

BSS

**U.S. District Court  
Southern District of Florida (Ft. Lauderdale)  
CIVIL DOCKET FOR CASE #: 0:11-cv-62429-KMW**

Kerr v. The City of Tamarac, Florida  
Assigned to: Judge Kathleen M. Williams  
Demand: \$100,000  
Cause: 42:2000 Job Discrimination (Race)

Date Filed: 11/14/2011  
Jury Demand: Plaintiff  
Nature of Suit: 442 Civil Rights: Jobs  
Jurisdiction: Federal Question

**Plaintiff****Conwade Kerr**

represented by **Conwade Kerr**  
4156 Inverrary Drive  
Apt. 411  
Lauderhill, FL 33319  
PRO SE

V.

**Defendant**

**The City of Tamarac, Florida**  
*Human Resources Department*

represented by **E. Bruce Johnson**  
Johnson Anselmo Murdoch Burke Piper  
& Hochman, PA  
International Building  
2455 E Sunrise Boulevard  
Suite 1000  
Fort Lauderdale, FL 33304-0220  
954-463-0100  
Fax: 954-463-2444  
Email: johnson@jambg.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
11/14/2011	<u>1</u>	COMPLAINT against The City of Tamarac, Florida. Filing fee \$ 350.00. IFP Filed, filed by Conwade Kerr. (Attachments: # <u>1</u> Civil Cover Sheet)(mb) (Entered: 11/14/2011)
11/14/2011	2	Judge Assignment to Judge Kathleen M. Williams (mb) (Entered: 11/14/2011)
11/14/2011	<u>3</u>	MOTION for Leave to Proceed in forma pauperis by Conwade Kerr. (mb) (Entered: 11/14/2011)
11/14/2011	<u>4</u>	MOTION to Appoint Counsel by Conwade Kerr. Responses due by 12/1/2011 (mb) (Entered: 11/14/2011)
12/02/2011	<u>5</u>	Clerks Notice of Receipt of Filing Fee received on 12/2/2011 in the amount of

		\$ 350.00, receipt number FLS100029355 (jua) (Entered: 12/02/2011)
12/05/2011	<u>6</u>	ORDER denying <u>4</u> Motion to Appoint Counsel ; denying as moot <u>3</u> Motion for Leave to Proceed in forma pauperis. Signed by Judge Kathleen M. Williams on 12/5/2011. (lbc) (Entered: 12/05/2011)
12/05/2011	<u>7</u>	ORDER OF INSTRUCTIONS TO PRO SE LITIGANT. Signed by Judge Kathleen M. Williams on 12/5/2011. (lbc) (Entered: 12/05/2011)
12/13/2011	<u>8</u>	Summons Issued as to The City of Tamarac, Florida. (yha) (Entered: 12/13/2011)
01/04/2012	<u>9</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint The City of Tamarac, Florida served on 12/29/2011, answer due 1/19/2012. (jua) (Entered: 01/04/2012)
01/13/2012	<u>10</u>	MOTION TO DISMISS <u>1</u> Complaint FOR FAILURE TO STATE A CLAIM <i>and Memorandum of Law In Support</i> by The City of Tamarac, Florida. Responses due by 1/30/2012 (Johnson, E.) (Entered: 01/13/2012)
02/01/2012	<u>11</u>	ORDER re <u>10</u> MOTION TO DISMISS <u>1</u> Complaint FOR FAILURE TO STATE A CLAIM <i>and Memorandum of Law In Support</i> filed by The City of Tamarac, Florida. Responses due by 2/10/2012. Signed by Judge Kathleen M. Williams on 2/1/2012. (lbc) (Entered: 02/01/2012)
02/06/2012	<u>12</u>	RESPONSE to Motion re <u>10</u> MOTION TO DISMISS <u>1</u> Complaint FOR FAILURE TO STATE A CLAIM <i>and Memorandum of Law In Support</i> filed by Conwade Kerr. Replies due by 2/16/2012. (jua) (Entered: 02/06/2012)
02/06/2012	<u>13</u>	RESPONSE to Motion re <u>10</u> MOTION TO DISMISS <u>1</u> Complaint FOR FAILURE TO STATE A CLAIM <i>and Memorandum of Law In Support</i> filed by Conwade Kerr. Replies due by 2/16/2012. (jua) (Entered: 02/06/2012)
02/06/2012	<u>14</u>	RESPONSE in Opposition re <u>10</u> MOTION TO DISMISS <u>1</u> Complaint FOR FAILURE TO STATE A CLAIM <i>and Memorandum of Law In Support</i> filed by Conwade Kerr. (jua) (Entered: 02/06/2012)
02/06/2012	<u>15</u>	RESPONSE in Opposition re <u>10</u> MOTION TO DISMISS <u>1</u> Complaint FOR FAILURE TO STATE A CLAIM <i>and Memorandum of Law In Support</i> filed by Conwade Kerr. (jua) (Entered: 02/07/2012)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
02/10/2012 12:12:55			
<b>PACER Login:</b>	vl0006	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	0:11-cv-62429-KMW
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.16

