;
- D. Permanently enjoin Defendant, their agents, officers and employees from engaging in all practices found by this Court to be in violation of 42 U. S. C. §2000e *et. seq.*;
- E. Award Plaintiff the costs and disbursements of this action, including his reasonable attorney's fees, pursuant to 42 U. S. C. §1988 and 2000e-5 (k);
- F. Award such other and further relief as this Court may deem just and proper.

**FOR A SECOND CAUSE OF ACTION
(VIOLATION OF THE THIRTEENTH AMENDMENT TO THE UNITED STATES
CONSTITUTION AND 42 U. S. C. §1981)**

28. Plaintiff, incorporates by reference paragraphs 1 through 27 as though fully set forth herein.
29. Plaintiff, a black person, was employed by Defendant under a contract of employment.
30. As set forth above, Defendant allowed the conditions Plaintiff's employment contract to become racially hostile after constructive and actual knowledge of such conditions. Defendant further terminated Plaintiff's employment and the motivation for such termination was based on retaliation for opposing racial discrimination practices and his race, African American. Said actions and termination were based on Plaintiff's race and violate his

constitutional right to make and enforce contracts in the same manner as white persons.

31. As a direct and proximate result of Defendant's reckless, willful and intentional acts of discriminatory treatment, Plaintiff experienced severe emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, embarrassment, humiliation, increased medical expenses, past, present and future loss of income, and other economic damages.
32. Plaintiff has no plain, adequate or complete remedy at law to correct Defendant's unlawful discrimination and seeks injunctive relief as his only means of securing full relief from Defendant's unlawful conduct.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff backpay, with interest thereon, from the date of discharge until the Plaintiff is restored to his former job and benefits;
- B. Order Defendants to reinstate Plaintiff to his former job with the employee benefits attendant to that job;
- C. Award Plaintiff punitive damages in an amount sufficient to impress upon Defendant the seriousness of its misconduct and to deter such similar misconduct in the future as determined by the jury.
- D. Permanently enjoin Defendant, its agents, officers and employees from engaging in all practices found by this Court to be in violation of the thirteenth amendment to the United States Constitution and 42 U. S. C. §1981 *et. seq.*;
- E. Award Plaintiff the costs and disbursements of this action, including his reasonable attorney's fees, pursuant to 42 U. S. C. §1988;
- F. Award such other and further relief as this Court may deem just and proper.

**FOR A THIRD CAUSE OF ACTION
(WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY)**

33. Plaintiff incorporates by reference paragraphs 1 through 32 as though fully set forth herein.
34. Defendant was engaging in practices and policies which discriminated against African American patrons as they were not treated the same as white patrons in their contractual relationship/s in Defendant.
35. Plaintiff notified Defendant's management of this discrimination and stated he could not engage in discriminatory behavior. Such notification and opposition was prior to his unfounded termination with Defendant and Defendant threatened Plaintiff with discipline in

- his position if he did not continue to support such practices and policies.
36. Such discrimination of contracting parties regarding the conditions and terms of contractual relations is violative of public policy and illegal as codified in 42 U.S.C. §1981 and other federal and state laws.
 37. Upon information and belief, Plaintiff's termination was in part caused by his opposition and refusal to condone and participate in such policies.
 38. Plaintiff's discharge, violates express and implicit public policy and termination for Plaintiff's actions is in violation of such public policy.
 39. As a direct and proximate result of Defendant's wrongful discharge, Plaintiff has been damaged in an amount to be determined by the jury.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff backpay, with interest thereon, and front pay from the date of discharge or until the Plaintiff is restored to his former job and benefits;
- B. Award Plaintiff punitive damages in an amount sufficient to impress upon Defendant the seriousness of its misconduct and to deter such similar misconduct in the future as determined by the jury;
- C. Award Plaintiff the costs and disbursements of this action
- D. Award such other and further relief as this Court may deem just and proper.

**FOR A FOURTH CAUSE OF ACTION
(ASSAULT AND BATTERY)**

40. Plaintiff incorporates by reference paragraphs 1 through 39 as though fully set forth herein.
41. Defendant's agent, the head chef for the facility (hereinafter "Chef") was a primary and key employee of the Defendant. Defendant knew or should have known the hostility and racist attitude and actions by "Chef" toward and against Plaintiff.
42. After Plaintiff's Complaints to senior management at the facility, Chef, while at work, threatened and indicated an intent to do bodily harm to Plaintiff on several occasions.
43. Chef's conduct placed Plaintiff, on several occasions, in reasonable fear of bodily harm.
44. Chef, on one occasion while at work and several weeks prior to Plaintiff's termination, stuck Plaintiff physically on several occasions.
45. Such infliction of forcible contact on Plaintiff was without justification or cause.

