

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JESSICA GARZA,
1007 Cimarron Ave.
Aztec, NM 87410

Plaintiff,

v.

SAN JUAN COUNTY ABSTRACT
& TITLE COMPANY,
111 North Orchard Ave.
Farmington, NM 87401

Defendant.

Case No. _____

COMPLAINT

NATURE OF ACTION

1. Plaintiff Jessica Garza (“Plaintiff” or “Ms. Garza”) brings this action against her former employer, San Juan County Abstract & Title Company (“Defendant” or “San Juan Title”), for unlawful discrimination on the basis of her sex and pregnancy. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended, (“Title VII”), New Mexico Statute § 28-1-7 (“Human Rights Act”), and New Mexico common law.

2. In March 2007, Jessica Garza began working for San Juan Title as an escrow assistant. Ms. Garza was an exemplary employee. After ten months she was running the company’s Aztec, New Mexico branch. She was then promoted to the position of escrow officer and given increased responsibility. Ms. Garza also received salary raises during her tenure. Defendant never raised any complaints about Ms. Garza’s job performance.

3. In early 2009, Ms. Garza became pregnant. The same day that she informed Defendant that she was pregnant, the president of the company, Joshua Payne, terminated her employment. He had a new employee take over Ms. Garza's responsibilities.

**JURISDICTION, VENUE, AND EXHAUSTION OF
ADMINISTRATIVE REMEDIES**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(4), and 28 U.S.C. § 1367.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial portion of the events or omissions giving rise to the claims occurred in New Mexico and because at all relevant times San Juan Title was incorporated in New Mexico and was doing business in New Mexico.

6. Plaintiff has exhausted her administrative remedies in compliance with Title VII and the Human Rights Act. Ms. Garza learned she was being terminated on March 23, 2009. On May 18, 2009, Ms. Garza dual-filed a formal charge of sex discrimination based on her pregnancy against San Juan Title with the EEOC and the New Mexico Department of Labor, Human Rights Division, now titled the New Mexico Department of Workforce Solutions, Human Rights Bureau. Ms. Garza's administrative complaints were pending for over 180 days. Ms. Garza received a notice of right to sue from the EEOC on December 29, 2009, and an order of non-determination from the Human Rights Bureau on January 25, 2010.

PARTIES

7. Plaintiff Jessica Garza is a citizen of the United States and a resident of Aztec, New Mexico. At all times relevant to this Complaint, Ms. Garza was employed with Defendant San Juan Title. Ms. Garza was a member of a protected class, in that she was a pregnant woman, at the time of the discriminatory acts giving rise to this Complaint.

8. Defendant San Juan County Abstract & Title Company is a New Mexico title insurance company doing business in Farmington, New Mexico and Aztec, New Mexico. At all times relevant to this Complaint, San Juan Title employed more than fifteen employees. Joshua Payne is the President of San Juan Title and its registered agent. At all times relevant to this Complaint, Joshua Payne was acting for his employer, San Juan Title.

FACTUAL BACKGROUND

9. Ms. Garza began working for San Juan Title in March 2007. She was hired as a full-time escrow assistant, and worked at the main office in Farmington, New Mexico. An escrow assistant works with an escrow officer and primarily performs administrative duties under the direction of the escrow officer.

10. In June 2007, Ms. Garza was transferred to the San Juan Title office located in Aztec, New Mexico, which was staffed with one other employee. In January 2008, the other employee in the Aztec office ceased working for San Juan Title. From January 2008 to the time of her termination, Ms. Garza was the sole employee in the Aztec office.

11. Ms. Garza was an exemplary employee. During the time that Ms. Garza worked at San Juan Title, she never received any complaints about her work performance. She was never reprimanded, disciplined, or counseled that her work needed improvement. The President of the company, Joshua Payne, gave her every indication that he was pleased with her performance.

12. While working in the Aztec office, Ms. Garza worked independently, receiving very little guidance or support from the Farmington office. She was trusted to run the office without any on-site supervision. She ran the Aztec office alone from January 2008 to the date of her termination and was not made aware of any complaints from her clients or Mr. Payne.

