

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF MECKLENBURG

SUPERIOR COURT DIVISION

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17 CVS 2995

MECKLENBURG CO., C.S.C.

MICHAEL JONES,

BY \_\_\_\_\_ )

Plaintiff,

v.

LOWE'S COMPANIES, INC.

Defendant.

**PARTIES**

1. Plaintiff Michael Jones is a citizen and resident of Mecklenburg County, North Carolina. He is African-American.
2. Defendant Lowe's Companies, Inc. is a home improvement company with fiscal year 2015 sales of \$59.1 billion at more than 2,355 home improvement and hardware stores. It has some 285,000 employees and is based in Mooresville, North Carolina

**JURISDICTION**

3. Plaintiff bring this action pursuant to 42 U.S.C. § 1981 and state law. The Court has jurisdiction over under Chapter 7A of the General Statutes and the applicable case law.

**FACTS**

4. In January 2013, Greg Bridgeford, Defendant's Chief Customer Officer, hired Plaintiff Jones in the position of Chief Merchandising Officer.
5. Jones is African-American and had a distinguished corporate career before coming to Lowe's, including 15 years with General Electric in roles of increasing responsibility and then three years as president of Husqvarna's North and South American operations.
6. Jones worked in conjunction with Rick Damron, Chief Operating Officer, to manage Lowe's U.S operations. Jones changed Lowe's business strategy in several ways, including a broader emphasis on contractor or "pro" sales and organizational changes .

Jones also headed activities that addressed the company's culture and working environment.

7. The positive impact that Jones' changes helped bring to Lowe's was measurable. From 2010 through 2012, Lowe's compound annual growth rate for sales ("CAGR") had been 1.9%; its growth in Earnings Before Interest and Taxes ("EBIT") had averaged 22 basis points ("bps") per year; and growth in the Return on Invested Capital ("ROIC") had increased an average of 65 bps/year.

8. From 2013 through 2015, by comparison, the sales CAGR increased to 5% EBIT grew by an average of 84 bps per year and ROIC increased by an average of 229 bps per year.

9. The success of Defendant's U.S. operations was key to the company's growth those three years. The U.S. division performed best to budget of all major components of the company and, for three years, was Defendant's only cash-flow positive division.

10. Both Jones and Damron consistently warned Niblock that costs were too high and were impacting the performance of the U.S. business.

11. The International division and other business development activities led by Jones' counterpart, Richard Maltsbarger, had not performed to plan nor been EBIT or cash flow positive during that time.

12. And those losses began to lead to significant write offs -- a \$530 Million charge off for 4Q 2015 for Masters, an Australian joint venture reporting at that time to Maltsbarger; and a \$8 Million inventory charge off for the IRIS home management system in 2015 followed by an additional \$50 Million of additional investment into IRIS.

13. Outside analysts noted Jones role in Lowe's improvement as a business from 2013 to 2016. Richard Saintvilus of "The Street" wrote in September 2014 that Jones had stopped Lowe's from suffering self-inflicted wounds and deserved a raise; Eric Bosshard of Cleveland Research wrote in December 2014 that merchandising was driving the company's transformation; Abram Rubinson from Wolff Research praised Jones in January 2015 for driving merchandising decisions and cash flow, and praised Lowe's in February 2015 for hiring Jones; and, RBC Capital Markets wrote in June of 2016 that Jones' comments to analysts about the Pro business at Lowe's gave them confidence in the company's continued growth.

14. The company also recognized his performance. Jones received "Leading Performer" performance ratings for the three years 2013, 2014 and 2015.

15. And, in the midst of this growth and his strong performance, Lowe's promoted Jones in May 2014 to replace Bridgeford as the Chief Customer Officer when Bridgeford retired. Jones then reported directly to Robert Niblock, the CEO and president, and was part of the executive team.

16. As an executive officer, Jones signed a management continuity agreement that required payment of nearly \$12.5 million in severance and other benefits if he were terminated without cause after a change in control of a majority of the Board of Directors.

17. Jones began to raise concerns about the firm culture, particularly as it pertained to inclusion. Late in 2015, Plaintiff learned in a staff meeting that a picture in the Mooresville office of an interracial couple had been damaged or destroyed and taken down. Plaintiff passed on that information to Niblock as an example of problems with the company culture.

18. Niblock wrote in February 2016 for the FY 2015 review that Jones had excelled in managing his team, bringing on new talent, creating “diversity of thought” and collaboration that enabled the division to get past obstacles that would have “derailed” progress in the past and to deliver “results better than industry growth and general retail.”