Nov. 14, 2011

STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S. D. OF FLA. - MIAMI

(Rev. 10/2002) Complaint

UNITED STATES DISTRICT COURT

Southern District of Florida

Case Number: **11-62429-Civ-WILLIAMS/SELTZER**

Conwade KERB

Plaintiff(s)

v.

The City of Tamarac  
Human Resources Dept.  
7525 N.W. 88th Avenue  
Tamarac, FL 33321-2401

Defendant(s)

COMPLAINT

I, Conwade KERB plaintiff, in the above styled cause, sues  
defendant(s); City of Tamarac

*(Allegation of jurisdiction, i.e., under which federal law or section of the U.S. Constitution  
this action is being filed - refer to Appendix B for a list)*

This action is filed under: Title VII of the 1964 act, Discrimination  
violation.

(Rev. 10/2002) Complaint

## (Statement of Facts)

I was wrongfully discharged after another co-worker cursed racial slurs at me. The co-worker that called me the n-word is named Esaba Bonrey and also he was not disciplined. He is still working there. We both get into an argument, but only I was terminated. There is only one thing that could<sup>be</sup> is that he is caucasian, and I am a negro. He cursed the n-word and the f--- you word at me. The management at The City of Tamarac should be ashamed of themselves. Esaba is been known to curse at other workers. He was not reprimanded. The rude behavior he demonstrate is unacceptable.

The city of Tamarac allows workers to provoke me, and they do nothing to stop this. I was call pro-black and other racist things, and management sat back and let it happen. Also a Supervisor MR. Byrd said don't let him go get his gun. He was never disciplined for his violent remarks. The City of Tamarac management team have no respect for humanity. They lied and said I fought on the job which I never fought on the job or anywhere else. By them lying didn't get unemployment, which I was told by Marcie Swanson I would receive. I still have not<sup>got</sup> any unemployment.

Thank you for your time.

Sincerely Yours,  
Conrado Kera

(Rev. 10/2002) Complaint

(Relief request, i.e., State what you want the Court to do or award)

Wherefore, I want the Court <sup>to</sup> award me 100,000 Dollars. For the blatant disrespect I had to encounter by the Hand of The City of Tamarac Management and co-workers  
Thank you for your time.

Sincerely yours,  
Conrado Kerr

Signed this 10th day of November, 20 11.

Conrado Kerr  
Printed or typed name of Filer

Conrado Kerr  
Signature of Filer

Florida Bar Number  
954-484-5714  
Phone Number

ConradoKERR@yahoo.com  
E-mail address

4156 Inverrary Drive Apt #411  
Street Address

Facsimile Number

Lauderhill, FL 33319  
City, State, Zip Code



**U.S. Department of Justice**

Civil Rights Division

NOTICE OF RIGHT TO SUE

WITHIN 90 DAYS

CERTIFIED MAIL

2012 8743

950 Pennsylvania Avenue, N.W.  
Karen Ferguson, EMP, PHB, Room 4239  
Washington, DC 20530

November 4, 2011

Mr. Conwade D. Kerr  
4156 Inverrary Dr.  
Apt. 411  
Lauderhill, FL 33319

Re: EEOC Charge Against City of Tamarac  
No. 510201105667

Dear Mr. Kerr:

Because you filed the above charge with the Equal Employment Opportunity Commission, and the Commission has determined that it will not be able to investigate and conciliate that charge within 180 days of the date the Commission assumed jurisdiction over the charge and the Department has determined that it will not file any lawsuit(s) based thereon within that time, and because you have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice. If you cannot afford or are unable to retain an attorney to represent you, the Court may, at its discretion, assist you in obtaining an attorney. If you plan to ask the Court to help you find an attorney, you must make this request of the Court in the form and manner it requires. Your request to the Court should be made well before the end of the time period mentioned above. A request for representation does not relieve you of the obligation to file suit within this 90-day period.

