

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DREYON WYNN,

Plaintiff,

Case No. 17-
Hon.

v.

CITY OF BAY CITY,

Defendant.

THE MASTROMARCO FIRM
VICTOR J. MASTROMARCO, JR. (P34564)
KEVIN J. KELLY (P74546)
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COMPLAINT & DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff, DREYON WYNN, by and through his attorneys, THE MASTROMARCO FIRM, and hereby complains against Defendant, CITY OF BAY CITY, stating more fully as follows:

COMMON ALLEGATIONS

1. That Plaintiff is a resident of the County of Bay, State of Michigan.
2. That Defendant is a municipal corporation organized and existing by

virtue of the laws of the State of Michigan and operating in the County of Bay, State of Michigan.

3. That the amount in controversy exceeds the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), excluding costs, interest, and attorney fees.

4. That Plaintiff is an African-American male.

5. That in the fall of 2015, Defendant posted an open position of Director of Human Resources.

6. That at that time, Plaintiff applied for said position with the City.

7. That Defendant refused to call Plaintiff back or acknowledge his application.

8. That Plaintiff was in fact the most qualified applicant for the position.

9. That instead of interviewing Plaintiff, Defendant alternatively offered the position to two (2) Caucasian applicants, both of whom were less qualified than Plaintiff.

10. That neither of the two (2) Caucasian applicants agreed to accept the position.

11. That thereafter, Defendant again posted the open Human Resources Director position.

12. That Plaintiff again applied for the position of Human Resources

Director.

13. That Plaintiff's employment application is dated March 10, 2016. See **(Exhibit 1 – Plaintiff's Application)**

14. That Plaintiff further provided a detailed curriculum vitae showing all of the various experiences he had in the past. See **(Exhibit 2 – Plaintiff's CV)**.

15. That Plaintiff was one (1) of two (2) final candidates for said position.

16. That Plaintiff interviewed with City Manager Richard Finn and Deputy City Manager Dana Muscott, both of whom are Caucasian.

17. That the other final candidate was a female Caucasian, Mikki Manion.

18. That Defendant chose the Caucasian, Ms. Manion, over Plaintiff, who was more qualified for the position.

19. That in fact, Ms. Manion was not qualified for the position.

20. That the job posting specifically required a bachelor's degree in human resources/personnel/labor relations/or related field with an advanced degree preferred. **(Exhibit 3 – Job Posting)**.

21. That Ms. Manion did not meet said requirement as outlined above.

22. That the above requirement was a "minimum job requirement." See **(Ex. 3)**.

23. That Ms. Manion did not meet the experience requirements of "five years of progressively responsible experience in all phases of human resources,

including three years of supervisory experience.” (Ex. 3).

24. That Ms. Manion lacked “advanced skills in labor negotiations and conflict resolution,” another minimum requirement for the position. (Ex. 3).

25. That Ms. Manion lacked “certification as a professional in human resources (“PHR”) or senior professional in human resources (“SPHR”).” (Ex. 3).

26. That on the other hand, Plaintiff, the African-American male, did possess all minimum job requirements, including a bachelors degree in human resources management and three (3) masters degrees in business administration, management information systems, and education administration. (Ex. 1); (Ex. 2).

27. That Plaintiff also possessed both minimum job required certifications, PHR and SPHR, which Ms. Manion did not have.

28. That furthermore, Ms. Manion had been suspended from work, while she was employed by the Saginaw Transit Authority and Regional Services, which Defendant had attempted to cover up that fact after it received a request submitted pursuant to the Freedom of Information Act.

29. That in fact, on two (2) different occasions, Defendant attempted to cover up Ms. Manion’s qualifications for the position by withdrawing information from the background check so as to cover up and mask its racial discrimination.

30. That at all times material hereto, Plaintiff was qualified for the position and was the only qualified candidate based upon Defendant’s job posting

and should have been selected for the job.

31. That Defendant's actions in choosing the Caucasian female over the Plaintiff was based on race.

32. That in point of fact, Plaintiff filed a complaint with the United States Equal Employment Opportunity Commission, who issued a determination indicating that the investigation revealed reasonable cause to believe that the charging party was denied being hired due to his race. (**Exhibit 4**).

33. That said determination further states that "the charging party was the most qualified candidate for the director of human resources position." (**Ex. 4**).

34. That Defendant's actions constitute racial discrimination in violation of the Michigan Elliott-Larsen Civil Rights Act.

35. That as a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered and will continue to suffer economic damages, including, but not limited to, lost wages, back pay, front pay, raises, bonuses, health, dental, vision, and life insurance benefits, disability benefits, pension and/or retirement benefits, investment opportunities, employer contributions, and any other compensation and fringe benefits lost to Plaintiff as a result of Defendant's failure to hire along with an additional amount to offset any negative tax consequences of recovery.

