

FILED IN OFFICE
CLERK SUPERIOR COURT
WALTON COUNTY GEORGIA
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KATHY K. TROST, CLERK

**SUPERIOR COURT OF WALTON COUNTY
STATE OF GEORGIA**

THOMAS M. FOX,)
)
 Plaintiff,)
)
 v:)
)
 CITY OF SOCIAL CIRCLE, GEORGIA,)
)
)
 Defendant.)

CIVIL ACTION FILE NO.:
13-0184-3

DEFENDANT’S ANSWER TO COMPLAINT

COMES NOW Defendant City of Social Circle, Georgia (hereinafter, “City”) by and through its undersigned counsel, and submit its Answer to Plaintiff’s Complaint as follows:

FIRST DEFENSE

The Complaint, in whole or part, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

At all times, Defendant’s actions with regard to Plaintiff have been in conformance with all applicable laws, rules, and regulations, and Plaintiff’s rights have not been otherwise violated.

THIRD DEFENSE

To the extent any employee, manager, supervisor, director or officer of Defendant engaged in any unlawful conduct as alleged in the Complaint, such actions were outside the scope and course of their employment and were not in furtherance of Defendant’s business.

FOURTH DEFENSE

Plaintiff’s claims are barred to the extent that he failed to file his civil action within the applicable statute of limitations and/or to the extent that Plaintiff failed to exhaust his administrative

remedies or otherwise to satisfy all conditions precedent or statutory prerequisites to bringing and maintaining his claims against Defendant. Specifically, Plaintiff's claim under the Georgia Whistleblower Act is barred to the extent that he failed to comply with the ante-litem notice requirements of O.C.G.A. 36-33-5 and/or the statutory limitations period set forth in O.C.G.A. 45-1-4.

FIFTH DEFENSE

Defendant has at all times acted in good faith compliance with all federal and state laws. Defendant has not intentionally or willfully violated Plaintiff's rights in any manner or acted maliciously or with reckless indifference with respect to Plaintiff or any aspect of his employment. At no time has Defendant acted with any intent to injure Plaintiff.

SIXTH DEFENSE

Any action taken with regard to Plaintiff or his employment was for legitimate, non-retaliatory reasons and, as such, did not violate any legal right possessed by Plaintiff.

SEVENTH DEFENSE

Plaintiff did not engage in protected activity under the Georgia Whistleblower Act, including disclosing a violation of a law, rule, or regulation concerning fraud, waste, and abuse relating to state programs and operations under the jurisdiction of the City.

EIGHTH DEFENSE

Defendant did not retaliate against Plaintiff for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency.

NINTH DEFENSE

Some or all of Plaintiff's claims may be barred by the doctrines of consent, waiver, estoppel, justification, laches, unclean hands, and/or by after-acquired evidence. Defendant asserts all defenses and affirmative defenses required to be raised at this time pursuant to O.C.G.A. §9-11-8(c) and 9-11-12(b), to the extent applicable. Defendant reserves the right to amend its pleadings as defenses are revealed by the discovery process.

TENTH DEFENSE

Plaintiff is not entitled to recover any of the relief requested, but, if any relief were to be awarded, such relief is limited to the relief allowable under the Georgia Whistleblower Act.

ELEVENTH DEFENSE

Any damages suffered by Plaintiff were the direct and proximate result of his own actions or inactions, or the actions of persons for whom Defendant is not liable.

TWELFTH DEFENSE

Plaintiff is required by law to take reasonable steps to mitigate his damages and to the extent he failed to do so, his claims for damages are barred.

THIRTEENTH DEFENSE

Defendant hereby reserves the right to amend this Answer or add additional defenses, or to withdraw defenses, as this civil action progresses.

FOURTEENTH DEFENSE

Defendant responds to the numbered allegations of Plaintiff's Complaint as follows:

PARTIES, JURISDICTION AND VENUE

1.

Defendant admits the allegations contained in Paragraph 1 of the Complaint.

2.

Defendant admits the allegations contained in Paragraph 2 of the Complaint.

II. FACTS

3.

Defendant denies as stated the allegations contained in Paragraph 3 of the Complaint. While the director was indeed supposed to “lead” the police and fire departments, he failed to effectively accomplish such, instead delegating leadership thereof to Lt. Ford and Lt. Morgan.

4.

Defendant denies the allegations contained in Paragraph 4 of the Complaint.

5.

