

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CLAUD BUCKNOR,

CASE NO. 98-536-CIV-UNGARO-BENAGES

Plaintiff,

v.

GREAT ATLANTIC MANAGEMENT
COMPANY, INC., a Virginia
corporation, GREAT ATLANTIC OF
FLORIDA, INC., a Florida corporation,
BARR-CODO CRANBROOK CLUB
APARTMENTS, a foreign limited partnership
d/b/a CRANBROOK CLUB APARTMENTS,
and D. F. ANTONELLI, JR., as general partner
of BARR-CODO CRANBROOK CLUB
APARTMENTS,

Defendants.

**PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO SERVE
PROCESS ON DEFENDANTS BARR-CODO CRANBROOK CLUB APARTMENTS
AND D. F. ANTONELLI JR. AND INCORPORATED MEMORANDUM OF LAW**

COMES NOW the Plaintiff, Claud Bucknor, by and through his undersigned counsel, and pursuant to Fed. R. Civ. P. 4(m) and Local General Rule 7.1.A, hereby files his Motion for Enlargement of Time Within Which to Serve Process on Defendants BARR-CODO CRANBROOK CLUB APARTMENTS and D.F. ANTONELLI and Incorporated Memorandum of Law, and as grounds therefor states as follows:

1. On or about March 9, 1998, Plaintiff caused to be filed his Complaint and Demand for Jury Trial, seeks declaratory, injunctive and equitable relief, compensatory and punitive damages, and costs and attorney's fees, for the unlawful termination of Plaintiff by Defendants, in violation of Title VII of the Civil Rights Act of 1964 and 1991, 42 U.S.C.

§1981, and the Florida Civil Rights Act of 1992, because of race discrimination, and in retaliation against Plaintiff for filing a workers' compensation claim, conduct which is protected by §440.205, *et. seq.*, Florida Statutes.

2. On or about March 31, 1998, this Court entered its Order Setting Initial Planning and Scheduling Conference and directed the parties to file a Joint Scheduling and Status Report on or before June 2, 1998.

3. On or about April 21, 1998, Plaintiff caused to be served upon Defendant GREAT ATLANTIC OF FLORIDA, INC. a copy of the Summons and Complaint. However, Defendant GREAT ATLANTIC OF FLORIDA, INC. failed to serve or file any paper required by law within the time period for doing so, and, on or about May 29, 1998, the Clerk of this Court entered a Default against GREAT ATLANTIC OF FLORIDA, INC.¹

4. On or about June 1, 1998, because Plaintiff had been unable to obtain service of the Complaint upon any of the other Defendants, Plaintiff moved this Honorable Court for an enlargement of time within which to file the parties' Joint Scheduling and Status Report.

5. On or about June 8, 1998, Defendants GREAT ATLANTIC OF FLORIDA, INC. and GREAT ATLANTIC MANAGEMENT COMPANY, INC. caused to be filed their Answers and Affirmative Defenses. *See supra* note 1.

6. On or about June 10, 1998, this Court entered its Order granting Plaintiff's Motion for Enlargement of Time, resetting the Planning and Scheduling Conference for

¹ On or about June 8, 1998, Defendant GREAT ATLANTIC OF FLORIDA, INC. caused to be filed its Answer and Affirmative Defenses, *see infra* ¶5, and on or about June 10, 1998, Defendant GREAT ATLANTIC OF FLORIDA, INC. caused to be filed its Motion to Vacate Clerk's Entry of Default, which the Plaintiff opposed, and which Motion is currently pending before this Honorable Court.

July 31, 1998, and directing the parties to file their Joint Scheduling Report on or before July 21, 1998. Further, the Court pointed out that service must be effectuated by July 10, 1998.

7. As of the date of the instant Motion, Plaintiff has been unable to effectuate service of the Summons and Complaint on Defendants BARR-CODO CRANBROOK CLUB APARTMENTS and D.F. ANTONELLI.

8. The instant Motion is being filed prior to the expiration of the one hundred and twenty (120) day time period for effectuating service.

9. Fed. R. Civ. P. 4(m) provides, in pertinent part, that if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action (as against those defendants) without prejudice **or direct that service be effected within a specified time.** Further, the rule allows this Court discretion to extend the time for service for an appropriate period if the plaintiff show good cause for the failure.

