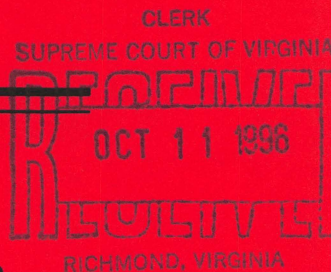


253 Va 185



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 961320

BRIDGETTE JORDAN, et al.,

Appellants,

v.

CLAY'S REST HOME, INC.,

Appellee.

JOINT APPENDIX

David R. Simonsen, Jr.
Attorney at Law
1600 Forest Avenue
Suite 110
Richmond, VA 23229-5007
(804) 285-1337

Counsel for Appellants

Ballard P. Wood
Attorney at Law
729 Thimble Shoals Blvd.
Suite 2-C
Newport News, VA 23606
(804) 873-0921

Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NOTTAWAY

BRIDGETT JORDAN,

Plaintiff,

v.

CLAY'S REST HOME, INC.,

SERVE: John H. Graham
780 Pilot House Drive
Building 2, Suite C
Newport News, VA 23602
(City of Newport News)

Defendant.

At Law No. 94-39

Motion For Judgment

Plaintiff Bridgett Jordan ("Jordan"), by counsel, states the following Motion For Judgment against defendant Clay's Rest Home, Inc. ("Clay's Rest Home"):

1. Jordan is a black female who resides at 106 South Harris Street, Blackstone, Virginia 23824, within the County of Nottaway, Virginia.

2. Clay's Rest Home is located on Lunenberg Avenue in Blackstone, Virginia.

3. The President and Registered Agent of Clay's Rest Home is John H. Graham, 780 Pilot House Drive, Building 2, Suite C, Newport News, Virginia 23602.

4. Clay's Rest Home employs approximately 25 employees.

5. Clay's Rest Home hired Jordan to work in its Blackstone facility on or about May 5, 1993, as a full time office employee,

working approximately 40 hours per week.

6. In early June, 1993, Clay's Rest Home hired a white female named Sandra Hester to work in the office full time.

7. Jordan had more experience working in a residential care facility than Hester.

8. Jordan was at least as qualified as Hester to work in the facility.

9. Jordan trained Hester in the office procedures of Clay's Rest Home.

10. After Hester worked at the facility approximately two weeks, Jordan was placed on part time duty, about one day or eight hours per week. Sandra Hester replaced Jordan in the office.

11. On or about Monday, June 28, 1993, Jordan had an on-the-job injury at the facility shortly before her scheduled quitting time; Jordan did not miss any work time that day.

12. The Virginia Workers' Compensation Commission has held that Jordan did suffer an on-the-job injury on June 28, 1993.

13. On June 28, 1993, Jordan reported the injury to the Administrator of Clay's Rest Home, Barbara Daniel, and was taken by ambulance to Southside Community Hospital.

14. The doctor that Jordan saw at the Hospital advised her to stay out of work for three days and released Jordan to return to work on the fourth day, which was Thursday, July 1, 1993.

15. On June 28, 1993, Daniel called Jordan at Jordan's home and asked how she was. Jordan told her that she was in pain.

16. Jordan went to the facility on or about Wednesday, June 30, 1993, to pick up her paycheck. At this time, Daniel asked Jordan how she was doing and Jordan said that she still had some pain; Jordan was on crutches and had a leg brace.

17. At this meeting between Daniel and Jordan on or about Wednesday, June 30, 1993, Daniel informed Jordan that Jordan was on the schedule to work Thursday, July 1, 1993, starting at 11 p.m. that night.

18. Jordan also asked Daniel for her schedule for the next week and Daniel said that the schedule was not prepared. Jordan knew this was inaccurate, because Jordan already had seen a schedule for the following week that had Jordan's name crossed out.

19. Jordan planned to return to work on Thursday, July 1, 1993. On Thursday, July 1, 1993, about 2:30 p.m., however, Daniel called Jordan and told her that John Graham had said that there was no need for Jordan to return to work and that Jordan's employment with Clay's Rest Home was terminated.

20. Daniel said that if Jordan needed a reason for the discharge that Graham would get his lawyer to write Jordan a statement of the reason.

21. On or about August 2, 1993, Graham's lawyer sent Jordan a letter stating that Jordan's termination was because Jordan could not do her job. Such statement was incorrect and pretextual.

22. Clay's Rest Home willfully and wantonly discharged Jordan because of her race and her on-the-job injury.

Count 1: Wrongful Discharge - Retaliation

23. Clay's Rest Home willfully and wantonly discharged Jordan because of her on-the-job injury and her filing of a claim for compensation under the Virginia Workers' Compensation Act, in violation of Virginia Code § 65.2-308 and the public policy of Virginia as expressed in the Virginia Workers' Compensation Act; as the proximate result of such wrongful discharge, Jordan has suffered the loss of employment, lost wages, lost benefits, emotional pain and suffering, inconvenience, mental anguish, and the loss of enjoyment of life.

Count 2: Wrongful Discharge - Race Discrimination

24. Clay's Rest Home willfully and wantonly discharged Jordan because of her race in violation of the public policy of Virginia as expressed in the Virginia Human Rights Act and the federal laws prohibiting race discrimination in employment; as the proximate result of such wrongful discharge, Jordan has suffered the loss of employment, lost wages, lost benefits, emotional pain and suffering, inconvenience, mental anguish, and the loss of enjoyment of life.

Demand for Jury Trial

25. Jordan demands trial by jury of all issues of fact.

WHEREFORE, Jordan asks that this Court enter judgment in her favor and award her the following relief:

1. Reinstatement to the position she would hold with Clay's Rest Home at the time of reinstatement but for the

wrongful conduct of Clay's Rest Home, with all privileges and benefits restored.

2. Her lost wages and benefits.
3. Compensatory damages in the amount of ONE HUNDRED THOUSAND DOLLARS (\$200,000.00).
4. Punitive damages in the amount of ONE HUNDRED THOUSAND DOLLARS (\$200,000.00).
5. Costs and attorney's fees incurred.
6. Such other and further relief as is proper.

Dated this 28th day of June, 1994.

Respectfully submitted,

BRIDGETT JORDAN
Original Signed By
David R. Simonsen, Jr.

By: _____
Of Counsel

David R. Simonsen, Jr. (Bar #20078)
Vickey A. Verwey (Bar #20267)
1600 Forest Avenue, Suite 110
Richmond, Virginia 23229-5007
(804) 285-1337

Counsel for Plaintiff

VIRGINIA: IN THE CIRCUIT OF THE COUNTY OF NOTTAWAY

BRIDGETT JORDAN,

Plaintiff,

v.

At Law No. CL94-39

CLAY'S REST HOME, INC.,

Defendant.

ANSWER AND GROUNDS OF DEFENSE

COMES NOW, the Defendant, CLAY'S REST HOME, INC., by Counsel, and for its Answer and Grounds of Defense to the Motion for Judgment herein filed against him, states as follows:

1. Defendant admits the allegations contained in Paragraphs 1, 2, 3, and 4.

2. Defendant admits in regards to Paragraph 5, that Jordan was hired on May 5, 1993, but denies that she was hired as a full time employee, but avers that she was hired as a part time employee on a ninety (90) day trial basis.

3. Defendant admits that Sandra Hester was hired on June 13, 1993, as alleged in Paragraph 6, but denies that she was hired as a full time employee at the time of employment and Defendant avers that Hester was hired on a ninety (90) day trial basis.

4. Defendant denies Paragraphs 7, 8, 9 and 10, and demands strict proof thereof.

5. Defendant admits that on June 28, 1993, Jordan allegedly was injured on the job, and, therefore, admits Paragraph 11, 12 and 13.

6. Defendant can neither admit or deny Paragraph 14, as they have no knowledge of the doctors' statements to her.

7. Defendant admits Paragraphs 15 and 20.

8. Defendant denies Paragraphs 16, 17, 18, 19, 21, 22, 23, and 24, and demands strict proof thereof and further denies that they are indebted to the Plaintiff for any sums.

WHEREFORE, the Defendant, CLAY'S REST HOME, INC., prays that this action be dismissed, that judgment be entered in their behalf and that they recover their costs herein expended.

CLAY'S REST HOME, INC.

BY: 
OF COUNSEL

BALLARD P. WOOD, ESQUIRE
729 THIMBLE SHOALS BLVD, SUITE 2-C
NEWPORT NEWS, VA 23606
(804) 873-0921

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer and Grounds of Defense was mailed to David R. Simonsen, Jr., and Vickey A. Verwey, Counsel for Plaintiff, at 1600 Forest Avenue, Suite 101, Richmond, Virginia 23229-5007.


Ballard P. Wood

VIRGINIA: IN THE CIRCUIT OF THE COUNTY OF NOTTAWAY

BRIDGETT JORDAN,

Plaintiff,

v.

At Law No. CL94-39

CLAY'S REST HOME, INC.,

Defendant.

MOTION FOR SANCTIONS

NOW COMES, the Defendant, CLAY'S REST HOME, INC., by Counsel, BALLARD P. WOOD, and moves for sanctions against the Plaintiff, BRIDGETT JORDAN, and her counsel, DAVID R. SIMONSEN, JR., and VICKEY A. VERWEY, for reasons as follows:

1. The Defendant is seriously impaired in receiving credit, both secured and un-secured, because they must report this pending claim on all financial statements filed by them;

2. The Plaintiff and her counsel are well aware that there is not one scintilla of evidence to support the Plaintiff's claim and further, the Plaintiff evinced in the past an intent to get the Defendant, and further, punitive damages are not recoverable by law on a wrongful discharge claim.

3. That counsel for the Plaintiff could not have conducted even a cursory, let alone, diligent or responsible investigation of the facts involving any one or all of the charges or matters addressed by this action.

4. That at no time did counsel for the Plaintiff write, telephone or otherwise contact the Defendant or their agents or

employees in order to obtain their version of the matters addressed in this action.

5. That counsel for the Plaintiff knew at all times relevant that the filing of this action would seriously impair business and trade dealings and the reputation of the Defendant herein; yet, the Plaintiff's counsel also knew that the Plaintiff is judgment proof and has a history of irresponsibility and she risks nothing by filing this actions.

WHEREFORE, the Defendant, CLAY'S REST HOME, INC., moves your Honorable Court to make the Plaintiff and her counsel immediately make an accounting of all work done, witnesses contacted, and reports received by them prior to the filing of this action; and further, the Defendant asks that counsel for the Plaintiff refute, under oath, the attached Affidavit; and, if the Court finds that the filing of this action was irresponsible, that the counsel for the Plaintiff and the Plaintiff be assessed a ONE HUNDRED DOLLARS (\$100.00) per day penalty for each day the suit is and continues to be pending; and, further that the Defendant be granted attorneys fees and such other relief as allowable.

CLAY'S REST HOME, INC.

BY: 
OF COUNSEL

BALLARD P. WOOD, ESQUIRE
729 THIMBLE SHOALS BLVD, SUITE 2-C
NEWPORT NEWS, VA 23606
(804) 873-0921

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Sanctions was mailed to David R. Simonsen, Jr., and Vickey A. Verwey, Counsel for Plaintiff, at 1600 Forest Avenue, Suite 101, Richmond, Virginia 23229-5007.

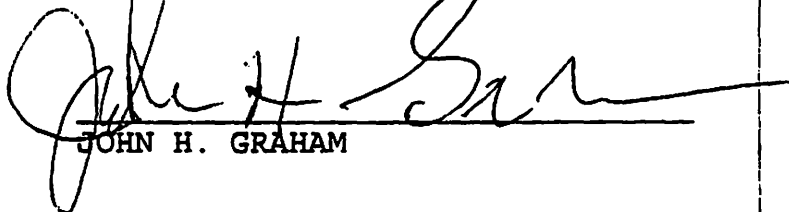

Ballard P. Wood

AFFIDAVIT

I, JOHN H. GRAHAM, am the President and Chief Executive Officer of Clay's Rest Home, Inc., and have been since January, 1983. That at all the time of my management of Clay's Rest Home, Inc., I have employed at least 28 Afro-Americans, of which none have been discharged for cause and have never had a complaint filed claiming prejudice, until now, by Bridgett Jordan. That typically, my Afro-American - Caucasian employment ratio is 18 to 11 or 62 percent in favor of Afro-Americans, including executive and non-executive personnel.

That during the last eleven (11) years, I have discharged four (4) employees, three (3) caucasians and one (1) Afro-American (Bridgett Jordan).

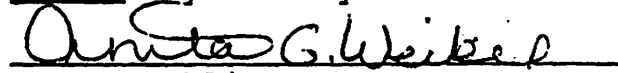
That during my management of this business, other Worker's Compensation claims have been made, honored and possibly denied; but never was any employee discharged or otherwise maltreated for filing such a claim. In fact, it is the insurance carrier for Clay's Rest Home, Inc., which administers all of the Worker's Compensation claims and Clay's Rest Home, Inc., is benefitted, by reduced premiums by re-employing or continuing the employment of a compensation claimant.


JOHN H. GRAHAM

STATE OF VIRGINIA
CITY OF NEWPORT NEWS, to wit:

I, Anita G. Weikel a Notary Public do hereby certify that JOHN H. GRAHAM, the affiant, whose name is subscribed to the foregoing affidavit, duly swore and made oath to the correctness and truth of the facts stated therein, before me in the said City of Newport News, Virginia, this 21st day of July 1994.

Given under my hand this 21st day of July 1994.


Notary Public

My commission expires: 9-30-97

COPY

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NOTTOWAY

BRIDGETT JORDAN YATES,

Plaintiff,

VS.

