

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

JOSEPH A. GOODEN,

Plaintiff,

v.

TIMPTE, INC., HAROLD CRABTREE, and Does 1 through 10,

Defendants.

COMPLAINT

Plaintiff Joseph Gooden, by and through his attorneys Fox & Robertson, P.C., hereby submits this Complaint for racial discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, intentional infliction of emotional distress and ethnic intimidation.

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.
2. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiff Joseph Gooden is an African-American citizen and was at all times material hereto a resident of the State of Colorado.

4. Defendant Timpte, Inc. (“Timpte”) is a company that manufactures truck and van bodies and truck trailers. Timpte has a manufacturing plant in Commerce City, Colorado. It is incorporated in the State of Delaware and registered to do business in Colorado. Its principal places of business are Council Bluffs, Iowa and Commerce City, Colorado.

5. Defendant Harold Crabtree is a supervisor at Timpte. On information and belief, Defendant Crabtree is a resident of the State of Colorado.

6. Defendants Does 1 through 10 are employees, supervisors and/or managers of Timpte whose identity is unknown to Plaintiff at this time.

GENERAL ALLEGATIONS

7. Plaintiff Joseph Gooden was hired as an employee at Timpte’s Commerce City plant in April 1998. He was the only African-American employee in a plant with at least 65 employees. From the start of his employment at Timpte, Mr. Gooden experienced subtle discrimination in the form of being shunned by many of his co-workers. This continued throughout his employment at Timpte.

8. This subtle discrimination soon became quite blatant. Shortly after he began working at Timpte, Mr. Gooden found out that another employee referred to Mr. Gooden as a “nigger.” Despite the fact that this slur was made in the presence of a Timpte supervisor, Defendant Harold Crabtree, the employee who made the statement was not disciplined.

9. In July 1998, Defendant Crabtree -- anticipating and apparently condoning the appalling discrimination to come -- told Mr. Gooden that if he saw a noose around the shop he

should not worry, that it would merely be a “joke” arising from the O.J. Simpson trial.

Defendant Crabtree also said that there had been nooses in the shop in the past.

10. Also in July, Mr. Gooden discovered that another co-worker had referred to him as a “nigger” and that this slur had been voiced in Defendant Crabtree’s presence. Mr. Gooden discussed the incident with the President and the Human Resources Director at Timpte. Despite reassurances made to Mr. Gooden that they would deal with the situation, the employee who made the racial slur was not terminated and received only minor, if any, discipline.

11. On August 7, 1998, Mr. Gooden arrived at work and opened the cabinet where his tools and other belongings were kept. Inside he found a black doll with a noose around its neck hanging from the top of the cabinet. Finding a depiction of an African American being lynched appalled, distressed and frightened Mr. Gooden. Faced with a workplace in which he was the only African American employee, in which he had been the target of racial slurs, and in which his supervisors and managers did not nothing to stop the discrimination, Mr. Gooden feared for his personal safety.

12. On information and belief, the noose and doll were placed in Mr. Gooden’s locker by Timpte employees, supervisors and/or managers whose identity is unknown to Mr. Gooden. These individuals are designated herein as Does 1 through 10.

13. Mr. Gooden often witnessed other Timpte workers using offensive ethnic epithets in reference to and to the face of Latino co-workers. Such epithets were often used in the presence of Timpte supervisors and managers. Such supervisors and managers tolerated, approved of, and condoned the racially and ethnically hostile workplace.

14. The conduct described herein created intolerable working conditions for Mr. Gooden. The racial harassment and intimidation were sufficiently severe and/or pervasive that they altered the terms, conditions and/or privileges of his employment. Mr. Gooden felt demeaned and humiliated by the environment of racial intolerance and abuse and felt fear for his personal safety in reaction to the mention and eventual appearance of a noose. A reasonable person in Mr. Gooden's position would likewise feel demeaned, humiliated and frightened by the conduct he encountered.

15. The events described above had the effect of unreasonably interfering with Mr. Gooden's work performance and of creating an intimidating, hostile, and offensive working environment.

16. Upon discovery of the noose in his locker, Mr. Gooden quit his position with Defendant Timpte. Based on the conduct described herein, this separation constituted a constructive discharge.

17. On information and belief, Timpte and its agents and/or its supervisory and management-level employees (including but not limited to Defendant Crabtree) knew of incidents of racial and ethnic harassment, hostility and slurs in the workplace including but not limited to those directed toward or concerning Mr. Gooden.

18. Defendant Timpte and its agents and/or supervisory and management-level employees (including but not limited to Defendant Crabtree) knew or should have known of the events described above and other incidents of racial and ethnic harassment, hostility and slurs and took no corrective action.

19. Defendant Timpte was negligent and/or reckless in its failure to take appropriate action to remedy or prevent the hostile or offensive work environment of which its supervisory and management- level employees (including but not limited to Defendant Crabtree) knew, or in the exercise of reasonable care should have known.

20. Defendant Timpte reasonably could have foreseen that Mr. Gooden would encounter racial harassment and hostility in its workplace.

21. Defendant Timpte did not have an effective policy barring and/or remedying racial harassment. It did not provide preventive or corrective opportunities of which Mr. Gooden might have taken advantage.

