

THE PICILLO LAW FIRM, LLC
112 Johnson Road
Turnersville, New Jersey 08012
(856) 227-0060
Attorneys for Plaintiffs
David Cox, and Terri Cox

By: Joseph Ives Picillo, Esq.

FILED

MAY 04 2012

CAPE MAY COUNTY
LAW DIVISION

COPY

DAVID COX; and TERRI COX

Plaintiff(s),

v.

BOROUGH OF WEST CAPE MAY; and
JOHN/JANE DOES (1-20) fictitious names;
and ABC CORPORATIONS (1-20)
fictitious names

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CAPE MAY COUNTY
Docket No.: *CPM-L-205-12*

Civil Action

COMPLAINT AND JURY DEMAND

VERIFIED COMPLAINT

I. INTRODUCTION

Plaintiff, David Cox, brings this action against his former employer, West Cape May Municipal Court (“Defendant”). While employed by Defendant, Plaintiff was harassed and discriminated against in retaliation for his complaint and/or reporting of wrongdoing by his employer in violation of the Conscientious Employee Protection Act (“CEPA”), N.J.S. 34:15-1, *et seq.*, and as a result of his age in violation of the New Jersey Law Against Discrimination, as amended, N.J.S.A. 10:5-1, *et seq.* (“NJLAD”) as well as retaliated against for reporting a work-related injury in violation of New Jersey Law.

Plaintiff seeks economic, compensatory, liquidated, and punitive damages, and attorney fees, interest and costs and any other available statutory relief under state law.

II. PARTIES

1. Plaintiff, David Cox ("Plaintiff"), is an individual and citizen of the State of New Jersey and currently resides at 116 Fourth Avenue, Apartment 3, West Cape May, New Jersey 08204.
2. Plaintiff is a male with a date of birth of November 29, 1964 and was over 46 years of age at the time of the adverse employment actions, including his unlawful termination by Defendant.
3. Defendant, Borough of West Cape May ("Defendant") is a municipal entity with offices located at 732 Broadway, West Cape May, New Jersey.
4. At all times material hereto, Defendant employed more than twenty (20) people.
5. At all times material hereto, Defendant employed more than fifty (50) people within a seventy five (75) mile radius of Plaintiff's workplace.
6. At all times material hereto, Defendant acted by and through its authorized agents, servants, workmen, and/or employees acting within the course and scope of their employment with Defendant and in furtherance of Defendant's business.
7. At all times material hereto, Defendant acted as an employer within the meanings of the statutes which form the basis of this matter.
8. At all times material hereto, Plaintiff was an employee of Defendant within the meanings of the statutes which form the basis of this matter.

III. JURISDICTION AND VENUE

9. The causes of action which form the basis of this matter arise under the New

Jersey Law Against Discrimination, as amended, N.J.S.A. 10:5-1, *et seq.* (“NJLAD”) and the Conscientious Employee Protection Act, N.J.S. 34:19-1, *et seq.* (“CEPA”).

IV. FACTUAL ALLEGATIONS

10. Plaintiff was hired by Defendant in 2006.
11. Plaintiff was continuously employed by Defendant in the position of Recycling Coordinator for approximately five (5) years until Defendant abruptly terminated his employment on or about May 5, 2011.
12. At all times, Plaintiff was qualified for his position and performed his duties for Defendant in a highly competent manner.
13. Plaintiff was born on November 29, 1964, and was over forty-six (46) years old at the time of his termination.
14. At all relevant times, Plaintiff reported to Robert Flynn, who was hired in or around the same time as Plaintiff in 2006.
15. On several occasions prior to his termination, Plaintiff complained of and reported to various management personnel of Defendant that his supervisor, Flynn, was intoxicated at or during the course of his employment for Defendant.
16. Plaintiff is aware that his supervisor, Robert Flynn, at times operated a motor vehicle during his employment on behalf of Defendant.
17. After Plaintiff complained of and/or reported the unlawful conduct of his supervisor, Flynn, to Defendant, Defendant began to treat plaintiff differently.
18. After Plaintiff complained of and/or reported the unlawful conduct of his supervisor, Flynn, to Defendant, Defendant effectively removed certain duties of Plaintiff’s position from him.