CLAY'S REST HOME, INC.,

Defendant.

CASE NO.

Complete transcript of testimony and other incidents in the above, when heard on January 19, 1996, before the Honorable Thomas V. Warren, Judge, with a jury.

CRANE-SNEAD & ASSOCIATES, INC.
4914 Fitzhugh Avenue
Richmond, Virginia 23230
Tel. No. (804) 355-4335

DANIEL - DIRECT

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Q Okay. Can you tell us how many residents Clay's has, at the present time?

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A Approximately fifty-five.

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Q And how many of the residents are black?

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A One.

14

Q And back in 1993, is it true that there were no black residents?

15

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A The whole year of '93?

17

Q Correct.

18

A I'm not sure of the whole year.

19

Q Now, is there any racial policy

20

that applies to admissions to Clay's Rest Home?

21

A No.

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Q So, you believe it to be simply a

23

chance that out of the fifty-five residents, only one is black?

24

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A Yes.

DANIEL - DIRECT

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In May, June of '93 can you give us an idea of how often he would be on the premises?

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A Generally comes down once a month, for a couple days. I really don't know.

* * *

A But I speak to him everyday, though, on the phone.

Q You speak to him on the phone?

A Right. Everyday.

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DANIEL - DIRECT

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Q How many times would it have occurred -- would it have occurred before June 28, 1993, that you would have received any feed back from Mr. Graham about what he had observed Ms. Jordan doing in the work place?

A Being that she was on a -- a new employee on a ninety day probationary period, we had spoken about her and had some conversations.

Q Do you recall anything he told you about what he had seen her doing in the work place?

A No, I don't.

Q Who hired Ms. Jordan?

A I did.

DANIEL - DIRECT

1 Q Did Mr. Graham have any
2 involvement in her hire?

3 A Yes.

4 Q And what would that involvement
5 in her hire have been?

6 A We reviewed the applications
7 together. And then made a decision.

8 Q Can you recall any comments made
9 at the time of her hire, made by Mr. Graham or
10 yourself to him?

11 A No, I don't at all.

12 Q Now, when you hired Ms. Jordan,
13 did you tell her about a probationary period?

14 A Yes.

15 Q What do you recall telling her
16 about a probationary period?

17 A That every employee is hired
18 under a ninety day probation. And after that
19 ninety days, we will reevaluate and possibly
20 raises or, you know, further employment.

21 I believe she was hired on a
22 part-time basis. So, she could possibly go to
23 full time after that period. I think I told her
24 that, too.

25 Q All right. Now, when you say she

DANIEL - DIRECT

1 was hired on a part-time basis, is it not true
2 that she was still working as many as forty hours
3 a week, through some of her work weeks?

4 A Yes. That may have happened at
5 times. Yes.

6 Q So, part-time is a description
7 that doesn't necessarily tell us that it is less
8 than forty hours, is that fair?

9 A Right. Sometimes it could be.
10 Sometimes it might be a little more.

11 Q Would it be true that the main --
12 major descriptive purpose of part-time would mean
13 the question of what benefits they would get?

14 A Not as far as I'm concerned.
15 That wouldn't be what it meant. It would just
16 mean that on a two week -- we get paid every two
17 weeks. Some pay periods she might get forty -- I
18 mean eighty hours and sometimes she might not get
19 that many.

20 Q Okay. What benefits did she
21 receive as -- well, let me ask you first about the
22 wage. Do you recall what her wage was?

23 A No, I don't.

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DANIEL - DIRECT

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Q Now, even though when you hire employees you tell them of this ninety day probationary period, did you, as the assistant administrator, understand that you still could not terminate a probationary employee for any illegal reason, such as a Worker's Comp Claim, or race?

A Sure.

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DANIEL - DIRECT

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Q Now, is it true that she was
basically working full shifts when she worked --
eight hour shifts -- up till the day she had the

DANIEL - DIRECT

1 accident?

2 A Full eight hour shifts?

3 Q Right.

4 A Yes.

5 Q And, now, this -- now in
6 Plaintiff's Exhibit No. 1, it shows that on June
7 27th she worked 10:52 p.m. to 7:00 a.m.

8 Now, it says June 27th there
9 because it would have been 11:00 p.m. on June
10 27th. And then the next day was the morning of
11 the 28th, when she had the accident; is that
12 right?

13 A Yes.

14 Q Okay. Now, you were there at the
15 time she was hurt, is that right?

16 A I wasn't there when she fell.
17 But, I was -- arrived about twenty minutes later.

18 Q You, yourself, observed her
19 swollen knee?

20 A Yeah, I saw the knee.

21 Q And you knew that she was
22 reporting it as an on the job injury and work
23 claim on the same day?

24 A Correct.

25 Q Now, is it true that Clay's Rest

DANIEL - DIRECT

1 Home contested the work claim, arguing that she
2 never had an on the job injury?

3 A No, that's not true. We didn't
4 contest it. I mean, we didn't know. We didn't
5 see it.

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DANIEL - DIRECT

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Q Now, is it true that after she had the on the job injury, on June 28th, she never worked for Clay's again?

A Correct.

Q And is it true that you saw her between the time of her accident and when she was next scheduled to return to work, at 11:00 p.m. on July 1st; saw her personally?

A Yes.

Q Okay. And what happened when you saw her, then?

A Well, I saw her several times. She came to Clay's; brought a note stating she

DANIEL - DIRECT

1 could return back to work. That was one time that
2 I saw her.

3 And then I saw her at baseball
4 games.

5 Q During any of those times, did
6 you tell her anything about whether or not she
7 could come back to work on the first?

8 A Not during that time. No.

9 Q Did there come a time when you
10 called Ms. Jordan to notify her that she should
11 not come back to work?

12 A Yes.

13 Q Do you recall when that was?

14 A I believe that was on the 1st of
15 July.

16 Q And why did you make that call?

17 A Because Mr. Graham and I had made
18 an evaluation, and he had asked me to call her.

19 Q When did you and Mr. Graham make
20 an evaluation?

21 A Well, we had been evaluating her,
22 like I said, throughout the period of being on a
23 ninety day probationary period.

24 Q Was any evaluation made involving
25 you and Mr. Graham, between June 28th and July

DANIEL - DIRECT

1 1st?

2 A I believe he made one. Yes.

3 Q Did you make one together, during
4 that time period?

5 A No.

6 Q When you called Ms. Jordan on
7 July 1st, did you give her any reason that her
8 employment was being ended?

9 A No.

10 Q Was there any reason why you did
11 not give her a reason?

12 A I told her that she would get a
13 letter, for the reason why.

14 Q All right. And what did you tell
15 her specifically?

16 What do you best remember that
17 you specifically told her about what she would
18 get?

19 A I told her she would get a reason
20 from Mr. Wood, explaining why she was being
21 terminated.

22 Q As of that time, as of July 1st,
23 had you ever warned Ms. Jordan that she was in
24 danger of termination of her job?

25 A No, I hadn't.

DANIEL - DIRECT

1 Q Had you ever written her up,
2 given her any discipline, of any kind?

3 A We had a couple of instances,
4 which I placed in her file, as I do to people who
5 are on probationary periods.

6 Q Did you give her anything?

7 A No.

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DANIEL - CROSS

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Q Now, I ask you to read that to the Court. And refresh your memory as to why you made this notation, and tell us about it?

A Okay. It's dated 6-1-93. "During an office staff meeting, Bridget Jordan made several inappropriate remarks about a male resident's backside.

"Bridget was also extremely loud and used profanity on several occasions. Signed assistant administrator, Barbara T. Daniel."

Q Had you had this problem, previously?

A With Ms. Jordan?

Q Yes, with Ms. Jordan.

A No. I don't think I had, no.

Q Had she used profanity before --

A Yes.

Q -- or after that?

A She has had a tendency to, maybe, use bad language. Yes, sir.

Q In front of the residents?

DANIEL - CROSS

1 A Yes, I believe so.

2 Q Then why did you write this
3 notation and put it in her file, when -- I've
4 forgotten. What date is that for?

5 A 6-24-93. Because, she was --
6 during this time period, she was on a probationary
7 period, and we were evaluating her, due to some of
8 that behavior.

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Q Ms. Daniel, Mr. Simonsen asked
you a question about the number of black residents
at Clay's. And if there was anything that could
show discrimination on bringing black residents
into Clay's.

A Uh-huh.

Q I believe yesterday I asked you
to get me a copy of your standard form for
admission --

DANIEL - CROSS

1 A Yes, sir.

2 Q Admitting residents.

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DANIEL - CROSS

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Q At the time Ms. Jordan was
employed there, there were no black residents, is
that correct?

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DANIEL - CROSS

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Now, Mister -- when Mr. Graham, I believe, called you on July the 1st, or thereabouts --

A Yes.

Q -- and told you what; to terminate Ms. Jordan?

A Yes, sir.

Q And -- but this was -- the two of you had discussed it, prior to her injury; is that correct?

A Letting her go?

Q Yes.

A No.

DANIEL - CROSS

1 Q Oh, you hadn't?

2 But, she was under evaluation?

3 A Yes. Yes.

4 Q And did you consider her work
5 habits and the problems we had with the missing
6 items, that she was the type of employee that
7 Clay's wanted?

8 A No, I didn't.

9 Q Now, were you -- when the items
10 that we had, as to the missing food and the
11 linens, were you involved in the investigation, as
12 much as you could be, as to how this happened?

13 A Yes.

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DANIEL - REDIRECT

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Q

Would you, for all probationary

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employees during the first ninety days, place in

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their file a note like that?

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Not unless I had some concern

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about them.

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DANIEL - REDIRECT

1 Q Has anyone else been terminated
2 in '93, '94, '95 at Clay's Rest Home, other than
3 Ms. Jordan?

4 A I don't think so.

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Q And did you receive an interview?

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A Yes, I did. With Bobbi Daniel.

16

Q Okay. And did she tell you what

17

the job would be and that kind of thing?

18

A Yes, she did.

19

Q Do you remember her telling you

20

anything about a ninety day probationary period?

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A No, I did not.

22

Q What position were you hired for?

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A An office person.

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YATES - DIRECT

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Q Could you explain to the jury
what a supervisor, office person did?

A An office person washed clothes.
Deliver them to the room. Iron them. Deliver
them to the door.

We check 'on our residents, every
hour on the hour. We count medicine. Count
money. Do a little book work. And that's mainly
all I can remember, right now.

Q Do you recall how many residents
were at Clay's Rest Home, while you were working
there?

A Not right off-hand.

Q Were there any black residents at
the home, while were you there?

A No, sir.

Q Were you ever told about any

YATES - DIRECT

1 policy as to the admission of black residents to
2 the home?

3 A No, sir.

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YATES - DIRECT

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8 Q Did you have any injury?

9 A Yes, sir.

10 Q And what did you do, in terms of
11 seeking medical treatment; if anything?

12 A I went to the hospital. The
13 doctor examined me and he gave me crutches and a
14 brace. And he said it was bruised real bad.

15 Q Okay. Now, did you make a
16 Worker's Compensation claim, that this was an on
17 the job injury?

18 A Yes, sir.

19 Q And what was the reaction of
20 Clay's Rest Home to your making of that claim?

21 A They was, like, I didn't hurt it
22 there. It didn't happen.

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Q She said okay, what?

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Could you give us a little bit

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more of an explanation?

24

A Oh, and then I asked her, I

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wanted to see the schedule of the days that I

YATES - DIRECT

1 would have worked. And she said she hadn't made
2 the schedule up yet.

3 Q Okay. But, she did say to come
4 back?

5 A She did tell me to come back to
6 work.

7 Q Then did you hear from her again
8 about whether or not you'd be coming back to work?

9 A Yes, I did.

10 Q How did that happen?

11 A She called me on the telephone.

12 I was at my mother's house. And she said --

13 THE COURT: When?

14 THE WITNESS: She called me on
15 the 1st.

16 THE COURT: Of July?

17 THE WITNESS: Yes, sir. I think
18 it was the 1st of July.

19 THE COURT: Okay.

20 BY MR. SIMONSEN:

21 A She called me at my mother's
22 house and said -- she asked me how I was doing.
23 And I said, well, I'm still in a little pain.

24 And she said, well, I'm calling
25 you to let you know that Mr. Graham said he no

YATES - DIRECT

1 longer needs you. You no longer need to come back
2 to Clay's Rest Home.

3 Q And tell us the rest of that
4 conversation, as best you can recall it.

5 A And she said, if you need -- if
6 you need -- if you need -- if you need to know
7 why, he said -- that Mr. Graham said he will get
8 his attorney to write me, to let me know why I was
9 fired; why I was terminated.

10 Q In that conversation, did
11 Ms. Daniel make any statement to you about why you
12 were being discharged?

13 A No.

14 Q At any time before being
15 terminated on July 1st, had anyone on behalf of
16 Clay's Home ever told you that you were in danger
17 of being fired?

18 A No.

19 Q Had you ever received any form of
20 disciplinary action?

21 A No, sir.

22 Q These notes, which are
23 Defendant's 1 and 2, had you ever seen them
24 before; before we got involved in this litigation?

25 A No.

YATES - DIRECT

1 Q Do you recall any meeting at the
2 home, at which you would have made any comments
3 about a resident's backside?

4 A No, sir.

5 Q About a resident's private parts?

6 A No, sir.

7 Q Can you think of any discussion
8 at any meeting, in which you participated, that to
9 the best of your understanding, someone might have
10 understood you to be making such a reference?

11 A No.

12 Q How did you get back and forth to
13 work, during the time you were working there in
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YATES - DIRECT

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Q

What access did you have, during
your employment, to the key to the linen closet?

