

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MEISHA WILDER,	)	Case No: 07-CV-4491
	)	
	)	Judge William J. Hibbler
	)	
Plaintiff,	)	
	)	
V.	)	
	)	
	)	
WHITE CASTLE SYSTEM, INC., and	)	
WESTEC INTERACTIVE SECURITY,	)	
INC.,	)	
	)	
	)	
Defendants.	)	

**RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Plaintiff, through her attorneys,  
responding to Defendant's, WESTEC INTERACTIVE SECURITY, INC., motion for summary  
judgment; states as follows:

**I. INTRODUCTION**

1. Plaintiff, Meisha Wilder, respectfully requests that this court deny Defendant, Westec's motion for summary judgment as there are outstanding factual issues as to whether Westec failed to perform its duties under the contract between itself and White Castle. Plaintiff would also join in any response filed by Co-Defendant, White Castle and against Defendant, Westec.

## II. ARGUMENT

### A. STANDARD OF REVIEW

1. A moving party is entitled to summary judgment if it can be shown that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Figueroa v. Evangelical Covenant Church*, 879 F.2d 1427 (7th Cir. Ill. 1989).

2. Although the burden is on the moving party to demonstrate that no genuine issues of material fact remain, the nonmovant must go beyond the pleadings to affirmatively demonstrate the existence of genuine issues for trial. If the moving party can demonstrate the absence of a genuine issue as to any necessary element of the nonmoving party's case, it is entitled to summary judgment. While the nonmovant's burden in making this showing is clearly a light one, failure to meet the burden as to even one essential element (if the element is one upon which the nonmovant will bear the burden of proof at trial) may result in summary judgment. *Figueroa v. Evangelical Covenant Church*, 879 F.2d 1427 (7th Cir. Ill. 1989).

### B. There are Factual Discrepancies and Questions Concerning Westec's Responsibilities under the Contract

1. Westec was hired by White Castle as a provider of security. (Plaintiff SMOF 26)

2. On April 23, 2003 a three year extension was executed between Westec and White Castle and includes 3 guard tours per day. (Plaintiff SMOF 1). Defendant's motion equates guard tours with video tours. However, no definition of guard tours is found within the four corners of the contract or the Visual Command Center manual.

(Plaintiff SMOF 3) Guard tours are not defined, nor is the length of time that these tours are to last.

2. The three year extension does not establish what time the guard tours were to be performed. (Plaintiff SMOF 1).

3. Mary Guzman was in charge of setting up the White Castle account in the Westec system so the system was capable of receiving the services sold to White Castle. (Plaintiff SMOF 14). Ms Guzman claims that White Castle requested the tours to be performed at 12:00 a.m., 4:00 a.m. and 5:00 p.m. via an email from White Castle/Don Desender. (Plaintiff SMOF 15).

4. Ms. Guzman no longer possesses the email. (Plaintiff SMOF 16).

5. Don Desender did not know that Westec would be performing these tours at 12:00 a.m., 4:00 a.m. and 5:00 p.m. (Desender deposition page 13 lines 17-20; page 21 lines 14-19). Mr. Desender believed that Westec's responsibilities were to monitor, random tours and respond to activations. (Plaintiff SMOF 13).

6. Nicholas Zuk, corporate counsel for White Castle, signed the April 23<sup>rd</sup> 2003 extension of services. (Plaintiff SMOF 1). Mr. Zuk did not know what time the tours were to be performed. (Plaintiff SMOF 12). In fact, when Westec's counsel asked Mr. Zuk if he knew that tours were to be performed, he was specifically asked if the tour times were "12:00 a.m., 4:00 a.m. and 5:00 p.m. central standard time." (Plaintiff SMOF 12).

7. Per the Westec's activity logs between the dates of 12/01/04 through 05/24/05,

four tours were conducted per day. (Plaintiff SMOF 7). Ms Guzman removed one of the tours due to a technical glitch. (Plaintiff SMOF 8). There is no evidence that White Castle was informed or asked as to which time should be removed.

8. Contrary to Westec's statement that the tours were to be performed at 12:00 a.m., 4:00 a.m. and 5:00 p.m., an updated contact list was sent from White Castle to Westec with tour times listed as 10:00 a.m., 7:00 p.m and 3:00 a.m. (Plaintiff SMOF 10).

9. No time zone corresponds to the times shown in the updated contact list provided in June of 2005, only two months before Plaintiff's incident. (Plaintiff SMOF 10).

10. When Ms. Guzman was asked about high volume times, however, she listed the times and its corresponding time zone. (Plaintiff SMOF 20).

11. Nicholas Zuk, the White Castle employee who executed the extension maintained his office in Columbus, Ohio. (Plaintiff SMOF 1).