The investigative file pertaining to your case is located in the EEOC Miami District Office, Miami, FL.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Thomas E. Perez  
Assistant Attorney General  
Civil Rights Division

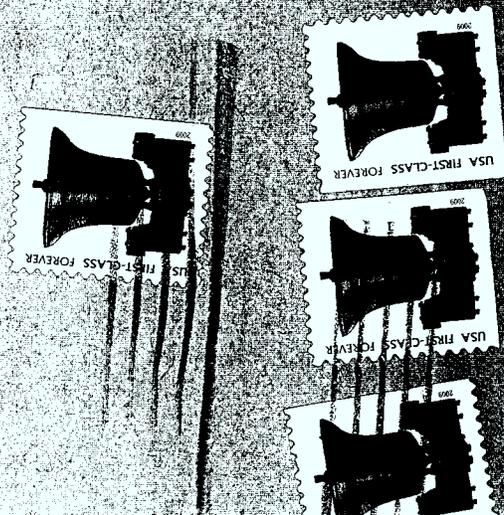
by

A handwritten signature in black ink that reads "Karen L. Ferguson".

Karen L. Ferguson  
Supervisory Civil Rights Analyst  
Employment Litigation Section

cc: Miami District Office, EEOC  
City of Tamarac

Cornelia Kopp  
1516 S. W. 10th Ave  
Lauderhill, FL 33319



United States District Court  
Southern District of Florida  
Office of the Clerk  
299 East Broward Boulevard, Room 1  
Fort Lauderdale, FL 33301

# 11-62429-Civ-WILLIAMS/SELTZER CIVIL COVER SHEET

**Nov. 14, 2011**

STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S. D. OF FLA. - MIAMI

JS 44 (Rev. 2/08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below**

**I. (a) PLAINTIFFS** Connacbe KERR

**(b) County of Residence of First Listed Plaintiff** Broward  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorney's (Firm Name, Address, and Telephone Number)**  
None, I am representing myself.

**DEFENDANTS** The City of T

County of Residence of First Listed Defendant Broward  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

**(d) Check County Where Action Arose:**  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKEECHOBEE  HIGHLANDS

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  2 Removed from State Court  3 Re-filed- (see VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** (See instructions second page):

a) Re-filed Case  YES  NO      b) Related Cases  YES  NO

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

**VII. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Title VII of Civil Right Act of 1964 Discrimination act

LENGTH OF TRIAL via \_\_\_\_\_ days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 100,000 Dollars

CHECK YES only if demanded in complaint: **JURY DEMAND:**  YES  NO

DATE 11/10/2011

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_ DATE \_\_\_\_\_

FOR OFFICE USE ONLY

AMOUNT \_\_\_\_\_ RECEIPT # \_\_\_\_\_ IFP \_\_\_\_\_

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-cv-62429-KMW

CONWADE KERR,

Plaintiff,

vs.

CITY OF TAMARAC, Florida,  
The Human Resource Department,

Defendant,

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**DEFENDANT, CITY OF TAMARAC'S, MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT**

Defendant, CITY OF TAMARAC ("CITY"), by and through undersigned counsel, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and pursuant to Rule 7.1 of the Local Rules for the United States District Court, Southern District of Florida, files the following Motion to Dismiss Plaintiff's, CONWADE KERR ("Plaintiff"), Complaint and Memorandum of Law in Support, and states:

1. Plaintiff has filed this action, *pro se*, against his former employer, the CITY.
2. In his handwritten Complaint, it appears that Plaintiff is attempting to state a claim under Title VII for race discrimination, alleging that he was terminated because of his race.
3. While unclear, it appears that Plaintiff may also be attempting to state a claim under Title VII that he was subjected to a hostile work environment during his employment.
4. Insofar as the Complaint attempts to state a claim under Title VII for race discrimination, the Complaint fails to state a cause of action because, in order to set a prima facie case, Plaintiff is required to allege sufficient facts to show not only that he suffered an adverse employment action,

Kerr v. Tamarac  
Case No.: 11-62429-KMW

but also that a “*similarly situated*” employee of another race was treated more favorably under the same circumstances. Plaintiff has not done that.