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A

I didn't have any key in access
to the linen closet. The only access I had was to
the closet that leads down to the basement; to the
basement closet, where the machine -- washing
machine and dryer were.

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Q All right. Do you know who
replaced you?

A Sandra Hester.

Q And do you know her race?

A She's white.

Q And do you know when she was
hired at Clay's Rest Home?

A No, sir. I can't really recall
the day she was hired.

Q Was she hired before or after
you?

A She was hired after me.

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YATES - CROSS

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Q Ms. Jordan, when you applied at
Clay's Rest Home, did you fill out an application?

A Yes, sir. I did.

Q I believe in your direct
testimony, you stated that you quit school in the
10th grade; is that correct?

A Yes, sir.

Q And on your application it says
the "schools you attended: Nottoway High School.
Diploma:" And you said "yes."

A I must have made a mistake there,
sir. Because I did not graduate.

YATES - CROSS

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Q Now, you put down that your last place of employment was Woodson and Wood. That was in July of '90 to February of '91.

Is that the place where you made planters?

A Yes, sir.

Q And -- but you didn't put down Clay's Rest Home, did you?

A No, sir.

Q So, you intentionally lied to American Reese on your application?

A Yes, sir. I had a reason for lying on that application.

YATES - CROSS

1 Q And you worked at Clay's for two
2 months?

3 A Yes, sir.

4 Q You worked at Premier Furniture
5 about how long?

6 A I guess, about three months. I
7 can't really recall it.

8 Q About three months?

9 A Uh-huh.

10 Q And you had an attitude problem
11 there; is that right?

12 A That's what -- that's what one of
13 the leaders said.

14 Q Were you fired from that job?

15 A Actually, no. I quit.

16 Q You quit before they fired you,
17 in other words?

18 A Yes, sir.

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But when I asked you why you were discriminated against, do you remember that?

15

A

Yes, sir.

16

Q

And you said, for one thing there were no black residents at Clay's.

18

A

Yes.

19

Q

Now, how does that discriminate against you?

21

A

It is, because there's no black residents there. And I feel that that's -- that's -- I feel that's prejudice.

24

There's no black residents. My

25

mother -- I remember -- I recall a long time ago

YATES - CROSS

1 when my mother called there and tried to get her
2 mother in Clay's Rest Home, but they would not
3 accept her.

4 Q A long time ago?

5 A Yes, sir. It was a long time
6 ago.

7 Q But you don't know whether there
8 are black residents -- You heard the testimony of
9 Bobbi Daniel that there is a black resident there
10 now.

11 A She said there is now. But,
12 there wasn't when I was there.

13 Q And there had been, prior to your
14 employment?

15 A No, sir.

16 Q How do you know that?

17 A Because, I worked the building.

18 Q I said prior to your employment;
19 before. You worked there a total of two months.

20 A Before I worked there, I don't
21 know if they had any or not.

22 Q Okay. So if Ms. Daniel's got up
23 and stated that there had been black residents,
24 you couldn't refute it, could you, prior to your
25 employment?

YATES - CROSS

1 A No.

2 Q Did you and Ms. Daniel get along
3 pretty good?

4 A Well, I got along with her.
5 She -- she just didn't have very much to say to
6 me.

7 Q And you think that's
8 discrimination?

9 A Yes, sir. I was the only black
10 office person.

11 Q Now, wait a minute. We have
12 Amega Mason. Do you know Amega?

13 A Yes, sir.

14 Q She's head of housekeeping?

15 A Yes, sir.

16 Q Her job is a little bit higher up
17 in the hierarchy in Clay's, then a shift
18 supervisor.

19 And you have a Connie Hawks,
20 who's --

21 A SPEAKER: Food services.

22 Q -- food services. She buys all
23 the foods and makes all the menus for the
24 residents. She is black, also, isn't she?

25 A Yes, sir.

JURY OUT

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MR. WOOD: Yes, sir. Your Honor,
I would make a motion to strike the
plaintiff's evidence; that they have not
proven that there has been any
discrimination or that the firing was

JURY OUT

1 because she was injured on the job.

2 The evidence, I think, so far
3 shows that she was a black employee that
4 was under duress at Clay's. But, she
5 hasn't proven, by any evidence, that she
6 was discriminated against, except that
7 Ms. Daniel didn't talk to her as much as
8 she did somebody else.

9 And I think for retaliatory
10 discharge, under the Workman's
11 Compensation, there has to be a history of
12 Clay's firing people when they file a
13 Workman's Comp Claim.

14 There's been no evidence of that.
15 So, I would respectfully say that they
16 have not proven their case to the point
17 where it should even be considered going
18 to a jury. And I would ask that the Court
19 strike their evidence.

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THE COURT: The fact that she has
a Workman's Comp injury, still does not
take them out of the employment at will,
does it?

19

MR. SIMONSEN: No, it does not.

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THE COURT: That's still
available to them, whether there's been an
on job injury or not.

23

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Termination at the will of either
party, that's still available, is it not?

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JURY OUT



1 MR. SIMONSEN: There's eleven
2 terminated employees who were black in
3 that list.

4 THE COURT: Wait a minute. It
5 says termination date.

6 MR. SIMONSEN: Correct.

7 THE COURT: Now, that doesn't
8 mean they were fired. There's no evidence
9 of that.

10 When somebody ceases to be
11 employed, that is a termination day.
12 There's no evidence that all these people
13 were fired.

14 The evidence is from this woman
15 that she's been there for -- as an
16 administrator, for three years. And only
17 one person has ever been fired, and that
18 was Ms. Jordan.

19 MR. SIMONSEN: That's correct.

20 THE COURT: Well, this doesn't
21 say these people were fired.

22 MR. SIMONSEN: Well, it is --

23 THE COURT: This is a termination
24 date. And it does give the race of
25 everybody. But, it's just as likely --

JURY OUT

1 I -- just because somebody has a
2 termination, that's the date their
3 employment terminated.

4 If I quit, my employment
5 terminates. If I die, my employment
6 terminates. If I'm fired, my employment
7 terminates. Where do you get that these
8 people were fired; all these people were
9 fired?

10 MR. SIMONSEN: I see the Court's
11 point. What I --

12 THE COURT: Well, the evidence is
13 there's only been one person fired in the
14 last three years. And these -- all these
15 people, '94, '93, '92. It just says
16 termination date.

17 There's no evidence that these
18 people were fired. So, I'm not going to
19 make that leap. There's no evidence of
20 that.



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MR. SIMONSEN: All right. Well,
the next point is she -- we believe that

JURY OUT

1 we have offered evidence sufficient to
2 find that Ms. Jordan is black. She was
3 performing her job satisfactorily at the
4 time of the discharge.

5 The evidence to establish that is
6 that until -- I mean, she was fired
7 without ever having been given any prior
8 warnings, prior notices, prior
9 disciplinary action. When you view the
10 evidence in the light most favorable to
11 her, that is established.

12 She was discharged. So, she was
13 a black individual who was discharged, who
14 was performing her job satisfactorily, at
15 the time of discharge.

16 She was replaced by a white
17 individual by the name of Sandra Hester.
18 Those four facts are all established.
19 That is the necessary basis of
20 establishing a prima facie case of race
21 discrimination, under Federal Law.

22 There is no Virginia case which
23 tells us, guides us in how you would
24 analyze a prima facie case under Lockhart.

25 I would suggest to you, if we use

JURY OUT

1 the Federal Standard, which is shifting
2 the burden of proof of the McDonald
3 Douglas line of cases, the Supreme Court
4 cases, they have laid out the shifting
5 burden of proof, which is:

6 "The plaintiff must establish a
7 prima facie case", which is a bear minimum
8 type case.

9 In order to shift the burden to
10 the defense, the defendant would have to
11 come forward on their case to articulate a
12 legitimate explanation of the reason for
13 the discharge.

14 Then, if they do that, which is a
15 very small burden of production, not
16 persuasion, then the ultimate issue in the
17 case is raised as to whether or not the
18 plaintiff has proved a racial
19 discriminatory discharge.

20 I would suggest to you, in this
21 case, the appropriate standard is the
22 shifting burden, prima facie case of model
23 of McDonald Douglas and the later cases,
24 under Federal Law. That the State Court
25 should adopt that as the appropriate

JURY OUT

1 manner of trying a case of wrongful
2 discharge on the basis of racial
3 discrimination.

4 If that is -- if I'm right about
5 that -- and the Court may disagree with me
6 on that -- but, if that is the proper
7 standard, she has proved a prima facie
8 case, which are those four elements:

9 . Black, discharged, performing the
10 job satisfactorily, the type of discharge,
11 and replacement by a white employee.
12 Thank you.

13 THE COURT: Thank you.

14 MR. WOOD: Well, if Your Honor
15 please. The only thing I don't understand
16 in his argument, there's been no evidence,
17 that I recall, that indicated that
18 Ms. Jordan was replaced by a white person.

19 There was a white person working
20 jointly with her, at the time.

21 THE COURT: Well, Ms. Hester.
22 The evidence was Ms. Hester came on.

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JURY OUT



The evidence is in conflict. She says she was doing a good job. I don't think that that is an element that the Court has to find, to make a disposition in this case.

And I think it's a very important point to make, that she was hired in May; that she was obviously black in May, as she was on July 1st. And that seems to me to be an important point in all of this; that somehow she was fired because she was black. But yet she was hired two months before that, and she was black then.

As to the matter concerning -- and she was replaced by a white. The evidence is that half the employees there were white and half were black. A 50/50 chance that anybody coming on would be white. I don't see that that's somehow suggestive of a firing because of race.

And I go back with this -- I'm certainly very familiar with this Bowman

JURY OUT

1 case, with the at will exception that was
2 carved out of that case. Other attempts
3 that have been made to carve out
4 additional exceptions; in addition to this
5 Lockhart case, which certainly we all
6 recognize.

7 But, even the majority opinion --
8 and it is a four to three decision, even
9 the majority opinion says "that we do not
10 retreat from our strong adherence to the
11 employment at will doctrine. We merely
12 hold that the narrow exception, which we
13 recognize in Bowman includes" -- and this
14 is the expansion, "employees who are
15 terminated because of discrimination,
16 based on race.

17 "The discharges of Lockhart and
18 Wright are allegedly tortuous, not because
19 they have a best at right to continued
20 employment, but because their employers
21 misuse the freedom to terminate the
22 services of an at will employee, but
23 purportedly discriminated against their
24 employees on the basis of race."

25 Now, it seems to me, in order to

JURY OUT

1 prove that Clay has discriminated because
2 of race, that the plaintiff has to prove
3 more than I am black and I was fired. I
4 do not think that she proved that she was
5 replaced by a white person.

6 Somehow that's suggested that
7 there was a white person waiting in the
8 wings to come on. And for some reason
9 they wanted to get rid of her to employ
10 this other person. And this employment at
11 will doctrine, I feel, is one that is very
12 strong. And I don't think that, in my
13 opinion, from reading all these cases, the
14 fact that the defendant does not assign a
15 reason, does not suggest an illegal
16 reason.

17 This letter of Mr. Wood's, I
18 would be very surprised if a lawyer or an
19 employer would say, well, the reason you
20 were fired is because it's scuttle butt
21 all over this place that you're stealing
22 food, or you're stealing linen.

23 Certainly, it would be most
24 inappropriate for any lawyer to say any
25 such thing as that in a letter to a

JURY OUT

1 person, where the employer has a right to
2 terminate because of any reason or no
3 reason.

4 Somehow Ms. Jordan has the idea,
5 because Mr. Daniel didn't talk to her
6 enough or talk to somebody else, that
7 that's somehow discrimination. Because
8 some relative of hers couldn't get in. No
9 evidence of whether or not they were
10 already full. No evidence of whether or
11 not the person had any of the means in
12 which to come in; whether they met the
13 criteria for being ambulatory. No
14 evidence about any of that. But, somehow
15 that is discriminatory.

16 It seems to me that there is an
17 overreaching here by the plaintiff; that
18 because she is black, she can't be fired.
19 And she can be fired, even though she
20 happens to be black. Just as a white
21 person can be fired.

22 She can be fired by the employer
23 for any reason or no reason, except she
24 can't be fired because she's black, or
25 because she's filed a claim, or because of

JURY OUT

1 the exception in Bowman.

2 And to engage any further, it
3 would just be the wildest kind of
4 speculation, inferences built upon
5 inferences upon inferences. There is just
6 no proof.

7 Certainly it has to be a
8 circumstantial case. It's got to be. But
9 the evidence here is only and merely, in,
10 my opinion, that she was employed. And
11 two months later she was fired. That
12 doesn't mean that she was fired because of
13 race, in my view.

14 And I have an opinion that, in
15 this case, the plaintiff has not proven a
16 prima facie case. And I would grant the
17 motion to strike.

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Clay's Rest Home, Inc.

