



STETSON LAW

2017
Tenth Annual
National Pretrial Competition

Competition Problem

This Competition will be held October 12–15, 2017
at Stetson University College of Law
Gulfport, Florida

The 2017 Stetson Law National Pretrial Competition Problem was drafted by Stetson University College of Law Alumni Brandon K. Breslow, Esq. (J.D. '16) and Lara E. McGuire, Esq. (J.D. '16) in association with the Stetson University College of Law Center for Excellence in Advocacy, Advocacy Center Director Charles Rose III, Advocacy Center Assistant Director Erika S. McArdle (J.D. '12), and Professor Julia Metts (J.D. '04). The 2017 Competition Problem is the property of the Stetson Law Center for Excellence in Advocacy.

Preliminary Notes from the Problem Authors

- This case problem addresses factual and legal issues that arise on a regular basis. That being said, all of the characters and companies are fictional and any facts similar to those in actual pending cases or other situations is purely coincidental.
- The case problem has been formatted to imitate actual filings in federal district courts. The following “documents” and document page numbers have been purposefully omitted, and their omission should not impact the integrity of the case problem or the ability of the teams to effectively and persuasively compete in the National Pretrial Competition:
 - Document 1-2: Civil Cover Sheet
 - Document 2: Summons
 - Document 3: Executed Return of Service
 - Document 4, Pages 2–10: Defendant’s Motion to Dismiss Argument
 - Document 5, Pages 2–7: Plaintiff’s Argument in Opposition to Defendant’s Motion to Dismiss

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF STETSON
METTS CITY DIVISION**

LINDSAY BOOTH,

Plaintiff

CASE NO.:

v.

SUDDEN VALLEY CONSTRUCTION
COMPANY,

Defendant.

_____ /

COMPLAINT

Plaintiff, Lindsay Booth, by and through undersigned counsel, hereby files this Complaint against the Defendant, Sudden Valley Construction Company, and states as follows:

PRELIMINARY STATEMENT OF JURISDICTION AND VENUE

1. This is an action based upon Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e-2, 2000e-3.

2. The Court has jurisdiction of all Title VII claims under 28 U.S.C. §§ 1331, 1343. Venue is proper under 28 U.S.C. § 1391.

3. Plaintiff, Lindsay Booth, is a citizen of the United States and a resident of Metts City in the State of Stetson.

4. Defendant, Sudden Valley Construction Company (“SVCC”), is a Stetson corporation. At all times material to this Complaint, Defendant maintained a place of business within the limits of Metts City, Stetson.

FACTUAL ALLEGATIONS

5. Lindsay Booth began his/her employment at SVCC on February 1, 2016, as a construction project engineer.

6. Booth was hired by SVCC Vice President Tobias Funk to construct a 120-acre commercial and residential development in Balboa Island, Stetson. The project, referred to as Milford Manor, was scheduled to break ground on February 29, 2016, and was to be completed by Fall 2019. Booth was to remain as one of four project engineers for the duration of construction, earning a salary of \$85,000 plus quarterly bonuses subject to his/her performance reviews.

7. As a project engineer, Booth was tasked with supervising and assisting the assigned team of construction workers.

8. Booth is an openly homosexual man/woman and married his/her spouse in Stetson on June 26, 2015.

9. Jesse Bowers began his/her employment at SVCC on November 3, 2008 as a construction project engineer, and was promoted to construction superintendent for the development of Milford Manor at the time the plans were finalized in Fall 2015.

10. As construction superintendent, Booth was responsible for the day-to-day operations of the construction team at Milford Manor, controlled the short-term and long-term schedules of the project's development, and supervised the performance of Milford Manor's four project engineers.

11. Milford Manor's four project engineers, including Booth, were required to submit weekly reports to Bowers, and further complete one-on-one meetings every two weeks to discuss any relevant updates or issues arising during the project.