19. In late 2015, the director of human resources, Maureen Ausura, informed Jones that the company was engaged in succession planning was to prepare a report for the Lowe’s board that compared Jones and Maltsbarger as leaders of the company and potential successors to Niblock.

20. Maltsbarger is Caucasian, as is Niblock, and is widely recognized as Niblock’s preferred successor.

21. Jones and Maltsbarger met with an outside consultant, and their peers and subordinates were interviewed as part of that succession planning process.

22. Cedric Coco, the Senior Vice President for Talent Development who had recruited Jones to Lowe’s, told Plaintiff that he had discussed the process with the consultant and learned that Plaintiff had done well and had compared very favorably to Maltsbarger.

23. On information and belief, Niblock did not like the result, particularly the comments the consultant had gathered from peers and subordinates, which were more favorable to Jones.

24. Niblock wanted Maltsbarger to be identified as his potential successor out of this process, so he did not present this report to the Board.

25. Ausura retired early in 2016 and Jennifer Weber replaced her as chief Human Resources officer. Weber was hired from Duke Energy.

26. Plaintiff interviewed Weber in the hiring and was initially impressed with her but expressed some concerns about some of her responses/reactions to questions and recommended waiting on a background check into her prior work relationships.

27. On information and belief, Niblock then approved hiring Weber without a full “forensic” background check, a review to which all key executive candidates were normally subjected. It involves hiring an investigator to do in-depth interviews of persons who have worked with or know the candidate.
28. Jones would be told later that Weber had built a negative reputation at Duke Energy with regard to diversity issues and the termination of minority executives.
29. Soon after she was hired, Weber told Jones that he and Maltzbarger would have to meet again with the outside consultant to conclude the assessment process.
30. Weber told Jones in March and April 2016 that after this second discussion, the process had concluded, notwithstanding three years of building a team that had delivered “results better than industry growth and general retail” and had driven the Defendant’s growth, that he was a poor executive who could not manage talent strategically or develop strategy or influence other executives.
31. Jones was surprised and stated that he could not agree with that assessment, based on his track record at Lowe’s and what he had read in the draft report from the consultant, which still contained the positive comments from peers and subordinates.
32. Jones called Ausura, who was also expressed surprised at this outcome of the assessment.
33. On Friday, April 25, 2016, Weber fired Coco, the Senior Vice President for Talent Development, who is African-American.
34. On Monday, April 28, 2016, Weber contacted Jones and told him that he needed to accept the assessment of the consultant that he was not an effective executive.
35. Jones again stated that he could not do so and went to Niblock to discuss his concerns about the process. He pointed out that this sudden claim that he could not manage was belied by financial results as well as the company’s internal scores on Engagement and its Leadership Index Score. His scores were higher than Maltzbarger’s.
36. Niblock stated that he would “get back” to Jones about his concerns, but never addressed them.
37. It was at this point that Jones was told by others from Duke Energy that Weber had a reputation there for getting rid of African-American executives.
38. In May, a report came out showing for the first quarter that year to year, same stores sales growth at Lowe’s U.S. stores had exceeded that of rival Home Depot for the first time in nearly five years.

39. But, on May 24, 2016, Weber told Jones that he had to meet with Niblock and accept the criticisms in the succession assessment that he could not lead effectively.

40. When they met, Jones again expressed his concerns about the assessment process, about being pitted against Maltzbarger in this manner, and about being asked to declare that he could not influence other executives. He again noted the success of the company over the last three years.

41. Niblock became enraged and told Jones that he had never been more disappointed in an executive in his life and began a list of criticisms.

42. Niblock also denied that the two men were being compared, though that was how the assessment process had been presented to Jones since late 2015, and Weber had confirmed to Jones that was the point of the process on two different occasions. She had even confided that she had expressed concern to Niblock about conducting such a comparison process.

43. Yet Niblock now denied the assessment was a comparison of the two and stated that other CEO direct reports would also be assessed in the last half of 2016.

44. Niblock and Weber then reopened the process as to Jones again to collect more feedback to modify the report and make it less favorable to Jones.

45. But as 2016 progressed, the problems increased in the International division and Business Development division. Lowe's prepared to write off more losses at the Board meeting in November.

46. In early June, Jones then raised concerns about the treatment of several other African-American management employees.

47. He got a note from an African-American woman in Human Resources in Bangalore, India, stating that she feared she was about to be fired.

48. He also learned that two other African-Americans, a recruiter and a director, both in Human Resources were also facing termination.

49. Jones talked with a Lowe's lawyer in labor relations and then with General Counsel, McCanless, and alerted them that he wanted to talk with Weber about a possible legal issue, the concern that African-American employees were suddenly being let go.

