

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO.: 2014 CA 000676

LINDA BOLANTE,

Plaintiff,

vs.

JAMES L. MANFRE, as the
Sheriff of Flagler County, Florida,

Defendant.

SECOND AMENDED COMPLAINT

Plaintiff, LINDA BOLANTE, sues Defendant, JAMES L. MANFRE, as the Sheriff of Flagler County, Florida, and states as follows:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of \$15,000.00 and for equitable relief, pursuant to the Florida Whistle-blower's Act ("FWA"), Fla. Stat. §112.3187.
2. The Flagler County Sheriff's Office ("FCSO") is, and at all times material was, a Flagler County governmental entity, and thus an "agency" within the meaning Fla. Stat. §112.3187 (3)(a). FCSO's principal place of business is and was in Flagler County, Florida.
3. At all times material, Defendant, JAMES L. MANFRE ("Sheriff Manfre") was the Sheriff of Flagler County, and was acting in his capacity as Sheriff with regard to the allegations stated herein. Sheriff Manfre was and is the top supervisory official of FCSO and thus, also deemed an "agency" within the meaning of Fla.Stat. §112.3187(3)(a).
4. The cause of action alleged herein arose in Flagler County, Florida.

COUNT I
(Violation of Florida Whistleblower's Act)

5. Plaintiff realleges all prior paragraphs as if fully set forth herein.

6. Linda Bolante was employed by FCSO from July 17, 2000 until March 31, 2014.

Mrs. Bolante served in several positions in FCSO's finance department and, at all times material to these allegations, was FCSO's Senior Business Services Director. Accordingly, Plaintiff was an employee of FCSO and the Sheriff as defined by §112.1287(3)(b), Fla. Stat.

7. At all times material, Sheriff Manfre had primary supervisory authority over Linda Bolante in all matters concerning her employment at FCSO. At all times material, Linda Bolante reported directly to FCSO's top supervisory officials, Sheriff Manfre and Undersheriff Rick Staly.

8. In October 2013, a public records request was made by an outside source for credit card receipts and backup documentation on certain questioned restaurant purchases made by Sheriff Manfre on his FCSO credit card. The credit card receipts showing the total amount of the purchases were obtained from the records submitted by Sheriff Manfre and provided; however, the Business Services Division did not have possession of the backup documentation because no vendor itemized receipts had been submitted by Sheriff Manfre to substantiate the charges.

9. In an attempt to comply with the public records request, Linda Bolante approached Sheriff Manfre regarding the back-up documentation, and was told he did not have any of it. Consequently, the Business Services Division made a second request to Sheriff Manfre demanding copies of the backup documentation or a signed, written explanation as to why the requested information was not available. Mrs. Bolante was advised by Sheriff Manfre's designated attorney, Sid Nowell and Undersheriff Staly to request duplicate copies of the itemized receipts from the vendors.

10. Upon obtaining itemized receipts from certain vendors, Linda Bolante discovered several inappropriate purchases, such as multiple meals and alcoholic beverages, including those for the Sheriff's wife and other persons who were not FCSO employees. The improper expenditures discovered by Linda Bolante included:

- a. On May 14, 2013, \$235.76 was charged to the Sheriff's Office credit card at the "Madhatter", for food and alcoholic beverages for 6 Sheriff's Office employees and 6 non-employees, including the Sheriff's wife.
- b. On July 16, 2013, \$86.50 was charged to the Sheriff's Office credit card at "Shingle Creek", for food and alcoholic beverages.
- c. On August 3, 2013, \$158.50 was charged to the Sheriff's Office credit card at "Kurrents". Sheriff Manfre documented on the hotel folio that it was dinner with the Undersheriff. However, both spouses were also treated and, alcohol was purchased. The Undersheriff did not know the agency credit card had been used for the purchase, and upon hearing of this, immediately reimbursed FCSO for his portion of the bill.
- d. On August 04, 2013, \$12.46 was charged to the Sheriff's Office credit card at "Golf Grill". The Sheriff had originally documented that it was breakfast, yet the itemized receipt indicated it was actually, alcohol only.
- e. On August 4, 2013, \$62.21 was charged to the Sheriff's Office credit card at "Quinns", for dinner and alcoholic beverages for the Sheriff and his wife.
- f. On August 7, 2013, \$54.58 was charged to the Sheriff's Office credit card at "Tropiks", for a buffet meal for the Sheriff and his wife.

11. On October 30, 2013, Linda Bolante met with Sheriff Manfre, Undersheriff Staly and attorney, Sid Nowell, disclosing to them the expenditures on the itemized receipts received which she believed to be unauthorized and improper. She advised them these charges were in violation of FCSO's policy regarding authorized expenditures on an agency credit card, and Fla. Stat. 112.061 (governing allowable costs for public officers). It was suggested by Undersheriff Staly that Sheriff Manfre reimburse FCSO for the disclosed purchases of alcoholic beverages and non-agency related expenditures, and Linda Bolante was asked to calculate that amount.