46. Such actions by Defendant's agent, caused actual damages to Plaintiff including but not limited to severe emotional stress and mental anguish.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff actual damages;
- B. Award Plaintiff punitive damages in an amount sufficient to impress upon Defendant the seriousness of its misconduct and to deter such similar misconduct in the future as determined by the jury;
- C. Award Plaintiff the costs and disbursements of this action
- D. Award such other and further relief as this Court may deem just and proper.

**FOR A FIFTH CAUSE OF ACTION
(WRONGFUL DISCHARGE / BREACH OF CONTRACT)**

47. Plaintiff incorporates by reference paragraphs 1 through 46 as though fully set forth herein.
48. Plaintiff was an employee of Defendant for approximately eight (8) years and throughout his tenure, he met or exceeded the legitimate expectations of his employer.
49. Defendant distributed a handbook to Plaintiff and other employees, subsequent to his hire, and was informed by his supervisor at the time that the provisions of the handbook would be followed by the Company and must be followed by employees. Plaintiff was further assured that no employee would be terminated without cause and the provisions of the policy manual (handbook) would be followed in pursuing discipline.
50. The handbook contained prohibitions and a code of conduct stated in mandatory language and the stated and course of dealing practice of Defendant was to use progressive discipline.
51. Plaintiff was terminated without notice or cause and contrary to express and implied provisions within the handbook, including the implicit covenant of good faith and fair dealing.
52. As a direct and proximate result of Defendant's breach of contract, Plaintiff has been damaged in an amount to be determined by the jury.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff backpay, with interest thereon, and front pay from the date of discharge or until the Plaintiff is restored to his former job and benefits
- B. Award Plaintiff the costs and disbursements of this action
- C. Award such other and further relief as this Court may deem just and proper.

**FOR A SIXTH CAUSE OF ACTION
(BREACH OF CONTRACT /Accompanied by a Fraudulent Act)**

53. Plaintiff incorporates by reference paragraphs 1 through 52 as though fully set forth herein.
54. Defendant, through its handbook and other company policies with mandatory and promissory language, created a unilateral contract which altered the legally presumed at will relationship between Defendant and Plaintiff.
55. Defendant breached such language by terminating him using a false and defamatory accusation and immediately prior to the false accusation, Defendant unlawfully restrained Plaintiff until he would agree to retract a written complaint regarding discriminatory treatment.
56. Such breach/s, upon information and belief, was taken in bad faith and was a fraudulent act made and taken with fraudulent intent.
57. Defendant's wrongful discharge accompanied with these acts and fraudulent intent directly and proximately caused Plaintiff to be damaged in an amount to be determined by the jury.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff backpay, with interest thereon, and front pay from the date of discharge or until the Plaintiff is restored to his former job and benefits;
- B. Award Plaintiff punitive damages in an amount sufficient to impress upon Defendant the seriousness of its misconduct and to deter such similar misconduct in the future as determined by the jury;
- C. Award Plaintiff the costs and disbursements of this action
- D. Award such other and further relief as this Court may deem just and proper.

**FOR A SEVENTH CAUSE OF ACTION
(DEFAMATION)**

58. Plaintiff incorporates by reference paragraphs 1 through 57 as though fully set forth herein.
59. Defendant stated, published and articulated expressly and implicitly, to third parties, representations about the Plaintiff's employment performance, his trade and inadequacy in performing his trade while employed and subsequent to his termination of employment.
60. Such published messages and/or statements were of a defamatory nature and such express and

implicit statements and messages about Plaintiff had a defamatory meaning.

