

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
 WEST PALM BEACH DIVISION

CASE NO.: 04-80611-CIV-RYSKAMP/VITUNAC

LINTON LEBLANC,

Plaintiff,

vs.

COASTAL MECHANICAL SERVICES, LLC

Defendant.

_____ /

**DEFENDANT’S AMENDED ANSWER AND AFFIRMATIVE DEFENSES
 TO SECOND AMENDED COMPLAINT**

Defendant, COASTAL MECHANICAL SERVICES, LLC (“Coastal”), pursuant to Rule 15(a), Fed.R.Civ.P., hereby answers the Second Amended Complaint (“Complaint”) of Linton LeBlanc (“LeBlanc” or “Plaintiff”) as follows. The initial 55 numbered paragraphs hereof correspond to those of the Complaint.

COUNT ONE

((Alleged) Racial Harassment in Violation of 42 U.S.C. § 1981)

1. Admits the allegations of paragraph 1 for jurisdictional purposes only and otherwise denies.
2. Admits the allegations of paragraph 2 for purposes of venue only, and otherwise denies.
3. Without knowledge or information as to the allegations of paragraph 3, and therefore denies.
4. Admits the allegations of paragraph 4; except denies that Plaintiff was an apprentice or ever employed as such.

5. Denies the allegations of paragraph 5.

6. Denies the allegations of paragraph 6; specifically denies that Oreo was Plaintiff's supervisor or a supervisor.

7. Denies the allegations of paragraph 7; except admits that during July 2002 Plaintiff was a plumbers' helper at Conniston Middle School; specifically denies that Oreo was Plaintiff's supervisor or a supervisor.

8. Denies the allegations of paragraph 8; except admits that in July 2002, Plaintiff worked at Conniston Middle School at certain times and that on occasion Plaintiff dug trenches; denies any implication that Plaintiff was treated differently than any other employee similarly situated.

9. Denies the allegations of paragraph 9; except admits that on occasion during his employment with Coastal, Plaintiff worked inside a trailer.

10. Denies the allegations of paragraph 10.

11. Denies the allegations of paragraph 11; except admits that on occasion during his employment with Coastal, Plaintiff worked inside a trailer, and that part of Plaintiff's job was to organize the trailer.

12. Denies the allegations of paragraph 12.

13. Denies the allegations of paragraph 13; except admits that on occasion during his employment with Coastal, Plaintiff sorted PVC fittings as part of his job while other workers performed other job functions as part of their jobs.

14. Denies the allegations of paragraph 14; except admits that on occasion during his employment with Coastal, Plaintiff worked inside a trailer.

15. Denies the allegations of paragraph 15.

16. Denies the allegations of paragraph 16; except admits that on occasion during his employment with Coastal, Oreo communicated with Plaintiff and other co-workers via “walkie-talkie;” without knowledge or information as to the actions of other unnamed co-workers and therefore denies.

17. Denies the allegations of paragraph 17.

18. Denies the allegations of paragraph 18; except admits that on occasion Plaintiff was required to organize fittings.

19. Denies the allegations of paragraph 19; except admits that during his employment with Coastal, Plaintiff worked at Conniston Middle School, and that during said work, Plaintiff was on occasion required to handle fittings.

20. Denies the allegations of paragraph 20; except admits that on occasion during his employment with Coastal, Plaintiff carried a cooler.

21. Denies the allegations of paragraph 21; except admits that on occasion during his employment with Coastal, Plaintiff was required to bore holes.

22. Denies the allegations of paragraph 22; except admits that on occasion during his employment with Coastal, Plaintiff on occasion worked inside a trailer and on one occasion Plaintiff and Oreo had a verbal altercation.

23. Denies the allegations of paragraph 23.

24. Denies the allegations of paragraph 24; except admits that on or about August 28, 2002, Plaintiff informed Sue Holland that he believed Oreo was mistreating him, that he provided Holland with the names of two purported witnesses, and that Holland told LeBlanc she would initiate an investigation.

25. Denies the allegations of paragraph 25.

26. Denies the allegations of paragraph 26; except admits that after August 28, 2002, Holland let Plaintiff know that he and Oreo were to work separately and that Oreo would be moved to another jobsite.

27. Denies the allegations of paragraph 27; except admits that Plaintiff and Oreo worked at the Conniston Middle School site on certain days in September, 2002.

28. Denies the allegations of paragraph 28.

29. Denies the allegations of paragraph 29; except admits that on occasion during his employment with Coastal Oreo put fittings on the floor during the course of his job duties, that Plaintiff's job functions included sorting fittings; denies any implication that Plaintiff was treated any differently than any other employee.

30. Denies the allegations of paragraph 30.

31. Denies the allegations of paragraph 31; except admits that part of Plaintiff's job was to organize trailers.

32. Denies the allegations of paragraph 32.

33. Denies the allegations of paragraph 33; except admits that on occasion during his employment with Coastal, Plaintiff was required to carry pipe and that if the size was wrong he had to take it back; denies any implication that Plaintiff was treated differently than any other employee.

34. Denies the allegations of paragraph 34.

35. Denies the allegations of paragraph 35.

36. Denies the allegations of paragraph 36; except admits that Plaintiff worked at a job in Pleasant City, Florida.

37. Denies the allegations of paragraph 37; except admits that Plaintiff worked at Martin Memorial Hospital on one occasion in October 2002, that Plaintiff was, with three co-

workers, storing pipe, and that Plaintiff claimed to have been injured. Without knowledge or information as to any specific treatment Plaintiff received at Columbia Hospital; and therefore denies.

