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NORTH CAROLINA

GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2009 JUL 29 P 1:05

09 CVS 9921

TRENT DAY,

Plaintiff,

vs.

ADVANCE STORES COMPANY, INCORPORATED,

Defendant.

COMPLAINT

COMES NOW PLAINTIFF, complaining of the acts of Defendant, alleges and says that:

1.

Plaintiff is a citizen and resident of Alamance County, North Carolina.

2.

Upon information and belief, Defendant is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with places of business in North Carolina.

FIRST CAUSE OF ACTION: RACIAL DISCRIMINATION AND RETALIATION

3.

That, Plaintiff, a Black male, became employed by Defendant in approximately 2004. He worked in a variety of positions until October, 2008 when his employment was terminated for a second time.

4.

That Plaintiff has complained about racially hostile treatment by non-minority employees and customers of Defendant. Plaintiff also notified management of Defendant regarding his concerns through conversations and a prior EEOC filing for racial discrimination and harassment. Through the prior EEOC activity and discovery he notified the Defendant of a noose that was left for him in his workplace as an example of the ongoing harassment and hostile work environment.

5.

Plaintiff repeatedly notified Defendant that said conduct was unacceptable and

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discriminatory but the work environment did not change. Said conduct of Defendant's supervisors was responsible for creating an intimidating, hostile, and offensive work environment for the Plaintiff. Plaintiff even tried self-demotion to relieve some of the scrutiny from his manager but the difficulties remained.

6.

Plaintiff repeatedly sought assistance and an end to the discrimination but, upon information and belief, no viable action was taken by Defendant. Thus Defendant was aware of the discrimination alleged by Plaintiff and failed to take action to correct the situation. Further, said managers began to retaliate against Plaintiff by work assignments, work locations, reduced working hours, and denial of necessary training in his second assistant manager position. New hire part-time employees were given more work hours than Plaintiff who was a full time employee.

7.

At all times relevant herein, Plaintiff's supervisors to whom he complained were agents of the Defendant, duly authorized and acting within the scope of their employment.

8.

Throughout his employment, Plaintiff worked to the best of his abilities and with the best interests of the Defendant in mind.

9.

The conduct of Defendant, as alleged herein, not only violates Title VII of the Civil Rights Act of 1964, as amended, but also violates the public policy of the State of North Carolina.

10.

That within 180 days of the last discriminatory actions of Defendant, Plaintiff filed a charge in writing with the Equal Employment Opportunity Commission (hereinafter "EEOC") charging Defendant with racial discrimination in its creation of a hostile atmosphere, retaliation, and racial discrimination in its termination of Plaintiff's employment. Upon completion of its investigation, the EEOC issued a Right to Sue Letter on said charges of discrimination. At this time, Plaintiff has decided to institute a private lawsuit, and is filing same within ninety (90) days of receipt of the EEOC's Right to Sue Letter.

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11.

Said creation of a hostile environment, retaliation, termination, and racial discrimination of Plaintiff by Defendant, by and through its duly authorized agents is the direct and proximate cause of injury to Plaintiff in an amount in excess of $10,000.00 representing lost wages and benefits, as well as emotional distress. The stress of the Defendant's actions has led to serious medical problems for Plaintiff as well as medical expenses in excess of $10,000.00.

SECOND CAUSE OF ACTION: PUNITIVE DAMAGES

12.

The allegations set forth in paragraphs one through eleven are realleged and incorporated by reference as if fully set forth.

13.

The above described acts or omissions of the Defendant, by and through its duly authorized agents acting within the scope of their employment, constitute wrongs done wantonly, willfully, or with actual malice, or under circumstances of rudeness, insult, indignity, oppression, or in a manner which demonstrates a reckless disregard of the Plaintiff's rights.

14.

Plaintiff is entitled to recover of Defendant on this cause an amount to be determined at trial as punitive damages to deter discrimination by Defendant in the future.

WHEREFORE, Plaintiff prays the Court as follows:

1. That Defendant be ordered to cease all discrimination and to eliminate the hostile environment which exists in its facility;

2. That Defendant be ordered to reinstate Plaintiff to his position, with back pay and benefits;

3. That he recover judgment against Defendant in an amount in excess of $10,000.00;

4. That he recover the costs of this action, including reasonable attorney's fees; and

5. For such other and further relief as to the Court may seem just and proper.

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