5. To that end, Plaintiff merely alleges in a cursory fashion that he got into an argument with a “[C]aucasian” co-worker, Mr. Csaba Banrevy, that Mr. Banrevy used the “n-word” and the “f-word,” and that following the argument, Plaintiff was terminated.

6. Notably, Plaintiff fails to present any facts whatsoever regarding his own conduct during the argument which he admittedly engaged in, which could be compared to Mr. Banrevy’s alleged conduct. In fact, Plaintiff alleges no facts whatsoever which would establish Mr. Banrevy as an adequate comparator for purposes of a Title VII race discrimination claim.<sup>1</sup>

7. Insofar as the Complaint attempts to state a claim under Title VII for a hostile work environment, Plaintiff has failed to allege any facts whatsoever which establish conduct that was severe and pervasive enough to have altered the terms and conditions of his employment and created a hostile or abusive working environment. Instead, Plaintiff has included only conclusory allegations of isolated, sporadic comments which fail to satisfy Rule 8's plausibility requirement for a hostile work environment claim under Title VII.

Wherefore, Defendant, CITY OF TAMARAC, respectfully requests Plaintiff’s Complaint be dismissed.

#### **Memorandum of Law**

Rule 8(a)(2) of the Federal Rules of Civil Procedure sets the benchmark for determining whether a complaint’s allegations are sufficient to survive a Rule 12(b)(6) motion. See, Chapman

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<sup>1</sup> Indeed, Plaintiff has failed to even allege that the CITY was aware of Mr. Banrevy’s alleged use of the “n-word” or “f-word.”

Kerr v. Tamarac  
Case No.: 11-62429-KMW

v. Western Express, Inc., 2011 U.S. Dist. LEXIS 95634, \*12 (S.D. Ala. 2011), citing Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009)(“Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a ‘short and plain statement of the claim showing that the pleader is entitled to relief.’ As the Court held in Twombly, ... the pleading standard **Rule 8** announces does not require ‘detailed factual allegations,’ but it *demand[s] more than an unadorned, the defendant-unlawfully-harmed-me accusation.*”)(emphasis added). Indeed, “[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” Id., (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Id. at \*13 (quoting Twombly, 550 U.S. at 557).

The Supreme Court requires that “a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face,’” which requires that the plaintiff plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Holland v. Pilot Travel Centers, LLC, 2010 U.S. LEXIS 67747, \*6 (M.D.Ga. 2010) citing Ashcroft, 129 S.Ct. at 1949. This plausibility standard is not a probability requirement, but demands “more than a sheer possibility that a defendant has acted unlawfully.” Id.

The determination of whether a complaint states a plausible claim for relief is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id., citing Ashcroft at 1950. The court is “not bound to accept as true a legal conclusion couched as a factual allegation.” Id. Again, “[b]are assertions” that “amount to nothing more than a formulaic recitation of the elements of a claim “are conclusory and not entitled to be assumed as

Kerr v. Tamarac  
Case No.: 11-62429-KMW

true.” Id., citing Ashcroft at 1951. The facts provided must be more than labels and conclusions and “raise a right to relief above the speculative level.” Id., citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

While the Court affords a *pro se* plaintiff wide latitude when construing his pleadings, a *pro se* litigant is not exempt from complying with the relevant rules of procedural and substantive law. Holland at \*7, citing Wayne v. Jarvis, 197 F.3d 1098, 1104 (11<sup>th</sup> Cir. 1999); Clark v. Bibb County Bd. Of Educ., 174 F.Supp.2d 1369 (M.D. Ga. 2001). *Pro se* pleadings must conform with Rule 8 of the Federal Rules of Civil Procedure or face dismissal. Holland at \*8.

**A. Plaintiff’s Complaint Fails to State a Cause of Action for Race Discrimination under Title VII.**

To establish a prima facie case of race discrimination pursuant to 42 U.S.C. §2000e et seq (“Title VII”), Plaintiff must show that:

- (1) he is a member of a protected class;
- (2) he was subject to an adverse employment action;
- (3) his managers treated *similarly situated* employees who were not members of his protected class more favorably or he was replaced by a person outside his protected class; and
- (4) he was qualified for the job.