12. Booth and Bowers are the same sex.

13. On February 29, 2016, SVCC broke ground on Milford Manor.

14. On February 29, 2016, Booth was in charge of twenty-eight construction workers working on the Northeast quadrant of Milford Manor. The Northeast quadrant was the anticipated location of several retail stores, three restaurants, and a Jaguar Land Rover dealership. As required, Booth reported his/her team's progress in the Northeast quadrant directly to Bower weekly.

15. A term of Jaguar Land Rover's lease of the property in the Northeast quadrant of Milford Manor required SVCC to report its progress quarterly to Jaguar Land Rover. Further, the lease permitted Jaguar Land Rover to terminate the lease if there was any "substantial delay" in the development of its dealership.

16. On May 24, 2016, three construction workers from Booth's team in the Northeast quadrant were injured when a scaffolding accidentally collapsed. The three workers suffered temporary injuries and returned to work June 21, 2016.

17. On June 28, 2016, Booth received his/her quarterly performance review from Jesse Bowers and Tobias Funk. Notwithstanding the development of the Northeast quadrant being four days behind schedule, the review indicated Booth was "an efficient and effective project engineer" who "handled the stresses and problems of the first quarter of development with ease." The review was signed by Bowers.

18. Following his/her first quarterly performance review, Booth received a \$4,500.00 bonus on July 7, 2016.

19. On September 12, 2016, Booth and Bowers became aware of a defect in the construction of the Jaguar Land Rover dealership that required part of the dealership's foundation to be demolished and rebuilt.

20. Booth promptly fired the four construction workers on his/her team responsible for the defect; SVCC refused to hire additional construction workers.

21. On October 8, 2016, Booth performed an internal review of the construction progress in the Northeast quadrant and his/her team. Booth realized the Northeast quadrant was three weeks behind schedule and projected based on his/her team's progress that the Northeast quadrant was unlikely to open before February 2020.

22. Booth informed Bowers of his/her projection on October 11, 2016, and the two agreed they would work overtime to ensure the delay was remedied.

23. On October 19, 2016, around 10:30 p.m., Booth and Bowers were working alone in the Northeast quadrant when Bowers asked Booth if he/she was concerned about his/her upcoming quarterly performance review. When Booth responded affirmatively, Bowers stated he/she was "impressed with Booth's diligence in dealing with the delays in development." Bowers then physically embraced Booth's buttocks and said he/she would "take care of the review, if [Booth] took care of him/her."

24. Booth immediately backed away from Bowers and unequivocally told Bowers that he/she was not interested in a sexual relationship with his/her supervisor. Bowers immediately left the project site.

25. Between October 20, 2016, and October 27, 2016, Bowers did not assist Booth in his/her overtime work on the Northeast quadrant.

26. On October 25, 2016, Booth overheard one of the construction workers on his/her team, Marta Estrella, use a derogatory term for homosexuals to refer to Booth. When Booth reprimanded Estrella privately about the comment, Estrella confirmed that she heard directly from Bowers that Booth was homosexual and that Bowers used the same derogatory word.

27. On October 28, 2016, Booth received his/her quarterly performance review from Bowers and Funk. The review indicated that Booth's performance between June and October had "declined significantly, to the point that the Milford Manor team may need to be restructured to accommodate for delays attributed to Booth's dreary leadership." Further, the review noted that the Milford Manor project required its project engineers to have "strong moral values that Booth lacks." The review was signed by Bowers.

28. On October 28, 2016, the development of the Northeast quadrant was two weeks behind schedule, and was projected to open in mid-January 2020.

29. On November 2, 2016, Jaguar Land Rover elected to terminate its lease in Milford Manor due to the substantial delay in the development of the Northeast quadrant and "the civil unrest in the United Kingdom caused by the Brexit referendum."

30. On November 7, 2016, at a meeting between Bowers and Funk, Bowers went on a profanity-ridden tirade against Booth that included both personal and professional attacks.

31. On November 8, 2016, Bowers called a meeting with Booth at which Booth expected to receive his/her quarterly bonus.

32. During the November 8 meeting, Bowers informed Booth that he/she would not be receiving a quarterly bonus, and was being demoted to the position of weekend shift supervisor in the Southwest quadrant. Bowers stated during the meeting that this demotion would allow Booth to "spend more time with his/her spouse."

