

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

KMART CORPORATION,

Debtor.

Case No. 02 B 02474

Honorable Susan Pierson Sonderby

Hearing Date: November 3, 2009

Hearing Time: 11:00 a.m.

**KMART CORPORATION'S OBJECTION AND ANSWER TO
STATEMENT OF CLAIM OF BEULAH JOHNSON**

Kmart Corporation, for its objection and answer to the claim of Beulah Johnson filed with this Court of September 16, 2009, states as follows:¹

1. I, Beulah D. Johnson lives at 1086 Torrey Drive, Fayetteville, NC 28301.

ANSWER: Admitted on information and belief.

2. Kmart ignored the notice of the trial for Beulah D. Johnson, Chief United States District, Terrence W. Boyle verified that information in the court.

ANSWER: Kmart believes that Johnson is referring to a complaint filed by Johnson against Kmart in 1996 in the United States District Court for the Eastern District of North Carolina. Kmart denies that it was properly served with complaint, which ended with a default judgment in favor of Johnson.

¹ Johnson's original bankruptcy claim included a claim on a default judgment she obtained against Kmart on June 11, 2008 for \$30,640. Although Kmart does not admit that it was properly served with the complaint that resulted in the judgment, or with a copy of the judgment, Kmart will nonetheless recognize Johnson has holding a Class 6 claim for \$30,640 plus interest accrued thereon at the federal judgment rate through January 22, 2002. Using an average annual federal judgment interest of 5.5%, Kmart calculates that Johnson's claim accrued \$5,892 in interest, and that the total allowed claim is \$36,532. Class 6 claims receive a distribution of .105 on the dollar of claim.

3. I started at Kmart on or about September 14, 1972, as a cashier at store #4357 West Colonial Drive in Orlando, Florida. I was discriminated against because of my race. I promoted to check-out supervisor, the position was taken away on January 9, 1975 and given to a young white girl I had trained.

ANSWER: Kmart admits that Johnson was an employee of Kmart from approximately September 1972 through January 1975 and that the Plaintiff worked in the Kmart store in Orlando, Florida. Kmart denies the remaining allegations in paragraph 3 of the Johnson Claim.

4. I went to EEOC for an investigation, it was found favorable to me. I did not suit, was transferred to North Carolina to the same position, this was a level 3 position.

ANSWER: Kmart lacks information or belief to admit or deny the allegations in Paragraph 4 of the Johnson Claim, except that Kmart admits that Johnson did transfer to a Kmart store in North Carolina.

5. Effective 08-1-89 the store manager Glenn Dixon demoted me to a door greeter a level 1 position without warning or complaints. On 09-01-09 [sic] Glenn Dixon reclassified me from a level one position to a four position, from that point on it was continuous back and forward on my levels (I have all documentation to prove my statement.

ANSWER: Kmart denies the allegations in Paragraph 5 of the Johnson Claim.

6. Kmart discriminated against me because I was black and related [sic] on me every chance they could.

ANSWER: Kmart denies the allegations in Paragraph 6 of the Johnson Claim.

7. At the same time Kmart would take positions from me stating their no position, they would give the position to someone else.

ANSWER: Kmart denies the allegations in Paragraph 7 of the Johnson Claim.

8. Kmart gave Andrea position on the MTM full time on or April of 1995, after it was taken from me, a young white girl.

ANSWER: Kmart denies the allegations in Paragraph 8 of the Johnson Claim.

9. Maria Heaps was giving the patio manager's position on or about January 1996, a white female.

ANSWER: Kmart denies the allegations in Paragraph 9 of the Johnson Claim.

10. I asked about an assistant manager position it was give to a young white man on or about 06/10/96 clock no. 409.

ANSWER: Kmart denies the allegations in Paragraph 10 of the Johnson Claim.

11. Kmart has discriminated against me over the years for age and race over the years, has related [sic] against me.

ANSWER: Kmart denies the allegations in Paragraph 11 of the Johnson Claim.

12. The have shown this by disobeying a court order concerning the manager's trainee. I believe I was discriminated against because of my race, black, in violation of Title VII of the Civil Rights act of 1964, as Amended, in violation of the Discrimination in employment act of 1967, as amended.

ANSWER: Kmart denies the allegations in Paragraph 12 of the Johnson Claim.

AFFIRMATIVE DEFENSES

1. Johnson's Claim is barred by the doctrine of *res judicata*. Johnson previously, in an action filed against Kmart on November 29, 1996 in the United States District Court for the Eastern District of North Carolina, sought relief for the same claims asserted in the claim Johnson filed in the Kmart bankruptcy case. Johnson obtained judgment in her favor on the previous claims and may not reassert those claims in this bankruptcy case.

2. Johnson's Claim is time barred under the applicable statute of limitations.

3. Johnson's Claim is barred by the doctrine of laches, waiver, and estoppel. In her claim, Johnson complains of events that occurred in January 1975, more than 27 years prior to Kmart's bankruptcy filing. Johnson also complains of events that happened in 1989, more than 12 years prior to Kmart's bankruptcy filing. After so many years, witnesses have died or can no longer be found, and Kmart is therefore prejudiced in its ability to defend the claim

4. Johnson's Claim is barred to the extent it asserts claims not identified in the proof of claim she filed with in the Kmart bankruptcy case on July 30, 2002.

Dated: October 20, 2009 at Chicago, Illinois.

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