12. Several significant questions of fact remain. Why did Westec believe that the tours were supposed to be 12:00 a.m., 4:00 a.m. and 5:00 p.m. when their own records from the updated contact specifically state different times? Why doesn't Westec acknowledge updated contact list times from their own disclosure and June 2005 emails? If in fact the updated contact list designations were the correct times, what time zone was used to correspond and give context to those times listed?

13. More specifically, was the 3:00 a.m. time listed in the updated contact list an eastern time zone? If so, the tour was then supposed to be conducted during the hour of Plaintiff's incident.

14. It appears that the left hand didn't know what the right hand was doing.

Neither Westec nor White Castle have established what time the tours were to take place. While both parties agree that Westec was supposed to monitor and provide security, the times of the tours and ostensibly the scope of the "guard tours" have not been established.

15. Westec held itself out as the security expert. In the Scope of Services, Westec acknowledges that "confrontational incidents have occurred..";that "most locations are within designated areas that cater to late night crowds..." and that the "surrounding neighborhoods seem to be one source of the problem." (Plaintiff SMOF 13).

16. It was Ms Guzman who testified that the email designating the times from White Castle stood out in her mind because White Castle was the first large customer who *requested specific tour times* across the board. In addition the tour times stood out because some of White Castles *different regions had different times* and some of those times conflicted with some of Westec's high traffic times. (Plaintiff SMOF 17(emphasis added)).

17. In fact, Ms Guzman had to go to her supervisor to request special approval. (Plaintiff SMOF 18). No evidence exists that Ms. Guzman received special approval for the times noted in the updated contact list or that she made any effort to clarify the times.

18. White Castle's employee, Don Desender's testimony as to Westec's responsibilities under the contract (Plaintiff SMOF 13) is at odds with Ms. Guzman's claim to have received an email from Don Desender specifically requesting certain times. (Plaintiff SMOF 15). Mr. Zuk, of White Castle, did not know that the tour times were 12:00 a.m., 4:00 a.m. and 5:00 p.m. as Westec maintains. (Plaintiff SMOF 12).

19. Ms Guzman testified that if White Castle did not specifically request certain tour times then Westec would unilaterally set tour times for lower volume times. (Plaintiff SMOF 21). High volume times were 5 p.m. to 7 p.m. Pacific standard time and 5 a.m. to 7 a.m. Pacific standard time. (Plaintiff SMOF 20).

20. Westec had approximately 1,847 accounts to monitor daily in or around August of 2005. (Plaintiff SMOF 19). Approximately 90 accounts per hour were in the queue. (Plaintiff SMOF 19). On average, two "customer service specialists" handled only tours in a given hour or shift. (Plaintiff SMOF 23,24). In addition, on average, six "intervention specialists" were on duty to respond to alarms or to conduct tours in a given hour or shift. (Plaintiff SMOF 25).

21. As a security expert, Westec knew that its customers faced "confrontational incidents" in "late night crowds" and that the surrounding neighborhoods were a source of problem. Surely Westec knew why White Castle, a 24 hour restaurant, hired them. Westec also knew that White Castles relied upon them to perform their services to fulfill their security needs. The evidence however demonstrates Westec failed do the service for which they were contracted.

22. While Westec maintains that 12 a.m., 4 a.m. and 5 p.m. were specifically designated by White Castle, the testimony of White Castle personnel does not support its contention. In fact, documents provided by White Castle point to a whole different set of times in the updated contact list. Questions of fact remain as to the time zone of those designations.

22. Ms Guzman testified that absent a specific request by White Castle she

would set tour times at low volume times. No documentary evidence exists as to the specific request by White Castle she claims to have received in '03 or '04.

23. Other questions of fact remain as to what the scope of a guard tour is as opposed to a video tour. An average of eight employees were designated per hour or shift to handle approximately 90 tours per hour. Six of those employees were responsible for handling alarms too.

24. The evidence suggests that not only was Westec understaffed to handle its contracted for duties but that Westec did not provide services during White Castle's requested times in the updated contact list. Westec had an obligation to do more to make sure that White Castle's needs were being met and being met according to White Castle's requested times.

25. The evidence produced by both Defendants as to the times of the tours demonstrate a breakdown in the execution of the security services contract. Questions of fact remain as to what time Westec was to perform the guard tours, what the guard tours encompassed. A jury could find that the tours were to be performed at and around the time of Plaintiff's incident and that the tours if conducted properly could have stopped the incident that ultimately led to Plaintiff's injury. Defendant, Westec, has not foreclosed these essential questions of fact.

26. The court must take the facts in the light most favorable to the Plaintiff. In doing so, must conclude that the tour should have been conducted at or around 2:00 a.m. central standard time, shortly before Plaintiff was injured.

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Conclusion

In sum, significant factual questions remain as to the parameters and four times of the security service contract at issue.

WHEREFORE, the Plaintiff respectfully asks this court to deny Defendant's motion in its entirety and/or any other relief the court deems just.

Respectfully submitted