19. After Plaintiff complained of and/or reported the unlawful conduct of his supervisor, Flynn, to Defendant, Defendant hired a significantly younger, less experienced man, Matt Franco, who began to assume some of the duties of Plaintiff's job.
20. On March 29, 2011, Plaintiff suffered an injury during the course and scope of his employment when he was struck in the head with a pipe by the newly hired, younger employee, Matt Franco.
21. As a result of the work-related injury, plaintiff suffered a concussion.
22. Despite reporting the incident to his supervisor and his supervisor disregarding the injury, Plaintiff sought medical treatment as a result of the injury suffered in the course and scope of his employment with Defendant.
23. Thereafter, Defendant continued to subject plaintiff to a hostile work environment.
24. Defendant repeatedly subjected Plaintiff to a hostile work environment and repeated humiliated and harassed him with regard to the work related injury he sustained leading to his complaining to his superiors.
25. Plaintiff experienced negative comments and jokes about his work related injury to his head by his supervisor as well as his co-workers and complained of harassment.
26. Following his verbal complaints of a hostile work environment, Plaintiff submitted a written complaint of harassment and a hostile work environment on or about April 14, 2011.
27. The written complaint of harassment was submitted by Plaintiff to Defendant, including Borough of West Cape May Commissioner Peter Burke.
28. On or about April 25, 2011, Plaintiff spoke briefly with Commissioner Peter Burke who instructed Plaintiff to report to the office on or about May 5, 2011.

29. On or about May 5, 2011, Plaintiff was advised that he was terminated effective immediately and that he needed to sign an agreement at that time in order to receive unemployment compensation insurance benefits.
30. Under duress and without the aid of legal advice or counsel, Plaintiff felt coerced to execute the Separation Agreement presented to him by Defendant.
31. The Separation Agreement which Plaintiff was coerced to sign did not contain the notice requirements pursuant to law for relinquishment of legal rights of older workers.
32. After Defendant terminated Plaintiff, Plaintiff was replaced by Matt Franco, approximate age 20, who is substantially younger, less qualified and less experienced than Plaintiff.
33. Throughout his employment, Plaintiff could perform the essential functions of his job with or without a reasonable accommodation.
34. From at least early 2010 and continuing through the date of his termination, Defendant subjected Plaintiff to retaliation including hostility and harassment because of his age and/or in retaliation for exercising his right to report unlawful activity pursuant to CEPA and to exercise his right to report a work-related injury.
35. Plaintiff was discriminated against and subjected to a hostile work environment because of his age.
36. Plaintiff was discriminated against and subjected to a hostile work in retaliation of his reporting of unlawful conduct by his employer.
37. Plaintiff was discriminated against and subject to a hostile work environment in retaliation of his exercise of his right to report a work related injury.
38. Defendant's retaliatory and discriminatory conduct was severe or pervasive and had the purpose and effect of creating a hostile work environment.

39. Defendant's retaliatory conduct was severe or pervasive and had the purpose and effect of creating a hostile work environment.

40. Defendant's discriminatory conduct was objectionable and offensive to Plaintiff and was such that it would have been objectionable and offensive to a reasonable person in the same position as Plaintiff.

41. Defendant has failed to provide a legitimate reason for plaintiff's abrupt termination of employment.

42. Plaintiff's age was a motivating and determinative factor in connection with Defendant's unlawful treatment of Plaintiff, including the termination of his employment.

43. Plaintiff's exercise of his right to report wrongdoing by his employer was a motivating and/or determinative factor in connection with Defendant's termination of his employment.

44. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff has in the past incurred, and may in the future incur, a loss of earnings and/or earning capacity, loss of benefits, pain and suffering, embarrassment, humiliation, loss of self-esteem, mental anguish, and loss of life's pleasures, the full extent of which is not known at this time.

45. The conduct of Defendant, as set forth above, was willful and outrageous under the circumstances and warrants the imposition of punitive damages against Defendant.

V. LAW

COUNT I

Conscientious Employee Protection Act (CEPA)

46. Plaintiff incorporates herein by reference paragraphs 1 through 45 above, as if set forth herein in their entirety.

47. Plaintiff reported to Defendant and others his reasonable belief of activity by his supervisor that was unlawful and in violation of Defendant's policies and procedures and rules.

48. After reporting his belief of unlawful activity, Defendant subjected Plaintiff to retaliation and a hostile work environment to which he complained.

