

**IN THE CIRCUIT COURT
OF GRANT COUNTY, WISCONSIN**

BRETT TIMMERMAN,)	
)	
Plaintiff,)	
)	No.
vs.)	
)	
ODEN A. WAITE and)	
ENOVE Q. URIAS,)	
)	
Defendants.)	

COMPLAINT

1. This action results from Defendants' unprovoked attack upon Plaintiff Brett Timmerman ("Timmerman" or "Plaintiff") because of his sexual orientation. Timmerman is an openly gay man. Defendants directed homophobic epithets at Timmerman, spat in Timmerman's face, struck Timmerman in the head, tackled Timmerman to the ground, and later falsely accused Timmerman of instigating the attack, thereby maliciously causing his arrest. Timmerman's injuries include a ruptured eardrum, severe emotional distress, reputational injury, and financial harm.

JURISDICTION and VENUE

2. This court has jurisdiction over the subject matter of this complaint pursuant to Wis. Stat. § 801.04(1) because the action seeks to enforce Plaintiff's statutory and common law rights under Wisconsin law.

3. Venue is proper in this Court pursuant to Wis. Stat. § 801.50(2)(a) because the events that give rise to the claims in this action occurred within Grant County, Wisconsin.

PARTIES

4. Plaintiff Brett Timmerman is an adult male resident of the State of Wisconsin. At the time of the events described in this Complaint, Timmerman lived in Platteville, Wisconsin.

5. Defendant Oden A. Waite (“Waite”) is an adult male resident of Platteville, Wisconsin, who also lived there at the time of the events described in this Complaint.

6. Defendant Enove Q. Urias (“Urias”) is an adult male who is or was a resident of the State of Wisconsin. Urias resides or has resided in Darlington, Wisconsin.

GENERAL ALLEGATIONS

7. On July 3, 2005, Timmerman and a female friend named Shannon Wallace (“Wallace”) attempted to enter a restaurant in Platteville, Wisconsin, when they heard a man yell "Hey faggot!" at Timmerman in a confrontational tone of voice.

8. Timmerman and Wallace turned around in the direction of the man who yelled “Hey faggot!” and saw a small group of people, including Defendants Waite and Urias. Timmerman responded, "Excuse me?"

9. Defendant Waite then stated to Timmerman, "Why don't you take your faggot ass back to Madison?"

10. Defendant Urias then slapped Timmerman in the face.

11. After Defendant Urias slapped Timmerman, Defendant Waite spat in Timmerman's face.

12. At this point, Wallace placed herself between Defendant Waite and Timmerman and asked Defendant Waite what he was doing. Defendant Waite pushed Wallace aside and spat in Timmerman's face a second time.

13. Defendant Waite then struck Timmerman in the head.

14. Defendant Waite then wrapped his arm around Timmerman's neck and knocked him down to the ground. Defendant Waite then kept Timmerman on the ground by remaining on top of Timmerman and shoving him downward.

15. At the time of the events described above, Timmerman stood approximately 5'8" tall and weighed approximately 140 lbs. Both Defendants at the time were significantly taller and heavier than Timmerman.

16. Each and every verbal and physical attack of the Defendants on Timmerman was unprovoked by Timmerman and was engaged in by Defendants without justification.

17. At the time of the events described above, Defendant Waite and his brother Doran Waite ("Doran") attended the same school, University of Wisconsin – Platteville, as Timmerman. Timmerman is openly gay at school and elsewhere. Doran was with Defendants at the time of their attack on Timmerman.

18. Defendants knew or perceived that Timmerman was gay and, at the time of their attacks on Timmerman, intentionally targeted Timmerman because of his actual or perceived sexual orientation.

19. Timmerman believed that his life was endangered by Defendants' attacks.

20. A police officer was patrolling the area in his vehicle at the time of the attacks on Timmerman and observed Defendant Waite take Timmerman to the ground. The officer also noted that Defendant Waite was on top of Timmerman when the two men went to the ground.

21. The police officer pulled up to the scene and ordered Defendant Waite to get off of Timmerman. The officer then physically separated Defendant Waite from Timmerman and took statements from them both.

22. Defendant Waite was placed under arrest by the police.

23. Immediately following the attack, the police directed Timmerman and Wallace to the Platteville Police Department to complete their written statements, which both of them signed approximately an hour after Defendants' attacks on Timmerman.

24. On or around August 31, 2005, Defendant Waite was convicted of disorderly conduct by this Court for his conduct toward Timmerman on July 3, 2005.

25. Defendant Waite falsely told the police that Timmerman had attacked him.

26. Days after the attack, Defendant Urias and Defendant Waite's brother Doran visited the Platteville police station to make written statements in which they falsely accused Timmerman of attacking Defendant Oden Waite. Waite's brother Doran did so at the encouragement of Defendants.

27. Because of these false statements to police, Timmerman was issued a municipal citation for disorderly conduct. As a result of Defendants' false statements,

Timmerman was forced to secure legal representation and suffered emotional distress and reputational.