50. Jones, the only minority in a Senior management position at Lowe's, warned McCanless that there was a too much swirl over African Americans being fired suddenly.

51. Jones then met with Weber and discussed his concerns about the employee in HR in Bangalore, and that Weber's recently promoted human resource VP handling the Bangalore employee had difficulty with African-American employees. And he raised

separate concerns that two other African Americans were being forced out of the Human Resources team in Mooresville.

52. Weber agreed to investigate Jones' concerns about Bangalore employee, but stated that she did not have any concerns about the recently promoted Human Resources Vice President.

53. But Weber agreed that removing all three at the same time would look bad.

54. After Plaintiff expressed those concerns, all three employees kept their employment with Lowe's, at least in the short term.

55. The employee in Bangalore told Jones that Human Resources was upset over his intervention in her situation.

56. On June 21, 2016, McCanless called Plaintiff to a meeting to discuss a letter he had received from an attorney for Coco alleging race discrimination in his termination from Lowe's. One paragraph of the letter stated that Coco believed the assessment process regarding Jones was racially biased.

57. McCanless asked Plaintiff if he believed the process was biased and asked Plaintiff to speak with outside counsel about Coco's concerns.

58. Plaintiff explained to both McCanless and outside counsel that he thought there was some sort of bias, that he had raised concerns over being compared to Maltzbarger, who was Niblock's clear preference. He explained that he found it suspect that he had been told initially he had been rated very well during the assessment, and then was told he was a failed executive after Weber took over in Human Resources.

59. Jones had given a speech to company employees in February 2016, with Niblock's prior approval, urging them to approach him or anyone else on the executive team if they had any concerns about their own leaders.

60. In August 2016, an employee working on a program called Unleash Our Sales Potential ("UOSP") being developed to move inventory between stores, asked Jones to meet about the UOSP program leader and general leadership issues at Lowe's.

61. Jones told Weber about the request to meet before he met with the employee, who was white.

62. UOSP was one of projects in financial difficulty, headed to a \$100 Million write off at the November 2016 board meeting.

63. The employee presented Jones a folder of materials pertaining to concerns about the project leader and referred to some accounting issues.

64. After the meeting, Jones presented the materials he had received to Weber, summarized the employee's concerns and asked Weber how she wanted to handle them. Weber took over the matter from there.

65. McCanless, the general counsel, then blew up at Jones for meeting with the employee. Jones explained that he had been told that he and all the executive team had an obligation to listen to any employee with leadership concerns and that he had turned her information over to Human Resources immediately.

66. Weber later apologized to Jones for the way McCanless had reacted, and stated that there was nothing wrong with Jones' response to the employee.

67. Also in August, Plaintiff met another time with Weber to discuss a complaint brought to him that Human Resources employees were stating that the recent promotion of a veteran African-American female employee in Human Resources had been "forced" on Weber. Plaintiff expressed concern that this message undermined that employee and needed to be addressed.

68. Then two African-Americans left Human Resources.. In late September or early October, the director in HR whom Plaintiff had tried to protect in the summer suddenly departed.

69. Then the Director of Diversity and Inclusion, an African-America woman, was terminated in early October.

70. Shortly after that woman's termination, Weber notified Jones that she and Niblock wanted to meet with him about the assessment process, with a revision of his feedback.

71. The feedback in the revised assessment document contained, almost verbatim, the negative comments Niblock had made in May when demanding that Plaintiff accept the assessment that he could not lead.

72. Then, on October 27, 2016, two weeks before the November meeting of the Board of Directors, Niblock and Weber met with Jones again to fire him.

73. Niblock did not mention the assessment at this meeting; he simply declared that Jones lacked energy and thus was being terminated.

74. There were now no minorities at the senior leadership level at Lowe's.

75. After he was terminated, a lawyer in the legal department expressed surprise to Jones at the firing, and noted that the only negative comment he had heard was from Weber – that Jones had stuck his nose where it did not belong.

76. Weber presented Jones with a severance package that compared very unfavorably with one provided to a recently terminated, subordinate white employee who had

reported to Jones. That employee was given all of his unvested Lowe's stock. Jones was not offered any of his unvested stock, which was worth several million dollars

77. Niblock then told the Board falsely at the November board meeting that Jones' departure was a mutually agreed upon decision, diverting attention from his decision to fire Jones and implicitly shifting responsibility to Jones for bad performance news that Niblock had to reveal at the meeting.

78. Niblock then informed the Board that the company had to take additional write offs, primarily from Maltzbarger's areas of responsibility: an anticipated \$360 Million charge off in the third quarter for Masters in Australia; an approximate \$100 Million impairment charge for Orchard Supply; and an approximate \$100 Million impairment charge for UOSP system. And the two Center City stores in New York City, a Maltzbarger project, were now on the company's watch list as underperforming.