QUIET, BEAUTIFUL, HOMELIKE SURROUNDINGS

FIREPROOF - STEAM HEATED

Phone 804-292-4497

701 LUNENBURG AVENUE
BLACKSTONE, VA 23824

August 5, 1994

BRIDGETTE JORDAN

1993

Pay Period 5/2 thru 5/15

| <u>DATE</u> | <u>IN</u> | <u>OUT</u> | <u>HRS.</u> | <u>GROSS</u> |
|-------------|-----------|------------|-------------|--------------|
| May 5 | 11:01pm | 6:59am | 8 | |
| 6 | 10:55pm | 7:00am | 8 | |
| 7 | 10:59pm | 7:01am | 8 | |
| 8 | 10:57pm | 7:04am | 8 | |
| 10 | 11:01pm | 7:00am | 8 | |
| 11 | 10:47pm | 7:00am | 8 | |
| 13 | 10:57pm | 7:00am | 8 | |
| 14 | 10:53pm | 7:01am | 8 | |
| 15 | 10:58pm | 7:00am | 8 | |
| | | | <u>72</u> | \$360.00 |

Pay Period 5/6 thru 5/29

| | | | | |
|--------|---------|--------|-----------|--------|
| May 16 | 10:54pm | 7:00am | 8 | |
| 17 | 10:54pm | 7:00am | 8 | |
| 19 | 10:53pm | 7:00am | 8 | |
| 20 | 10:56pm | 7:00am | 8 | |
| 21 | 10:57pm | 7:05am | 8 | |
| 24 | 11:01pm | 7:00am | 8 | |
| 25 | 10:52pm | 7:00am | 8 | |
| 26 | 10:55pm | 7:00am | 8 | |
| 27 | 10:55pm | 7:00am | 8 | |
| 29 | 10:50pm | 7:01am | 8 | |
| | | | <u>80</u> | 400.00 |

Pay Period 5/30 thru 6/12

| | | | | |
|--------|---------|---------|------------------------------------|--------------|
| May 30 | 10:53pm | 6:59am | 8 | |
| June 1 | 10:56pm | 7:00am | 8 | |
| 2 | 1:57pm | 2:55pm | 1 | (meeting) |
| 2 | 10:56pm | 6:59am | 8 | |
| 3 | 10:53pm | 11:28pm | $\frac{1}{2}$ | (left early) |
| 4 | 10:58pm | 7:02am | 8 | |
| 8 | 11:11pm | 6:58am | 7 $\frac{3}{4}$ | (tardy) |
| 9 | 11:04pm | 7:02am | 8 | |
| 10 | 10:57pm | 6:57am | 8 | |
| 11 | 10:53pm | 6:59am | 8 | |
| 12 | 11:01pm | 6:59am | 8 | |
| | | | <u>73 $\frac{1}{2}$</u> | 366.25 |

64

Plaintiff's Exhibit No. 1

BRIDGETTE JORDAN

PAGE 2

1993

Pay Period 6/13 thru 6/26

| <u>DATE</u> | <u>IN</u> | <u>OUT</u> | <u>HRS.</u> | <u>GROSS</u> |
|-------------|-----------|------------|-----------------------------------|------------------|
| June 13 | 10:59pm | 7:00am | 8 | |
| 15 | 10:59pm | 7:00am | 8 | |
| 16 | 2:31pm | 2:55pm | $\frac{1}{2}$ | (office Meeting) |
| 16 | 11:00pm | 6:59am | 8 | |
| 17 | 11:05pm | 7:00am | 8 | |
| 18 | 10:54pm | 6:59am | 8 | |
| 21 | 10:53pm | 7:00am | 8 | |
| 24 | 10:54pm | 7:00am | 8 | |
| 26 | 11:00pm | 7:01am | 8 | |
| | | | <u>64$\frac{1}{2}$</u> | 322.50 |

Pay Period 6/27 thru 7/10

| | | | | |
|---------|-------------------|--------|---|-------|
| June 27 | 10:52pm | 7:00am | 8 | |
| | Accident occurred | | | 40.00 |

Total gross pay - \$1488.75

BALLARD P. WOOD
ATTORNEY AND COUNSELOR AT LAW
729 Thimble Shoals Boulevard
Suite 2-C
Newport News, Virginia 23606

PHONE: (804) 873-0921

FAX (804) 873-1078

August 2, 1993

Ms. Bridgette B. Jordan
106 S. Harris Street
Blackstone, VA 23824

Dear Ms. Jordan:

Re: Clay's Rest Home
Termination of Employment

At the request of John H. Graham, President of Clay's Rest Home, I am advising you that your dismissal from employment was due to the following facts:

1. You were employed on a 90 day trial basis.
2. It became apparent that you did not or could not perform up to the standards they expect at Clay's Rest Home.
3. You were an employee at will and as such your employer may terminate at anytime without cause, which was done.

Yours truly,

Ballard P. Wood

Ballard P. Wood

BPW/kds

cc: Mr. John H. Graham
780 Pilot House Dr.
Newport News, VA 23606

Plaintiff's Exhibit No. 2

66

JW

6-11-93

During an office staff meeting Bridgette Jordan made several inappropriate remarks about a male residents back side. Bridgette was also extremely loud and used profanity on several occasions.

Assist. Admin
Bridgette J. Jordan

Defendant's Exhibit No.

6-24-93

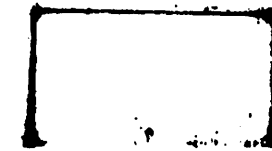
2 To whom it may concern:
Dudette Jordan is being evaluated
for continued employment here at
Clays.

Kabana S. Conil

Defendant's Exhibit No. 2
JH

| | | | | | | | | | | | |
|---|--|--|--|----------------|--|--------------------------------|--|-----------------------|--|---|--|
| Last Name | | First Name | | Middle Name | | Adm. Mo. Day Year Hour Date | | a.m. p.m. | | Admission Number | |
| Previous Address | | City | | State | | Zip | | Sex M F | | Civil Status M S W D Sep. | |
| Age—Yrs. | | Birth Date | | Mo. Day Year | | Birthplace | | Citizen of | | How Many Years in City County State U.S. | |
| Previous Occupation | | If in Military Service which War or Date of Serv | | | | | | | | | |
| ADMITTED FROM: HOME () HOSPITAL () OTHER NURSING HOME () | | | | | | | | | | | |
| Name of Husband or Maiden Name of Wife | | | | Address | | | | | | Birthplace | |
| Name of Father | | | | Birthplace | | Maiden Name of Mother | | | | Birthplace | |
| Notify in Case of Emergency 1. | | | | Relationship | | Address | | | | Phone | |
| 2. | | | | | | | | | | | |
| 3. | | | | | | | | | | | |
| ADMITTING DIAGNOSIS: | | | | | | | | | | | |
| Church Affiliation | | | | Name of Pastor | | | | Address and Phone No. | | | |
| Hospital Preference | | | | | | Insurance | | | | | |
| Funeral Home | | | | | | Interests | | | | | |
| Responsible for Account | | | | | | Address—Phone | | | | | |
| Personal Physician | | | | | | Address—Phone | | | | | |

OVER



RECORD OF DISCHARGE

Final Diagnosis _____ Condition _____

Other Diagnoses: _____

In Emergency, Notified: _____ Date _____ Time _____

Reason for leaving _____ Date _____ 19 _____ Time _____ a.m.
p.m.

Released to _____ Relationship _____

New address _____

RECORD OF DEATH

Immediate cause _____

Contributing factors _____

(THE TWO ABOVE LISTED AS RECORDED ON THE DEATH CERTIFICATE)

Date of death _____ Time _____ a.m.
p.m. Death certificate dated _____ 19 _____

Mortician _____ Address _____

CLAY'S REST HOME, INC.



Documents (2)

APPLICATION FOR EMPLOYMENT

WORK DESIRED _____ DATE _____

NAME ^{MR.} ^{MRS.} ^{MISS} Bridgette Burnette Jordan AGE 23

ADDRESS 106 South Harris St Blackstone Va. 23824 PHONE 292-5906

NAME OF SPOUSE, IF MARRIED _____

NEAREST RELATIVE OR FRIEND Dorothy Jordan

ADDRESS 408 Tanager St Blackstone Va. 23824 PHONE 292-5906

DATE OF BIRTH 6-16-69 SOC. SEC. NO. 229-37-4151

HEIGHT 5 11 WEIGHT 220 MARITAL STATUS NOT

NUMBER OF CHILDREN & AGES 2 4-5

OTHER DEPENDENTS none

HAVE YOU EVER COLLECTED UNEMPLOYMENT INSURANCE NO DATE _____

HAVE YOU EVER MADE CLAIM FOR COMPENSATION INS. NO DATE _____

HAVE YOU EVER MADE CLAIM FOR HEALTH OR DISABILITY INS. NO DATE _____

DOCTOR AND DATE WHEN LAST EXAMINED _____

ADDRESS OF DOCTOR _____ PHONE _____

CONDITION OF HEALTH IN LAST THREE YEARS Good Health

LAST TWO SCHOOLS ATTENDED

| TYPE | NAME & ADDRESS | DATES | DIPLOMA | MAJOR COURSE |
|------|------------------------------|-------|------------|-------------------|
| | <u>Nutterway High School</u> | | <u>yes</u> | <u>Nursing</u> |
| | <u>SVCC</u> | | <u>yes</u> | <u>child care</u> |

LICENSE NUMBER IF ANY, AND DATE OF EXPIRATION 229-37-4151 Expiration Date 6-94

PREVIOUS EMPLOYMENT

| DATE | EMPLOYER | SUPERVISOR | POSITION | REASON FOR LEAVING | REV. <input checked="" type="checkbox"/> |
|--------------------|----------------------------------|------------------|-----------------|----------------------------|--|
| FROM: <u>NAME</u> | <u>Brandon Mill Nursing Home</u> | <u>NAME</u> | <u>POSITION</u> | <u>Went back to school</u> | |
| TO: <u>ADDRESS</u> | <u>Chesapeake County</u> | | | | |
| | <u>PHONE</u> | <u>TITLE</u> | <u>SALARY</u> | | |
| | | <u>Nurse Aid</u> | <u>5.75</u> | | |
| FROM: <u>NAME</u> | <u>Hardegar</u> | <u>NAME</u> | <u>POSITION</u> | | |
| TO: <u>ADDRESS</u> | <u>Chesapeake</u> | | | | |
| | <u>PHONE</u> | <u>TITLE</u> | <u>SALARY</u> | | |
| | | <u>Cashier</u> | <u>4.25</u> | | |

EMPLOYED AT PRESENT WITH 71

DATE AVAILABLE any SALARY EXPECTED _____

2/4/94 - Called - Left a Message
2/2/94 - Orientation

3RD FAD R
\$4.25/Hr

North American Reiss
CORPORATION

APPLICATION FOR EMPLOYMENT

Name in Full Jordan Bridgette Burnette
Last First Middle

Date: 1-25-94

299-37-4151
Soc. Sec. No.

Address 106 Southharrow St Blackstone Va. 23824

Telephone Number 292-5906

Position Desired any

Salary Desired \$4.25 Hour.

How long have you lived in this City? 24 year In this State? 24 years

Are you a Citizen of the U.S. or legally eligible for employment in the U.S.? yes Are you 18 yrs of age or older? yes

Last previous address 408 Taven St. Blackstone Va. 23824

Do you have any disabilities which would prevent you from satisfactorily performing the job?
NO

If you have any "sideline" business interests explain: NO

Why did you leave your last position? couldn't get back and force to work

Previously employed here? NO From To

Give names of any relatives or friends connected with this Company: Sandra Broken

In case of emergency notify Dorothy Jordan Telephone 292-5906

Address 408 Taven St. City Blackstone State Va.

on school records Bridgett Burnette Jordan

| | Did you graduate? | Degree if any | Name of schools | Address |
|--------------------|-------------------|-------------------|---------------------------|----------------------|
| de ool | YES | | Blackstone Intermediate | Blackstone Va. 23824 |
| h ool | NO | | Northway High | Northway County |
| lege er rses | YES | Child Development | SVCC 72 | Liberty Va. |
| | YES | Nursing | Southwest Training Center | Crane Va. |

Defendant's Exhibit No. 7

BUSINESS EXPERIENCE (List Positions Consecutively)

| Dates of Employment | | | | Name of Company | Address | Position | Salary |
|---------------------|-----|-----|-----|-----------------|--------------|-----------------|--------|
| Mo. | Yr. | Mo. | Yr. | | | | |
| 4 | 93 | 7 | 93 | Widener | Cheshamfield | Plumber | \$4.25 |
| 7 | 90 | 2 | 91 | Woodenward | Blackmore Rd | Making Planters | \$1.30 |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

If there were periods when you were unemployed since leaving school, state disposition of time: _____

Are you now employed? NO Where? _____

By whom sent to us for employment NO ONE

I have answered the above questions without reservation, and agree, if employed to conform to all the present and future rules of the Company. I will consult with my supervisor on company rules, regulations and procedures. My employment may be terminated at any time at the option of the Company without previous notice, and if desired by it, without assigning any cause, therefore, I being likewise at liberty to terminate it myself; and it is understood that upon the termination of my employment by the Company, or by myself, that I shall have no claim for compensation except for the actual time I have worked.

I understand that accuracy is essential in answering the questions in this application, and I hereby authorize schools and my former employees to furnish the Company a complete history of my record, releasing them from all liability for furnishing this information, and shall hold the Company harmless from any liability due to decisions based on those references.

SIGNATURE Bridgett Jordan

LEAVE THIS SPACE BLANK

By Whom Interviewed _____

Tested _____

Assigned to: _____

| Office | Position | Reporting | Salary |
|--------|----------|-----------|--------|
| | 73 | | |

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF NOTTOWAY

BRIDGETT JORDAN,

Plaintiff,

v.

AT LAW NO. CL94-39

CLAY'S REST HOME, INC.,

Defendant.

JUDGMENT

On the 19th day of January, 1996, came the parties, by counsels, and came as well the jury impanelled and sworn.

Thereupon at the conclusion of Plaintiff's evidence, defendant, by counsel, moved the Court to strike the Plaintiff's evidence and enter summary judgment in its behalf, which motion after having been fully heard and maturely considered by the Court, was granted as to both counts.