49. Said retaliation by Defendant included but is not limited to the abrupt termination of Plaintiff's employment.

50. By committing the foregoing acts of retaliation against Plaintiff, Defendant has violated the CEPA.

51. As a direct and proximate result of Defendant's violation of CEPA, Plaintiff has sustained the injuries, damages and losses set forth herein and has incurred attorney fees and costs.

52. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendant's retaliatory and discriminatory acts unless and until this Court grants the relief requested herein.

COUNT II

New Jersey Law Against Discrimination (NJLAD)

53. Plaintiff incorporates herein by reference paragraphs 1 through 52 above, as though set forth in their entirety.

54. By committing the foregoing acts against Plaintiff, Defendant has violated the NJLAD.

55. There was participation by upper management in connection with the retaliation to which Plaintiff was subjected.

56. Said violations were intentional and willful and warrant the imposition of punitive damages under the NJLAD.

57. As a direct and proximate result of Defendant's violations of the NJLAD, Plaintiff has sustained the injuries, damages and losses set forth herein and has incurred attorney fees and costs.

58. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendant's discriminatory and unlawful acts unless and until the Court grants the relief requested herein.

COUNT III

Loss of Services

59. The plaintiffs hereby repeat each and every allegation contained in paragraphs 1 through 58 as if herein set forth at length.

60. At all times relevant hereto, Plaintiff Terri Cox was and is the wife of Plaintiff David Cox.

61. As a result of the aforesaid injuries sustained by her husband, Plaintiff David Cox, Plaintiff Terri Cox lost the services and companionship of her husband and will in the future continue to lose his services and companionship, all to her detriment as well as to their mutual detriment.

RELIEF

WHEREFORE, Plaintiff, David Cox, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant, Borough of West Cape May:

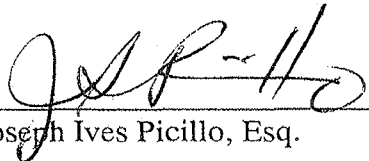
- a. declaring the acts and practices complained of herein to be in violation of CEPA;
- b. declaring the acts and practices complained of herein to be in violation of the NJLAD;
- c. enjoining and restraining permanently the violations alleged herein;
- d. awarding compensatory damages to Plaintiff to make Plaintiff whole for all past and future lost earnings, benefits and earnings capacity which Plaintiff has suffered and will continue to suffer as a result of Defendant's discriminatory and unlawful misconduct;
- e. awarding compensatory damages to Plaintiff for past and future emotional upset, mental anguish, humiliation, loss of life's pleasures and pain and suffering;

- f. awarding liquidated damages to Plaintiff;
 - g. awarding Plaintiff costs of this action, together with reasonable attorney's fees;
 - h. awarding punitive damages to Plaintiff;
 - i. awarding Plaintiff such other damages as are appropriate under the CEPA and NJLAD;
- and,
- l. granting such other and further relief as this Court deems appropriate.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4, the Court is advised that Joseph Ives Picillo, Esq., is hereby designated as trial counsel.

THE PICILLO LAW FIRM, LLC
Attorneys for Plaintiffs
David Cox and Terri Cox

By: 
Joseph Ives Picillo, Esq.

Dated: 5/3/12

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues.

CERTIFICATION OF COUNSEL

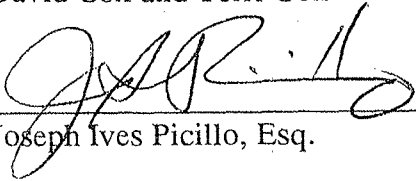
Pursuant to Rule 4:5-1 the undersigned hereby states that at the time of filing this Complaint, the matter in controversy is not the subject of any other action pending in any other Court and/or Arbitration proceeding. Further, I hereby certify that no other action or arbitration

process is contemplated. I further certify that it is not contemplated that any party should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

THE PICILLO LAW FIRM, LLC
Attorneys for Plaintiffs
David Cox and Terri Cox

By:



Joseph Ives Picillo, Esq.

Dated: 5/3/12

Richardson, Galella & Austermuhl

142 Emerson St.

Woodbury, NJ 08096

Tel: 856-579-7045, Fax: 856-579-7051

www.employmentlaw-nj.com

Charles B. Austermuhl, Esq. - NJ Atty ID# 022411989

Attorneys for Defendant Borough of West Cape May

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| DAVID COX; and TERRI COX, Plaintiffs, v. BOROUGH OF WEST CAPE MAY; and JOHN/JANE DOES (1-20) fictitious names, and ABC CORPORATIONS (1- 20) fictitious names, Defendants. | SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAPE MAY COUNTY DOCKET NO. CPM-L-205-12 Civil Action SETTLEMENT AGREEMENT AND GENERAL RELEASE |
|--|---|

This Settlement Agreement and General Release (hereinafter "this Agreement") is entered into and by and among David Cox and Terri Cox (Releasors or "Plaintiffs"), Releasors, and the Borough of West Cape May (Releasee or "Defendant"), Releasee, collectively known as "the Parties."