79. The week that Jones was terminated, the U.S. business/division was at 99.35% of its sales budget for the year and was cash flow positive.

80. The company's earnings were off eight cents per share compared to the market consensus for the third quarter.

81. But seven of those eight cents was directly related to costs, which Jones and Damron had repeatedly urged Niblock were too high.

82. Niblock had hired an outside consulting firm that had recommended cuts in personnel to improve productivity, and reduce general costs, the same concern that Jones and Damron had voiced repeatedly.

83. Jones was replaced by a Caucasian employee.

84. Jones is one of a series of African-American employees at the vice president level or higher, in multiple functions, terminated disproportionately to their white counterparts in recent years.

85. If Jones had remained employed through the May 2017 annual meeting, when a change of one more board member will trigger the "change of control" provisions in the continuity agreement Jones had signed, he would have been eligible for nearly \$12.5 Million in severance on termination.

### **FIRST CAUSE OF ACTION**

#### **(42 U.S.C. § 1981 – Discrimination in the Termination of Employment)**

86. All prior paragraphs are incorporated by reference.

87. Defendant terminated Plaintiff on account of race, firing him when he was performing all of the duties of his job well and replacing him with the white employee for



no legitimate business reason. Further, Defendant fired Plaintiff for refusing to admit he was inferior to another white executive to whom he was being compared in the assessment succession process.

88. Plaintiff seeks and is entitled to compensatory damages, including lost earnings and benefits as well as damages for humiliation and emotional harm. He seeks and is entitled to reinstatement or, in lieu of that, front pay in the amount the company valued his termination in the continuation agreement.

89. Plaintiff seeks and is entitled to punitive damages, as actions of Defendant's executive officers evinced malice toward Plaintiff and willful and wanton disregard for his rights.

90. Plaintiff seeks and is entitled to attorney's fees.

**SECOND CAUSE OF ACTION**  
**(43 U.S.C. § 1981 – Retaliation in the Termination of Employment)**

91. All prior paragraphs are incorporated by reference.

92. Defendant terminated Plaintiff for standing up for other African-American employees employed by Defendant, or "sticking his nose where it did not belong."

93. Plaintiff seeks and is entitled to compensatory damages, including lost earnings and benefits as well as damages for humiliation and emotional harm. He seeks and is entitled to reinstatement or, in lieu of that, front pay in the amount the company valued his termination in the continuation agreement.

94. Plaintiff seeks and is entitled to punitive damages, as actions of Defendant's executive officers evinced malice toward Plaintiff, showed willful and wanton disregard for his rights.

95. Plaintiff seeks and is entitled to attorney's fees under 42 U.S.C. § 1988.

**THIRD CAUSE OF ACTION**  
**(State Law Wrongful Discharge)**

96. All prior paragraphs are incorporated by reference.

97. Defendant terminated on account of his race and in retaliation for advocating on behalf of other African-American employees.

98. The North Carolina Legislature has declared in the North Carolina Equal Employment Practices Act, N.C.G.S. § 143-422.2, that:

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, biological sex or handicap by employers which regularly employ 15 or more employees.

(b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

99. Defendants' actions in terminating Plaintiff on account of her disability/handicap and/or on account of race and in retaliation for protecting other African-American employees from discharge directly violated this express public policy of the State of North Carolina. Thus, the termination of Plaintiff was wrongful and unlawful.

100. Plaintiff seeks and is entitled to compensatory damages, including lost earnings and benefits as well as damages for humiliation and emotional harm. He seeks and is entitled to reinstatement or, in lieu of that, front pay in the amount the company valued his termination in the continuation agreement.

101. Plaintiff seeks and is entitled to punitive damages, as actions of Defendant's executive officers evinced malice toward Plaintiff, showed willful and wanton disregard for his rights.

### **JURY DEMAND**

102. Plaintiff demands that all matters be tried before a jury of his peers.

### **PRAAYER FOR RELIEF**

Upon the trial of this matter, Plaintiff prays that the Court enter Judgment for him and award the following relief:

- a. Injunctive relief, including reinstatement with payment of full back pay and benefits, or, in lieu of reinstatement, front pay and the full value of the continuation agreement package;
- b. Actual and compensatory damages;
- c. Punitive damages under to the extent allowed under law;

- d. The costs of this action, including reasonable attorney's fees under 42 U.S.C. §1988;
- e. Any further the relief the Court deems just and necessary.

Respectfully submitted this 15th day of February, 2016.



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