

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

APR 26 2007

PATRICIA PRESLEY, COURT CLERK
by [Signature]
Deputy

KENNETH EUGENE COLE,)
)
Plaintiff,)
)
v.)
)
PAPA JOHN'S INTERNATIONAL, INC.,)
a Delaware Corporation,)
)
and,)
)
DCT ENTERPRISES OF OKLAHOMA,)
INC., a Foreign Corporation,)
)
Defendants.)

Case No.: **CJ -2007-3648**

PETITION

COMES NOW Plaintiff, Mr. Kenneth E. Cole, by and through his attorney of record, Mr. Richard R. Rice, and for his cause of action would state:

Jurisdiction and Venue

1. Plaintiff is a resident of Midwest City, Oklahoma, located within Oklahoma County, Oklahoma.
2. Defendant Papa John's is the corporate franchiser with its principal place of business located in Kansas. Papa John's has franchise locations in Oklahoma County, Oklahoma.
3. Defendant DCT Enterprises is the Papa John's franchisee with its principal place of business located in Oklahoma County, Oklahoma. DCT Enterprises is the owner of the Papa John's franchise that is the subject of this litigation; and that franchise location is found in Oklahoma County, Oklahoma.

4. All of the events complained of in this cause of action occurred in Oklahoma County, Oklahoma.

5. Jurisdiction and venue are proper before this court.

Brief Factual Statement

6. Plaintiff incorporates by reference all of the allegations asserted above in paragraphs 1 - 5.

7. On Saturday, April 14, 2007, in the early evening, plaintiff was at his home in Midwest City, Oklahoma, getting ready for dinner with his family and friends. Present at the time with plaintiff was plaintiff's three minor children, plaintiff's adult brother, and friends of plaintiff and plaintiff's brother, a married couple, along with the couple's three minor children.

8. Plaintiff called the Papa John's Pizza store located on Douglas Boulevard in Midwest City, Oklahoma, for the purpose of ordering pizza. The store is owned by defendant DCT Enterprises, franchised through defendant Papa John's.

9. Plaintiff attempted to speak with a Papa John's employee who could not hear plaintiff and hung up the telephone on plaintiff. Plaintiff immediately called back and was confronted by a hostile, verbally abusive and profane employee. The Papa John's employee again hung up the telephone. Plaintiff again called the store and was connected with the store manager who denied that the store's employee was unprofessional.

10. Plaintiff called another Papa John's store (located on S.E. 29th Street in Del City, Oklahoma) to complain about the behavior of the employees at the first Papa John's store. While the manager at the Del City store sympathized with plaintiff - the manager informed plaintiff he

could not assist plaintiff other than to provide plaintiff with defendant DCT Enterprises's phone number and to also pass the complaint up the chain of command.

11. Plaintiff immediately called defendant DCT Enterprises phone number which had been provided by the manager from the Del City store and received a recording indicating that at the end of the weekend, plaintiff's call would be returned. Plaintiff left a message seeking a return phone call.
12. Immediately after calling defendant DCT Enterprises, plaintiff's phone rang and plaintiff's caller ID indicated that it was the first Papa John's store. Plaintiff answered the phone and was immediately confronted by the first store employee plaintiff had spoken with earlier. The store employee, among other things, said:
 - a. He knew of plaintiff's address and where plaintiff lived;
 - b. He *also* lived in plaintiff's neighborhood;
 - c. He was a gang member belonging to the "Bloods" gang;
 - d. He was going to "shoot up" plaintiff's house in a "drive by" shooting; and
 - e. He was going to kill everyone in plaintiff's house.
13. Plaintiff immediately called the manager from the Del City Papa John's store to complain. The manager from the Del City Papa John's store told plaintiff he would contact the manager from the Midwest City store and report what the employee said.
14. Plaintiff waited until Tuesday, April 17, 2007, with no return phone calls or updates from any Papa John's representatives. As a result, plaintiff then called defendant DCT Enterprises and spoke with a district manager for the Papa John's stores located in the Oklahoma County

