

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WESTCHESTER

CITY OF YONKERS,

COMPLAINT

Plaintiff,

-vs-

Index No.:

THOMAS CAVALLO,

Defendant.

Plaintiff the CITY OF YONKERS, by and through its attorneys, Coughlin & Gerhart, LLP, (Paul J. Sweeney, Esq., of counsel), as and for its Complaint against Defendant, THOMAS CAVALLO, alleges as follows:

PARTIES

1. The City of Yonkers (“City” or “Yonkers”) is, and at all times mentioned in this complaint was, a New York public municipal corporation under Municipal Home Rule Law § 2(11) and General Construction Law § 66(2), with its principal office at 40 South Broadway, Yonkers, New York 10701.

2. Upon information and belief, Thomas Cavallo (“Cavallo”) is an individual who resides at 43 Turkey Run, Hopewell Junction, New York 12533.

JURISDICTION

3. This Court has jurisdiction under sections 503 and 505 of the Civil Practice Law and Rules (“CPLR”).

FACTS

4. On or before March 12, 2018, Cavallo was employed by the City as an Assistant Chief in the Yonkers Fire Department.

5. On or before March 12, 2018, Cavallo was the recipient of benefits paid by the City pursuant to General Municipal Law (“GML”) § 207-a(1), benefits which included the payment of his regular wages and salary.

6. On or about March 12, 2018, Cavallo filed for a disability retirement claiming that he was permanently disabled from performing the full duties of an Assistant Fire Chief.

7. On or about March 12, 2018, Cavallo was separated from employment with the City, pursuant to Civil Service Law § 71.

A. Erroneous Payment of Regular Wages and Salary

8. By a determination of the New York State Comptroller (“Comptroller”) dated March 26, 2019, Cavallo received a disability retirement retroactive to March 13, 2018 (“Comptroller Determination”).

9. Pursuant to the Comptroller’s Determination, Cavallo should have been removed from payroll effective April 2, 2019.

10. Notwithstanding the Comptroller’s Determination, Cavallo was not removed from payroll on April 2, 2019 and Cavallo continued to receive and improperly retain the City’s payment of his regular wages and salary.

11. Following receipt of the Comptroller’s Determination, Cavallo received payment from the Comptroller for disability retirement benefits, including a payment for disability benefits retroactive to March 13, 2018.

12. Despite receiving payment from the Comptroller for disability retirement benefits, including a payment for disability benefits retroactive to March 13, 2018, Cavallo continued to receive and improperly retain the City’s payment of his regular wages and salary.

13. The City’s payments to Cavallo of his regular wages and salary continued until Cavallo was removed from the City’s payroll on November 28, 2019.

14. Upon information and belief, at no time prior to November 28, 2019 did Cavallo advise the City that he was receiving and retaining concurrent payments from the Comptroller for a disability retirement and payments from the City of his regular wages and salary.

15. At no time prior to November 28, 2019 did Cavallo offer to return the payments from the City of his regular wages and salary.

16. Cavallo received and improperly retained the City's payment of his regular wages and salary during the period from March 13, 2018 through November 28, 2019, which amounted to the sum of Two Hundred and Fifty-Eight Thousand, Eight Hundred and Nineteen Dollars and Sixty One Cents (\$258,819.61).

17. The City paid Cavallo the sum of \$258,819.61 in error, as Cavallo had no legal right to receive or retain concurrent payments both from the Comptroller for a disability retirement and payments from the City of his regular wages and salary.

18. By letter dated January 27, 2020 ("the City's Repayment Demand"), the City demanded that Cavallo repay the regular wages and salary paid to him by the City in error.

19. Cavallo has refused to repay the regular wages and salary paid to him by the City in error despite due demand therefore.

B. Erroneous Payout of Accrued Vacation

20. Following his separation under CSL 71, and notwithstanding Article 7, Section 01.07 of the applicable collective bargaining agreement ("CBA"), the City also erroneously paid Cavallo for his accrued but unused vacation leave in the sum of Twenty-Two Thousand and Four Hundred and Twenty-Two Dollars and Fourteen Cents (\$22,422.14).