Holland v. Pilot Travel Centers, LLC, 2010 U.S. LEXIS 67747 (M.D.Ga. 2010), citing Gillis v. Georgia Dept of Corr., 400 F.3d 883, 887 (11<sup>th</sup> Cir. 2005); Rioux v. City of Atlanta, 520 F.3d 1269, 1276 (11<sup>th</sup> Cir. 2008)(citations omitted).

In this case, Plaintiff has alleged that he is a member of a protected class (he is black), and that he was subjected to an adverse employment action (he was discharged). However, he has failed

Kerr v. Tamarac  
Case No.: 11-62429-KMW

to allege any facts which establish the third element necessary to his claim— that is, that his managers treated *similarly situated* employees who were not members of his protected class more favorably, or that he was replaced by a person outside his protected class.

Employees are similarly situated if they are involved in the same or similar conduct but are disciplined in different ways. Santillana v. Fla. State Court System, 2012 U.S. App. LEXIS 66 (11<sup>th</sup> Cir. Jan. 4, 2012). A plaintiff and the employee(s) he identifies as comparators must be similarly situated “in all relevant respects.” Id.; Maniccia v. Brown, 171 F.3d 1364, 1368 (11<sup>th</sup> Cir. 1999)(requiring that the quantity and quality of the comparator’s misconduct be nearly identical to prevent courts from second-guessing employers’ reasonable decisions and confusing apples with oranges); Silvera v. Orange County, 244 F.3d 1253, 1259 (11<sup>th</sup> Cir. 2001).

In this case, Plaintiff’s Complaint alleges that Plaintiff and a co-worker, Csaba Banrevy, who is “[C]aucasian,” got into an argument. (“We both get into an argument...”) He alleges that Mr. Banrevy “cursed racial slurs at me” (“He cursed the n-word and the F...you word at me.”) Plaintiff claims that Mr. Banrevy was not disciplined for his “rude behavior,” but Plaintiff was terminated for his own *unspecified* conduct (“...we both get into an argument, but only I was terminated.”).

As a threshold matter, Plaintiff has failed to allege any facts which would establish that the CITY was even aware of any racial slurs now alleged to have been made by co-worker Banrevy. Rather, Plaintiff simply alleges that “Csaba is been known to curse at other workers.” He does not allege that the CITY was aware that Csaba allegedly used a racial slur or that the “f...word” in the argument with Plaintiff. Absent allegations that the CITY was even aware of Mr. Banrevy’s alleged conduct, Plaintiff cannot be said to have demonstrated a prima facie case of race discrimination.

Second, Plaintiff has failed to allege sufficient facts to establish that he and Mr. Csaba

Kerr v. Tamarac  
Case No.: 11-62429-KMW

Banrevy were “similarly situated” employees. In fact, Plaintiff has failed to allege any facts whatsoever which would establish that Mr. Csaba Banrevy is an adequate comparator. To that end, Plaintiff has merely alleged that he got into an argument with a co-worker. Plaintiff utterly fails to provide any factual detail as to the conduct *Plaintiff* engaged in during the argument (which preceded his termination).

Further, Plaintiff fails to provide any factual detail as to Plaintiff’s own or Mr. Banrevy’s employment disciplinary history— such as, whether, since the inception of employment either have been the subject of numerous, repeated disciplinary actions based on inappropriate conduct, including threats of violence made towards other co-workers, and whether either Plaintiff or Mr. Banrevy has previously been referred to the Employee Assistance Program for anger management issues and difficulties dealing with co-workers. Absent any factual detail establishing that Mr. Banrevy and Plaintiff were “similarly situated,” in all relevant respects, Plaintiff’s claim fails.<sup>2</sup>

To proceed on a claim of race discrimination, Plaintiff cannot simply make a number of legal accusations and attach a few isolated fact fragments. He must somehow combine the two to form a coherent theory of the case. Here, Plaintiff has not pled sufficient “factual content [to] allow[] the court to draw reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S.Ct. At 1949. Plaintiff has not included a sufficient factual background in his Complaint to “nudge[] [his] claims across the line from conceivable to plausible[.]” *Twombly*, 550 U.S. at 570.

The mere possibility that Defendant acted unlawfully is insufficient to survive a motion to dismiss. *Id.* Even assuming all of the allegations in the [Complaint] are true, the Court would need to

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<sup>2</sup> Plaintiff does not allege that he was replaced by someone outside his protected class.