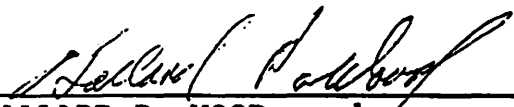
WHEREFORE, IT IS CONSIDERED AND ORDERED by the Court that the Plaintiff, Bridgett Jordan, shall have and recover nothing of the Defendant, Clay's Rest Home, Inc., but that the defendant, Clay's Rest Home, Inc., shall have the Court rule on the defendant's motion for sanctions at a later date.

IT IS FURTHER ORDERED, that this cause be continued on the docket until further Order of this Court.

ENTERED: March 5, 1996

DATE: G. H. [Signature]

I ask for this:


BALLARD P. WOOD, p.d.
729 Thimble Shoals Blvd
Suite 2-C
Newport News, VA 23606
(804) 873-0921

Have seen and objected to:

DAVID R. SIMONSEN, JR., p.q.

NOTTOWAY CIRCUIT CT.
A Copy, Teste: JAMES W. KING, CLERK
By William M. Miller D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NOTTOWAY

BRIDGETTE JORDAN,

Plaintiff,

v.

CLAY'S REST HOME, INC.,

Defendant.

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At Law No. CL94-39

Memorandum in Opposition to Motion For Sanctions

Plaintiff Bridgette Jordan ("Jordan"), by counsel, and pursuant to this Court's Order, submits the following memorandum in opposition to the Motion for Sanctions of defendant Clay's Rest Home (Clay's).

A hearing on this matter is set before this Court in Amelia County Courthouse on Tuesday, March 26, 1996, at 9:30 a.m.

Factual Background

1. Jordan is a black female.
2. Clay's hired Jordan on May 5, 1993.
3. During her employment, Jordan worked steadily and continuously until the day of her on-the-job injury. See Plaintiff's Exhibit 1.
4. During her employment, Jordan never received any discipline or any notice that she was in danger of discipline or the termination of her employment.
5. During Jordan's employment, Clay's had no black residents and Jordan was the only black employee who worked in the office.

6. On Monday, June 28, 1993, at the end of her eight hour shift, Jordan suffered an on-the-job injury.

7. Clay's, including John Graham, knew and understood as of Monday, June 28, that Jordan would file a claim for workers compensation because of her on-the-job injury.

8. On Monday, June 28, 1993, Jordan was released to return to work on the evening of Thursday, July 1, 1993.

9. On Wednesday, June 30, 1993, Jordan was on the schedule to report to work on the evening of Thursday, July 1, 1993.

10. On Wednesday, June 30, Barbara Daniel, the Assistant Administrator of Clay's, informed Jordan that she was on the schedule and was expected to return to work on the evening of Thursday, July 1, 1993.

11. On the morning of Thursday, July 1, 1993, John Graham, the Owner and Administrator of Clay's, told Daniel to discharge Jordan.

12. Graham is at Clay's on an average of a few days a month; Daniel has far more involvement in and knowledge of the day-to-day operations.

13. Graham had never before Thursday, July 1, 1993, discussed terminating Jordan with Daniel.

14. Clay's had not terminated any other employee, during either 1992 or 1993, for any reason; termination of an employee was a highly unusual event on July 1, 1993.

15. Graham did not give Daniel an explanation of why he was directing her to discharge Jordan.

16. Graham told Daniel to tell Jordan that Clay's attorney would provide Jordan with a statement of the reason for Jordan's discharge, if Jordan wanted a statement of a reason.

17. Daniel did inform Jordan of her termination on July 1, 1993.

18. Daniel did inform Jordan that she could obtain a statement of a reason for her discharge only from Clay's attorney.

19. Jordan requested a statement of the reason for her discharge on July 1.

20. Clay's attorney did not provide Jordan with any statement of a reason for discharge until by letter dated August 2, 1993. See Plaintiff's Exhibit 2.

21. Clay's and its workers compensation carrier denied workers compensation coverage to Jordan for the injury suffered on June 28, 1993.

22. Jordan first consulted Simonsen on or about September 7, 1993.

23. Jordan has never made any statement to any person about any desire "to get" Clay's; apart from statements of her desire to obtain appropriate legal relief for her on the job injury and her wrongful discharge.

24. Before meeting Jordan in connection with her claims against Clay's, neither Simonsen nor any other counsel involved in this matter, had any prior dealings with, or knowledge of any kind about, Clay's, its owners, or its employees.

25. From September 7, 1993 to the present time, there was never any question in the mind of Jordan or her counsel that but for her on the job injury on June 28, 1993, she would not have been removed from the schedule and discharged on July 1, 1993.

26. Given everything known about Jordan, Clay's, Daniel, and Graham, it always has been an obvious fact to Jordan and her counsel that no matter how Clay's viewed Jordan in general, she would have continued working her schedule the week of June 28, 1993, specifically her shift that began the evening of July 1, 1993, but for her on the job injury.

27. On November 23, 1993, Jordan's counsel (Simonsen) filed an application for hearing on Jordan's claim for benefits with the Virginia Workers Compensation Commission.

28. Simonsen, with the assistance of Keith B. Marcus, another Richmond attorney, represented Jordan in connection with her workers compensation claim on a pro bono basis.

29. Clay's and its workers compensation carrier vigorously contested Jordan's workers compensation claim, obtaining leave for interrogatories and a deposition of Jordan, among other things.

30. A hearing was held on Jordan's workers compensation claim on March 24, 1994.

31. At the hearing on March 24, 1994, Barbara Daniel made the statement to Jordan's counsel (Simonsen), that she did not know why John Graham terminated Jordan's employment. This statement is consistent with Daniel's later trial testimony on January 19, 1996. Daniel's statement of a lack of knowledge as to the reason for

Jordan's discharge was always viewed as very significant.

32. After the March 24, 1994 hearing, the Deputy Commissioner ruled that Jordan had suffered an on-the-job injury and was entitled to benefits.

33. Clay's and its carrier filed a Request for Review with the Commission; the gravamen of the Request for Review was the Deputy Commissioner's alleged failure to make an express determination of credibility. The Request for Review argued that Jordan was not credible and that her testimony should not be believed.

34. As a result of the Request for Review, the Commission remanded the matter to the Deputy for an express finding of credibility. After remand, and further briefing, in February, 1995 - more than 1.5 years after her on the job injury, the Deputy Commissioner expressly credited Jordan's testimony and ruled in her favor.

35. Jordan did not receive her workers compensation benefits to which she was entitled, until after the February, 1995, ruling.

36. Jordan filed her Motion for Judgment in this action, by counsel, on or about June 28, 1994, just before the one year statute of limitations applicable to her two claims of wrongful discharge were to expire on July 1, 1994.

37. Jordan and her counsel never have had any knowledge of Clay's ability to receive credit, Clay's need or duty to file any financial statements with or without reference to the Motion For Judgment, or any other such matters concerning Clay's financial

affairs.

38. Jordan alleges in her Motion For Judgment that Clay's discharged her on Thursday, July 1, 1993, because of (1) her on-the-job injury on Monday, June 28, 1993, and her intent to file a workers compensation claim; and (2) her race.

39. The Motion For Judgment sought, among other things, compensatory and punitive damages.

40. The law of Virginia allows the recovery of punitive damages in an action for wrongful discharge on the basis of race in violation of public policy; Jordan's counsel is aware of no ruling to the contrary.

41. With regard to the claim of retaliatory discharge under § 65.2-308, Jordan is aware of Circuit Court decisions, and a federal district court decision, holding that punitive damages are not recoverable in an action under Virginia Code § 65.2-308. Jordan does not consider the issue definitively settled, given the lack of Supreme Court precedent on the issue.

42. Clay's counsel (Wood), before having or attempting any conversation of any kind with Jordan's counsel about the Motion For Judgment or Jordan's action, filed a Motion For Sanctions with this Court.

43. The Motion For Sanctions, by its terms, claimed to seek immediate, extraordinary relief; Clay's never made any attempt to place any such demand for immediate, extraordinary relief before this Court.

44. Attached to the Motion For Sanctions was an Affidavit of John Graham; which was considered significant for what it did not say. Receipt of this Affidavit simply reinforced Jordan's belief that she had a strong and viable claim of wrongful discharge against Clay's.

- a. The Affidavit does not identify Graham as the "Administrator" of Clay's; Clay's did not identify Graham as the "Administrator" of Clay's until January, 1996, in answer to interrogatories. This was seen as possibly significant, because it showed that Clay's was going to argue that Graham was more involved in day-to-day operations than Jordan previously had understood.
- b. The Affidavit states that of the "28 Afro-Americans" that Clay's had employed between January 1983 and July 21, 1994, which included Jordan, "none have been discharged for cause". Thus, as of the start of the action, Graham had already stated in an Affidavit that Jordan was not discharged for cause. Although Jordan recognized that this statement might later be said to be a drafting error on the part of Clay's, it nevertheless would enable Jordan, in cross-examining Graham, to confront Graham with this statement under oath dated July 21, 1994. Jordan also expected that she would have the opportunity to cross-examine Graham, because Graham was the acknowledged decision maker for the discharge decision. If in fact, Clay's did not discharge Jordan for cause,

then it appeared very likely that the only reasonable inference was that there was an illegal motive for the discharge.

- c. Most striking, particularly in light of the statement that Clay's did not discharge Jordan for cause, the Affidavit made no statement whatever about why Jordan was discharged. If Clay's, in filing the Motion For Sanctions, was acting in good faith in filing the Motion, to demonstrate that its discharge of Jordan was legal, Jordan would expect the Affidavit to state the reason for the discharge. The absence from the Affidavit of a legitimate, nondiscriminatory reason for the discharge, implied to Jordan that Clay's had no such reason. In the context of a case alleging a racially discriminatory discharge, such an omission in the context of such an Affidavit is usually an admission of substantial exposure, if not liability.

45. The prayer for relief set forth in the Motion For Sanctions is moot, because it is directed to pre-trial relief.

46. The Motion for Sanctions contains false statements of fact and law.

47. For example, the Motion For Sanctions states as fact in paragraph 4 that "at no time did counsel for the Plaintiff write, telephone or otherwise contact the Defendant or their agents or employees in order to obtain their version of the matters addressed in this action."

48. In fact, because of the lengthy and convoluted proceedings before the Workers Compensation Commission, Simonsen had had contacts and conversations with John Poma, Clay's attorney in the workers compensation proceedings, along with the opportunity to talk with, and cross-examine in the hearing, both Barbara Daniel and Billy Naugle, a maintenance employee of Clay's.

49. As a further example, the Motion For Sanctions states in paragraph 5 that "[Simonsen] knew at all times relevant that the filing of this action would seriously impair business and trade dealings and the reputation of the Defendant herein".

50. To date, Simonsen has never had any such knowledge. Apart from the fact that Simonsen has never had any such knowledge, Clay's has never provided any evidence that in fact this action had any such effect on Clay's. Simonsen very much doubts that "the filing of this action would [or did] seriously impair business and trade dealings and the reputation of [Clay's]".

51. After receipt of the Motion For Sanctions, Jordan submitted seven (7) Requests for Admission to Clay's; the Request for Admissions and Clay's responses are attached as Exhibit A.

52. At least some of Clay's responses to the Requests for Admission are inconsistent with Daniel's statements and testimony; other responses are vague and unintelligible.

53. Clay's never filed a Demurrer to test the legal sufficiency of any part of the Motion For Judgment.

54. Trial of this action was held on January 19, 1996.

55. In her case in chief, Jordan believes that she established a prima facie case that Clay's had discharged Jordan either because of her on the job injury and/or because of her race.

56. After Jordan, believing that she had established prima facie cases of wrongful discharge, rested; Clay's moved to strike.

57. Jordan generally argued that the circumstantial evidence in favor of a finding of a retaliatory discharge in violation of the Workers Compensation Act, § 65.2-308, was clear.

58. Believing (albeit incorrectly) that the Court's concern with regard to the motion to strike was focused only on the claim of race discrimination, Jordan argued in greater detail that Jordan had established a prima facie case of a discharge on the basis of race, because Jordan had offered evidence that established the four elements of a prima facie case that are well established under the federal laws prohibiting race discrimination. See, e.g., St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742, 125 L.Ed.2d 407, 62 FEP (BNA) 96 (US 1993).

59. Specifically, in her case in chief, Jordan had established:

- i. she is black;
- ii. she was discharged;
- iii. she was performing her job satisfactorily, within the legitimate expectations of Clay's as of the time of discharge; and
- iv. she was replaced by a white individual (Sandra Hester).

60. Once Jordan established her prima facie case of race discrimination, under well established federal law, then the burden of production (but not persuasion) shifted to Clay's to state a legitimate, nondiscriminatory reason for the discharge.

61. As of the time of this Court's ruling on the motion to strike, the decision maker who made the decision to discharge Jordan (John Graham) had not testified; Clay's never offered into evidence its statement of a legitimate, nondiscriminatory reason for Jordan's discharge. Had such a statement been proffered, then Jordan could have proceeded to offer proof that the statement was false and pretextual, thus persuading the jury that the real reason for the discharge was her race.

62. Notwithstanding Jordan's view of the state of the evidence and her prima facie case, this Court granted the motion to strike as to both of Jordan's claims. Consequently, Clay's never offered the testimony of Graham as to the reason for discharge, and Jordan never had the opportunity to challenge the truth of such stated reason.

63. Jordan does not know why this Court found that she had not established a prima facie case with regard to either of her claims; specifically with regard to her claim of race discrimination, Jordan does not know if the Court rejected the shifting burden of proof paradigm used in cases of alleged race discrimination under federal law.