13. In April 2008, Ms. Garza was promoted to the position of escrow officer, a position that carried significant additional responsibility. During Ms. Garza's tenure at the Aztec office, several realtors and mortgage brokers began to repeatedly use her services as an escrow officer. An escrow officer is responsible for every aspect of the closing on a property. Ms. Garza performed well as an escrow officer. After approximately six months as an escrow officer, she was given a raise in her salary.

14. Ms. Garza worked hard to maintain client relationships and to bring new business to the Aztec office. She held a series of open houses to which she invited realtors, mortgage brokers and bank officers, threw Halloween parties and an Oktoberfest celebration to open the Aztec office to the public, and, during the Christmas holidays, hand-delivered home-baked goods to all of the office's local clients.

15. On Friday, March 20, 2009, Ms. Garza became aware that she was pregnant. On Monday, March 23, 2009, Ms. Garza called Mr. Payne to inform him that she was pregnant. During their conversation, Ms. Garza told Mr. Payne that she was due in November 2009, but that she wanted to give him plenty of notice because she was the only employee working in the Aztec office. She also told him that she would only be out of the office for six weeks of maternity leave, and that she would be returning to work full-time after the baby was born. Mr. Payne responded by telling Ms. Garza that he was going to come to the Aztec office and talk to her in person.

16. Later that day, Mr. Payne travelled to the Aztec office to speak with Ms. Garza. He told her that she had been a great employee, but that he was going to terminate her employment. He said that the overhead costs of keeping the Aztec office open were too high, and he was going to have to close the office.

17. The conversation Ms. Garza had with Mr. Payne on March 23, 2009, was the first she had heard that the Aztec office would be closing.

18. Ms. Garza wanted to be transferred and continue employment with San Juan Title. She was willing to work out of the Farmington office, which is located approximately fifteen miles from the Aztec office. Ms. Garza could easily have served her clients from that location and would have liked to have been able to do so. Mr. Payne informed her that he did not have a position available for her at the Farmington office, stating that the office was already overstaffed.

19. Ms. Garza was aware that an escrow officer in Farmington, who was pregnant, was planning on permanently leaving her job in September 2009, which would have made a position available in that office in a few months time. Mr. Payne was aware that an escrow officer in the Farmington office would be leaving his employment in September 2009. Ms. Garza wanted that position and was willing to move to the Farmington office. She would have taken the position had she been given the opportunity. Upon information and belief, the escrow officer who planned to leave in September 2009 did leave San Juan Title permanently in September 2009.

20. Mr. Payne gave Ms. Garza virtually no notice before terminating her employment, telling her he would pay her through the remainder of the month, which amounted to six work days. Ms. Garza's last day of employment at San Juan Title was March 25, 2009.

21. Upon information and belief, Mr. Payne hired a new escrow officer to work in the Farmington office as of April 1, 2009, to do the same job that Ms. Garza had performed while she was employed as an escrow officer by San Juan Title. An escrow officer in Farmington could easily serve Aztec clients from the Farmington office. Although the Aztec office provided a more convenient location for some customers, the customers could also make the

approximately twenty-minute drive to Farmington. An escrow officer in the Farmington office could perform the same services for the same clients as an escrow officer in the Aztec office.

22. On April 8, 2009, Ms. Garza was informed that Mr. Payne had sent an email to San Juan Title clients served by the Aztec office stating that he had hired a new escrow officer in Farmington who would be doing the closings for the Aztec office.

23. Ms. Garza was denied the opportunity to continue working for San Juan Title when Mr. Payne failed to inform her that there was an equivalent position available at the Farmington office, failed to inform her that he intended to fill that position and have that employee serve the Aztec office, and told her on the day that he terminated her employment that the Farmington office was overstaffed and there were, therefore, no positions available for Ms. Garza.

24. Mr. Payne's stated reason for firing Ms. Garza and not allowing her to continue her employment with San Juan Title in the Farmington office was pretextual. The Farmington office was not overstaffed and closing the Aztec office did not require firing Ms. Garza. San Juan Title did in fact have an escrow officer position available in Farmington at the time Ms. Garza was fired and Mr. Payne hired someone else to fill that position. Ms. Garza could have continued working for San Juan Title in the Farmington office. Mr. Payne hired a new employee to take on the responsibilities previously handled by Ms. Garza.