22. Although Mr. Gooden reported the use of racial epithets to Timpte's human resources department and although Defendant Crabtree explicitly stated that he was aware of the existence of a noose and the possibility that Mr. Gooden would be offended by its presence, neither Timpte nor Crabtree took any or sufficient action to punish the harassers and/or prevent further harassment. Defendants Timpte and Crabtree failed to exercise reasonable care to prevent and failed to correct promptly the racially hostile environment at the Commerce City plant.

23. Defendants Timpte and Crabtree approved, sanctioned, ratified and/or cooperated with the conduct described herein.

24. The conduct described herein was directed at Mr. Gooden based on his race.

25. Defendants Timpte, Crabtree and Does 1 through 10 acted maliciously, with evil motive or intent, and/or with reckless or callous indifference to Mr. Gooden's federally protected rights.

26. Mr. Gooden suffered injuries as a result of Defendants' conduct including, but not limited to, loss of backpay, front pay, benefits and other compensation, loss of self-esteem, severe emotional distress, humiliation, embarrassment, anguish and fear.

27. On or about August 18, 1998, Mr. Gooden timely filed a charge of discrimination with the Colorado Civil Rights Division. A copy of this charge is attached hereto as Exhibit 1. On or about March 15, 1999, Mr. Gooden received a Notice of Right to Sue from the Equal Employment Opportunity Commission. A copy of this letter is attached hereto as Exhibit 2. Mr. Gooden has thus satisfied all conditions precedent to filing this suit under Title VII of the Civil Rights Act of 1964.

Count I: Violation of Title VII of the Civil Rights Act of 1964
(Against Defendant Timpte)

28. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 - 27 above as if fully set forth herein.

29. Based on the facts set forth above, Defendant Timpte discriminated against Mr. Gooden on the basis of his race by causing his constructive discharge and with respect to the terms, conditions, and/or privileges of Mr. Gooden's employment, in violation of 42 U.S.C. § 2000e et. seq.

30. Mr. Gooden was injured by Defendant Timpte's discrimination as more fully set forth above.

Count II: Violation of 42 U.S.C. § 1981
(Against all Defendants)

31. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 - 30 above as if fully set forth herein.

32. Through the acts described above, Defendants intentionally interfered with Mr. Gooden's right to make and enforce contracts as defined in 42 U.S.C. § 1981 and/or intentionally caused an infringement of Mr. Gooden's rights under that statute.

33. Defendants' conduct violated Mr. Gooden's rights under 42 U.S.C. § 1981.

34. Mr. Gooden was injured by Defendants' violation of 42 U.S.C. § 1981 as more fully set forth above.

Count III: Ethnic Intimidation
(Against all Defendants)

35. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 - 34 above as if fully set forth herein.

36. Defendants, by the words and conduct described herein, knowingly placed Mr. Gooden in fear of imminent lawless action directed at him and knew or should have known that such words or conduct were likely to produce bodily injury to Mr. Gooden.

37. Defendants engaged in the words and conduct described herein with the intent to intimidate or harass Mr. Gooden because of his race.

38. Defendants acted in violation of C.R.S. §§ 18-2-121(2) and 13-21-106.5.

39. Mr. Gooden was injured by Defendants' ethnic intimidation as more fully set forth above.

Count IV: Intentional Infliction of Emotional Distress

(Against Defendants Does 1 through 10)

40. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 - 39 above as if fully set forth herein.

41. The conduct described herein constitutes extreme and/or outrageous conduct.

42. Defendants Does 1 through 10 engaged in the conduct described above recklessly or with the intent of causing Mr. Gooden severe emotional distress.

43. The conduct described above caused Mr. Gooden severe emotional distress and other injuries as more fully set forth above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays:

1. That this Court assume jurisdiction;
2. That this Court declare the actions of Defendant Timpte described herein to be in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981 and C.R.S. §§ 18-2-121(2) and 13-21-106.5.
3. That this Court declare the actions of Defendant Crabtree described herein to be in violation of 42 U.S.C. § 1981 and C.R.S. §§ 18-2-121(2) and 13-21-106.5.
4. That this Court declare the actions of Defendants Does 1 through 10 described herein to be in violation of 42 U.S.C. § 1981 and C.R.S. §§ 18-2-121(2) and 13-21-106.5 and to constitute intentional infliction of emotional distress;

5. That this Court award Mr. Gooden damages for backpay, front pay, benefits and other compensation in an amount to be proved at trial;

6. That this Court award Mr. Gooden compensatory damages in an amount to be proved at trial;

7. That this Court award Mr. Gooden exemplary and punitive damages for Defendants' intentional, malicious and reckless conduct, such damages to be in an amount commensurate with each Defendant's ability to pay and sufficient to deter future illegal conduct;

8. That this Court award Mr. Gooden his reasonable attorneys' fees and costs; and

9. That this Court award such additional or alternative relief as may be just, proper and equitable.

JURY DEMAND: Plaintiff demands a jury on all issues which can be heard by a jury.

Respectfully submitted,

FOX & ROBERTSON, P.C.

Timothy P. Fox
Amy F. Robertson
1675 Larimer Street, Suite 610
Denver, CO 80202
(303) 595-9700

Dated: April 22, 1999

Attorneys for Plaintiff

Address of Plaintiff:

2180 91st Avenue,
Thornton, Colorado, 80229.