Answering Paragraph 5 of the Complaint, Defendant admits that the City and Plaintiff purported to enter into an employment agreement document on March 15, 2011, but said “agreement” had an unenforceable renewal and severance provision that unlawfully attempted to bind future councils in violation of O.C.G.A. § 36-30-3(a) and a 2011 decision of the Georgia Supreme Court, which unenforceability was related to Plaintiff in early October, 2011. Defendant further states that the purported employment agreement speaks for itself. Except as otherwise stated herein, Defendant denies the allegations contained in Paragraph 5.

6.

Answering Paragraph 6 of the Complaint, Defendant denies that Plaintiff is the person who made the discoveries alleged. Defendant admits that in approximately February 2011, two Department of Public Safety employees discovered and reported to Captain Ron Zara and Lt. Scott Ford apparent discrepancies in one individual's Social Circle firefighter's training records. Defendant is without sufficient knowledge and information to form a belief about the reason for the one reported discrepancy and therefore denies the allegation that "[t]hey did so in order to satisfy GFSTC's minimum training requirements." Except as otherwise stated herein, Defendant denies the allegations contained in Paragraph 6.

7.

Answering Paragraph 7 of the Complaint, Defendant admits on information and belief that firefighters must complete at least 24 hours of training per year to maintain his or her state firefighter certification. Answering further, Defendant states that the allegation that the firefighters' [sic- was one firefighter at issue at the inception] falsification of training records constitutes waste, fraud and abuse in connection with a state program recites a legal conclusion to which no responsive pleading can or should be framed. The third sentence of Paragraph 7 thus stands denied. Except as otherwise stated herein, Defendant denies the allegations contained in Paragraph 7.

8.

Answering Paragraph 8 of the Complaint, Defendant admits that at some point in September 2011, after discussions began about separating the police and fire functions into two separate departments, that Plaintiff began pursuing the training record issue which had originated in February 2011. Defendant otherwise denies the allegations contained in Paragraph 8 as stated.

9.

Answering Paragraph 9 of the Complaint, Defendant admits that on or about September 26, 2011, White provided Plaintiff with a letter, which speaks for itself. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 9.

10.

Answering Paragraph 10 of the Complaint, Defendant admits that on or about September 26, 2011, White provided Plaintiff with a letter, which speaks for itself. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 10.

11.

Defendant denies the allegations contained in Paragraph 11 of the Complaint. The purported employment “agreement” had an unenforceable renewal and severance provision that unlawfully attempted to bind future councils in violation of O.C.G.A. § 36-30-3(a) and a 2011 decision of the Georgia Supreme Court, which unenforceability was related to Plaintiff in early October 2011. The amendment voluntarily agreed on by all parties conformed the “agreement” to the governing law.

12.

Defendant denies the allegations contained in Paragraph 12 of the Complaint. The City Attorney on behalf of the Mayor and Council independently initiated an investigation into the alleged record falsification. All files relevant to Plaintiff’s complaints remain in existence and in safekeeping.

13.

Answering Paragraph 13 of the Complaint, Defendant admits that after the City Attorney on behalf of the Mayor and Council independently initiated an investigation into the alleged record

falsification, that Plaintiff thereafter discussed the discrepancies in a certain firefighter's training records with the Georgia Fire Standards & Training Council, and later Plaintiff discussed same with the GBI. Except as specifically admitted herein, Defendant is without sufficient knowledge or information to form a belief about the truthfulness of the allegations contained in Paragraph 13 of the Complaint and therefore denies same.

14.

Defendant denies the allegations contained in Paragraph 14 of the Complaint. The mayor was aware prior to February 13 that there would be a meeting with the GBI.

15.

Answering Paragraph 15 of the Complaint, Defendant denies as stated the allegations contained in Paragraph 15. Although written complaints were made against Plaintiff by former City employees, and White advised Fox that complaints had been received, there never has been any notation in Fox's file about being placed on leave or being suspended.

16.

Answering Paragraph 16 of the Complaint, Defendant admits that by agreement, Mr. Reitman and Mayor Dally met with Plaintiff on or about the afternoon of February 19, 2012, to assess the situation and determine if Plaintiff should remain on the job during the pendency of the two written complaints against him. Fox was advised to report to work. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 16.

17.

Defendant denies the allegations contained in Paragraph 17 of the Complaint. The discussions of separating the DPS into a separate fire and police department began during or prior to August of 2011.

18.

Defendant admits the allegations contained in Paragraph 18 of the Complaint that on July 17, 2012 the City Council voted to separate the DPS into a separate fire and police department and to eliminate the DPS director position effective September 15, 2012, and to have separate chiefs for the fire and police department. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 18.

19.

Answering Paragraph 19 of the Complaint, Defendant denies as stated. Plaintiff was at the July 17 meeting and knew that the public safety director position would end effective September 15, 2012. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 19.

20.