64. Jordan believes that this Court's granting of the motion to strike was error, because construing the facts in the light most

favorable to Jordan, Jordan had established her prima facie case of wrongful discharge either under Virginia Code § 65.2-308 and/or Lockhart v. Commonwealth Education Systems Corp., 247 Va. 98, 439 S.E.2d 328, 9 IER (BNA) 277 (1994).

65. Jordan believes that the Virginia Supreme Court, when presented with the issue, will adopt the shifting burden of proof paradigm set forth in federal law, in cases alleging a racially discriminatory discharge in violation of the public policy of Virginia.

Argument

Jordan and her counsel deny that there is any basis in law or fact for Clay's Motion for Sanctions. On the contrary, Jordan respectfully submits that this Court erred in granting the motion to strike.

Jordan submits that Clay's Motion For Sanctions is the only pleading in this action that was filed in violation of Virginia Code § 8.01-271.1. Wood filed the Motion For Sanctions immediately after receiving the Motion For Judgment, presumably in an effort to cause Jordan to dismiss her action, and presumably without knowing, among other things, the background of the workers compensation proceedings. It is apparent that the Motion For Sanctions, along with the attached Affidavit of John Graham, was prepared without any research into the applicable law, and without any serious deliberation.

The Motion For Sanctions consists of a great deal of bluster and hyperbole, at best. Apart from disagreeing with the statements

of fact contained in the Motion For Sanctions, Jordan has no knowledge of any possible basis for Clay's statements. Presumably, Wood will testify at the March 26 hearing as to his basis for the filing of the Motion For Sanctions.

The most striking aspect of the Motion for Sanctions is the fact that Wood filed the Motion without any prior contact with Simonsen, even though in the Motion for Sanctions, Wood complains about Simonsen having filed the Motion For Judgment without talking with Clay's, first. Of course, Simonsen had talked with employees of Clay's, among others, and had become convinced, as a partial result, of the validity of Jordan's claims. Ironically, in light of the Motion For Sanctions, it is Wood, not Simonsen, who is guilty of filing allegations of wrong-doing, without first talking with the other side.

Prior decisions of the Virginia Supreme Court set forth the applicable standards for an award of sanctions. See, e.g., Nedrich v. Jones, 245 Va. 465, 429 S.E.2d 201 (1993). Apart from the fact that Jordan has a viable appeal from the granting of the motion to strike, Clay's cannot offer any evidence to meet the standards necessary for an award of sanctions. Accordingly, the motion for sanctions must be denied.

WHEREFORE, Jordan moves that this Court deny Clay's Motion For Sanctions; grant Jordan such other and further relief as is proper; and enter a Final Order in this action.

Dated this 7th day of March, 1996.

Respectfully submitted,

BRIDGETT JORDAN

Original Signed by:
David R. Simonsen, Jr.

By: _____
Of Counsel

David R. Simonsen, Jr. (Bar #20078)
Vickey A. Verwey (Bar #20267)
1600 Forest Avenue, Suite 110
Richmond, Virginia 23229-5007
(804) 285-1337

Counsel for Plaintiff

Certificate of Service

I certify that on this 7th day of March, 1996, a copy of this Memorandum was mailed to Ballard P. Wood, Esquire, 729 Thimble Shoals Blvd., Suite 2-C, Newport News, Virginia 23606.

Original Signed by:
David R. Simonsen, Jr.

VIRGINIA: IN THE CIRCUIT OF THE COUNTY OF NOTTOWAY

BRIDGETT JORDAN,

Plaintiff,

v.

At Law No. CL94-39

CLAY'S REST HOME, INC.,

Defendant.

RESPONSE TO REQUESTS FOR ADMISSIONS BY DEFENDANT

1. As of July 27, 1984, Ballard P. Wood, Esquire, has never spoken or attempted to speak, with David R. Simonsen, Jr., Esquire, about this action.

RESPONSE: No.

2. During the hearing before the Virginia Workers' Compensation Commission on March 24, 1994, concerning Jordan and Clay's Rest Home, occurring before the filing of this actions, David R. Simonsen, Jr., Esquire, had the opportunity to speak with and cross examine Barbara Daniels, Administrator of Clay's Rest Home and William Naugle concerning the events of the week of June 28, 1993, when Clay's Rest Home fired Jordan.

RESPONSE: Yes. Mr. Simonsen did cross examine Barbara Daniels, Assistant Administrator of Clay's Rest Home and William Naugle, an employee of Clay's, but Jordan was not fired on June 28, 1993.

3. Jordan suffered and on-the-job injury on June 28, 1993.

RESPONSE: Yes, she suffered an injury while at work.

4. Jordan never returned to work with Clay's Rest Home after her on-the-job injury on June 28, 1993.

RESPONSE: True.

5. On or about Tuesday, June 30, 1994, Barbara Daniels informed Jordan that it was "okay" for Jordan to return to work on July 1, 1994.

RESPONSE: No.

6. On Thursday, July 1, 1994, Barbara Daniels telephoned Jordan and told her that she could not return to work at Clay's Rest Home.

RESPONSE: No.

7. Between Daniel's conversation with Jordan on June 30 and Daniel's conversation with Jordan on July 1, John Graham told Daniel that Jordan's employment was terminated and that Jordan would not return to work at Clay's Rest Home.

RESPONSE: Denied.

CLAY'S REST HOME, INC.

BY: 

OF COUNSEL

BALLARD P. WOOD, ESQUIRE
729 THIMBLE SHOALS BLVD, SUITE 2-C
NEWPORT NEWS, VA 23606
(804) 873-0921

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Response to Request for Admissions of Defendant was mailed to David R. Simonsen, Jr., and Vickey A. Verwey, Counsel for Plaintiff, at 1600 Forest Avenue, Suite 101, Richmond, Virginia 23229-5007 this 24th day of August 1994.


Ballard P. Wood

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF NOTTOWAY

BRIDGETTE JORDAN,)

Plaintiff,)

v.)

AT LAW NO. CL94-39

CLAY'S REST HOME, INC.,)

Defendant)

MEMORANDUM FOR MOTION FOR SANCTIONS

Defendant, Clay's Rest Home, Inc. (Clay's), by counsel, and pursuant to this Court's Order, submits the following memorandum for sanctions.

1. Under Section 8.01-271 of the Code of Virginia (1950) as amended, sanctions may be awarded for failure to make reasonable inquiry to determine whether the civil suit is grounded in fact and this duty continues to the signing and filing of every pleading, written motion, and other paper and to the making of an oral motion, to the end that the lawyer certify, advisedly and creditably, that each such pleading paper, or motion is "well-grounded in fact", see Oxenham v. Johnson, 402 S.E. 2D 1 (VA 1991).

2. In the case before the Court, Jordan v. Clay's, the Plaintiff filed suit on June 29, 1994 claiming wrongful discharge-retaliation, and wrongful discharge-race discrimination, claiming compensatory and punitive damages in the sum of \$200,000.00 each, plus costs and attorney's fees; a Motion for Sanctions, with Affidavit attached, an Answer and Grounds of Defense was filed on July 21, 1994.

3. This put the Plaintiff and her counsel on notice that this was a frivolous suit and any other pleading, motion should be investigated thoroughly before answering any pleading or motions. On July 26, 1994, Plaintiff's counsel, David R. Simonsen, Jr., filed for their first set of Discovery and by cover letter indicated that he was aware that Clay's was not interested in settling and requested dates for Discovery after the Interrogatories were answered (a copy of letter attached as Defendant's Ex. A). It should have been apparent that the Defendant would not be willing to settle this frivolous claim for nuisance value and that by going forward with the case would possibly open himself to sanctions, giving the Plaintiff and her counsel every benefit of the doubt at this stage of the proceedings, they may have thought that they had a possibility of getting by a Motion to Strike, however, the Plaintiff never requested dates for additional Discovery indicating a complete disregard for the veracity of his position and the suit became a matter of harassment.

4. Count 1 of the Motion for Judgment: Wrongful discharge-retaliation was not proven by the evidence at trial, nor was it proven by subpoena of the records of the Workers Compensation Commission, in fact these records showed that no one had been fired from Clay's for filing for compensation from 1982 to 1993, again showing a complete disregard for the truth. The Plaintiff, by her attorney, asked for trial by jury, which is not appropriate in

Virginia, nor does a claim for punitive damages (Dunn v. Bergen Brunswick Drug Co., U. S. District Court Norfolk, April 13, 1994.

5. Count 2: Wrongful discharge - race discrimination is equally without foundation. The Plaintiff gave Discovery Depositions on December 8, 1995 in which her only claims of discrimination were that the assistant administrator of Clay's would talk to other employees more than she would to the Plaintiff; that there were no black residents at Clay's, and that she was as qualified for the job as the person who took her place. If this is all that her attorney was going on as a basis of race discrimination, then he was looking for a quick settlement of a nuisance value claim. In addition Plaintiff and her attorney admitted on my Request for Admissions that the Equal Employment Opportunity Commission ruled that the Plaintiff was discharged for cause dated June 27, 1995 (see Defendant's Ex. B). Even though this evidence was not admissible at trial because Defendant could not produce the author of this document, it still shows a complete disregard for the attorney's duty to make a reasonable inquiry into the merits of the case.

6. In spite of all the evidence since filing the suit, the Plaintiff's attorney pushed ahead for trial.

7. All of this evidence without taking into account the main issue in the case: that the Plaintiff was an employee at will and as such could quit at any time and likewise the employer may fire her at any time, both without any reason or any notice. This right of employment at will, has been zealously protected by our Courts,

both for the employee and the employer and any practicing attorney in the Commonwealth should have been aware of this policy, making their original pleadings not well-grounded in fact.

8. Then, we have the latest Motion for Reconsideration and Retrial, which is nothing but a ploy to attempt to preserve a possible error for appeal. It is a blatant attempt to force the Defendant to drop his Motion for Sanctions and another frivolous motion not well-grounded in fact.

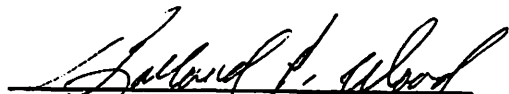
9. Your Defendant asks for attorney's fees in the sum of \$10,000.00 Dollars plus it's costs of \$413.90 expended in this matter.

WHEREFORE, Clay's moves that this Court grant the Motion for Sanctions, and such other and further relief as is proper.

Dated this 14th day of March, 1996.

Respectfully submitted,
CLAY'S REST HOME, INC.

BY 
OF COUNSEL


BALLARD P. WOOD, p.d.
729 Thimble Shoals Blvd. St. 2-C
Newport News, VA 23606
(804) 873-0921

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed this 14th day of March, 1996 to David K. Simonsen, Jr. and Vickey A. Verwey, 1600 Forest Avenue, Suite 110, Richmond, Virginia 23229-5007.


BALLARD P. WOOD

DAVID R. SIMONSEN, JR.
ATTORNEY AT LAW
1600 FOREST AVENUE • SUITE 110
RICHMOND, VIRGINIA 23229-5007

PHONE: (804) 285-1337
FAX: (804) 285-1350

July 26, 1994

Ballard P. Wood, Esquire
729 Thimble Shoals Blvd, Suite 2-C
Newport News, Virginia 23606

Jordan v. Clay's Rest Home, Inc.
Nottoway Circuit Court At Law No. CL94-39

Dear Mr. Wood:

Enclosed is our first set of discovery.

Please advise me at your earliest convenience as to your available dates for the taking of the depositions of John Graham and Barbara Daniel. I will want to receive your responses to the discovery before the taking of these depositions so we should plan on a late August or September date. I am willing to take these depositions at my office, at the facility, or another location in Richmond.

I assume from your manner of litigation that your client has no interest in discussing any possible settlement and therefore I shall not waste your time or mine on that subject.

Sincerely,



David R. Simonsen, Jr.

DRS, JR: drs
cc: Bridgett Jordan

Defendant's Ex. D

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF NOTTOWAY

BRIDGETTE B. JORDAN, ..

Plaintiff,

v.

AT LAW NO. CL94-39

CLAY'S REST HOME, INC.,

Defendant,

REQUEST FOR ADMISSIONS

Comes now, the defendant, Clay's Rest Home, Inc., by counsel, pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, and requests that the plaintiff, Bridgette B. Jordan Yates, make the following admissions for the purpose of this pending action only:

1. That the attached form entitled, "Charge of Discrimination," charge number 121-94-0016 filed by plaintiff with the EEOC, dated 9/25/93, marked Exhibit "A," is true, correct and is an accurate reproduction of the original document.

2. That the attached letter of Determination by the U. S. Equal Employment Opportunity Commission, Norfolk Office, dated September 28, 1994, marked Exhibit "B," is true, correct and is an accurate reproduction of the original document.

SUBMITTED BY

CLAY'S REST HOME, INC.

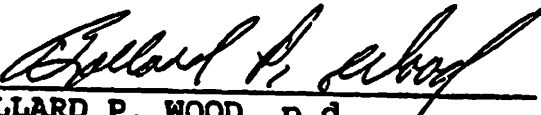
By: 

Counsel

BALLARD P. WOOD, p.d.
729 Thimble Shoals Blvd
Suite 2-C
Newport News, VA 23606
(804) 873-0921

CERTIFICATE OF SERVICE

I, hereby certify that on this 8th day of June, 1995, a true and exact copy of the foregoing Request for Admissions was mailed to David R. Simonsen, Jr. and Vickey A. Verwey, Esquires, 1600 Forest Avenue, Suite 110, Richmond, VA 23229-5007


BALLARD P. WOOD, p.d.