12. On October 31, 2013, Linda Bolante was asked to report to Sheriff Manfre's office to meet again with attorney Nowell, Undersheriff Staly and Sheriff Manfre. The disclosures made by Mrs. Bolante at the October 30 meeting were again confirmed and discussed. Sheriff Manfre declined to reimburse the agency for the improper charges, and instead, provided Linda Bolante with receipts from January 2013 for approximately \$1100.00 in purchases made by his wife to spruce up the FCSO Operations building when he first took office, directing Mrs. Bolante to use those receipts to offset what he owed the agency for his unauthorized restaurant, entertainment and alcohol purchases. Ms. Bolante responded that what he was asking her to do was unlawful and entirely inappropriate, and stated she could not ethically comply with this request. At that point, Sheriff Manfre told her, "Linda, I need you to take the hit for this." Sheriff Manfre was referring directly to covering up for the improper expenditures she had disclosed and claiming responsibility for the malfeasance and any consequences.

13. Although ultimately Sheriff Manfre wrote a check for \$344.03 as reimbursement for some of the unauthorized expenditures discussed at the meeting, he did so reluctantly, and only upon the advice of Undersheriff Staly and Mr. Nowell.

14. Linda Bolante was extremely upset by Sheriff Manfre's statement to her at the end of the October 31 meeting and, hence, later that same day wrote and sent an email to Sheriff Manfre and Undersheriff Staly indicating her concerns. The email specifically referenced her disclosures of Sheriff Manfre's improper and unauthorized expenditures at their meeting, and conveyed her intent to be honest and candid when any inquiry was made of her regarding Sheriff Manfre's improper use of the agency credit card and the unlawful expenditures discovered on the receipts.

15. When Sheriff Manfre discovered Mrs. Bolante had written an email documenting these statements, he became extremely angry with her, vocalizing his anger to the point others could hear him yelling at her behind closed doors.

16. On November 1, 2013, Undersheriff Staly advised Linda Bolante that Sheriff Manfre had told Staly he needed him to “be the bad guy” and find a reason to terminate her. Clearly, this was a result of her disclosures, confrontation about the malfeasance and refusal to take responsibility for or cover up his improper and unauthorized expenditures on the agency credit card. Undersheriff Staly told Mrs. Bolante he did not intend to do what the Sheriff had asked.

17. For the next few months, Sheriff Manfre created an extremely difficult work environment for Mrs. Bolante by publicly treating her in a degrading manner, which humiliated and embarrassed her in front of other staff members, and which demonstrated to others he was retaliating due to her reports of his misconduct and refusal to be disingenuous about the cause. As one example, Sheriff Manfre refused to speak to or acknowledge Mrs. Bolante at meetings, and publicly rolled his eyes to other while she was speaking.

18. On or about January 17, 2014, Undersheriff Staly called Linda Bolante in to his office and informed her Sheriff Manfre had specifically instructed him to advise her she needed to agree to resign or she would be fired in the very near future. It was clear to all involved this was a result of her disclosures and email regarding Sheriff Manfre’s improper expenditures. Undersheriff Staly told Mrs. Bolante that, if and only if she would agree to retire when her retirement benefits became fully vested at the end of March, he would try to protect her employment and stave off a final decision and date regarding termination until that time. This placed Mrs. Bolante under great duress, since she did not want to retire or be terminated without her retirement benefits, which could significantly impact her family’s future financial well-being.

19. Due to the extreme duress caused by the impending threat of being terminated at any time, especially prior to full vesting of her public service retirement benefits, Linda Bolante was constructively forced to tender a letter of retirement, to become effective March 31, 2014, as per the instructions of Undersheriff Staly. Mrs. Bolante understood this to be a period of “reprieve”, during which no final decision would be made. Despite the statement in her letter that she was, “with mixed emotions,” giving notice of retirement, Linda Bolante did not wish to retire on March 31, 2014, and hoped some reconciliation could occur before that date. Clearly, but for the duress she was under to delay or prevent an earlier termination and suffer the permanent financial consequences of such action, she would not have tendered the notice.

20. If at any time prior to March 31, 2014, Mrs. Bolante had been able to reconcile with Sheriff Manfre, or had he withdrawn his unlawful intuition to fire her, she would have immediately rescinded her retirement notice and would not have left her employment. However, circumstances did not change during her continued employment and, consequently, on March 31, 2014, Linda Bolante had no choice or alternative but to follow through with her retirement and leave her employment.

21. Linda Bolante’s forced retirement on March 31, 2014 constituted constructive termination and an adverse personnel action under the FWA, which was a direct result of her disclosure to her supervisors on October 30, 2013, (re-stated at the meeting on October 1, 2013), of Sheriff Manfre’s malfeasance and unauthorized and wrongful personal use of public funds, as well as her refusal to condone or participate in covering up such actions.