28. Prosecutors later dismissed the disorderly conduct citation against Timmerman.

29. Timmerman sought medical treatment as a result of Defendants' attack on him, and it was determined that Timmerman suffered physical injuries, including a ruptured eardrum, as a result of the attack by Defendants.

30. In addition to physical pain, Timmerman sustained mental and physical shock and distress, fright, humiliation, depression and anxiety as a result of Defendants' attack. Timmerman also has had to bear medical, mileage and legal expenses as a result of Defendants' attack on him and their and Defendant Waite's brother's false statements to the police.

31. Timmerman has suffered nightmares and has undergone counseling as a result of Defendants' attack on him. Timmerman has made and continues make changes to his daily habits and has suffered an inability to function as a result of the ongoing fears Defendants' conduct caused.

FIRST CLAIM FOR RELIEF

Violation of Wis. Stat. §§ 895.443 and 939.645(1), providing civil recovery for actions constituting battery (Wis. Stat. § 940.19) intentionally committed based on the victim's sexual orientation

32. Plaintiff incorporates the allegations in Paragraphs 1 through 31 above as if fully set forth herein.

33. Defendants Waite and Urias each caused bodily harm to Timmerman.

34. Defendants intended to commit the acts that Timmerman bodily harm to Timmerman.

35. Timmerman suffered physical injury, emotional distress and monetary losses as a result of the conduct of Defendants.

36. Defendants intentionally selected Timmerman at least in part because Defendants believed or perceived Timmerman to be gay.

SECOND CLAIM FOR RELIEF

Violation of Wis. Stat. §§ 895.443 and 939.645(1), providing civil recovery for actions constituting disorderly conduct (Wis. Stat. § 947.01) intentionally committed based on the victim's sexual orientation

37. Plaintiff incorporates the allegations in Paragraphs 1 through 31 above as if fully set forth herein.

38. On a public street and outside the entrance of a place of public accommodation, Defendants Waite and Urias each engaged in violent, abusive, indecent, profane, boisterous, and otherwise disorderly conduct.

39. The Defendants' conduct occurred under circumstances in which it tended to cause or provoke a disturbance.

40. Timmerman suffered physical injury, emotional distress and monetary losses as a result of the conduct of Defendants.

41. Defendants intentionally selected Timmerman at least in part because Defendants believed or perceived Timmerman to be gay.

THIRD CLAIM FOR RELIEF

Assault and Battery

42. Plaintiff incorporates the allegations in Paragraphs 1 through 31 above as if fully set forth herein.

43. Defendants Waite and Urias each made an unlawful attempt, coupled with apparent and real present ability, to do bodily harm to Timmerman with intent to do injury to Timmerman. Defendants put Timmerman in reasonable fear of immediate and harmful bodily contact.

44. Defendants unlawfully used force and violence upon Timmerman.

45. Defendants intentionally directed force and violence at Timmerman's person.

46. Defendants touched Timmerman in rudeness, anger and with an insolent manner.

47. Timmerman sustained physical impairment, physical pain, bodily harm, emotional distress and financial losses as a result of Defendants' conduct.

48. Defendants' conduct was the cause-in-fact and proximate cause of the physical impairment, physical pain, bodily harm, emotional distress and financial losses that Timmerman suffered.

49. Timmerman did not consent to Defendants' conduct.

FOURTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

50. Plaintiff incorporates the allegations in Paragraphs 1 through 31 above as if fully set forth herein.

51. Defendants Waite and Urias each intended to cause Timmerman emotional distress.

52. Defendants' conduct was extreme and outrageous.

53. Defendants' conduct was the cause of Timmerman's emotional distress.

54. As a result of Defendants' conduct, Timmerman suffered an extreme and disabling emotional response.

FIFTH CLAIM FOR RELIEF

Malicious Prosecution

55. Plaintiff incorporates the allegations in Paragraphs 1 through 31 above as if fully set forth herein.

56. Judicial proceedings were instituted against Timmerman for disorderly conduct ("Judicial Proceedings").

57. The Judicial Proceedings were at the instance of Defendants, who made false statements to police in which they falsely accused Timmerman of attacking Defendant Waite without provocation. Defendants also encouraged Doran Waite to make such false statements as well.

58. The Judicial Proceedings terminated in favor of Timmerman.

59. Defendants' false statements, which led to the Judicial Proceedings, were malicious.

60. There was no probable cause for institution of the Judicial Proceedings against Timmerman.

61. Timmerman sustained injuries and damages including personal humiliation, mental anguish and monetary losses as a result of the Judicial Proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brett Timmerman respectfully requests that this Court enter judgment in his favor against Defendants, jointly and severally, and:

- (a) award Plaintiff special and general damages, including damages for emotional distress, in an amount to be determined at trial;
- (b) award Plaintiff punitive damages;
- (c) award Plaintiff his costs, including attorneys' fees and other costs of the investigation and litigation incurred by him; and
- (d) grant such further and different relief as this Court deems just and proper.

BRETT TIMMERMAN

By one of his attorneys

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** Motion for admission *pro hac vice* pending.