Whereas, David Cox and Terri Cox, as Plaintiffs, filed a Complaint against Releasee in the Superior Court of New Jersey, Law Division, Cape May County, entitled David Cox and Terri Cox v. Borough of West Cape May; and John/Jane Does (1-20) fictitious names, and ABC Corporations (1-20) fictitious names, bearing Docket No. CPM-L-205-12, and have asserted claims against Releasee; and,

Whereas, the Parties wish to settle all controversies among them involving Plaintiffs, including Plaintiffs' claims bearing Docket No. CPM-L-205-12, and any and

all related claims which could have been asserted, whether they are presently known or unknown,

Whereas, Releasee denies each and every allegation made by Plaintiffs, and enters into this agreement for reasons other than the merits of Plaintiffs' claims; and,

Whereas, Plaintiffs agree that the merits of their claims against Releasee are disputed and have not been adjudicated by any Court;

Now, and for the consideration of the agreements, covenants, and conditions herein contained, the adequacy and sufficiency of which is expressly acknowledged by the Parties hereto, the Parties agree as follows:

1. **SETTLEMENT PAYMENTS.**

- a. After David Cox and Terri Cox's execution and presentation of the attached Release and Stipulation of Dismissal with Prejudice, plaintiffs shall be paid the total amount of Sixty-Two Thousand Five Hundred dollars (\$62,500.00), which payment shall constitute consideration for the execution of this agreement and any other documents necessary to resolve and compromise this matter, with finality and with prejudice.
- b. Releasee takes no position on the allocation of the settlement amount, which represents a global settlement of all claims presented and which could have been presented. All prayers for relief are dismissed in consideration for the sum tendered.
- c. Plaintiffs agree that, but for this Settlement Agreement and General Release, they would not be entitled to the aforesaid payment.

- d. The settlement amount shall be paid by Releasee in the form of a check or checks payable to "David Cox and Terri Cox, and Joseph Ives Picillo, Esq., their attorney."
- e. No payment shall be released without an executed Release and Settlement Agreement and signed Stipulation of Dismissal with Prejudice for the matter bearing Docket No. CPM-L-205-12.

2. **DISMISSAL OF ACTION.**

Plaintiffs understand and agree that counsel for Releasee will file with the Court an executed Stipulation of Dismissal. The Parties understand and agree that the terms of the aforesaid Dismissal are expressly incorporated by reference within the Settlement Agreement and General Release as if fully set forth herein.

3. **RELEASE.**

In consideration for the payment and other consideration provided for in this agreement, Plaintiffs, personally and for their estate and/or their heirs, waive, release, and give up any and all claims, demands, obligations, damages, liabilities, causes of action and rights, in law or in equity, known and unknown, that they may have against Releasee and any and all of their officers, officials, employees (present and former), and their respective successors and assigns, heirs, executors and legal or personal representatives, based upon any act, event, or omission of any kind occurring before the execution of this Agreement, including, but not limited to, any claim that was asserted or could have been asserted under any federal and/or state statutes, regulations and/or common law, expressly including

but not limited to any potential claim relating to the following (including any amendments thereto):

- a. The National Labor Relations Act;
- b. Title VII of the Civil Rights Act of 1964;
- c. Sections 1981 through 1988 of Title 42 of United States Code;
- d. The Employment Retirement Income Security Act of 1974;
- e. The Immigration Reform Control Act;
- f. The Americans with Disabilities Act;
- g. The Age Discrimination in Employment Act of 1967;
- h. The Fair Labor Standards Act;
- i. The Occupational Safety and Health Act;
- j. The Family and Medical Leave Act of 1993;
- k. The Equal Pay Act;
- l. The New Jersey Law Against Discrimination;
- m. The New Jersey Minimum Wage Law;
- n. The Equal Pay Law for New Jersey;
- o. The New Jersey Worker Health and Safety Act;
- p. The New Jersey Family Leave Act;
- q. The New Jersey Conscientious Employee Protection Act;
- r. Any anti-retaliation provision of any statute or law;
- s. Any other federal, state or local, civil or human rights law or any other local, state or federal law, regulation or ordinance, any provision of any

federal or state constitution, any public policy, contract, tort or common law, or any losses, injuries or damages (including back pay, front pay, liquidated, compensatory or punitive damages, attorney's fees and litigation costs).