36. That as a direct and proximate result of Defendant's unlawful actions,

Plaintiff has suffered and will continue to suffer non-economic damages, including, but not limited to, emotional distress, mental anguish, shock, fright, embarrassment, humiliation, nervousness, anxiety, depression, denial of social pleasures, and disruption of lifestyle.

37. That Plaintiff hereby claims compensatory and punitive damages pursuant to 42 U.S.C. § 1981a.

38. That Plaintiff hereby claims the costs of this action and reasonable attorney fees pursuant to 42 U.S.C. § 1988(b).

39. That Plaintiff hereby claims the costs of litigation, including reasonable attorney fees and witness fees, pursuant to MCL § 37.2802.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) in addition to costs, interest, and attorney fees along with any and all legal and/or equitable relief this Court deems just.

COUNT I – RACIAL DISCRIMINATION
IN VIOLATION OF 42 U.S.C. § 1983

40. That Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 39 of his Common Allegations, word for word and paragraph for paragraph, as if fully set forth herein.

41. That 42 U.S.C. § 1983 provides that every person who, under the color of State law, deprives a citizen of the United States any rights or privileges

secured by the Constitution shall be liable to the injured party at law or in equity.

42. That the Fourteenth Amendment provides in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

43. That both the Equal Protection Clause and the concept of Substantive Due Process protect against intentional discrimination based on race. See *Gutzwiller v. Fenik*, 860 F.2d 1317 (6th Cir. 1988).

44. That claims brought under Section 1983 “must prove the same elements required to establish a disparate treatment claim under Title VII of the Civil Rights Act of 1964.” *Perry v. McGinnis*, 209 F.3d 597, 601 (6th Cir. 2000).

45. That at all times material hereto, Defendant acted under the color of State law.

46. That Defendant subjected Plaintiff to racially discriminatory treatment.

47. That at all times material hereto, Plaintiff was and is a member of a protected class by virtue of his race.

48. That at all times material hereto, Plaintiff was and is qualified for the position of Human Resources Director.

49. That Plaintiff applied for the position of Human Resources Director.

50. That Plaintiff suffered an adverse employment action through Defendant's failure to hire Plaintiff for the position of Human Resources Director.

51. That Plaintiff suffered the above adverse employment action under circumstances that give rise to an inference of race discrimination.

52. That at the time that Plaintiff applied for the Human Resources Director position, another employee, Ms. Manion, who was a not a member of Plaintiff's protected class and who was less qualified than Plaintiff, received the position.

53. That Defendant's proffered reasons for choosing Ms. Manion over Plaintiff are pretextual in nature.

54. That Defendant's proffered reasons are not based in fact and/or did not actually motivate the decision.

55. That Plaintiff was a plainly superior candidate and no reasonable employer would have chosen Ms. Manion over Plaintiff.

56. That Ms. Manion lacked several minimum requirements.

57. That Ms. Manion had disciplinary records in her past.

58. That at all times material hereto, Defendant acted pursuant to a policy or custom.

59. That Defendant's actions constitute racial discrimination in violation

of 42 U.S.C. §1983.

60. That as a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered and will continue to suffer economic damages, including, but not limited to, lost wages, back pay, front pay, raises, bonuses, health, dental, vision, and life insurance benefits, disability benefits, pension and/or retirement benefits, investment opportunities, employer contributions, and any other compensation and fringe benefits lost to Plaintiff as a result of Defendant's failure to hire along with an additional amount to offset any negative tax consequences of recovery.

61. That as a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered and will continue to suffer non-economic damages, including, but not limited to, emotional distress, mental anguish, shock, fright, embarrassment, humiliation, nervousness, anxiety, depression, denial of social pleasures, and disruption of lifestyle.

62. That Plaintiff hereby claims the costs of this action and reasonable attorney fees pursuant to 42 U.S.C. § 1988(b).

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) in addition to costs, interest, and attorney fees along with any and all legal and/or equitable relief this Court deems just.

**COUNT II – RACIAL DISCRIMINATION IN
VIOLATION OF 42 U.S.C. § 1981**

63. That Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 39 of his Common Allegations and paragraphs 40 through 62 of Count I, word for word and paragraph for paragraph, as if fully set forth herein.

64. That 42 U.S.C. § 1981 “prohibits intentional race discrimination in the making and enforcing of contracts involving both public and private actors.” *Amini v. Oberlin Coll.*, 440 F.3d 350, 358 (6th Cir. 2006).

