

**IN THE CIRCUIT COURT OF THE
FOURTEENTH JUDICIAL CIRCUIT,
IN AND FOR BAY COUNTY, FLORIDA**

MARY JAN BOSSERT,

Plaintiff,

v.

CITY OF PANAMA CITY BEACH,

Defendant.

**CASE NO.: 20-CA-
FLA BAR NO.: 0739685**

COMPLAINT

Plaintiff, MARY JAN BOSSERT, hereby sues Defendant, CITY OF PANAMA CITY BEACH, and alleges:

NATURE OF THE ACTION

1. This is an action brought under §112.3187, Florida Statutes, for claims which are, individually, valued in excess of Thirty Thousand Dollars (\$30,000.00), exclusive of costs, interest and attorney's fees.

THE PARTIES

2. At all times pertinent hereto, Plaintiff, MARY JAN BOSSERT, has been a resident of the State of Florida and was employed by Defendant. Plaintiff is a member of a protected class because she reported unlawful practices and was subject to retaliation thereafter.

3. At all times pertinent hereto, Defendant, CITY OF PANAMA CITY BEACH, has been organized and existing under the laws of the State of Florida. At all times pertinent to this action, Defendant has been an "employer" as that term is used under the applicable laws identified above. Defendant was Plaintiff's employer as it relates to these claims.

CONDITIONS PRECEDENT

4. Plaintiff has satisfied all conditions precedent to filing this action, if any.

STATEMENT OF THE ULTIMATE FACTS

5. Plaintiff began her employment with Defendant on January 9, 2017 as a Senior Administrative Support Specialist. She was promoted into the position of City Clerk and Executive Assistant to the City Manager and Mayor on January 10, 2019 until her illegal termination on March 26, 2020.

6. As the City Clerk, Plaintiff was the person designated by the Defendant City as being responsible for responding to requests for public records under Chapter 119, Florida Statutes.

7. In November, 2019, Plaintiff properly and timely responded to a legitimate request for public records under Chapter 119 submitted by a local resident who hosts a talk show and is affiliated with the local media, Burnie Thompson. Mr. Thompson is known to be disliked if not hated by Hector Solis, a Council Member on the Defendant's City Council and Mike Thomas, the Mayor of the Defendant City because of his public humiliation of members of the City Council and City Manager. Specifically, and without limitation, at least by 2017, Thompson began to utilize the information he received through public records to accuse former City Manager Mario Gisbert of corruption, which caused embarrassment to Defendant's leadership and City Council. Beginning early 2017, Thompson's requests became more frequent and extensive. Thompson ultimately accused Gisbert and the City Council of using their City positions to advance Gisbert's girlfriend's company without following proper procedures for awarding contracts, accused a Councilman of utilizing his City position to acquire prostitutes,

accused Mayor Thomas of using his position to harass businesses and failing to be a law-abiding citizen, and accused Councilman Solis of a similar complaint and operating a business without a valid license.

8. Prior to fulfilling this public records request from Burnie Thompson, Plaintiff had been applauded for her good work and service to the Defendant City. Since she was hired as Clerk last January, 2019, she had not received an email, telephone call, write-up, or counseling on her performance from the Mayor or any member of the Council.

9. Virtually immediately after Plaintiff timely and properly provided documents to Burnie Thompson in November 2019, she was confronted by Mayor Mike Thomas who was visibly angry because Plaintiff provided public records to Thompson that included a list of candidates for the position of City Manager. Thomas actually emailed Plaintiff on November 12, 2019 after she fulfilled this request stating that “records are far more important safeguarded until they are truly public.” Thomas then told Plaintiff that responding to Thompson’s request was a “terrible mistake.”

10. After the writing on November 12, 2019, at the conclusion of a Tourist Development Council meeting, Thomas confronted Plaintiff and told her “you fucked up, little girl, you fucked up.”

11. Around the following day, November 13, 2019, Solis called Plaintiff into a meeting with Solis, Amy Myers (City Attorney) and the City Manager, Gisbert. During that meeting, Plaintiff was questioned about the documents she sent to Thompson and she stated that she was doing her job by responding to the public records request to which Solis asked her how she learned how to respond to public records requests and berated her extensively about her

response. During this inquiry, Plaintiff told Solis and other participants in the meeting that it would have been illegal if she had not responded to the Thompson public records request. She also said that she did not know what the issue was and even Ms. Myers told Solis that Plaintiff did not do anything illegal.

12. After Plaintiff responded to this public records request discussed above, her employment plummeted downhill.

13. In January, 2020, Plaintiff was given a copy of her evaluation by Amy Myers that was completed by the City Council members in which they falsely marked her down in many categories. During that meeting, which was initiated by Ms. Myers, Plaintiff told Ms. Myers that the only reason her score was low was because of her response to the public records request she fulfilled for Burnie Thompson.

14. By February, 2020, Plaintiff was told that she needed to quietly transition into a supervisor position within the Defendant but the hours of that position were not compatible with her responsibilities with her children and family which would have required that she work weekends and she had questions as to whether she was even qualified to work in the position, aquatics, an area she had never worked in before. Plaintiff stated that the position was not in her field of expertise and would not work for her. There was no legitimate reason to move Plaintiff from the City Clerk position.