33. As the construction team in the Southwest quadrant did not regularly work on weekends, Booth was effectively demoted to a position which only required him/her to work three days per week and for which he/she would be paid \$18 per hour.

34. When Booth inquired with Funk about his/her demotion, Funk responded the “change in position” was permanent “so long as the British continue[d] to be up in arms.”

35. On November 14, 2016, Booth tendered his/her resignation letter to Funk. The letter indicated that SVCC’s actions amounted to Booth’s constructive discharge from his/her employment.

36. On November 29, 2016, Booth filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) citing the aforementioned facts and alleging that SVCC discrimination against him/her and that SVCC retaliated against him/her after he/she refused Bowers’ sexual advance on October 19, 2016.

37. On June 6, 2017, Booth received a right-to-sue letter from the EEOC as to his/her filing on November 29, 2016. *See* Exhibit A.

COUNT I:
TITLE VII SEXUAL DISCRIMINATION

38. Booth re-alleges and incorporates by reference the allegations contained in Paragraphs 1–37, above.

39. At all times material to this Complaint, Booth was an “employee” as defined in 42 U.S.C. § 2000e(f).

40. At all times material to this Complaint, SVCC was an “employer” as defined in 42 U.S.C. § 2000e(b).

41. Booth is a homosexual man/woman.

42. Defendant SVCC, through its employee Bowers, engaged in unlawful employment practices prohibited by 42 U.S.C. § 2000e-2(a) by discriminating against Booth with respect to the terms and conditions of his/her employment on the basis of his/her sexual orientation.

43. As a result of SVCC's unlawful employment practices, Booth has suffered damages, including, without limitation, loss of salary or wages, benefits, and other compensation; loss of job and job opportunities; mental anguish and emotional distress; harm to his/her personal and business reputations; and other pecuniary and non-pecuniary losses.

44. SVCC's actions were taken willfully, in reckless disregard of Booth's rights under Title VII.

45. Booth filed a timely charge of discrimination with the EEOC against SVCC on November 29, 2016 and received his/her right-to-sue letter from the EEOC within the past ninety (90) days. Booth has exhausted all administrative remedies.

46. Booth has been forced to retain the undersigned counsel to prosecute this action and is now obligated to pay a reasonable attorney's fee.

WHEREFORE, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against Defendant for actual damages, punitive damages, attorney's fees, and any other such relief the Court may deem just and proper.

COUNT II:
TITLE VII RETALIATION

47. Booth re-alleges and incorporates by reference the allegations contained in Paragraphs 1–37 and 39–41, above.

48. Booth “opposed [a] practice made an unlawful employment practice by [Title VII],” pursuant to 42 U.S.C. § 2000e-3(a) when he/she rejected Bowers's unwanted sexual advance on October 19, 2016, which was tantamount to unlawful *quid pro quo* sexual harassment.

49. Booth's opposition resulted in his/her removal from his/her position as a construction project engineer and subsequent demotion, thereby constructively discharging Booth of his/her employment.

50. SVCC engaged in unlawful employment practices prohibited by 42 U.S.C. § 2000e-3(a) by constructively terminating Booth's employment.

51. SVCC's stated reasoning behind the demotion and constructive termination is a pretext.

52. As a result of SVCC's unlawful employment practices, Booth has suffered damages, including, without limitation, loss of salary or wages, benefits, and other compensation; loss of job and job opportunities; mental anguish and emotional distress; harm to his/her personal and business reputations; and other pecuniary and non-pecuniary losses.

53. SVCC's actions were taken willfully, in reckless disregard of Booth's rights under Title VII.

54. Booth filed a timely charge of discrimination with the Equal Employment Opportunity Commission (EEOC) against SVCC on November 29, 2016 and received his/her right-to-sue letter from the EEOC within the past ninety (90) days. Booth has exhausted all administrative remedies.

