

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)	
)	C.A. No. 2024-CP-43-00956
Brian Christmas,)	
)	
Plaintiff,)	ANSWER
)	
v.)	
)	
City of Sumter, Karl Ford and Ernie)	
Dollard,)	
)	
Defendants.)	
)	

Defendants City of Sumter (“the City”), Karl Ford (“Ford”) and Ernie Dollard (“Dollard”) (collectively “Defendants”) answer the Complaint as follows:

FOR A FIRST DEFENSE

I. The Complaint fails to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE

II. Plaintiff’s claim for monetary relief is limited and/or foreclosed by the doctrine of avoidable damages due to his failure to mitigate.

FOR A THIRD DEFENSE

III. Some or all of Plaintiff’s claims should be dismissed because they are time-barred under the applicable statutes of limitations and the doctrine of laches.

FOR A FOURTH DEFENSE

IV. Plaintiff’s claims are barred under the doctrines of estoppel and waiver.

FOR A FIFTH DEFENSE

V. Defendants had legitimate, non-discriminatory and non-retaliatory reasons for all actions taken in relation to Plaintiff. Defendants acted at all times in accordance with all

relevant laws.

FOR A SIXTH DEFENSE

VI. The wrongful discharge claim is barred because Plaintiff had an existing remedy under the law.

FOR A SEVENTH DEFENSE

VII. The wrongful discharge claim is barred because Plaintiff has failed to identify a public policy of the State that Defendants allegedly violated.

FOR AN EIGHTH DEFENSE

VIII. Defendants exercised reasonable care to prevent and correct any harassing behavior, and Plaintiff unreasonably failed to take advantage of preventive or corrective opportunities provided by Defendants or to avoid harm otherwise.

FOR A NINTH DEFENSE

IX. Defendants plead the immunities, limitations, and defenses granted or preserved in the S.C. Tort Claims Act (“SCTCA”), S.C. Code Ann. § 15-78-10 *et seq.*, including those under S.C. Code Ann. § 15-78-20; § 15-78-60(1), (2), (4), (5), (17), and (25); § 15-78-70; § 15-78-120; and § 15-78-200.

FOR A TENTH DEFENSE

X. Plaintiff’s exclusive and preemptive state law remedy for any physical, emotional, or mental injury he claims arose out of and in the course and scope of his employment is under the South Carolina Workers’ Compensation Act, and any such injuries as alleged in the Complaint, if substantiated, would be barred pursuant to S.C. Code § 42-1-540.

FOR AN ELEVENTH DEFENSE

XI. Defendants deny that they published any defamatory statement about or concerning Plaintiff, but if they did, they did so under circumstances and on an occasion giving rise to a qualified privilege, and Defendants plead qualified privilege as a defense to this action.

FOR A TWELFTH DEFENSE

XII. Any statements published by Defendants concerning Plaintiff were true or substantially true and Defendants pleads truth as a complete defense to any claim for defamation.

FOR A THIRTEENTH DEFENSE

XIII. Plaintiff's defamation claims are subject to dismissal because the complaint fails to identify any defamatory statements or acts by Defendants.

FOR A FOURTEENTH DEFENSE

XIV. Plaintiff's claim for civil conspiracy fails pursuant to the intracorporate conspiracy doctrine, which Defendants expressly plead.

FOR A FIFTEENTH DEFENSE

XV. The individual defendants are agents or employees of the City who, at all times relevant to this action, were acting in their capacity as such and they are therefore not subject to suit individually.

FOR A SIXTEENTH DEFENSE

XVI. At all times mentioned in the Complaint, the individual defendants were acting in the course and scope of their duties as officers and agents of the City, within the scope of discretion entrusted to them by law, and in good faith, and they plead good faith immunity as a complete defense to all claims asserted against them.

FOR A SEVENTEENTH DEFENSE

XVII. To the extent Plaintiff failed to satisfy conditions precedent to filing suit, his claims are barred and should be dismissed.

