

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TREVOR ANDERSON,

Plaintiff,

v.

CIVIL ACTION NO. 22-C- 216

SPIRIT HALLOWEEN SUPERSTORES, LLC,
and THELMON JAMAR PENN,

Defendants.

COMPLAINT

For his Complaint against the Defendants, Plaintiff alleges as follows:

Parties

1. Plaintiff is a resident of Charleston, Kanawha County, West Virginia.
2. Defendant Spirit Halloween Superstores, LLC, is a limited liability company organized under the laws of the State of Delaware with its principal place of business located at Egg Harbor Township, New Jersey. Defendant Spirit Halloween Superstores, LLC, owns and operates the Spirit Halloween store located in Charleston, Kanawha County, West Virginia.
3. Defendant Thelmon Jamar Penn is a resident of Fayette County, West Virginia.

At all material times herein, Defendant Penn was an employee or agent of Defendant Spirit Halloween Superstores, LLC.

Jurisdiction and Venue

4. Jurisdiction and venue are appropriate in this Court because the claims asserted herein are based upon alleged violations of the laws of the State of West Virginia. The acts alleged herein occurred in Charleston, Kanawha County, West Virginia.

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COPY
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Facts

5. Defendant Spirit Halloween Superstores, LLC, owns and operates the Spirit Halloween store located at 5707 MacCorkle Avenue, Charleston, West Virginia, which is a place of public accommodation as defined by West Virginia law.

6. On October 25, 2021, between 8:00 p.m. and 8:30 p.m., Trevor Anderson presented to the Spirit Halloween located at 5707 MacCorkle Avenue, Charleston, West Virginia, to return or exchange a Halloween costume.

7. Mr. Anderson placed the costume on the counter and asked the cashier to return the costume. Defendant Thelmon Penn, who was standing near the counter, told the cashier that he would handle this and stepped to the register. He asked why Mr. Anderson wanted to return the items and Mr. Anderson replied that some of the items did not fit. Defendant Penn replied loudly: "Maybe you shouldn't try to wear women's clothes."

8. Mr. Anderson requested to speak with a manager and Defendant Penn advised that he was the manager. When Mr. Anderson told Defendant Penn that his comment was out of line, Defendant Penn became enraged. Defendant Penn refused to process the return and stated that he "is the manager and does not have to let you exchange anything."

9. When Mr. Anderson asked Defendant Penn for his contact information, Defendant Penn grabbed a receipt from the register and wrote his name on it and said: "I'll give you my name, but I'm not giving my number to a faggot."

10. Defendant Penn wrote his name on a piece of paper and called Mr. Anderson a "fucking pussy" and threatened to "beat his ass" if he ever returned to the store. Defendant Penn yelled: "Get the fuck out of my store."

11. As Mr. Anderson exited the store, Defendant Penn followed him outside and Mr. Anderson ran. Defendant Penn subsequently followed Mr. Anderson to his car, removed his shirt, and started screaming that he was going to “beat your faggot ass” and tried to physically assault Mr. Anderson.

12. To avoid the physical attack, Mr. Anderson jumped in his car, locked the doors, and left while Defendant Penn struck the trunk of his car.

13. Defendant Spirit Halloween Superstores, LLC, is liable for the actions and inactions of its employee, Defendant Thelmon Jamar Penn.

COUNT ONE: VIOLATION OF THE WEST VIRGINIA HUMAN RIGHTS ACT

14. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

15. Defendant Spirit Halloween is a “person” and “place of public accommodations” as defined by the West Virginia Human Rights Act, W. Va. Code § 5-11-3.

16. Defendant Thelmon Jamar Penn is a “person” as defined by the West Virginia Human Rights Act, W. Va. Code § 5-11-3.

17. Through their unlawful conduct, Defendants have acted to discriminate against Plaintiff in violation of the West Virginia Human Rights Act, W. Va. Code § 5-11-1, et seq.

18. The Human Rights Act’s prohibition against discrimination based on sex includes discrimination based on sexual orientation as well as discrimination based on negative sex or gender stereotypes. *See Bostock v. Clayton County*, 140 S.Ct. 1731, 1741 (2020) (“That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”)

19. The Defendants' actions described above violated the West Virginia Human Rights Act, W.Va. Code § 5-11-9(6) and (7).

20. As a direct and proximate result of Defendants' misconduct, Plaintiff has suffered damages and will continue to suffer damages in the future.

COUNT TWO: VIOLATION OF PUBLIC POLICY

21. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

22. It is unlawful, in the City of Charleston, West Virginia, for a place of public accommodation to discriminate against a person based upon his or her sexual orientation.

23. Discrimination in a place of public accommodation because of an individual's sexual orientation, perceived sexual orientation, or sex violates a substantial public policy.

24. The substantial public policy principle against discrimination because of a person's sexual orientation, perceived sexual orientation, or sex derives from: (i) the non-discriminatory purpose of and intent behind the West Virginia Human Rights Act, which ensures that all West Virginia citizens will not be discriminated against in places of public accommodation and declares the right of individuals to be free from discrimination to be a basic human right, see W.Va. Code § 5-11-2; and (ii) the City of Charleston's Human Rights Ordinance, which prohibits employers from discriminating against an individual in a place of public accommodation on the basis of sexual orientation, including actual or perceived homosexuality or sex. *See* City of Charleston Municipal Ordinance §§ 62-2, 62-3, 62-81.

25. The Defendants' actions described above constitute unlawful discrimination in violation of a substantial public policy.

26. As a direct and proximate result of Defendants' misconduct, Plaintiff has suffered damages and will continue to suffer damages in the future.

**COUNT THREE: INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

27. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

28. Defendants' actions against Plaintiff based on his actual or perceived sexual orientation, or because of negative sex stereotypes associated with that sexual orientation, and in concealing from him the true motivation behind their actions, were atrocious, intolerable, and so extreme and outrageous so as to exceed the bounds of decency.

29. Defendants acted with the intent to inflict emotional distress upon Plaintiff and/or acted recklessly when it was certain or substantially certain that Plaintiff would suffer emotional distress from their conduct.

30. Defendants' actions constitute intentional infliction of extreme emotional distress and the common law tort of outrage.

31. As a direct and proximate result of Defendants' misconduct, Plaintiff has suffered damages and will continue to suffer damages in the future.

COUNT FOUR: CIVIL ASSAULT

32. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

33. As alleged herein, Defendants' actions intended to cause harmful or offensive contact with Plaintiff and did place Plaintiff in imminent apprehension of such contact.

34. As a direct and proximate result of Defendants' misconduct, Plaintiff has suffered damages and will continue to suffer damages in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- (a) That he may have a trial by jury;
- (b) That he be awarded all damages provided by law, including but not limited to, economic and non-economic damages;
- (c) That he be awarded punitive damages;
- (d) That he be awarded attorney's fees and costs; and
- (e) That he be awarded such other relief as this Court may deem as just and equitable;

PLAINTIFF DEMANDS A TRIAL BY JURY

TREVOR ANDERSON
By Counsel



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