Defendant is without sufficient knowledge or information to form a belief about the truthfulness of the allegations contained in Paragraph 20 of the Complaint and therefore denies same. Defendant has seen no report from the GBI and is unaware if the GBI is moving forward with the investigation.

21.

Defendant denies the allegations contained in Paragraph 21 of the Complaint. There was no retaliation against Fox.

22.

Defendant denies the allegations contained in Paragraph 22 of the Complaint.

COUNT I: WHISTLEBLOWER CLAIM

23.

Answering Paragraph 23 of the Complaint, Defendant realleges and reasserts its defenses and responses to Paragraphs 1 through 22 of the Complaint as though fully set forth herein.

24.

Defendant denies the allegations contained in Paragraph 24 of the Complaint because plaintiff is no longer a city employee and has not been since September 15, 2012.

25.

Answering Paragraph 25 of the Complaint, Defendant responds that the allegation states a legal conclusion to which a responsive pleading is neither necessary nor appropriate and therefore, denies same.

26.

Answering Paragraph 26 of the Complaint, Defendant responds that the allegation states a legal conclusion to which a responsive pleading is neither necessary nor appropriate and therefore, denies same.

27.

Answering Paragraph 27 of the Complaint, Defendant responds that the allegation states a legal conclusion to which a responsive pleading is neither necessary nor appropriate and therefore, denies same.

28.

Defendant is without sufficient knowledge or information to form a belief about the truthfulness of the allegations contained in Paragraph 28 of the Complaint and therefore denies same. Furthermore, the subject training record allegation was initially disclosed by two firefighters six months before Plaintiff raised the issue, and was not discovered by Plaintiff. Fox did not pursue the training record falsification allegation until after discussion of separation of the fire and police departments began, and approximately 6 months after the allegation was disclosed by the two firefighters.

29.

Answering Paragraph 29 of the Complaint, Defendant is without sufficient knowledge or information to form a belief about the truthfulness of the allegations contained in Paragraph 29 of the Complaint and therefore denies same. Fox did not pursue the training record falsification allegation until after discussion of separation of the fire and police departments began, and approximately 6 months after the allegation was disclosed by the two firefighters.

30.

Defendant denies the allegations contained in Paragraph 30 of the Complaint, including subparagraphs (a)-(d). They are patently false.

31.

Defendant denies the allegations contained in Paragraph 31 of the Complaint.

32.

Defendant denies the allegations contained in Paragraph 32 of the Complaint.

33.

Defendant denies the allegations contained in Paragraph 33 of the Complaint.

34.

Defendant denies the allegations contained in Paragraph 34 of the Complaint.

35.

Answering the allegations contained in the unnumbered Paragraph that follows Paragraph 34 of Plaintiff's Complaint and that begins, "WHEREFORE," including subparagraphs (1) through (5), Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

36.

Except as specifically admitted herein, Defendant denies any and all other claims or allegations which are raised or may have been raised by or in Plaintiff's Complaint.

WHEREFORE, having fully answered the allegations of Plaintiff's Complaint, Defendant requests that the Court enter an Order dismissing the Complaint in its entirety with prejudice; awarding Defendant its costs and expenses (including attorneys' fees) reasonably incurred in defending this action; and awarding Defendant any other relief the Court deems just and proper.

Respectfully submitted, this 18th day of March, 2013.

[Signature Follows]



R. Read Gignilliat
Georgia Bar No. 293390
Joshua H. Viau
Georgia Bar No. 378557
Tracy L. Glanton
Georgia Bar No. 415008

ELARBEE, THOMPSON, SAPP & WILSON, LLP
229 Peachtree Street, N.E.
800 International Tower
Atlanta, GA 30303
(404) 659-6700
(404) 222-9718 (Facsimile)
gignilliat@elarbeethompson.com
viau@elarbeethompson.com
glanton@elarbeethompson.com

Attorneys for Defendant

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing **DEFENDANT'S ANSWER TO COMPLAINT** on counsel of record by sending same via First Class Mail with proper postage affixed, addressed as follows:

A. Lee Parks, Jr.
J. Matthew Maguire, Jr.
Parks, Chesin & Walbert, P.C.
75 Fourteenth Street
26th Floor
Atlanta, GA 30309

Respectfully submitted, this 18th day of March, 2013.


Joshua H. Viau
Georgia Bar No. 378557

ELARBEE, THOMPSON, SAPP & WILSON, LLP
229 Peachtree Street, N.E.
800 International Tower
Atlanta, GA 30303
(404) 659-6700
(404) 222-9718 (Facsimile)
viau@elarbeethompson.com

Attorney for Defendant