FOR AN EIGHTEENTH DEFENSE AND BY WAY OF ANSWER

XVIII. A. Each allegation of the Complaint not hereinafter expressly admitted is denied.

B. Defendants respond to the allegations of the Complaint by paragraph numbers corresponding to the respective paragraph numbers of the Complaint as follows:

1. Defendants admit only that City of Sumter personnel records reflect any information in Defendants' possession concerning Plaintiff's residence and that those records speak for themselves.

2. Defendants admit only that the City of Sumter is a a municipality governed by the laws of South Carolina and located in Sumter County, South Carolina and that the Sumter Fire Department's operation is reflected in records of the City which speak for themselves.

3. Defendants admit that Ford is the chief of the Sumter Fire Department. Otherwise denied.

4. Admitted.

5. This is a statement of the case requiring no response. To the extent a response is required, Defendants deny that they violated any law related to Plaintiff or harmed him in any way.

6. This is a statement of jurisdiction requiring no response. To the extent a response is required, Defendants deny that they violated any law related to Plaintiff or harmed

him in any way.

7. This is a statement of the case requiring no response. To the extent a response is required, Defendants deny that they violated any law related to Plaintiff or harmed him in any way and affirmatively allege that Plaintiff has alleged a number of equitable causes of action that would not be subject to a trial before a jury.

8. This is a statement of jurisdiction requiring no response. To the extent a response is required, Defendants deny that they violated any law related to Plaintiff or harmed him in any way.

9. This is a statement of jurisdiction requiring no response. To the extent a response is required, Defendants deny that they violated any law related to Plaintiff or harmed him in any way.

FACTUAL ALLEGATIONS

10. Defendants admit only that City of Sumter personnel records reflect any information in Defendants' possession concerning Plaintiff's employment with the City and that those records speak for themselves.

11. Defendants admit only that City of Sumter personnel records reflect any information in Defendants' possession concerning Plaintiff's employment with the City and that those records speak for themselves.

12. Defendants admit only that City of Sumter personnel records reflect any information in Defendants' possession concerning Plaintiff's employment with the City and that those records speak for themselves.

13. Defendants admit only that City of Sumter personnel records reflect any

information in Defendants' possession concerning Ford and Dollard's employment with the City and that those records speak for themselves.

14. Defendants are without information to admit or deny allegations about concerns or beliefs Plaintiff experienced, and so deny this allegation in its entirety. Defendants affirmatively allege that no violations of law or ethics rules took place, that Plaintiff's pleadings reflect that he contacted SLED and the South Carolina Ethics Commission about his concerns and neither agency took action based on his reports, and that statements Plaintiff made to Dollard indicate that Plaintiff did not take any action based on concerns or beliefs about alleged legal or ethical violations but because of his frustration that Ford would not retire so that he could become chief of the Sumter Fire Department.

15. Defendants are without information to admit or deny allegations about what Plaintiff noted, and so deny this allegation in its entirety. Defendants also deny the substance of the matters which Plaintiff alleges he noted.

16. Defendants admit only, upon information and belief, that Plaintiff called SLED on his way to the October 28, 2020, fire, before engaging in any attempts to fight the fire in question. Otherwise denied.

17. Defendants deny that Dollard "took over operations at the scene of the fire" but admit that Dollard - as Assistant Fire Chief - took part in fighting the fire in question. Defendants are unable to admit or deny whether Plaintiff specifically told Ford that it was a "conflict of interest for Defendant Dollard to be at the scene" but Ford recalls Plaintiff making a comment of that nature while the rest of the department was attempting to fight the fire in question. To the extent that Plaintiff is alleging that a firefighter should be required to leave the

scene of a fire and not attempt to fight it if that firefighter's spouse's uncle owns the building that is on fire, Defendants deny that allegation.