10. As demonstrated by the Affidavit of undersigned counsel, attached hereto as Exhibit "A", the Plaintiff has shown good cause for extending the time for service for an appropriate period, which Plaintiff would suggest should not exceed sixty (60) additional days. In fact, as indicated by the attached Affidavit, undersigned counsel, on this date, has caused to be mailed to Mr. Antonelli at his home address in Maryland a Notice of Commencement of Action and Request for Waiver of Service of Summons, pursuant to Fed. R. Civ. P. 4(d). Pursuant to Rule 4(d)(2)(F), the Notice will allow Antonelli 60 days from the date on which the Notice is sent (July 8, 1998) to return the Waiver since he

resides outside of the Southern District.

11. Further, enlarging the time to serve process in the instant case is especially warranted due to the expiration of Plaintiff's Notice of Right to Sue, as against Defendants CRANBROOK and ANTONELLI, as General Partner of CRANBROOK. That is, although dismissal for failure to serve process within 120 days as to Defendants CRANBROOK and ANTONELLI would be without prejudice, *see* Rule 4(m), such a dismissal might in fact operate as a dismissal with prejudice, short of equitable tolling of the ninety (90) day Notice of Right to Sue issued to the Plaintiff by the Equal Employment Opportunity Commission ("EEOC") on or about December 10, 1997, attached hereto as Exhibit "B".

12. As this case is in its infancy, Defendants GREAT ATLANTIC MANAGEMENT COMPANY, INC. and GREAT ATLANTIC OF FLORIDA, INC. will not be prejudiced by the granting of this Motion.

WHEREFORE, the Plaintiff, CLAUD BUCKNOR, respectfully requests that this Honorable Court grant Plaintiff's Motion for Enlargement of Time Within Which to Serve Process, enter an Order Enlarging the Time Within Which to Serve Defendants BARR-CODO-CRANBROOK CLUB APARTMENTS and ANTONELLI for an additional sixty (60) days, and take such further action as it deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the forgoing document was served by U.S. Mail to: John M. Finnigan, Esq., Garwood, McKenna, McKenna & Wolf, Attorneys for Defendants GREAT ATLANTIC OF FLORIDA, INC. and GREAT ATLANTIC MANAGEMENT COMPANY, INC., P.O. Box 60, Orlando, Florida 32802-0060, and D.F. Antonelli, Jr., general partner of Barr-Codo Cranbrook Club Apartments, 1725 Desales Street NW, #900, Washington, DC this 8th day of July, 1998.

Respectfully Submitted,

MUCHNICK, WASSERMAN & DOLIN
Attorneys for Plaintiff
4000 Hollywood Boulevard, Suite 620 North
Hollywood, Florida 33021
(954) 989-8100 - Broward
(954) 989-8700 - Fax

By:



SUSAN L. DOLIN, ESQ.
Fla. Bar No. 708690
DANIEL R. LEVINE, ESQ.
Fla. Bar No. 0057861

AFFIDAVIT OF DANIEL R. LEVINE

STATE OF FLORIDA)
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, on this date personally appeared DANIEL R. LEVINE, who, after first being duly sworn deposes and says:

1. My name is Daniel R. Levine. I am Plaintiff's counsel in the above-captioned lawsuit.

2. I have personal knowledge of the facts recited in this Affidavit.

3. On or about December 23, 1997, I received a copy of the attached corporate detail record screen from Florida's office of the Secretary of State, indicating that Benjamin F. Hutto was the registered agent for Barr-Codo Cranbrook Club Apartments. However, attempts to send pre-suit notices to Mr. Hutto proved fruitless, as indicated by the attached copy of a returned envelope sent by certified mail to Mr. Hutto.

4. On or about March 9, 1998, I caused to be filed the Complaint and Demand for Jury Trial in the above-captioned matter, and instructed Octavio Fiol, a certified process server, to effectuate service of the Summons and Complaint on all of the named Defendants, including Defendants Barr-Codo Cranbrook Club Apartments and D.F. Antonelli, by serving Mr. Antonelli, the General Partner of Barr-Codo, at his listed business address of 1725 Desales Street NW, #900, Washington, D.C.

5. Attempts to serve Mr. Antonelli at the Washington, D.C. address were unsuccessful. Thus, further attempts to serve Mr. Antonelli have been attempted at his home address in Maryland. However, to date, those attempts have been unsuccessful as well.