55. Booth has been forced to retain the undersigned counsel to prosecute this action and is now obligated to pay a reasonable attorney's fee.

WHEREFORE, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against Defendant for actual damages, punitive damages, attorney's fees, and any other such relief the Court may deem just and proper.

Respectfully submitted,

/s/ Margaret T. Lizer

Margaret T. Lizer, Esq.

Stetson Bar No. 0127170

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Counsel for Plaintiff

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Eleazer Bay Field Office
300 E. Sebring St., Suite 1200
Eleazer Bay, Stetson 33610
Phone: (505) 444-4444

LETTER OF DETERMINATION AND NOTICE OF RIGHTS

June 6, 2017

Lindsay Booth
c/o Margaret T. Lizer, Esq.
Hurwitz & Howard LLP
1401 61st Street South
Metts City, Stetson 86750

Dear Mr./Ms. Booth,

To follow are the EEOC's findings of fact, charge determination, and notice of rights in regards to the charge of **sexual discrimination and retaliation** filed by **Lindsay Booth** on **November 29, 2016** against **Sudden Valley Construction Company**.

FINDINGS OF FACT

1. Lindsay Booth (Booth) is thirty-three years old, married to Taylor Holt-Booth, and is an openly homosexual man/woman.
2. On February 1, 2016, Booth began working for Sudden Valley Construction Company (SVCC) on February 1, 2016 as a construction project engineer.
3. A review of Booth's personnel file shows that Booth consistently received favorable reviews and above-average quarterly bonuses.
4. Booth was required to his/her immediate supervisor, Jesse Bowers (Bowers), a construction superintendent with SVCC.
5. On October 19, 2016, Bowers made an unwanted sexual physical advance toward Booth, suggesting a quid pro quo transaction.
6. Booth unequivocally rejected Bowers' advance and left the project site.
7. On October 25, 2016, Booth was informed by another SVCC employee that Bowers had repeatedly referred to Booth in the presence of other subordinate employees using a derogatory term for homosexuals.

8. On October 28, 2016, Booth received his/her first negative quarterly performance review. This review claimed that Booth's performance had "declined significantly," described Booth's leadership as "dreary," and suggested that Booth lacked "strong moral values."
9. Booth's negative review was signed by Bowers.
10. On November 8, 2016, Bowers called a meeting with Booth to discuss the quarterly performance review. During this meeting, Bower demoted Booth to a position of weekend shift supervisor, reducing Booth's work schedule to only three days per week.
11. This demotion resulted in a reduction from Booth's original salary of \$85,000 plus quarterly bonuses, to \$18 per hour for three days per week.
12. On November 14, 2016, Booth tendered his/her resignation letter to SVCC.
13. Booth filed a charge of discrimination with the EEOC on November 29, 2016, alleging the above conduct constituted constructive termination, and further qualified as sexual discrimination and retaliation.

CHARGE DETERMINATION

[Omitted]

NOTICE OF SUIT RIGHTS

This will be the only notice of your right to sue that we will send you. You may file a lawsuit against the respondent under federal law based on this charge in federal or state court. Your lawsuit must be filed within 90 days of your receipt of this Notice, or your right to sue based on this charge will be lost.

Respectfully,

/s/ Katherine Sanchez_____

Katherine Sanchez

Investigator

EQUAL EMPLOYMENT OPPORTUNITY

COMMISSION

300 E. Sebring Street

Suite 1200

Eleazer Bay, Stetson 88972

Phone: (505) 444-4444

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF STETSON
METTS CITY DIVISION**

LINDSAY BOOTH,

Plaintiff

CASE NO.: 15:17-cv-0068-CHR-ESM

v.

SUDDEN VALLEY CONSTRUCTION
COMPANY,

Defendant.