CHARGE OF DISCRIMINATION

 AGENCY
☐ FEPA
☒ EEOC

CHARGE NUMBER

 This form is affected by the Privacy
 Act of 1974; See Privacy Act Statement before
 completing this form.

of 1974; See Privacy Act Statement before

121-94-0016

State or local Agency, if any

and EEOC

NAME (Indicate Mr., Ms., Mrs.)

Ms. Bridgette B. Jordan

HOME TELEPHONE (Include Area Code)

(804) 292-5906

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

106 SOUTH HARRIS STREET, BLACKSTONE, VA 23824

06/16/69

 NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE,
 STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (Include Area Code)

CLAY'S REST HOME

Cat. A (15-100)

(804) 292-4497

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

701 LUNENBURG AVENUE, BLACKSTONE, VA 23824

135

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE

EARLIEST

LATEST

/ / 07/30/93

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

- I. On or about June 20, 1993 I was demoted from my full time office position to a part time one. On July 30, 1993, I was discharged. I had been employed with this company since May 5, 1993.
- II. The reason given for the demotion by Bobbie Daniels (white), Supervisor/Administrator was because it was what Mr Graham wanted.
- The reason given for my discharge was I could not do my job.
- III. I believe I was demoted and discharged in violation of Title VII of the Civil Rights Act of 1964, as amended, because of my race, black.

☐ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local requirements)

 I swear or affirm that I have read the above charge and that
 it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (Day, month, and year)

 I declare under penalty of perjury that the foregoing is true
 and correct.

X Bridgette Jordan

100

 Date 9/25/93
 EEOC FORM 5 (Rev. 06/92)

Charging Party (Signature)

RESPONDENT'S COPY



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Norfolk Area Office

252 Monticello Ave., 1st Floor

Norfolk, VA 23510

PII: (804) 441-3470

TDD: (804) 441-3578

FAX: (804) 441-6720

Charge No.: 12194-0016

**Bridgette B. Jordan
106 South Harris Street
Blackstone, VA 23824**

Charging Party

**Clay's Rest Home
701 Lunenburg Avenue
Blackstone, VA 23824**

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended.

All requirements for coverage have been met. Charging Party alleges she was demoted from her position as Office Personnel on June 20, 1993 and she was discharged on July 30, 1993 because of her race, Black.

Respondent denies Charging Party was demoted and contends she was discharged because she did not meet the Respondent's expectations.

Charging Party was hired on May 5, 1993 and her employment as Floor Supervisor terminated with Respondent on July 2, 1993.

The evidence of record shows Charging Party was not demoted in position but was changed to part-time status.

The evidence of record further shows Charging Party was discharged due to misconduct. Testimonial evidence could not be obtained to support Charging Party's allegations. Charging Party was the only employee discharged during the relevant period of the investigation.

Based on the analysis, I have determined that the evidence obtained during the investigation does not establish a violation of the statute.

This determination and dismissal concludes the processing of this charge. This letter will be the only notice of dismissal and the only notice of the Charging Party's right to sue which will be sent by the Commission. THE CHARGING PARTY MAY ONLY PURSUE THIS MATTER FURTHER BY FILING SUIT AGAINST THE RESPONDENT(S) NAMED IN THE CHARGE IN FEDERAL DISTRICT COURT WITHIN 90 DAYS OF THE

Charge No.: 12194-0016

Page 2

CHARGING PARTY'S RECEIPT OF THIS LETTER. Therefore, if a suit is not filed within this 90 day period, the Charging Party's right to sue will be lost.

On Behalf of the Commission:

092894
Date

Kathryne E. Stokes
Kathryne E. Stokes
Area Director
Norfolk Area Office

Enclosures: Information Sheets for Charging Parties

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE COUNTY OF NOTTOWAY

3

4 BRIDGETTE JORDAN

5 vs.

6 CLAY'S REST HOME, INC.

7

At Law No.
CL94-39

8

9 COPY

March 26, 1996

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Amelia, Virginia

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11 Complete transcript of a motion for sanctions
12 and other incidents in the above, when heard before
13 the Honorable Thomas Warren, Judge.

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THE COURT: Suppose I agree with you, what is the basis for your claim of attorney's fees? How much are you asking and where do you get it from?

MR. WOOD: I'm asking for \$10,000, Your Honor, because I have spent --

THE COURT: Did I see somewhere \$5,000 here in your motion?

MR. WOOD: No, sir, \$10,000. My time on this is well over 100 hours, counting the answers to all the interrogatories and my

1 requests and depositions and the time that I
2 spent with the E.E.O.C. And then the trial, of
3 course that was just a half a day, but that did
4 require setting aside a full day and a half out
5 of my time, which my client will have to pay me
6 for if we're not awarded sanctions. And I think
7 that my client is entitled to sanctions because
8 this was just frivolous just on the basis of
9 Ms. Jordan's claim of discrimination. That's
10 all I have.



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22 motions for sanctions. There was only one
23 motion for sanction filed which was filed on
24 July 21st, I believe it was 1994. It was filed
25 shortly after the defendant received the motion

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then requests certain relief. As I understand it, that is the motion we are before the Court on today. There's never been any other motion made other than that motion.

THE COURT: You agree with that, Mr. Wood?

MR. WOOD: Yes, sir.

MR. SIMONSEN: Paragraph one states the defendant is seriously impaired in receiving credit because they must report this pending claim on all financial statements. I have never had any knowledge that this is true. My client has never had any knowledge that this is true. Mr. Wood has never offered me any evidence that the defendant has been impaired in any manner in receiving credit. Certainly --

THE COURT: Suppose it is true, what difference does it make?

MR. SIMONSEN: I don't know, Your Honor.

THE COURT: I don't think that certainly would not be a reason for me to impose sanctions.

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MR. SIMONSEN: The defendant has stated that the only third party this action was reported to was a business insurance company which also handled the compensation claim, so it doesn't appear to me that I have any reason to believe this statement is true, much less that it's relevant.

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MR. SIMONSEN: Paragraph two, plaintiff and counsel are well aware there is not one scintilla of evidence to support the plaintiff's claim. With regard to that, it is difficult to separate my response in connection with the motion for sanctions to my feeling about the status of the case after plaintiff's case in chief was rested. I've submitted the memorandum to the Court, which I believe we've had the opportunity to read.

THE COURT: Yes, sir, you have and I have read it.

MR. SIMONSEN: I've explained in there the

1 facts that we believe not only that we had, but
2 also the facts we had in support of the claims.
3 I continue to believe that the circumstances
4 surrounding the discharge, the fact that she was
5 on the schedule for July 1st, then removed
6 somewhat strangely from the schedule without any
7 explanation being given to the assistant
8 administrator, Barbara Daniel, accomplishes a
9 prima facie case of worker's compensation
10 retaliation in that case. I think that is
11 clear. I have always thought that was clear.
12 It's hard for me to respond otherwise in
13 connection with that evidence.

14 In regard to the race discrimination claim,
15 again, as of the time of the filing of this
16 motion to which this motion of sanctions
17 responded, I had every reason to believe and I
18 think it was borne out that I could establish a
19 prima facie case in a race discrimination in a
20 federal law context, which the United States
21 Supreme Court has laid out in a series of cases,
22 the most recent and important one is the Saint
23 Mary's case, where if you show if the plaintiff
24 is of the protected group, black in this case,
25 suffered the action, discharged in this case,

1 the employee was immediately, before the
2 stopping of work, was replaced by a white
3 individual in the position. I knew as of the
4 time of the filing that we could establish those
5 four things.

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17 THE COURT: Further I think you will agree,
18 and it seems to me, important, that Ms. Jordan
19 had only been working less than two months --

20 MR. SIMONSEN: She was hired May 5th.

21 THE COURT: -- when she was fired.

22 MR. SIMONSEN: That's correct.

23 THE COURT: And further the evidence was
24 from Ms., I can't remember the administrator's
25 name, Barbara Daniel was that she was a

1 probationary employee.

2 MR. SIMONSEN: That was disputed. My client
3 disputed the fact that she was ever told about a
4 90-day period.

5 THE COURT: That was the testimony of
6 Ms. Daniel nevertheless. And there was one
7 other thing. That's it.

8 MR. SIMONSEN: You can find the replacement,
9 for example, on a reduction in force case by
10 identifying the person who had already been on
11 the payroll but in fact filled the position.
12 The former employee plaintiff had been
13 performing --

14 THE COURT: One other question I did want to
15 ask you. The evidence was, and I think you
16 agree that I don't think it was disputed, that
17 the majority of employees at Clay's Rest Home
18 are black.

19 MR. SIMONSEN: It is not managed, but of the
20 total work force, correct, not in the office
21 where Ms. Jordan worked. She was the only black
22 employee in the office.

23 THE COURT: But the majority of the
24 employees at the facility are black.

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Plaintiff's events in the past is an intent to get the defendant, we have no knowledge of that. That's simply an unsupported statement.

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THE COURT: I don't think that was evidence. I don't remember any evidence to that extent that she said testified she was going to get -- there was no evidence to that effect. So I'm going to confine my ruling to the evidence.

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MR. SIMONSEN: It says punitive damages are not recoverable by law on a wrongful discharge claim. That is simply not correct in my opinion. In a case of race discrimination and violation of the public, the Lockhart type test applies. There's no question in my mind but that the Supreme Court would permit the recovery of punitive damages. I don't know why the law would be read to the contrary. So with regard to race discrimination counted, I think it's clear that punitive damages would be recoverable if you would show an act of intentional race discrimination.

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With regard to the worker's compensation

1 claim, the Virginia Supreme Court has not ruled
2 on it. There are a various circuit court
3 opinions, there's one eastern district opinion
4 that I believe Mr. Wood cited in his memorandum
5 saying that punitive damages are not
6 recoverable. I think the issue is ultimately
7 open by the Virginia Supreme Court. In any
8 event in an action brought for worker's
9 compensation, retaliation and/or race
10 discrimination, I certainly think any lawyer
11 bringing such a claim would add a punitive
12 damage claim given the possibility of recovery
13 under a race discrimination claim under punitive
14 damages.

15 Mr. Wood has never supplied me with any
16 reason to believe that his statement here is
17 true, that punitive damages are not recoverable
18 by law on a wrongful discharge claim. I think
19 the law is contrary.

20 Paragraph three in the motion, the counsel
21 for the plaintiff could not have conducted even
22 a cursory, let alone a diligent or thorough
23 investigation of the facts involving any one or
24 all of the charges or matters addressed by this
25 action. This is based totally on his own

1 speculation and surmise. He never talked to me
2 before filing this. He never asked me what I'd
3 found out. He never asked me anything. He had
4 absolutely no knowledge of what I or my office
5 had done before filing the motion for judgment.
6 To my knowledge he has never provided me any
7 information that he had any knowledge of what
8 counsel for plaintiff had done. And this ties
9 into paragraph four in which Mr. Wood states
10 that at no time did counsel for the plaintiff
11 write, telephone or otherwise contact the
12 defendant or their agents or employees in order
13 to obtain their version of the matters addressed
14 in this action. This is a false statement of
15 fact, which Mr. Wood should have known at the
16 time that he wrote this that it was false.

17 I had been involved in a worker's comp
18 proceeding which lasted for over a year and a
19 half before Ms. Yates was able to obtain any of
20 her benefits because it was hotly contested in
21 the worker's comp commission by Clay's Rest Home
22 and their insurance carrier. They're
23 represented by John Poma in Richmond and I had
24 numerous conversations, and another was Keith
25 Marcus had attended her deposition. I attended

1 a hearing in the worker's compensation in 1994
2 before we filed the motion for judgment, which I
3 had an opportunity to talk with Mr. Poma,
4 Barbara Daniel, Billy Naugle, outside the
5 hearing and then cross-examine them inside the
6 hearing. In that process they could not give me
7 any reason why she was fired other than simply
8 the order for Mr. Graham on July 1 to Barbara
9 Daniel to terminate her employment. I
10 considered that very significant. In fact
11 throughout the process, for example even after
12 the filing of the motion for judgment on October
13 13, 1993 in the first response to the E.E.O.C.,
14 which I was really not a part of the E.E.O.C. I
15 did not participate in that process other than
16 assisting Ms. Jordan with filing the original
17 charge with them.

18 On October 13, 1993, Clay's Rest Home did a
19 response to the E.E.O.C. about why she was fired
20 in which they gave no cause reason. They also
21 gave no cause reason in Mr. Graham's affidavit
22 dated July 21st, which they attached to their
23 motion for sanctions. If in fact they had a
24 cause reason, which Mr. Wood suggested in his
25 opening statement they were going to attempt to

1 prove at trial these allegations of theft, why
2 was that never stated at the time of the
3 termination in the attorney's letter in August,
4 in the motion for sanctions with this attached
5 affidavit sent to me in July 1994 and then in a
6 letter to the E.E.O.C. in October 1993? Why was
7 that never raised? I think it was after the
8 fact creation is the answer to that. What I
9 felt could be proved in a courtroom --

10 THE COURT: Where is the obligation that he
11 supply a reason for her being fired?

12 MR. SIMONSEN: The obligation does not exist
13 under Virginia law accept if you're in a
14 litigation setting. In a prima facie case in
15 either wrongful discharge or wrongful violation
16 of public policy because race can be shown, then
17 an obligation does arise. The burden shifts to
18 the defendant to articulate a legal explanation.

19 THE COURT: If you prove a prima facie case.

20 MR. SIMONSEN: But in anticipating a trial
21 in litigation, you have to decide am I going to
22 prove a prima facie case of race discrimination
23 and comp retaliation. The burden was going to
24 shift to them as I understand the procedure.
25 And I'm not trying to tell you what my view of

1 it was, under my understanding then we would
2 have an opportunity to attack their explanation
3 and we would be able to offer in evidence in
4 cross-examination.