- area. Plaintiff informed defendant's district manager of all that had transpired, including but not limited to the specific threat of the drive by shooting made by a Papa John's employee.
15. Defendant's district manager promised to investigate the matter by visiting the store and conferring with the store manager. Further, the district manager promised to call plaintiff back to report on the situation.
 16. No representative from either defendant returned the call or tried to contact plaintiff to report on the investigation.
 17. Four (4) days later, on Saturday, April 21, 2007, a drive by shooting occurred at plaintiff's home at approximately 11:30 p.m. At least four (4) bullets were fired at plaintiff's house. Plaintiff's car was struck by a bullet, as was the car owned by plaintiff's brother. Plaintiff, his minor children, and plaintiff's adult brother were all in the home at the time. Plaintiff immediately contacted the police who responded quickly. Four (4) bullet casings and one bullet were recovered from the scene. The police spoke with the manager of the Papa John's store only to discover that the suspected employee worked at the Midwest City store along with his twin brother - who both worked on April 14, 2007. Both of these employees are criminals with extensive histories with the Midwest City Police Department. However, absent a confession from one of the brothers, the police department is unable to identify which Papa John's employee actually fired the bullets at plaintiff's house - even though both brothers remain suspects in the shooting.
 18. Plaintiff and his family have now had to take precautions to protect themselves, including not sleeping in the front bedrooms of plaintiff's house. Plaintiff and his entire family are now

living in fear and have found it necessary to consider moving to another home for the safety of the family.

First Cause of Action - Negligence

19. Plaintiff incorporates by reference all of the allegations asserted above in paragraphs 1 - 18.
20. Defendant DCT Enterprises of Oklahoma, Inc., is negligent in that it:
 - a. Negligently hired its employees, including its managers;
 - b. Negligently trained its employees, including its managers;
 - c. Negligently supervised its employees, including its managers; and
 - d. Negligently retained its employees, including its managers.
21. The negligence of this defendant is the direct cause of the damages suffered by plaintiff and his family.
22. The actions of defendant were extremely outrageous and reckless.
23. As a result of its negligence, defendant DCT Enterprises of Oklahoma, Inc., is liable to plaintiff for actual damages, punitive damages, attorneys fees and all other costs associated with this cause of action.

Second Cause of Action - Negligence

24. Plaintiff incorporates by reference all of the allegations asserted above in paragraphs 1 - 24.
25. Defendant Papa John's International, Inc., is negligent in that it:
 - a. Negligently contracts with its franchisees (including defendant DCT Enterprises of Oklahoma, Inc.);

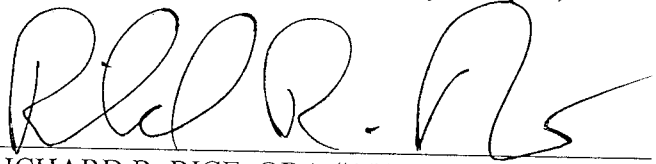
- b. Negligently trains its franchisees;
 - c. Negligently supervises its franchisees; and
 - d. Negligently retains its franchisees.
26. The negligence of this defendant is the direct cause of the damages suffered by plaintiff and his family.
27. The actions of defendant were extremely outrageous and reckless.
28. As a result of its negligence, defendant Papa John's International, Inc., is liable to plaintiff for actual damages, punitive damages, attorneys fees and all other costs associated with this cause of action.

Third Cause of Action - Tort of Outrage

29. Plaintiff incorporates by reference all of the allegations asserted above in paragraphs 1 - 28.
30. The actions of both defendants are so outrageous that they knew or should have known that plaintiff would have suffered injury at the hands of defendants' employee(s).
31. As a result of their tortious behavior, defendants DCT Enterprises of Oklahoma, Inc., and Papa John's International, Inc., are liable to plaintiff for actual damages, punitive damages, attorneys fees and all other costs associated with this cause of action.

WHEREFORE, the above having been stated, plaintiff asks this court to grant judgment on plaintiff's Petition, awarding to plaintiff his actual damages, ^{\$10,000 +} punitive damages, attorneys fees and his reasonable and necessary costs associated with this cause of action.

Respectfully submitted this 26th day of April, 2007.

A handwritten signature in black ink, appearing to read "R.R. Rice", written over a horizontal line.

RICHARD R. RICE, OBA #15129

Rice & Reneau, P.C.

1401 South Douglas Boulevard, Suite A

Midwest City, Oklahoma 73130

(405) 732-6000 / 737-7446 - fax

email: Rick@RiceandReneau.com

COUNSEL FOR PLAINTIFF

KENNETH E. COLE

JURY TRIAL DEMANDED
ATTORNEYS LIEN CLAIMED