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## **Yankwitt LLP Uses Sophisticated Deposition Strategy to Craft Winning Summary Judgment Motion in Employment Discrimination Case**

### **Situation**

A former employee filed suit against our hospitality client alleging employment discrimination under 42 U.S.C. § 1981 and the New Jersey Law Against Discrimination (LAD). The plaintiff claimed that: 1) he resigned as a restaurant general manager after suffering racial discrimination and 2) when he attempted to rescind his resignation, the restaurant refused to accept it in retaliation for his complaints about the alleged discrimination. Yankwitt LLP's investigation quickly uncovered inconsistencies. First, the plaintiff's personnel file depicted a difficult employee who was in several altercations with other restaurant staff members, and discussions with other employees suggested that he resigned to move to Atlanta, not because he was mistreated at work. Also, neither his resignation letter nor his personnel file contained any complaints of discrimination, making the timing of those allegations in his rescission letter suspicious. Given the absence of evidence of discrimination or retaliation, we were confident that this case was a prime candidate for dismissal on summary judgment, but we needed compelling deposition testimony from the plaintiff to seal the case.

### **Approach**

At Yankwitt LLP, our experienced litigators not only execute each piece of a case with precision, we always keep our eye on the end game – be it settlement, dispositive motion practice or trial – and implement strategies at each stage that position us to achieve our client’s goals. Here, we were fortunate to have strong documentary evidence and case law to support our summary judgment motion. The final piece of the puzzle was the plaintiff’s deposition. In a typical discovery deposition of a plaintiff, the goals are twofold: 1) to learn about the case and 2) to obtain testimony for later use on cross-examination. Questioning in these depositions is often open ended and probing. In this case, however, we knew exactly what we needed the plaintiff to say to support our summary judgment motion, so we treated his deposition like a trial deposition – using targeted questions that specifically addressed the factual and legal issues we planned to raise in our summary judgment motion. We prepared for the deposition, knowing this was our one shot at summary judgment, and that preparation paid off handsomely. We obtained numerous admissions and favorable pieces of testimony that supported our summary judgment arguments perfectly. Yankwitt LLP’s briefing team then took the lead on crafting a persuasive summary judgment brief, supported by the documentary evidence, the plaintiff’s deposition testimony, and client declarations, all of which made clear to the court that the plaintiff’s discrimination and retaliation claims were meritless.

## Result

The United States District Court for the District of New Jersey agreed with Yankwitt LLP's arguments, and dismissed the complaint in its entirety. The court held that an employer's refusal to allow an employee to rescind his resignation is not an adverse employment action because the employment relationship has ended. The court stressed that "to hold otherwise where, as here, the Plaintiff's protected activity (reporting alleged racial discrimination) occurred simultaneous to his attempt to rescind his resignation, would place the employer in an impossible position:" namely, to permit the rescission to avoid the later claim that the refusal was retaliatory or face the risk of a lawsuit. The case is Jones v. McCormick & Schmick’s Seafood Restaurants, Inc., Case No. 12-cv-04503 (RMB)(AMD).