_____ /

**DEFENDANT SUDDEN VALLEY CONSTRUCTION COMPANY'S
MOTION TO DISMISS COMPLAINT**

Defendant Sudden Valley Construction Company (“SVCC”), respectfully moves to dismiss the Complaint (Dkt. 1) filed by Plaintiff Lindsay Booth pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. In support of this motion, SVCC states as follows:

BACKGROUND FACTS

Plaintiff brings this action against SVCC alleging claims under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e-2, 2000e-3. Plaintiff seeks, *inter alia*, actual damages to recover his/her salary for the remaining three years following his/her termination.

ARGUMENT

[Omitted]

RELIEF REQUESTED

WHEREFORE, Defendant, Sudden Valley Construction Company, respectfully prays this Honorable Court grant this Motion to Dismiss for failure to state a claim, thereby dismissing Plaintiff's Complaint, and for such other relief as this Court deems just and proper.

Dated: July 27, 2017

Respectfully submitted,

/s/ Lane Newton-Jarvis

Lane Newton-Jarvis, Esq.

Stetson Bar No. 0123755

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Phone: (326) 331-1010

Facsimile: (326) 529-5612

Counsel for Sudden Valley Construction Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Court's CM/ECF system on this 27th day of July, 2017, to all parties of record.

/s/ Lane Newton-Jarvis

Lane Newton-Jarvis, Esq.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
METTS CITY DIVISION**

LINDSAY BOOTH,

Plaintiff

CASE NO.: 15:17-cv-0068-CHR-ESM

v.

SUDDEN VALLEY CONSTRUCTION
COMPANY,

Defendant.

_____ /

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS COMPLAINT**

The Plaintiff, Lindsay Booth, by and through undersigned counsel, hereby submits this Response to Defendant, Sudden Valley Construction Company's Motion to Dismiss Complaint (Dkt. 4), and states the following in opposition to the relief sought therein:

I. ARGUMENT

[Omitted]

II. Conclusion

For the forgoing reasons, SVCC's Motion to Dismiss should be denied.

Dated: August 10, 2017

Respectfully submitted,

/s/ Margaret T. Lizer

Margaret T. Lizer, Esq.
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Phone: (673) 480-2500
Facsimile: (673) 480-2501

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Court's CM/ECF system on this 30th day of August, 2017, to all parties of record.

/s/ Margaret T. Lizer

Margaret T. Lizer, Esq.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
METTS CITY DIVISION**

LINDSAY BOOTH,

Plaintiff

CASE NO.: 15:17-cv-0068-CHR-ESM

v.

SUDDEN VALLEY CONSTRUCTION
COMPANY,

Defendant.

ORDER REQUIRING SUPPLEMENTAL BRIEFING AND SETTING HEARING

THIS CAUSE comes before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint (Dkt. 4), filed July 27, 2017, and Plaintiff's Response to Defendant's Motion (Dkt. 5), filed August 10, 2017.

Upon consideration, the Court finds that counsel of record will be required to submit supplemental briefing on the issues presented in Defendant's Motion to Dismiss and appear for oral argument. The parties shall address only the following two issues in both their supplemental briefing and oral argument:

1. Whether Title VII protects discrimination based on an employee's sexual orientation?
2. Whether Plaintiff has properly pleaded a claim for retaliation under 42 U.S.C. § 2000e-3(a), including, but not limited to the issue of, whether a person who rejects a supervisor's sexual advance has engaged in protected activity to sufficiently state a retaliation claim?

Accordingly, it is hereby **ORDERED and ADJUDGED** that:

1. On or before Friday, September 15, 2017, the parties are **DIRECTED** to file supplemental briefing with the Court addressing the narrowed issues as identified above.
2. On Friday, October 13, 2017 at 9:00 a.m., counsel for the parties are required to appear before the Court in Courtroom 2A of the William R. Eleazer U.S. Courthouse, 558 W. Central Avenue, Metts City, Stetson, 86755, for a hearing concerning Defendant's Motion and the parties supplemental briefing.

DONE AND ORDERED in Chambers in Metts City, Stetson, this 18th day of August, 2017.

/s/ *CHR*

Charlotte H. Rosen
United States District Judge

Copies to:

Counsel of Record