61. Such statements were and are false.
62. The messages defaming Plaintiff's ability in his trade and work ethic and employment were about and concerned Plaintiff and were made with actual or implied malice.
63. Plaintiff has suffered special damages including but not limited to his decreased ability to continue working under contracts for bartending not associated with Defendant and employment after his termination, and legally presumed damages as a result of such messages/statements regarding his trade.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff backpay, with interest thereon, and front pay from the date of discharge or until the Plaintiff is restored to his former job and benefits;
- B. Award Plaintiff punitive damages in an amount sufficient to impress upon Defendant the seriousness of its misconduct and to deter such similar misconduct in the future as determined by the jury;
- C. Award Plaintiff the costs and disbursements of this action
- D. Award such other and further relief as this Court may deem just and proper.

**FOR AN EIGHTH CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

64. Plaintiff incorporates by reference paragraphs 1 through 63 as though fully set forth herein.
65. Defendant, through its agent Chef, by assaulting, harassing, discriminating, chastising, striking, and otherwise creating an atmosphere of hate and hostility, intentionally, willfully and recklessly caused Plaintiff severe emotional distress.
66. Defendant, had actual and/or constructive knowledge of such actions by its agents and ratified such behavior.
67. Such conduct was so extreme and outrageous as to exceed all possible bounds of decency, was atrocious and intolerable in a civilized society.
68. The emotional distress suffered by Plaintiff was severe and no reasonable person should be expected to endure or tolerate such distress.
69. Defendant, through its agent/s, was substantially certain that severe distress would result from such actions and such actions did, as a direct and proximate result, cause Plaintiff emotional

distress.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff actual damages;
- B. Award Plaintiff punitive damages in an amount sufficient to impress upon Defendant the seriousness of its misconduct and to deter such similar misconduct in the future as determined by the jury;
- C. Award Plaintiff the costs and disbursements of this action
- D. Award such other and further relief as this Court may deem just and proper.

**FOR A NINTH CAUSE OF ACTION
(FALSE IMPRISONMENT)**

- 70. Plaintiff incorporates by reference paragraphs 1 through 69 as though fully set forth herein.
- 71. On the date of Plaintiff's termination and after Plaintiff had sent the letter opposing the discriminatory practices to corporate offices, Defendant/s, through its agents Brayton and Parsons, forcibly took Scott to a room and demanded that Plaintiff rescind the complaint and state that the content of the letter was not accurate. Mr. Scott declined stating he had reported the actions and discrimination to all levels of management within the facility.
- 72. Defendant/s, through its agents, would not allow Scott to leave the room despite his stated desire to leave the room. Scott reasonably believed that he could not leave the room.
- 73. Defendant restrained Plaintiff from exiting a room despite his desire to leave.
- 74. Such restraint was intentional and unlawful.

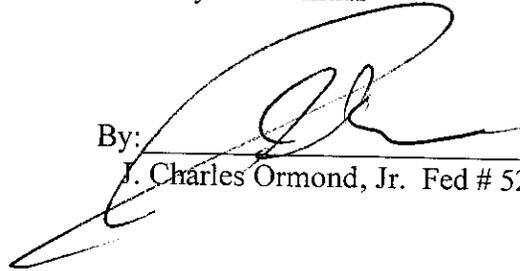
WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff actual or nominal damages;
- B. Award Plaintiff punitive damages in an amount sufficient to impress upon Defendant the seriousness of its misconduct and to deter such similar misconduct in the future as determined by the jury;
- C. Award Plaintiff the costs and disbursements of this action
- D. Award such other and further relief as this Court may deem just and proper.

September 9, 2004

Law Offices
Holler Dennis Corbett Ormond & Garner
Attorney for Plaintiff

By:



J. Charles Ormond, Jr. Fed # 5276

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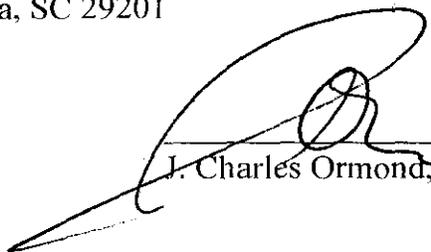
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10 day of Dec., 2004, a copy of **Plaintiff's / Intervening Pleading / Complaint** was served upon Defendant by depositing the same in the United States mail, first class, postage prepaid, and addressed to:

Via U.S. Mail

Jessica Dixon, Esq., Regional Attorney
U.S. Equal Employment Opportunity Commission
129 West Trade Street, Suite 400
Charlotte, NC 28202

William Duda, Esquire
Olgetree Deakins et al.
1201 Main Street, 1230
Columbia, SC 29201



J. Charles Ormond, Jr. (#5276)