

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

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

MARTELL WAITE,

Plaintiff-Intervenor,

v.

CHAMPION WINDOW MANUFACTURING  
& SUPPLY CO., LLC, d/b/a/ CHAMPION  
WINDOW MFG., INC. and/or d/b/a  
CHAMPION WINDOW OF PITTSBURGH

Defendant.

Civil Action

No. 07-1563

Judge Schwab

JURY TRIAL DEMANDED

**COMPLAINT IN INTERVENTION**

Intervenor, Martell Waite, files this Complaint in Intervention and joins with Plaintiff, Equal Employment Opportunity Commission, in seeking legal and equitable relief, and also asserts his own claim pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e-2(a)(1) and 2000e-3(a), and the Pennsylvania Human Relations Act (PHRA), 43 Pa. Cons.Stat. Ann. §§ 955(a) and 955(d) in support alleges the following:

**I. Jurisdiction**

1. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. §2000e-5(f)(1); 42 U.S.C. §1981A, and this Court's supplemental jurisdiction pursuant to 28 U.S.C. §1367.

2. Intervenor, Martell Waite, intervenes as of right pursuant to Fed. R.Civ.P. 24(a) and 42 U.S.C. §2000e-5(f)(1).

## II. The Parties

3. Plaintiff, the Equal Employment Opportunity Commission (“Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII.

4. Plaintiff-Intervenor, Martell Waite (“Waite”), is an African American Male, and was an employee of Defendant.

5. Defendant, a construction company, is a Delaware Corporation headquartered in Cincinnati, Ohio, and has continuously been doing business in the State of Pennsylvania and the City of Pittsburgh.

## III. Factual Background

6. Waite worked for Defendant from August 2005 and was fired January 27, 2007 effective January 19, 2007.

7. Defendant hired Waite as a Helper.

8. 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.”

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

10. 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.

11. When Waite confronted and complained to Swartzwelder about Duggins’ use of the word, “nigger;” Swartzwelder replied, “I know you’ve heard that word before.”

12. 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.”

13. 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. Respondent’s Human Resources Director advised Waite not to mention race in his complaint to Defendant’s corporate office.

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

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

16. 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.

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

**Count I**  
**Title VII**  
**Discrimination**

18. Waite incorporates by reference paragraphs 1 through 17 as if fully restated herein.

19. Defendant engaged in unlawful employment practices, demoted Waite, and fired Waite because of his race in violation of Title VII of the Civil Rights Act, 42 U.S.C. §2000e-2(a)(1).

20. Defendant’s unlawful employment practices, demotion, and termination of Waite were undertaken with reckless indifference to his federally protected rights under Title VII.

21. As a direct result of Defendant’s violation of Title VII, Waite has lost wages and other

economic benefits of his employment with Defendant, in addition to suffering extreme emotional distress, depression, inconvenience and humiliation.

WHEREFORE, Waite requests the following:

- a. That the Court enter a judgment declaring Defendant's actions to be unlawful and in violation of Title VII of the Civil Rights Act;
- b. That Defendant be ordered to reinstate Plaintiff and provide him accumulated seniority, fringe benefits, and all other rights;
- c. That Defendant be required to compensate Plaintiff for the full value of wages he would have received had it not been for Defendant's illegal treatment of Plaintiff, with interest from the date of discrimination, in addition to reimbursement for lost pension, social security, experience, training opportunities and other benefits;
- d. That the Court award Plaintiff compensatory damages as a result of Defendant's violations of Title VII of the Civil Rights Act;
- e. That Defendant be ordered to pay Plaintiff punitive damages in an amount sufficient to punish Defendant's illegal conduct and to deter others from engaging in similar conduct.
- f. That Defendant be enjoined from discriminating against Plaintiff in any manner that violates Title VII of the Civil Rights Act;
- g. That Plaintiff be awarded against Defendant the costs and expenses of this litigation and a reasonable attorney fee; and
- h. That the Court grant Waite additional relief as may be just and proper.

**Count II**  
**Title VII**  
**Retaliation**

22. Plaintiff incorporates by reference the allegations in Paragraphs 1 to 21 as if fully restated herein.

23. Defendant fired Waite in retaliation for opposing conduct made illegal under Section

704(a) of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e-3(a).

24. As a direct result of Defendant's retaliation, Waite has lost wages and other economic benefits of his employment with Defendant, in addition to suffering extreme emotional distress, depression, inconvenience and humiliation.

WHEREFORE, Waite requests the following:

- a. That the Court enter a judgment declaring Defendant's actions to be unlawful and in violation of Title VII of the Civil Rights Act;
- b. That Defendant be ordered to reinstate Plaintiff and provide his accumulated seniority, fringe benefits and all other rights;
- c. That Defendant be required to compensate Plaintiff for the full value of wages he would have received had it not been for Defendant's illegal treatment of Plaintiff, with interest from the date of discrimination, in addition to reimbursement for lost pension, social security, experience, training opportunities and other benefits;
- d. That the Court award Plaintiff compensatory damages as a result of Defendant's violations of Title VII of the Civil Rights Act;
- e. That Defendant be ordered to pay Plaintiff punitive damages in an amount sufficient to punish Defendant's illegal conduct and to deter others from engaging in similar conduct.
- f. That Defendant be enjoined from discriminating against Plaintiff in any manner that violates Title VII of the Civil Rights Act;
- g. That Plaintiff be awarded against Defendant the costs and expenses of this litigation and a reasonable attorney fee; and
- h. That the Court grant Waite additional relief as may be just and proper.

**Count III**  
**PHRA**

25. Plaintiff incorporates by reference the allegations in Paragraphs 1 to 24 as if fully restated herein.

26. Defendant fired Waite because of his race and in retaliation for opposing race discrimination in violation of the PHRA, 43 Pa. Conns. Stat. Ann. §§ 955(a) and 955(d).

27. As a direct result of Defendant's violation of the PHRA, Waite has lost wages and other economic benefits of his employment with Defendant, in addition to suffering extreme emotional distress, depression, inconvenience and humiliation.

WHEREFORE, Waite requests the following:

- a. That the Court enter a judgment declaring Defendant's actions to be unlawful and in violation of the Pennsylvania Human Relations Act;
- b. That Defendant be ordered to reinstate Plaintiff and provide his accumulated seniority, fringe benefits, and all other rights;
- c. That Defendant be required to compensate Plaintiff for the full value of wages he would have received had it not been for Defendant's illegal treatment of Plaintiff, with interest from the date of discrimination, in addition to reimbursement for lost pension, social security, experience, training opportunities and other benefits;
- d. That the Court award Plaintiff compensatory damages as a result of Defendant's violations of the Pennsylvania Human Relations Act;
- e. That Defendant be enjoined from discriminating against Plaintiff in any manner that violates the Pennsylvania Human Relations Act;
- f. That Plaintiff be awarded against Defendant the costs and expenses of this litigation and a reasonable attorney fee; and
- g. That the Court grant Waite additional relief as may be just and proper

Respectfully submitted,

**Ogg, Cordes, Murphy & Ignelzi**

/S/ Samuel J. Cordes

Samuel J. Cordes

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Attorneys for Plaintiff Intervenor

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of December 2007, I served a copy of the foregoing *Complaint in Intervention* via electronic mail as follows:

John J. Myers  
Allison L. Feldstein  
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M. Jean Clickner, Esquire  
U.S. Equal Employment Opportunity Commission  
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/S/ Samuel J. Cordes  
Samuel J. Cordes