65. That Plaintiff belongs to an identifiable class of persons who are subject to discrimination based on their race.

66. That Defendant intended to discriminate against Plaintiff on the basis of race.

67. That Defendant’s discriminatory conduct abridged a right enumerated in Section 1981(a).

68. That Defendant’s discriminatory conduct abridged Plaintiff’s right to enter into, perform, and enjoy the benefits of an employment contract with Defendant.

69. That Defendant’s discrimination is established by Defendant’s failure to select Plaintiff for the Human Resources Director position, even though he possessed superior qualifications that the Caucasian employee selected for the

position.

70. That said Caucasian employee did not possess the minimum requirements for the job.

71. That Defendant further attempted to hide evidence that the Caucasian employee was less qualified than Plaintiff.

72. That Defendant's actions constitute racial discrimination in violation of 42 U.S.C. § 1981.

73. That as a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered and will continue to suffer economic damages, including, but not limited to, lost wages, back pay, front pay, raises, bonuses, health, dental, vision, and life insurance benefits, disability benefits, pension and/or retirement benefits, investment opportunities, employer contributions, and any other compensation and fringe benefits lost to Plaintiff as a result of Defendant's failure to hire along with an additional amount to offset any negative tax consequences of recovery.

74. That as a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered and will continue to suffer non-economic damages, including, but not limited to, emotional distress, mental anguish, shock, fright, embarrassment, humiliation, nervousness, anxiety, depression, denial of social pleasures, and disruption of lifestyle.

75. That Plaintiff hereby claims the costs of this action and reasonable attorney fees pursuant to 42 U.S.C. § 1988(b).

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) in addition to costs, interest, and attorney fees along with any and all legal and/or equitable relief this Court deems just.

**COUNT III – RACIAL DISCRIMINATION IN VIOLATION OF
THE MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT**

76. That Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 39 of his Common Allegations, paragraphs 40 through 62 of Count I, and paragraphs 63 through 75 of Count II, word for word and paragraph for paragraph, as if fully set forth herein.

77. That the Elliott-Larsen Civil Rights Act makes it unlawful for an employer to fail or refuse to hire or recruit or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of race. MCL § 37.2202(1)(a).

78. That at all times material hereto, Defendant was an employer as defined by MCL § 37.2201(a).

79. That at all times material hereto, Plaintiff was and is a member of a protected class by virtue of his race.

80. That at all times material hereto, Plaintiff was and is qualified for the

position of Human Resources Director.

81. That Plaintiff applied for the position of Human Resources Director.

82. That Plaintiff suffered an adverse employment action through Defendant's failure to hire Plaintiff for the position of Human Resources Director.

83. That Plaintiff suffered the above adverse employment action under circumstances that give rise to an inference of race discrimination.

84. That at the time that Plaintiff applied for the Human Resources Director position, another employee, Ms. Manion, who was a not a member of Plaintiff's protected class and who was less qualified than Plaintiff, received the position.

85. That Defendant's proffered reasons for choosing Ms. Manion over Plaintiff are pretextual in nature.

86. That Defendant's proffered reasons are not based in fact and/or did not actually motivate the decision.

87. That Plaintiff was a plainly superior candidate and no reasonable employer would have chosen Ms. Manion over Plaintiff.

88. That Ms. Manion lacked several minimum requirements.

89. That Ms. Manion had disciplinary records in her past.

90. That Defendant's actions constitute racial discrimination in violation of the Michigan Elliott-Larsen Civil Rights Act.

91. That as a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered and will continue to suffer economic damages, including, but not limited to, lost wages, back pay, front pay, raises, bonuses, health, dental, vision, and life insurance benefits, disability benefits, pension and/or retirement benefits, investment opportunities, employer contributions, and any other compensation and fringe benefits lost to Plaintiff as a result of Defendant's failure to hire along with an additional amount to offset any negative tax consequences of recovery.

92. That as a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered and will continue to suffer non-economic damages, including, but not limited to, emotional distress, mental anguish, shock, fright, embarrassment, humiliation, nervousness, anxiety, depression, denial of social pleasures, and disruption of lifestyle.

93. That Plaintiff hereby claims the costs of litigation, including reasonable attorney fees and witness fees, pursuant to MCL § 37.2802.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) in addition to costs, interest, and attorney fees along with any and all legal and/or equitable relief this Court deems just.

Respectfully submitted,
THE MASTROMARCO FIRM

Dated: June 22, 2017

By: /s/ Victor J. Mastromarco, Jr.
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DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff, DREYON WYNN, by and through his attorneys,
THE MASTROMARCO FIRM, and hereby demands a trial by jury on all of the
above issues, unless otherwise expressly waived.

Respectfully submitted,
THE MASTROMARCO FIRM

Dated: June 22, 2017

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