18. Denied as alleged. Defendants admit only that Ford and Dollard instructed Plaintiff that while the fire in question was actively burning, the department's focus needed to be on putting out the fire rather than investigating its cause. Otherwise denied.

19. Defendants are without information to admit or deny allegations about concerns Plaintiff experienced, and so deny this allegation in its entirety. Defendants also deny the substance of the matters about which Plaintiff alleges he became concerned.

20. Defendants are without information to admit or deny allegations about what Plaintiff noticed, and so deny this allegation in its entirety. Defendants affirmatively allege that Sumter Fire Department personnel are subject to being called to respond to emergencies at any time and so are issued departmental vehicles that they operate both while performing work for the department and otherwise, including occasionally while running personal errands, and that any personal use of departmental vehicles is incidental. Defendants further affirmatively allege that Plaintiff was assigned a departmental vehicle that, upon information and belief, he also used for incidental personal use.

21. Defendants admit only that Ford accessed the website in question from his work computer on occasion. Otherwise denied.

22. Defendants admit that Ford has purchased and sold vehicles in the past. Otherwise denied.

23. Defendants admit only that Sumter Fire Department personnel are subject to being called to respond to emergencies at any time and so are issued departmental

vehicles that they operate both while performing work for the department and otherwise, including occasionally while running personal errands, and that any personal use of departmental vehicles is incidental. Defendants affirmatively allege that departmental vehicles are regularly either fueled at the City's fueling station or using City gas cards. Ford does not recall using the City's gas card when he drove to Florida to take a cruise several years ago and the other Defendants are without information to admit or deny that allegation and so deny it.

24. Defendants admit only that Dollard has purchased a Gator and that Sumter Fire Department personnel are subject to being called to respond to emergencies at any time and so are issued departmental vehicles that they operate on a regular basis, including occasionally to run personal errands, and that any personal use of departmental vehicles is incidental. Otherwise denied.

25. Defendants are without information to admit or deny allegations about what Plaintiff felt, and so deny the same. Defendants also deny the substance of the matters about which Plaintiff alleges he felt he had to report.

26. Defendants are without information to admit or deny this allegation, and so deny the same.

27. Defendants are without information to admit or deny this allegation, and so deny the same. Defendants affirmatively allege, upon information and belief, that Plaintiff had been telling a Sumter County councilperson that he wanted to contact SLED concerning Ford and Dollard since some time in February 2023, and that Plaintiff did not speak to the individual in question about doing so for the first time on the date alleged.

28. Defendants admit only that oversight of the Sumter Fire Department's

operation is reflected in records of the City which speak for themselves.

29. Denied as alleged. Defendants affirmatively allege that Ford and Dollard recall Plaintiff telling each of them separately around this time that Plaintiff intended to retire from City employment. Dollard specifically recalls Plaintiff telling him that he planned to retire due to frustrations he felt that Ford did not plan to retire so that Plaintiff could be chief of the Sumter Fire Department, or words to that effect. Ford recalls Plaintiff complaining to him about Dollard and recalls telling Plaintiff that Dollard was not leaving the department. Ford passed along to City management that Plaintiff had expressed his intention to retire and City management requested that Plaintiff submit the proper form required to do so. Ford asked Plaintiff for the retirement form and said that City management had asked him for it. In or around August 2023, Plaintiff stated that he had changed his mind about retiring. None of these events were in any way linked to Plaintiff's communications with a Sumter County councilperson.

30. Defendants are without information to admit or deny this allegation, and so deny the same.

31. Defendants are without information to admit or deny this allegation, and so deny the same.

32. Denied as alleged. Defendants affirmatively allege that Chief Roark recalls speaking with a SLED agent about several ongoing matters, one of which was the fact that Plaintiff had contacted SLED. Defendants further affirmatively allege that Chief Roark recalls the SLED agent telling him that Plaintiff had complained about Ford, the SLED agent had communicated Plaintiff's complaints about Ford to his superiors, and his superiors had told the SLED agent that the incidents Plaintiff had complained about were not criminal offenses.