5 THE COURT: Surely you would have had you
6 proven a prima facie case.

7 MR. SIMONSEN: I still think we had the
8 evidence. I don't mean to reargue it accept in
9 explanation of this.

10 Four is simply false to say that I had never
11 contacted any of the defendants or their agent
12 is simply false. Paragraph five, again we're
13 back to this financial business. The counsel
14 for plaintiff knew at all times relevant that
15 the filing of this action would seriously impair
16 business and trade dealings and the reputation
17 of the defendant. Again, I consider that a
18 false statement. I did not know that. And then
19 he finally ends, I consider totally irrelevant
20 whether it's true or not, plaintiff's counsel
21 also knew that the plaintiff is judgment proof
22 and has a history of responsibility and she
23 risks nothing by filing this action. That's
24 utterly irrelevant and if that were a reason not
25 to represent somebody, you couldn't represent --



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3 MR. SIMONSEN: I've gone through what were
4 presented as the facts in support of a motion
5 for sanctions that sought an immediate relief to
6 obtain an accounting, essentially discovery of
7 all work done, witnesses contacted, reports
8 received by them, et cetera, et cetera, and a
9 some type of fine be assessed at \$100 per day.
10 This was received in July 1994. I considered it
11 totally unsupportive. He never filed any
12 demurrers of any kind to question the issue of
13 the punitive damages. The reason, to the extent
14 that it's relevant on the motion for sanctions,
15 filing of the motion for judgment, the reason we
16 did not pursue discovery is I decided as a
17 tactical matter, having already obtained the
18 testimony of Daniels and having had a feel that
19 she basically would tell the truth, although
20 would feel the pressure of her employer being
21 the defendant, I decided that I did not need to
22 depose her. And Mr. Daniels, I would be able to
23 cross-examine him at trial.

24 So to summarize, at the time of the filing
25 of the motion for judgment, we had the worker's

1 comp filed, we had talked with and
2 cross-examined who I viewed, other than
3 Mr. Graham, as the key decision maker, Barbara
4 Daniel. I had no reason to know until trial
5 that Mr. Wood was going to assert that he was
6 personally involved in the decision to
7 discharge. He indicated that in his opening
8 statement, I objected and I believe the
9 objection was sustained, and before that time I
10 had no reason to believe that I was dealing with
11 in effect a third possible decision maker as far
12 as evaluating her work performance, which is
13 Mr. Wood himself. Had I known that, I would
14 have done things differently in preparation for
15 trial. So at the time of the filing of the
16 motion for judgment, I had that record, I had
17 Barbara Daniel unable to state why she'd been
18 terminated and we had a clear charge of the
19 worker's compensation act. Had it gone to a
20 fact finder in that posture, to say that she
21 would have been taken off the schedule and
22 terminated on that July 1st had she not been
23 injured on June 28th, I thought a reasonable
24 fact finder would have a problem with that
25 unless the defendant went forward with a

1 legitimate non-discriminatory reason for the
2 discharge.

3 THE COURT: Any questions for Mr. Simonsen?

4 MR. WOOD: No, sir.

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In my memorandum submitted to the Court, which I offer as part of evidence in the case, in my motion and in my testimony I've tried to explain why I felt at the time I signed the motion for judgment that I had evidence sufficient and could prove, even though that I was wrong later, but I felt that I could prove a prima facie case. And the fact that I was wrong later, and there's been no showing to demonstrate, which at the time of the signing of the motion for judgment on June 28, 1994, I did not have a basis in fact for the signing of the motion for judgment and filing. Thank you.

THE COURT: Mr. Wood, anything else?

MR. WOOD: Just briefly, Your Honor. I think that my memorandum, I stated that possibly when he filed the motion for judgment that he may have thought that he had a valid claim. But

1 after discovery and after he just testified that
2 he got something from E.E.O.C. in October of
3 '94, which we were unable to produce the writer,
4 the decision maker in that case at trial, but he-
5 did admit that it was true that she was fired
6 for cause and yet he still went forward.

7 What my motion is that possibly yes, he had
8 a possible claim for race discrimination, a
9 possible claim for wrongful retaliation when he
10 filed the suit. But after all the discovery and
11 everything was brought out, then he had no claim
12 and he should have done something other than
13 just go forward and say blindly maybe we'll be
14 lucky, we'll get a jury. If the judge lets it
15 go to the jury, we'll get a jury that will give
16 us verdict, and I don't think that's the way the
17 law is.



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4 271.1. In relevant part it seems to me the
5 Court must address paragraph two that when an
6 attorney signs a pleading, he says that to the
7 best of his knowledge, information and belief
8 that the lawsuit is formed after reasonable
9 inquiry, it is well grounded in fact and is
10 warranted by existing law or good faith argument
11 for the extension, modification or reversal of
12 existing law, and I think it does leave some
13 room for lawyers to be creative, to be
14 assertive.

15 We have had in Virginia some relatively
16 recent law on this matter of racial discharge or
17 discharge because of race on the inroad of
18 doctrine on the Lockhart case where the judge
19 dismissed the case on a demurer and the trial
20 court sent it back, the appellant court sent it
21 back for review, but the trial court established
22 that she could file a cause of action, which the
23 plaintiff has done in this case.

24 As to the workmen's comp claim, the
25 plaintiff is asserting, in contravention of the

1 statute, that she was discharged solely, and the
2 statute does says solely because of the
3 employee's intent to file or has filed a claim
4 for workmen's compensation. So with that we are
5 faced with the evidence that she was employed in
6 May, obviously she's black, she was black when
7 she was hired and fired less than two months
8 later. With a great deal of cross-examination
9 of the defendant's witness, the employee on the
10 scene, Ms. Daniel, as to how many employees they
11 had as to the fact that there were no blacks in
12 the facility, the testimony was that the
13 majority of the employees were black and
14 acknowledged that maybe, except the assertion by
15 Mr. Simonsen, that she was the only black in the
16 office, but it was a relatively small office by
17 any account, two, three, four people.

18 The argument that somehow that she could be
19 fired because she was black two months after she
20 was hired when she was black seems to me sort of
21 non-sensible. How you can argue I was employed
22 in May, I was black when I was hired but then
23 they fired me in June because I'm black. That
24 to me makes no sense at all. Clearly she was
25 discharged. The testimony from Ms. Jordan was

1 that she was performing her job satisfactorily
2 and I don't think that was substantially refuted
3 by Ms. Daniel.

4 I question whether or not, and these are all
5 matters that Mr. Simonsen alleges to be
6 important, I don't at this point agree that she
7 was replaced by a white employee. Somebody was
8 on the staff who was white and apparently she
9 assumed the duties that had earlier been assumed
10 by Ms. Jordan. This theory that Mr. Simonsen
11 has regarding this shift in the burden of proof
12 paradigm, or that has been adopted in the
13 federal courts for some purposes, I don't see
14 that recognized anywhere in Virginia law.

15 The Lockhart case, again, stands by the
16 strong assertion that Virginia is an at will
17 employment state. There is no obligation. It's
18 set out again in the case. There's no
19 obligation when Ms. Jordan goes to work that she
20 remain an employee at Clay's Rest Home. She can
21 leave any time she wants to. She is not
22 obligated in any way to stay there against her
23 will. She can leave at any time. That right is
24 a reciprocal right enjoyed by Clay's Rest Home
25 and any other employer that they can, with the

1 limited exceptions, fire a person at any time
2 for any reason or for no reason with the limited
3 exception that they cannot fire her because of
4 her race and they cannot fire her because she
5 has filed or anticipates filing a workmen's comp.
6 claim. And as I have said, to suggest that this
7 evidence, because the defendant was fired,
8 because she was black two months after she was
9 hired, that just makes no sense at all to me.
10 There's no evidence in this case that she was
11 fired because she is black and there's nothing
12 in Virginia law that requires a person who fires
13 a black to come up with a reason or to assert a
14 reason, or to have the burden of putting a
15 reason into the case.

16 The plaintiff could have put Mr. Graham, the
17 owner, could have put him on the stand and
18 proved -- but he put Ms. Daniel on the stand.
19 He didn't prove that she was fired because she
20 was black by Ms. Daniel. There's nothing in the
21 Virginia law that says that you can file a -- a
22 black can file a lawsuit and say I was fired and
23 therefore the defendant is put to the burden of
24 telling me why she was fired. There's nothing
25 in Virginia law about that and the facts of this

1 case, and I think the facts are important that
2 she was hired in May, she was fired in June.
3 She had an accident and this goes to the
4 workmen's comp claim. She had an accident,
5 clearly for the sake of the record and the
6 evidence shows that she had an accident on the
7 job at the end of June and she was fired shortly
8 thereafter. So it seems to be somehow that that
9 automatically creates a circumstantial case that
10 she was fired because she was going to file a
11 workmen's comp claim. But the burden is on the
12 plaintiff. There's nothing in the statute
13 shifting the burden. The burden is on the
14 plaintiff to prove a prima facie case that she
15 was fired solely because she intended to file a
16 claim under the act, or has filed a claim. And
17 to suggest that simply because she has an
18 accident, that somehow that immunizes her
19 forever from being fired either because she may
20 file a claim or because she had filed a claim,
21 that she would be virtually a permanent employee
22 forever and that she could not be fired by the
23 defendant because she filed a claim somehow and
24 because she filed a claim, that she can never be
25 fired.

VIRGINIA: IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

BRIDGETT JORDAN,)

Plaintiff)

v.)

CASE NO. CL94-39

CLAY'S REST HOME, INC.)

Defendant)

ORDER

The Motion for Reconsideration and Retrial filed February 21, 1996 by the Plaintiff is denied.

ENTER

4.3.96


THOMAS V. WARREN, JUDGE

NOTTOWAY CIRCUIT CT.
A Copy, To: JAMES W. KING, CLERK
By William M. Kelly D.C.

VIRGINIA: IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

| | | |
|-------------------------|---|------------------|
| BRIDGETT JORDAN YEATTS, |) | |
| PLAINTIFF |) | |
| v. |) | CASE NO. CL94-39 |
| CLAY'S REST HOME, INC. |) | |
| DEFENDANT |) | |

ORDER

On the 26th day of March, 1996, came the parties, by counsel, on the Motion for Sanctions filed by the Defendant.

Thereupon, after Plaintiff and Defendant submitted memorandums of law supporting their positions, ten (10) days prior to the hearing; upon argument by Defendant's counsel and upon Plaintiff's counsel sworn testimony and further argument by both counsel, the Motion for Sanctions having been fully heard and maturely considered by the Court.

WHEREFORE, IT IS CONSIDERED AND ORDERED by the Court that the Defendant, Clay's Rest Home, Inc., shall recover from the Plaintiff, Bridgett Jordan Yates, the sum of Five Thousand Dollars (\$5,000.00) as sanctions and recover from Plaintiff's counsel, David R. Simonsen, Jr., the sum of Five Thousand Dollars (\$5,000.00) as sanctions for filing and pursuing a claim that was not well grounded, in fact, to which Plaintiff's counsel ~~expected~~ ^{excepted} to and noted his intentions to appeal this ruling.

IT IS FURTHER ORDERED, that the execution on the judgments duly made and given herein on March 26, 1996, and all proceeding

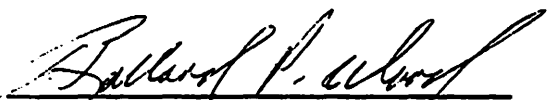
for enforcement thereof be and are hereby stayed pending appeal and final order of the Appellate Court.

ENTERED

4-3-56

 
JUDGE


I ASK FOR THIS:



BALLARD P. WOOD, p.d.
729 Thimble Shoals Blvd. Suite 2-C
Newport News, Virginia 23606
(804) 873-0921

HAVE SEEN AND OBJECTED TO:

DAVID R. SIMONSEN, JR., p.q.

NOTTOWAY CIRCUIT CT.
A Copy, Tests: JAMES W. KING, CLERK
By  D.C.

Assignments of Error

1. The Trial Court erred in failing to apply to this action the indirect, burden shifting method of proof that the United States Supreme Court has applied to race based wrongful discharge actions under federal law.
2. The Trial Court erred in granting Clay's motion to strike after Jordan's case in chief, because:
 - a. Jordan had established a prima facie case of retaliatory discharge under the Virginia Workers' Compensation Act;
 - b. Jordan had established a prima facie case of a racially discriminatory discharge in violation of the public policy of Virginia; and
 - c. A burden of production had shifted to Clay's to state a legitimate, non-discriminatory reason for Jordan's discharge.
3. The Trial Court erred in holding that Clay's hiring of Jordan on May 5, 1993, disproves Jordan's allegation of a racially discriminatory discharge on July 1, 1993.
4. The Trial Court erred in granting Clay's motion for sanctions under § 8.01-271.1, and awarding sanctions in the amount of \$10,000 against Jordan and her counsel, because:
 - a. The Motion For Judgment set forth viable claims for which Jordan established prima facie cases in her case in chief;
 - b. Clay's offered no evidence that Jordan or her counsel failed to undertake any reasonable investigation before filing the Motion For Judgment;
 - c. Clay's motion for sanctions contained false statements of fact and law; and
 - d. Clay's offered no evidence of the actual costs and fees it incurred because of the filing of the Motion For Judgment.
5. The Trial Court erred when entering its Final Order, because the Trial Court did not obtain the endorsement of Jordan's counsel, provide notice of the time and place of entry, or indicate any waiver of the requirements of Rule 1:13 of the Rules of the Supreme Court of Virginia.