Plaintiffs acknowledge that they have twenty-one (21) days to review and consider this Release, which waives Plaintiffs' rights and claims under the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) and that their execution of this Release prior to the expiration of that time period constitutes an express waiver to the consideration period.

It is expressly understood by and among the Parties that this Agreement shall not serve to bar plaintiffs from pursuing relief under the Worker's Compensation Act for claims known and unknown as of the date of this Agreement and which are separate from claims encompassed in the civil action filed under Docket No. CPM-L-205-12.

4. **NO CLAIMS PERMITTED/COVENANT NOT TO SUE.**

Plaintiffs waive their right to file any charge or complaint on their own behalf, to participate as a complainant, a plaintiff or a charging party in any charge or complaint, or to collect damages as a result of any charge or complaint which may be made by any other person or organization on their behalf, with respect to anything which has happened up to the execution of this Agreement, before any federal, state or local court or administrative agency against Releasee except as such waiver is prohibited by law. It is expressly understood by and among the

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Parties that this Agreement shall not serve to bar plaintiffs from pursuing relief under the Worker's Compensation Act for claims known and unknown as of the date of this Agreement and which are separate from claims encompassed in the civil action filed under Docket No. CPM-L-205-12.

5. **CONFIDENTIALITY.**

The Parties agree that this Release contains no confidentiality agreement.

6. **NON-DISPARAGEMENT.**

The Parties agree not to make any disparaging statements concerning one another, or to defame one another in any manner to any person or entity. The Parties agree not to authorize any person or entity to make any disparaging statements about one another or to defame one another to any person or entity.

7. **DEFENSE/INDEMNIFICATION.**

Releasors agree to defend Releasee in any action brought by any source as a result of Releasors' allocation of the settlement amount and to indemnify and hold Releasee's harmless from any judgment, penalty, fine or other financial assessment against Releasee's stemming from such action.

Releasors' counsel agrees to be solely responsible for any and all judgement searches required by law, including, but not limited to child-support Orders, and to defend and indemnify Releasee in any action of any description resulting from a judgment against plaintiff entered prior to the date of this Release.

8. **NO ADMISSION OF LIABILITY.**

It is expressly understood that neither the execution of this agreement, nor any

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other action taken by Releasee in conjunction with Plaintiffs' alleged claims or this settlement, constitute an admission by Releasee of any violation of any law, duty or obligation and that Releasee specifically denies any liability to Plaintiff or to any other person.

9. **ENTIRE AGREEMENT.**

This Agreement contains the sole and entire Agreement between the Parties.

Plaintiffs represent and acknowledge that, prior to executing this Agreement, they consulted with their attorney and that they have had ample time to do so, and that they obtained the advice of their counsel prior to making the decision to execute this Agreement, and that they has not relied upon any representation or statement not set forth in this Agreement made by any other party hereto, or their counsel or representatives, with regard to the subject matter of this Agreement.

No other promises or agreements shall be binding unless in writing, signed by the Parties hereto, and expressly stated to represent an amendment to this Agreement.

10. **SEVERABILITY.**

The Parties agree that if any Court declares any portion of this Agreement unenforceable, the remaining portion or portions shall be fully enforceable.

Plaintiffs hereby understand and agree that they have sought and received the advice of their attorney prior to executing this Agreement, and that they have had ample time to do so and that they knowingly and voluntarily have

decided to settle their claims against Releasee after thoroughly reviewing this Agreement with their attorney.

David Cox, Plaintiff and Releasor
David Cox

Terri Cox, Plaintiff and Releasor
Terri Cox

STATE OF NEW JERSEY :

: SS

COUNTY OF *Gloucester*

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|--|--|
| Sworn to and subscribed before me this <u>24th</u> day of November 2014 | <i>[Signature]</i> JOSEPH I. PICILLO ATTORNEY-AT-LAW OF N.J. |
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Charles B. Austermuhl, Esq., Preparer

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Austermuhl