Defendants further affirmatively allege that Chief Roark recalls calling Plaintiff and telling him that he had a duty to report what he had learned to the City Manager, but would not be speaking with Ford about the matter at that time. Otherwise denied.

33. Defendants admit only that on or around the date alleged, Plaintiff requested to meet with the City of Sumter's City Manager, who instructed Plaintiff to meet with the City employee who was in charge of handling all human resources issues related to the Sumter Fire Department, Mark Partin ("Partin"). Otherwise denied.

34. Denied. Defendants affirmatively allege that Plaintiff stated repeatedly in that meeting that he felt that he needed to leave the Sumter Fire Department, which was unsurprising because Plaintiff had expressed his intention to retire earlier in the year.

35. Denied. Defendants affirmatively allege that the City Manager did join the meeting in question but did not in any way pressure Plaintiff to retire or tell him that he had to set a retirement date; rather, the City manager asked Plaintiff what he believed was the way forward. Defendants further affirmatively allege that Partin described what he saw as possible actions Plaintiff could take, including continuing to work in the Sumter Fire Department, resigning, retiring, or going to work somewhere else. Defendants further affirmatively allege that the only mention of "terminal leave" was informing Plaintiff that if he wanted to take leave from employment to find another job that the City might be able to offer that. Defendants further affirmatively allege that Plaintiff asked to take leave to think about his decision and he was told that would be fine and that he and Partin could meet again to discuss on Monday. Defendants deny that any statements were made concerning Plaintiff having sinned or having gone against the family and needing to be punished or referencing Hebrews, which - based upon their review

of that book of the Bible following Plaintiff's allegations - Defendants do not believe contains any of the language Plaintiff mentions in this allegation.

36. Denied as alleged. Defendants affirmatively allege that Plaintiff asked to delay the meeting that was scheduled for Monday, October 23, 2023, until the next day, but, upon information and belief, Plaintiff had actually submitted his retirement paperwork on the previous Friday without informing the City that he planned to do so.

37. Defendant admits only that the City of Sumter regularly removes email access from employees who resign or retire and handled Plaintiff's retirement as it would any other. Otherwise denied.

38. Denied.

39. Defendants admit only that Plaintiff filed a grievance, a grievance hearing was held, and that the City of Sumter grievance committee found unanimously that Plaintiff had voluntarily retired from employment with the City and that his retirement should remain in place. *See Exhibit A to Answer.*

AS TO THE FIRST CAUSE OF ACTION
AGAINST DEFENDANT CITY
(Wrongful Discharge in Violation of Public Policy)

40. Defendants incorporate the prior paragraphs verbatim.

41. This allegation presents a legal conclusion which requires no response. To the extent a response is required, Defendants deny that Plaintiff was discharged from employment or that any action was taken towards Plaintiff based upon any opposition to violations of law, regulations, public policy or ethical practices, or that any such violations occurred.

42. Denied.

43. Denied.

44. This is a statement of the case requiring no response. To the extent a response is required, Defendants deny that they violated any law related to Plaintiff or harmed him in any way.

45. Denied.

AS TO THE SECOND CAUSE OF ACTION
AGAINST DEFENDANT CITY
(Retaliation in Violation of the S.C. Whistleblower Act (S.C. Code § 8-27-10 et seq.))

46. Defendants incorporate the prior paragraphs verbatim.

47. This is a statement of the case requiring no response. To the extent a response is required, Defendants deny that they violated any law related to Plaintiff or harmed him in any way.

48. Defendants admit only that City of Sumter personnel records reflect any information in Defendants' possession concerning Plaintiff's employment and that those records speak for themselves.

49. This is a legal conclusion requiring no response. To the extent a response is required, Defendants admit only that the City of Sumter is a a municipality governed by the laws of South Carolina.

50. This is a legal conclusion requiring no response. To the extent a response is required, Defendants deny that they violated any law related to Plaintiff or harmed him in any way.