25. Upon information and belief, the new employee who was hired to replace Ms. Garza was not pregnant.

26. Upon information and belief, San Juan Title has a history of making the workplace unfriendly to pregnant women. It does not pay maternity leave and has no written policies regarding maternity leave or other employment policies. Upon information and belief,

most of the women who have become pregnant while employed by San Juan Title have resigned from San Juan Title.

27. Ms. Garza, who was pregnant at the time she was terminated, lost her health insurance. Her doctor cancelled her prenatal care appointment when he learned she had lost her insurance. Ms. Garza's husband was forced to switch from an hourly, steady pay job to one that paid on commission because it provided health insurance for his family. His new job was less attractive than his prior job because it could not guarantee that he would earn the same amount of money and provided less opportunity for growth. The new health insurance did not begin until the end of May and by then Ms. Garza had to find a new doctor.

28. At all times relevant to this Complaint, Mr. Payne was acting within the scope of his duties as an employee, agent, and/or representative of San Juan Title.

29. San Juan Title knew or reasonably should have known that some harm might be caused by the acts or omissions of Mr. Payne, who was entrusted with a high-ranking supervisory position.

INJURY TO PLAINTIFF

30. As a result of Defendant's discriminatory conduct, Plaintiff has suffered, and in the future will continue to suffer, irreparable loss and injury, including but not limited to, economic loss, humiliation, embarrassment, mental and emotional distress, and the deprivation of her rights to equal employment opportunities.

31. Through the actions of Joshua Payne, Defendant San Juan Title acted intentionally, maliciously, oppressively, and with willful, callous, wanton, and reckless disregard for Plaintiff's rights.

CLAIMS FOR RELIEF

COUNT I

Discrimination under Title VII of the Civil Rights Act of 1964

32. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 31 above.

33. As described above, Defendant's termination of Ms. Garza's employment because of her sex and pregnancy and refusal to transfer her to the equivalent level position in the Farmington office is in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

COUNT II

Discrimination under New Mexico Human Rights Act

34. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 33 above.

35. As described above, Defendant's termination of Ms. Garza's employment because of her sex and pregnancy and refusal to transfer her to the equivalent position in the Farmington office is in violation of N.M. Stat. § 28-1-7.

COUNT III

Negligent Supervision under New Mexico Common Law

36. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 35 above.

37. As described above, Defendant's actions constituted negligent supervision or retention of Mr. Payne, who was Defendant's employee, after it knew or reasonably should have

known that some harm might be caused by Mr. Payne's acts or omissions and also that his acts or omissions harmed Plaintiff.

PRAYER FOR RELIEF

38. WHEREFORE, Plaintiff prays that this Court grant her the following relief:

- a) enter a declaratory judgment finding that the foregoing actions of Defendant violate 42 U.S.C. § 2000e, *et seq.*, N.M. Stat. § 28-1-7, and constitute negligent supervision and retention under New Mexico common law;
- b) enter a permanent injunction directing Defendant to take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
- c) award compensatory damages in an amount to be determined by the jury that would fully compensate Plaintiff for the economic loss, humiliation, embarrassment, and mental and emotional distress caused by the conduct of Defendant alleged herein;
- d) award punitive damages to Plaintiff in an amount to be determined by the jury that would punish Defendant for its willful, wanton, and reckless conduct alleged herein and that would effectively deter Defendant from engaging in similar conduct in the future;
- e) award Plaintiff her reasonable attorneys' fees and costs incurred in this action and the administrative proceedings that preceded it; and
- f) order such other relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff requests trial by jury as to all issues in this case.

Date: February 23, 2010

Respectfully submitted,

/s/ Reed N. Colfax
Reed N. Colfax, NM Bar # 98-31
Katherine A. Gillespie
RELMAN & DANE PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036
(202) 728-1888 (o)
(202) 728-0848 (fax)

Attorneys for Plaintiff