38. Denies the allegations of paragraph 38.

39. Without knowledge or information as to the allegations of paragraph 39, and therefore denies.

40. Denies the allegations of paragraph 40; except admits that Oreo telephoned Plaintiff outside of working hours; denies that Coastal had knowledge or constructive knowledge of said event or that it occurred in connection with Oreo's job duties or within the scope of his employment.

41. Denies the allegations of paragraph 41.

42. Denies the allegations of paragraph 42.

43. Denies the allegations of paragraph 43.

44. Denies the allegations of paragraph 44.

45. Denies the allegations of paragraph 45; except admits that on or about August 28, 2002, Plaintiff informed Sue Holland that he believed Oreo was mistreating him, that he provided Holland with the names of two purported witnesses, that Coastal was aware of the requirements of equal employment opportunity laws, that Holland told LeBlanc she would initiate an investigation, that Holland subsequently discussed the matter with Coastal President Al Osterhout, and that Coastal took prompt and appropriate remedial action in accordance with federal and state law in response to Plaintiff's information.

46. Denies the allegations of paragraph 46.

47. Denies the allegations of paragraph 47.

48. Denies the allegations of paragraph 48.

COUNT TWO

(Retaliation in Violation of 42 U.S.C. § 1981)

49. Coastal re-alleges and incorporates herein its responses to Plaintiff's allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, and 47 in response to paragraph 49 of the Second Amended Complaint.

50. Without knowledge or information as to the allegations of paragraph 50, and therefore denies.

51. Denies the allegations of paragraph 51; except admits that it received its first notice of any charge of discrimination on Plaintiff's part after Plaintiff had been discharged.

52. Denies the allegations of paragraph 52.

53. Denies the allegations of paragraph 53.

54. Denies the allegations of paragraph 54.

55. Denies the allegations of paragraph 55.

56. Denies all allegations of paragraphs 1 through 55 not expressly addressed above.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his alleged damages in whole or in part.

THIRD AFFIRMATIVE DEFENSE

To the extent that Plaintiff claims any economic damages (Coastal denies that Plaintiff is claiming any such damages), any recovery against Coastal should be set off by whatever wages

and benefits LeBlanc has earned and/or received subsequent to the cessation of his employment at Coastal.

FOURTH AFFIRMATIVE DEFENSE

Coastal is not and cannot be liable to LeBlanc for the claims and damages alleged for alleged racial harassment because at all relevant times there was in place and in effect a valid mandatory policy, duly disseminated to employees, prohibiting any form of unlawful employment discrimination, including race discrimination, racial harassment and retaliation, and which required individuals allegedly subjected to such discrimination or harassment to report it to Coastal. If Plaintiff did suffer any of the conduct alleged, (which Coastal specifically denies), he failed to comply with the policy by failing to report it timely and by failing to report such conduct as he now alleges it herein. Furthermore, when Plaintiff did complain of alleged mistreatment, Coastal conducted a prompt and effective investigation and took prompt, appropriate, and effective remedial action. For those reasons, Plaintiff has no basis in law or in fact for the claims of harassment and the alleged damages allegedly thereby caused.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has waived or is estopped from bringing this action.

SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff's allegations in this action exceed the scope of the allegations contained in any administrative charge of discrimination filed with the Palm Beach County Office of Equal Opportunity ("OEO"), the FCHR and/or the EEOC Plaintiff has failed to satisfy the statutory prerequisites under applicable law for bringing a civil action based on such claims.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that any alleged unlawful acts occurred more than 180 days prior to Plaintiff's filing of an administrative charge of discrimination with the OEO, more than 300 days

prior to the filing of a charge with the EEOC, or more than 365 days prior to the filing of a charge with the FCHR, a civil action based on said acts is barred.

EIGHTH AFFIRMATIVE DEFENSE

Any adverse employment action taken against Plaintiff was based upon legitimate, business-related reasons unrelated to his race or retaliation.

NINTH AFFIRMATIVE DEFENSE

Coastal denies that it discriminated or retaliated against LeBlanc; however, should a finder of fact determine that any of its actions were based on a discriminatory or retaliatory motive, Coastal asserts that it would have engaged in the same action regardless of such motive.

TENTH AFFIRMATIVE DEFENSE

To the extent that any of the alleged conduct about which LeBlanc complains (the occurrence of which Coastal specifically denies) was taken outside the scope of employment of the alleged actor, Coastal is not liable therefor.

ELEVENTH AFFIRMATIVE DEFENSE

Coastal neither knew nor should have known of the actions about which LeBlanc complains and therefore has no liability for the actions of the purported harasser.

TWELFTH AFFIRMATIVE DEFENSE

To the extent that the Complaint purports to seek punitive damages, Plaintiff is not entitled to such since Defendant acted at all times towards Plaintiff in good faith, without malice, evil intent or reckless disregard for his rights, and made good faith efforts to comply with federal law.

WHEREFORE, Coastal respectfully requests the entry of judgment in its favor and against Plaintiff, together with an award of costs and attorney's fees to the extent that a basis

therefor exists under applicable law, and such other and further relief as the Court deems just and proper.

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By: /s/ Mary Ruth Houston
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by U.S. first-class mail, postage prepaid, on January 11, 2005 upon:

Matthew Jay Lane, Esquire
1015 10th Street
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/s/Mary Ruth Houston
COUNSEL

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