15. In the midst of the Council being aggressive towards her at times, in March, 2020, Plaintiff was told that her evaluation would be made public and it was, in fact, placed on the City Council agenda for review and public comment on March 26, 2020.

16. On March 21, 2020, Plaintiff wrote to Defendant City Council and advised that she had been the victim of retaliation after fulfilling the public records request for Burnie Thompson. Specifically, and without limitation, Plaintiff stated in her written complaint to the Defendant Council the following:

“I believe that this evaluation is retaliatory towards me after I fulfilled a public records request by Burnie Thompson. Councilman Solis was visibly angry that I complied with the law and fulfilled a public records request to Mr. Thompson. It is my impression that Councilman Solis wanted to interfere with Mr. Thompson’s ability to obtain the documents and then punished me after I complied with the request. This isn’t legal, is it? Mr. Gisbert also told me that I had a great evaluation review until I responded to the public records request from Mr. Thompson. I was also told that the majority of the Council members were upset that I responded to Mr. Thompson’s public records request. Clearly, this evaluation is punishment for my response to what I believed was a legitimate request for public records by Mr. Thompson.”

17. Plaintiff was given no opportunity to rebut the evaluation and was forced to use time during the public comments segment of the March 26, 2020 meeting to address the issues in her evaluation.

18. Four days after she questioned the legality of the actions by Solis in writing and stated that he wanted to interfere with Thompson’s ability to obtain public documents within the Defendant City, she was fired during the Council meeting on March 26, 2020. She had no prior discipline or criticism of her performance.

19. This is not the first time that the Defendant has retaliated against employees who responded to public records requests filled for Burnie Thompson. Diane Floyd, the City’s former Clerk, like Plaintiff, was forced to resign/fired after filling a public request submitted by Thompson, which angered the City County and City Manager.

20. Plaintiff has retained the undersigned to represent her interests in this cause and is obligated to pay a fee for these services. Defendant should be made to pay said fee under the statutory provisions cited herein.

COUNT I
VIOLATION OF PUBLIC WHISTLE BLOWER ACT

21. Paragraphs 1-20 are incorporated herein by reference.

22. This is an action against Defendant under §112.3187 et seq.

23. Plaintiff was a public employee protected under Chapter 112, Florida Statutes.

24. As stated more specifically, in part, above, Plaintiff reported and disclosed malfeasance, misfeasance, and other acts specifically outlined in §112.3187 (5), et seq., Florida Statutes by employees of Defendant.

25. After providing information as well as reporting these matters as related more fully above, Plaintiff was the victim of retaliatory actions as set forth more fully above.

26. Plaintiff's position and responsibilities within Defendant were adversely affected as a result of reporting violations of rules, regulations and laws and misfeasance, malfeasance and gross misconduct, as specified in part above.

27. These actions were taken against Plaintiff after Plaintiff objected to and/or reported matters that Plaintiff reasonably suspected were and/or actually were incidents of gross misconduct, malfeasance, and/or misfeasance within Defendant.

28. These reports were conveyed in writing and/or were made to supervisors and/or other persons within the Defendant who could remedy the violations. After reporting these matters within Defendant, adverse actions were taken against her.

29. Under §112.3187(4), Defendant is prohibited from taking adverse personnel action against persons like Plaintiff who disclose the types of information disclosed by Plaintiff. Specifically, Defendant is prohibited from dismissing, disciplining or otherwise taking any other adverse personnel action against an employee for disclosing information pursuant to the provisions of §112.3187(4), Florida Statutes. Under §112.3187(3)(c) “adverse personnel action” is defined as “the discharge, suspension, transfer or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.”

30. After making the disclosures identified in part above, Plaintiff suffered adverse employment action, which adverse actions are reported in part above.

31. Plaintiff maintains that the actions of all employees within Defendant who affected her employment adversely did so in retaliation against her for "whistle blowing" activities.

32. As a direct and proximate result of the actions taken against her by Defendant, Plaintiff has suffered injury, including but not limited to past and future wage losses, loss of benefits, emotional pain and suffering, loss of the capacity for the enjoyment of life, and other tangible and intangible damages. These damages have occurred in the past, are occurring at present and will occur in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

- (a) that process issue and this Court take jurisdiction over this case;

- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendant and for Plaintiff awarding all legally-available general and compensatory damages and economic loss to Plaintiff from Defendant for Defendant's violations of law enumerated herein;
- (d) enter judgment against Defendant and for Plaintiff permanently enjoining Defendant from future violations of law enumerated herein;
- (e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs;
- (f) award Plaintiff interest where appropriate; and
- (g) grant such other further relief as being just and proper under the circumstances, including but not limited to reinstatement.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues herein that are so triable.

DATED this 27th day of March, 2020.

Respectfully submitted,

/s/ Marie A. Mattox

Marie A. Mattox [FBN 0739685]

MARIE A. MATTOX, P. A.

203 North Gadsden Street

Tallahassee, FL 32301

Telephone: (850) 383-4800

Facsimile: (850) 383-4801

Email: marie@mattoxlaw.com

Secondary emails:

michelle2@mattoxlaw.com

marlene@mattoxlaw.com

ATTORNEYS FOR PLAINTIFF