

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

HARRIET THOMPKINS,

Plaintiff,

vs.

Case No. 8:10-CV-1518-T23-TBM

GULF BEACHES PUBLIC LIBRARY, INC.,
a Florida Non-Profit Corporation,

Defendant.

**ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT
AND DEMAND FOR JURY TRIAL**

COMES NOW, Defendant, GULF BEACHES PUBLIC LIBRARY, INC., a Florida non-profit corporation, by and through its undersigned counsel, and file this Answer to Complaint and Affirmative Defenses, as follows:

INTRODUCTION

1. Admitted that this is an action brought under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. Otherwise, denied.

JURISDICTION AND VENUE

Defendant, GULF BEACHES PUBLIC LIBRARY, INC. realleges and reincorporates its responses previously made to Paragraph 1.

2. Without knowledge, therefore denied.
3. Denied.

4. Admitted that this Court has jurisdiction pursuant to 28 U.S.C. § 1331. Otherwise, denied.

PARTIES

Defendant, GULF BEACHES PUBLIC LIBRARY, INC. realleges and reincorporates its responses previously made to paragraphs 1-4.

5. Admitted.
6. Denied.

FACTUAL BACKGROUND

Defendant, GULF BEACHES PUBLIC LIBRARY, INC. realleges and reincorporates its responses previously made to paragraphs 1-6.

7. Without knowledge, therefore denied.
8. Admitted.
9. Denied.
10. Denied.
11. Admitted that Stan Silverstein is a white male who does not possess a Masters in Library Science. Otherwise, denied.
12. Denied.
13. Denied.

COUNT I - RACE DISCRIMINATION

14. Defendant, GULF BEACHES PUBLIC LIBRARY, INC. realleges and reincorporates its responses previously made to paragraphs 1-13.
15. Denied.

16. Denied.

17. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

Second Affirmative Defense

Plaintiff is unable to establish a prima facie case for discrimination based on race under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981.

Third Affirmative Defense

Defendant acted reasonably and in good faith towards to Plaintiff.

Fourth Affirmative Defense

There is no causal relation between the Defendant's employment decision to termination Plaintiff, and her race.

Fifth Affirmative Defense

Defendant made all employment and termination decisions concerning Plaintiff based on legitimate, non-discriminatory factors, other than Plaintiff's race.

Sixth Affirmative Defense

Plaintiff cannot prove that Defendant's reasons for termination was a pretext for discrimination.

Seventh Affirmative Defense

Defendant did not act with malice and/or reckless disregard for Plaintiff's rights protected under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981.

Eight Affirmative Defense

Plaintiff has failed to make every reasonable effort to minimize or reduce her damages for loss of compensation by seeing employment.

Ninth Affirmative Defense

Plaintiff's Complaint includes claims that were not made by Plaintiff in her Charge of Discrimination, submitted to the Equal Employment Opportunity Commission (the "EEOC") and the Pinellas County Office of Human Relations on or about January 20, 2009. Plaintiff is barred from making such claims and is limited to the charges previously filed with the EEOC and Pinellas County Office of Human Relations.

Tenth Affirmative Defense

Defendant is entitled to and claims a set-off for any and all collateral sources, including, but not limited to, any compensation earned by the Plaintiff.

Eleventh Affirmative Defense

Defendant would have terminated the Plaintiff in the absence of any alleged discrimination.

Twelfth Affirmative Defense

Defendant's decision to terminate Plaintiff as an employee was a legitimate, non-discriminatory reason, as Defendant chose to eliminate the position and generate a reduction in work force necessary to achieve financial stability. Verna v. Public Health Trust of Miami-Dade County, 539 F. Supp. 2d 1340 (S.D. Fla. 2008).

DEMAND FOR JURY TRIAL

Defendant, GULF BEACHES PUBLIC LIBRARY, INC., a Florida non-profit corporation, demands a trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2010, I electronically filed the foregoing Answer and Affirmative Defenses to Complaint And Demand for Jury Trial with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Craig L. Berman, Esquire (cberman@tampabay.rr.com), Plaza Tower, 111 Second Avenue NE, Suite 706, St. Petersburg, Florida 33701.

/s/ Andrew J. Salzman

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Attorneys for Defendant, Gulf Beaches Public Library, Inc.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

HARRIET THOMPKINS,

Plaintiff,

vs.

Case No.

**GULF BEACHES PUBLIC LIBRARY, INC.,
a Florida Non-Profit Corporation**

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, HARRIET THOMPKINS ("Plaintiff"), hereby sues Defendant, GULF BEACHES PUBLIC LIBRARY, INC., a Florida Non-Profit Corporation ("Defendant") and alleges as follows:

INTRODUCTION

1. This action is brought under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 to redress discrimination in Plaintiff's discharge from employment and failure to re-hire by Defendant.

JURISDICTION AND VENUE

2. Plaintiff has exhausted her administrative remedies under Title VII of the Civil Rights Act of 1964 by timely filing a charge of race discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC").
3. Plaintiff is not required to exhaust administrative remedies under § 1981.
4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331.

PARTIES

5. Plaintiff was a resident of Pinellas County, Florida at all times material to this action. Defendant is a non-profit Florida corporation conducting business in Pinellas County, Florida within the Middle District of Florida.
6. Defendant is a covered employer under Title VII based on its control and funding by cities which are also covered by Title VII.

FACTUAL BACKGROUND

7. Plaintiff is an African-American female.
8. Plaintiff was employed by Defendant commencing June 26, 2006.
9. On November 6, 2008, Nick Simon, Board of Trustees Chairman, told Plaintiff that her position as Assistant Director/Reference Librarian was being eliminated effective December 1, 2008.
10. Plaintiff was replaced by a white subordinate, Travis Sherman, as Acting Director.
11. Stan Silverstein, a white male, lacks a Masters in Library Science and survived the layoffs.
12. Plaintiff never received anything but positive evaluations of her work by the Director.
13. Plaintiff was discharged based on her race.

COUNT I - RACE DISCRIMINATION

14. Plaintiff realleges paragraphs 1 through 13 as if fully set forth herein.
15. Plaintiff was discharged by Defendant and not re-hired in any capacity because of race in violation of Title VII and § 1981.
16. Defendant's purported legitimate non-discriminatory explanation for Plaintiff's discharge and non-rehire are mere pretexts for race discrimination.
17. Plaintiff has been damaged by the conduct of Defendant.

WHEREFORE, Plaintiff requests this Honorable Court to:

- A. Grant Plaintiff an award of actual and compensatory damages, punitive damages, back-pay, front-pay, and attorney's fees and costs.
- B. Grant Plaintiff a trial by jury and such further relief as the Court deems just and equitable.

DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury as to all issues so triable.

Respectfully submitted,

Craig L. Berman
Craig L. Berman, Esquire
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ATTORNEY 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
HARRIET THOMPkins,
(b) County of Residence of First Listed Plaintiff Pinellas
(c) Attorney's (Firm Name, Address, and Telephone Number)
Craig L. Berman, Esquire
BERMAN LAW FIRM, P.A.

DEFENDANTS
GULF BEACHES PUBLIC LIBRARY, INC.
County of Residence of First Listed Defendant Pinellas
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
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):
Title VII of the Civil Rights Act of 1964 and 42 U.S.C. 1981
Brief description of cause:
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: Yes No

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

DATE: 07/09/2010
SIGNATURE OF ATTORNEY OF RECORD: /s/ Craig L. Berman

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

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.