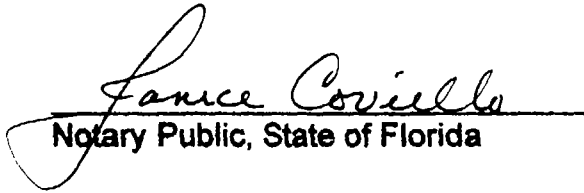


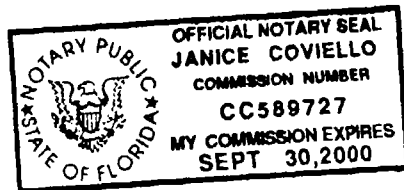
6. On this same date, I have caused to be mailed to Mr. Antonelli at his home address in Maryland a Notice of Commencement of Action and Request for Waiver of Service of Summons, pursuant to Fed. R. Civ. P. 4(d). Pursuant to Rule 4(d)(2)(F), the Notice will allow Antonelli 60 days from the date on which the Notice is sent (July 8, 1998) since he resides outside of the Southern District.

Further Affiant Sayeth Naught.


DANIEL R. LEVINE

SWORN TO AND SUBSCRIBED before me this 8th day of July, 1998, by DANIEL R. LEVINE, who is personally known to me, or who produced as identification, and who did/did not take an oath.


Notary Public, State of Florida



My Commission Expires:

Acknowledger's Name Stamped,
Typed or Printed

ATTN; KIM

12/23/97 CORPORATE DETAIL RECORD SCREEN 10:12 AM
 NUM: A22942 ST:IL INACTIVE/FOREIGN LP FLD: 07/21/1986
 LAST: VOLUNTARY CANCELLATION FLD: 03/02/1994
 ACT CONT: 2,900,250.00 FEI#: 58-1395356
 NAME : BARR-CODO CRANBROOK CLUB APARTMENTS LIMITED PARTNERSHIP
 PRINCIPAL: 1750 N. UNIVERSITY DRIVE CHANGED: 11/17/89
 ADDRESS SUITE 114
 CORAL SPRINGS, FL 33071
 RA NAME : HUTTO, BENJAMIN F.
 RA ADDR : 1750 N. UNIVERSITY DRIVE ADDR CHG: 11/17/89
 SUITE 114
 CORAL SPRINGS, FL 33071 US
 ANN REP : (1991) I 10/16/90 (1992) I 11/15/91 (1993) I 10/09/92

12/23/97 GENERAL PARTNER DETAIL SCREEN 10:12 AM
 CORP NUMBER: A22942 CORP NAME: BARR-CODO CRANBROOK CLUB APARTMENTS LIM
 NAME: ANTONELLI, D. F. JR.
 1725 DESALES ST NW #900
 WASHINGTON, DC

----- THIS IS NOT OFFICIAL RECORD; SEE DOCUMENTS IF QUESTION OR CONFLICT -----

MUCHNICK WASSERMAN & DOLIN

Attorneys At Law
A Partnership of Professional Associations

Presidential Circle, Suite 710 North
4000 Hollywood Boulevard
Hollywood, Florida 33021

CERTIFIED

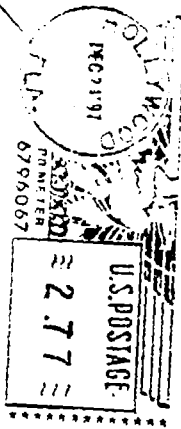
P 425 574 017

MAIL

MOVED, NOT FOR MAILING
CORAL SPRINGS, FL

Mr. Benjamin F. [REDACTED]
Registered Agent of Cranbrook Club Apartments
1750 N. University Drive, Suite 114
Coral Springs, Florida 33071

FD
EX



NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To:

Claud Bucknor
395 NW 121 Street
Miami, FL 33168

From:

Miami District Office
Equal Employment Opportunity Commission
One Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, Florida 33131-1805

On behalf of a person aggrieved whose identity is CONFIDENTIAL
(29 C.F.R. 1601.7(a))

Charge Number

150 96 2112

EEOC Representative

Erika La'Cour, Sr. Investigator

Telephone Number

305/ 536-5382 or 530-6050

TO THE PERSON AGGRIEVED:

This Notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

-- NOTICE OF SUIT RIGHTS --

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or Age Discrimination in Employment Act: This will be the only notice of your right to sue that we will send you. You may pursue this matter further by bringing suit in federal or state court against the Respondent(s) named in the charge. **Your suit must be filed WITHIN 90 DAYS from your receipt of this Notice.** Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act (EPA): EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On Behalf of the Commission

DEC 10 1997

(Date Mailed)

George E. Evans, Jr.

Federico Costales, District Director

Enclosures

Information sheet
Copy of Charge

cc: Cranbrook Club Apartments
c/o E.D. David, Esq.
301 Hiden Boulevard, Suite 200
Newport News, Virginia 23606

