

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

OCT 30 1973

ALTON L. CURTIS, CLERK

By: *[Signature]*
Crenshaw

WILBERT OLIVER; ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 ESCUDE FUNERAL HOMES, INC.,)
 ET AL.,)
)
 Defendants.)

CIVIL ACTION

NO. 19353

OPINION AND ORDER

The plaintiffs, in their motion filed October , 1973, move for summary judgement; said motion is now submitted upon the verified complaint, affidavits and other pleadings heretofore filed.

"[A] motion for summary judgment lies only when there is no genuine issue of material fact; summary judgment is not a substitute for the trial of disputed fact issues. 10 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE 378-79 (1973).

There are no disputed issues of fact in this case. The only question to be decided is whether or not 42 U.S.C. § 1981 forbids racial discrimination by the operators of private funeral homes.

The defendants are Escude Funeral Homes, Inc. of Mansura, Louisiana and its principal owner, Joseph Escude, and Hixson Brothers Funeral Homes, Inc. and its Marksville, Louisiana manager, Kent Juneau, and Reed J. Chenevert, a managing agent for Hixson Brothers.

It is clear from the uncontroverted affidavits and the verified complaint of plaintiffs that the defendants have

engaged and continue to engage in a pattern and practice of racial discrimination. In the case of Hixson and its staff the discrimination consists of refusal to accept black bodies at all; in the case of Escude and its staff refusal to wake the bodies of blacks is the discriminatory factor.

Well settled is the proposition of law that 42 U.S.C. § 1981^{1/} forbids private discrimination against blacks in the making of contracts; and it is this statute which, in its support of the Thirteenth Amendment, requires a finding by this Court in favor of the plaintiffs in the case sub judice.

Jones v. Alfred Mayer, 392 U.S. 409 (1968); Sanders v. Dobbs House, 431 F.2d 1097 (5th Cir., 1970), reh. den. (en banc) 431 F.2d 1011 (1970); Boudreaux v. Baton Rouge Marine, 437 F.2d 1011 (5th Cir., 1971), Scott v. Young, 421 F.2d 143 (4th Cir., 1970) cert den. 398 U.S. 929 (1970); Waters v. Wisconsin Steel Works, 427 F.2d 476 (7th Cir., 1970), cert den. sub nom; Bricklayers v. Waters, ___ U.S. ___, 38 U.S.L.W. 3194 (1970); Young v. ITT, 438 F. 2d 757 (3rd Cir., 1971); Lee v. Southern Homesites Corp., 429 F.2d 292 (5th Cir., 1970); Clark v. American Marine Corp. 304 F.Supp. 603 (E.D. La., 1969); United States v. Medical Society of South Carolina, 298 F.Supp. 145 (D.S.C., 1969); Dobbins v. Local 212, Intl. Bro. of Elec. Wkrs., 292 F.Supp 413 (S.D. Ohio, 1968), Wallace v. Brewer, 315 F.Supp. at 455 (M.D. Ala., 1970) (three judges). See also Tillman v. Wheaton-Haven Association, ___ U.S. ___, 41 U.S.L.W. 4311, 4313, n. 11 (1973).

^{1/} All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. (R.S. § 1977.)

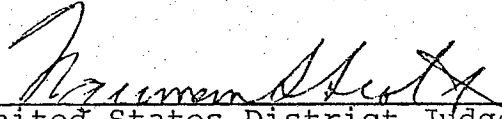
The actions of the defendants in refusing to contract with blacks in the receipt of bodies, preparation of bodies and waking of bodies in the same way as they contract with whites is illegal and unconstitutional.

It is therefore ORDERED, ADJUDGED and DECREED that,

1. The defendants are hereby permanently enjoined from contracting with blacks on terms and conditions different from those offered to whites; and the defendants are required to provide funeral services and facilities to blacks on the same basis as they are provided to whites; and

2. Plaintiffs' attorney's fees in the amount of one thousand dollars (\$1,000.00) and plaintiffs' costs are taxed against the defendants jointly, severally and in solido, for which execution may issue.

Done this 29th day of October, 1973.


United States District Judge