Kerr v. Tamarac  
Case No.: 11-62429-KMW

speculate on Plaintiff's right to relief. Plaintiff has not alleged enough facts to state a claim for relief that is plausible on its face. Twombly, 550 U.S. at 570. Therefore, Plaintiff's Complaint should be dismissed.

**B. Plaintiff's Complaint Fails to State a Cause of Action Under Title VII for Hostile Work Environment.**

To plead a hostile work environment claim, a plaintiff is required to allege that:

- (1) he belongs to a protected group;
- (2) he was subjected to unwelcome harassment;
- (3) the harassment was based on his membership in the protected group; and
- (4) it was severe or pervasive enough to alter the terms and conditions of employment and create a hostile or abusive working environment; and
- (5) the employer knew or should have known but failed to take prompt remedial action.

Mann v. Miami-Dade County Corrections & Rehabilitation, 2010 U.S. Dist. LEXIS 103233 (S.D. Fla. 2010); Martin v. Auburn University Montgomery, 2011 U.S. Dist. LEXIS 141729, \*6 (M.D. Ala. Dec. 8, 2011). The requirement that Plaintiff demonstrate that the actions of the employer altered the conditions of the workplace, creating an objectively and subjectively abusive and hostile atmosphere, is designed to be "sufficiently demanding to ensure that Title VII does not become a 'general civility code.'" Pelt-Washington v. Fresenius Medical Care, 2007 U.S. Dist. LEXIS 36466, \*22 (N.D. Fla. 2007).

In this case, Plaintiff has alleged only that:

- "The City of Tamarac allows workers to provoke me..."
- "I was call pro-black and other racist things..."
- "Also a supervisor Mr. Byrd said don't let him go get his gun..."

Kerr v. Tamarac  
Case No.: 11-62429-KMW

Plaintiff has failed to allege any facts which demonstrate a hostile work environment based on his race. The allegations that the CITY allows workers to provoke Plaintiff, that Plaintiff was once called “pro-black” by someone, and that a supervisor once stated “don’t let him get his gun,” do not alone equate to racially discriminatory statements. The allegations that Plaintiff was called “other racist things,” is entirely conclusory and by itself fails to comply with the pleading requirements of Rule 8, as noted by the Supreme Court in Twombly and Ashcroft. In short, Plaintiff has failed to allege any conduct severe or pervasive enough to alter the terms and conditions of employment and create a hostile or abusive working environment. Therefore, he has not satisfied Rule 8's plausibility requirement for hostile work environment under Title VII.

Wherefore, Defendant CITY OF TAMARAC, respectfully requests Plaintiff's Complaint be dismissed for failure to state a claim.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of January, 2012, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I further certify that I either mailed the foregoing document and the Notice of Electronic Filing by first class mail to any non CM/ECF participants and/or the foregoing document was served via transmission of Notice of Electronic Filing generated by CM/ECF to any and all active CM/ECF participants.

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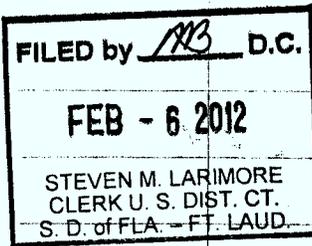
Kerr v. Tamarac  
Case No.: 11-62429-KMW

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Case # 0:11-CV-62429-KMW

Please File this with my Case  
KEBA v. The City of Tamarac

Dear Court of Courts:

How are you,  
I'm Fine. I am writing this for  
you to file this with my case. My  
case number is 0:11-CV-62429-KMW.  
This is my answer to the  
discrimination case against the City  
of Tamarac. The City of Tamarac  
wrongfully fired me because of my  
race. I got in to a argument with  
another worker you called me the  
nigga word and cursed the F you  
curse word at me. I was ~~wrong~~ wrong-  
ful terminated because of my race  
which is Negro. The other co-  
worker was not disciplined or fired  
he still worker for the city of  
Tamarac. I detailed this my complaint.  
~~There~~<sup>There</sup> lawyer was very and respect ful.  
To see I was wrongful disrespected  
and called a nigga that is

racist and Discrimination at it best.

So I say to you please don't  
dismiss this Discrimination and  
Wrongful termination.

Thank you For your time

Sincerely yours,

Conwade KERR