51. Denied.

52. Defendants are without information to admit or deny what Plaintiff reported to SLED, and so deny this allegation in its entirety.

53. Denied.

54. Denied.

55. This is a legal conclusion requiring no response. To the extent a response is required, Defendants affirmatively allege that the referenced statute specifically states that actions brought pursuant to it are nonjury and therefore this allegation is denied.

AS TO THE THIRD CAUSE OF ACTION
AGAINST DEFENDANTS FORD AND DOLLARD
(Civil Conspiracy)

56. Defendants incorporate the prior paragraphs verbatim.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

AS TO THE FOURTH CAUSE OF ACTION
AGAINST DEFENDANT DOLLARD
(Defamation)

62. Defendants incorporate the prior paragraphs verbatim.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

AS TO THE FIFTH CAUSE OF ACTION
AGAINST DEFENDANT CITY
(Defamation)

69. Defendants incorporate the prior paragraphs verbatim.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

C. Defendants deny Plaintiff's prayer for relief, including subparts found in ¶¶76-79.

WHEREFORE, having fully answered the Complaint, Defendants request that this action be dismissed and they be awarded their costs, attorneys' fees and such other and further relief as the Court may grant.

s/Fred A. Williams

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July 18, 2024

Columbia, South Carolina

ATTORNEYS FOR DEFENDANTS

Exhibit

A



OPERA HOUSE
P.O. BOX 1449
Sumter, SC 29151

TELEPHONE
(803) 436-2583
FAX
(803) 774-3984

December 29, 2023

To: Brian L. Christmas
From: Christy Smith
Date: December 29, 2023
Re: Employee Grievance Committee Decision

Dear Mr. Christmas:

The Committee has reviewed the information presented in the non-disciplinary Grievance Hearing regarding your voluntary resignation from the City of Sumter Fire Department. Please find below the Committee's findings and recommendations to the City Manager.

Your request for reinstatement of employment, back pay dating to your time of separation, and third-party investigation have been considered. The Committee came to a unanimous consensus that your grievance should be fully dismissed with no further action.

During the hearing, you stated that you did not know who to turn to when reporting what you perceived as ethical infractions by the Fire Chief and Assistant Fire Chief. Your prior military and police background included extensive training in following chain-of-command protocols. Your actions did not follow the chain of command hierarchy.

Your testimony included statements where you stated you were aware of four viable options moving forward. While on leave, where you were given time to think, you acted before the agreed-upon meeting date. It was also noted that, throughout the last few months with the City you were actively seeking employment elsewhere. An informal retirement notice was given and later rescinded. These actions were perceived by the Committee as you no longer desired to work with the City of Sumter Fire Department.

Additionally, you agreed to meet back with the Organizational Improvement Director and City Manager on Monday, October 23, 2023, to review your four viable options. You did not meet with the Organizational Improvement Director or the City Manager, instead, you submitted retirement paperwork with PEBA on Friday, October 20, 2023. This action was viewed by the Committee as not operating in good faith and keeping your word to discuss your options with the City before making a final decision.

Lastly, the Committee found discrepancies in your letter of retirement based on the testimony of all parties. You stated in writing abuse of government funds, but the City Manager and Organizational Improvement Director did not have any prior knowledge of

a complaint regarding misuse of funds. The letter referenced an offer, but throughout the hearing, no details regarding the offer were given in your testimony or rebuttal. Your failure during your rebuttal to address or offer contradictory evidence in the testimony of the City Manager and Organizational Improvement Director also did not support your desired outcome in this matter.

In closing, The Grievance Committee finds that you had a good career with the City of Sumter Fire Department, but your retirement should remain in place. The Committee does not recommend employment reinstatement, does not recommend backpay, and sees the SLED investigation as a sufficient third-party investigation.

Sincerely,



Christy Smith
Chair, Employee Grievance Committee