22. Plaintiff has complied with all conditions precedent to the maintenance of this action. On May 16, 2014, within 60 days of her constructive termination on March 31, 2014, Mrs. Bolante sent a written administrative complaint to Sheriff Manfre, as the Sheriff of Flagler County, and

requested to be advised of any available administrative remedy or recourse within the agency for her constructive and retaliatory termination. In response, she was advised FCSO had no established administrative procedure for handling complaints and conducting hearings pursuant to §112.3187(8)(b).

23. In addition, on or about May 7, 2014, Linda Bolante filed a formal complaint with the Florida Commission on Ethics regarding Sheriff Manfre's ethical misconduct; that investigation is ongoing and a hearing to determine probable cause is scheduled in June, 2015.

24. This civil action was brought on September 25, 2014, within 180 days of Plaintiff's constructive termination.

25. The disclosures made by Ms. Bolante to her supervisors on October 30 and 31, 2013 regarding Sheriff Manfre's violations or suspected violations of a state or local law, rule or regulation which presents a danger to the public welfare, or which constitute malfeasance, misfeasance or waste of public funds, were statutorily protected disclosures within the meaning of Fla. Stat. §112.3187(5)(a) and (b).

26. Linda Bolante disclosed these violations or suspected violations and acts of malfeasance to the highest supervisory authorities of the FCSO, Sheriff Manfre and Undersheriff Staly.

27. Linda Bolante specifically referenced these disclosures (and the discussions regarding them at the meetings) in a written email to FCSO's top supervisory officials, Sheriff Manfre and Undersheriff Staly, and specifically expressed her refusal to participate in such behavior or to lie about Sheriff Manfre's improper actions. Accordingly, Linda Bolante is a protected employee within the meaning of Fla. Stat. §112.3187.

28. Linda Bolante's disclosures of Sheriff Manfre's acts or suspected acts of malfeasance, misfeasance and waste of public funds were not made in bad faith or for a wrongful purpose, and occurred prior to FCSO's initiation of an adverse personnel action against her.

29. Mrs. Bolante's written email to Sheriff Manfre and Undersheriff Staly specifically incorporated by reference the disclosures made at the October 30, 2013 meeting, as well as the confirmation and further discussions of these disclosures at the October 31, 2013 meeting. Consequently, the email sufficiently documents what she disclosed and to whom she disclosed it. There is no question Sheriff Manfre knew what specific disclosures and conduct the email referred to. Indeed, it was the written documentation of the disclosures of his improper conduct that provoked Sheriff Manfre's retaliatory anger at Linda Bolante, and resulted in her constructive termination on March 31, 2014.

30. Moreover, in addition to the FWA's protection of those who disclose information in a written complaint, the FWA protects those who refuse to participate in actions prohibited by the statute. A liberal interpretation of this provision would encompass Linda Bolante's refusal to participate in or to cover up Manfre's unlawful conduct.

31. Section 112.3187(4), Fla. Stat., provides in pertinent part:

(4) Actions prohibited-

(a) An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.

(b) An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information under this section.

32. Sheriff Manfre's constructive termination of Linda Bolante on March 31, 2014, constitutes a prohibited adverse action under §112.3187(4)(a) and (b).

33. As a direct and proximate result of Sheriff Manfre's prohibited and retaliatory adverse employment action against her, Plaintiff, Linda Bolante has suffered damages, including the loss of compensation and benefits in the past and in the future. Plaintiff's damages are continuing in nature and she is entitled to compensation pursuant to Fla.Stat. §112.3187(9)(c).

34. Pursuant to Fla. Stat. §112.3187(9)(a) and (f), Plaintiff is entitled to reinstatement, including temporary reinstatement, to the same or equivalent position, or to reasonable front pay as alternative relief.

35. Plaintiff has retained the undersigned attorney to represent her in this action and, if she prevails, is entitled to be awarded her reasonable costs, including attorney's fees pursuant to Fla. Stat. §112.3187(9)(d).

WHEREFORE, Plaintiff, LINDA BOLANTE, respectfully requests judgment against Defendant, JAMES L. MANFRE, as Sheriff of Flagler County, and awarding her:

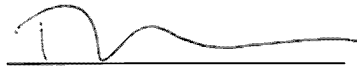
1. Reinstatement to the same position held by Plaintiff before Defendant's retaliatory action against plaintiff, or to an equivalent position;
2. Reinstatement of full fringe benefits and seniority rights;
3. Compensation for lost wages, benefits, and other remuneration;
4. Assessment against Defendant of reasonable costs and attorney's fees of this action; and
5. Such further relief as the court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all matters so triable.

DATED this 20th day of March 2015.

the mcleod firm

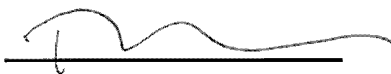


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 2015, a true and correct copy of the foregoing was served via e-mail to Linda Bond Edwards, Esq., Rumberger Kirk Caldwell at ledwards@rumberger.com.

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