21. Article 7, Section 01.07 of the Uniformed Fire Officers Association's CBA expressly limits vacation payouts to an "Officer *retires or resigns* during a calendar year." (emphasis added).

22. Because Cavallo neither retired nor resigned from his position with the City, and instead was separated under CSL 71, he was not entitled to receive payment for any unused vacation leave pursuant to the CBA, Art. 7 § 7:01.07.

23. In the City's Repayment Demand, the City demanded that Cavallo repay the vacation payout paid to him by the City in error.

24. Cavallo has refused to repay the vacation payout paid to him by the City in error despite due demand therefore.

C. Erroneous Return of Health Insurance Premiums

25. By correspondence dated April 23, 2018, the City notified Cavallo that his City subsidized health insurance as a member of the UFOA would terminate, and that he would be required to pay the full share of his health insurance premium to maintain his health insurance benefits.

26. Thereafter, Cavallo elected to continue health insurance, and began paying the applicable premium for that coverage.

27. Following the Comptroller's Determination, the City erroneously returned to Cavallo insurance premiums paid by him to the City in the amount of Twenty-Four Thousand and Four Hundred and Twenty Nine Dollars and Eighty-Eight Cents (\$24,429.88), and did not collect Cavallo's health insurance premiums in the sum of Thirteen Hundred and Ninety-Five Dollars and Forty-Two Cents (\$1,395.42) for January 2020 and \$1,395.42 for February 2020.

28. The City's Repayment Demand advised Cavallo payment of the returned insurance premiums, payment of the premiums for January and February 2020 and further advised "that the City expect[ed] [him] to pay the premium for [his health insurance] coverage going forward," and that "[his] failure to do so w[ould] result in [his] coverage being terminated effective February 28, 2019.

29. Cavallo has refused to repay the returned insurance premiums or pay the premiums for January and February 2020 despite due demand therefore.

AS AND FOR A FIRST CAUSE OF ACTION
(MONEY HAD AND RECEIVED)

30. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-29 as though set forth in full herein.

31. Equity and good conscience dictate that Cavallo not be permitted to retain the City's payment of his regular wages and salary for the period March 13, 2018 through November 28, 2019 in the sum of \$258,819.61 when he was in receipt of concurrent payments from the Comptroller for a disability retirement.

32. Equity and good conscience dictate that Cavallo not be permitted to keep the erroneous vacation payout made by the City in error to him, in the sum of \$22,422.14, which was made to him in contravention of the express terms of the CBA.

33. Equity and good conscience dictate that Cavallo not be permitted to keep the City's return of his payments for health insurance premiums in the amount of \$24,429.88 or not pay for his health insurance premiums of \$1,395.42 for January 2020 and \$1,395.42 for February 2020, altogether totaling \$27,220.72.

34. Cavallo has wrongly received monies rightfully belonging to the City in the total sum of Three Hundred and Eight Thousand and Four Hundred and Sixty-Two Dollars and Forty-Seven Cents (\$308,462.47).

35. Cavallo has unjustly benefitted from the erroneous payment of the City's monies.

36. As a result of Cavallo's refusal to repay the City's monies paid to him in error, the City has been damaged in the amount of \$308,462.47, or such lesser amounts as this Court may find, plus interest since the dates of said payments.

AS AND FOR A SECOND CAUSE OF ACTION
(UNJUST ENRICHMENT)

37. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-36 as though set forth in full herein.

38. Cavallo has been unjustly enriched in the sum of \$308,462.47.

39. The City has been damaged in the sum of \$308,462.47, or such lesser amounts as this Court may find, plus interest since the dates of said payments.

AS AND FOR A THIRD CAUSE OF ACTION
(DECLARATORY RELIEF)

40. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-39 as though set forth in full herein.

41. The City demands a judicial declaration that Cavallo has been overpaid by the City in the sum of sum of \$308,462.47, or such lesser amounts as this Court may find, plus interest since the dates of said payments.

WHEREFORE, Plaintiff demands judgment against Defendant in the amount of \$308,462.47, or such lesser amounts as this Court may find, plus statutory pre-judgment interest at 9% per annum on said amount, together with the costs and disbursements of this action.

Dated: March 9, 2020
Binghamton, New York

Respectfully submitted,



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