

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH
SUNSHINE SWINSON,

Plaintiff,

v.

CASE NO.: CL23-577 -00

CITY OF PORTSMOUTH,

Serve: Mimi Terry, City Manager
City of Portsmouth
801 Crawford Street, #6
Portsmouth, VA 23704

and

Lavonda Graham-Williams, City Attorney
City Attorney's Office
801 Crawford Street
Portsmouth, VA 23704

Defendant.

2023 FEB - 1 PM 3:47
Circuit Court Clerk

COMPLAINT

NOW COMES your plaintiff, Sunshine Swinson ("Swinson"), by counsel,
and as and for her Complaint against the City of Portsmouth, states as follows:

1. Swinson is a resident of the City of Portsmouth and was formerly employed by the City of Portsmouth.
2. The City of Portsmouth ("the City") is a municipal corporation and was formerly Swinson's employer.
3. In November 2022, Swinson and the City entered into a contract entitled "Severance Pay Agreement," a copy of which is attached hereto as Exhibit A.
4. Swinson was terminated from her employment with the City, as stated in the attached (Exhibit B) December 1, 2022 letter authored

by then-City Manager, Tonya D. Chapman ("Chapman").

5. The December 1, 2022 letter did not articulate any grounds for the termination of Swinson.
6. Swinson was employed by the City as Deputy City Manager before she was terminated on December 1, 2022.
7. During Swinson's employment at Deputy City Manager, her direct supervisor was the City Manager, Chapman.
8. On November 30, 2022, before Chapman notified Swinson that her employment was terminated, Chapman requested that Swinson resign and sign a letter stating that Swinson gave Chapman misinformation regarding allegedly missing gift cards previously purchased by the City. Chapman further requested that Swinson lie to City officials and investigators regarding an expected investigation into the gift cards. Chapman expressed concern that her own employment position was in peril and wanted Swinson to accept false blame for any problems, performance failures or mistakes attributable to Chapman regarding the gift cards at issue.
9. In a further effort to induce Swinson to resign and falsely accept blame for any City gift card issues or problems, Chapman attempted to bribe Swinson with various promises and benefits, including a payment of \$37,500.00 and two additional weeks of pay if Swinson signed a resignation letter. Chapman also offered to bring Swinson back as a paid consultant at a salary of \$150,000.00

per year, and Chapman claimed that this would work because "no one would know." Finally, Chapman said that if the gift card controversy went away and Chapman kept her job, the City would re-hire Swinson in March, 2023 at an increased salary of \$175,000.00 per year.

10. Swinson told Chapman in clear terms that she would not lie or participate in any type of cover up.
11. In response to Swinson's refusal to participate in Chapman's proposal schemes of dishonesty and deceit, Chapman sent Swinson home and asked that Swinson think about it further. However, Swinson learned later that same afternoon that she was locked out of the computer system, workplace and her City-issued cell phone.
12. The next day was December 1 and Chapman, on behalf of the City, terminated Swinson.
13. After being terminated, Swinson demanded that the City honor the Severance Pay Agreement (Exhibit A).
14. The City has failed and refused to honor the Severance Pay Agreement, thus causing Swinson to suffer damages.
15. Further, the City has failed and refused to provide any factual grounds or legitimate legal theories pursuant to which the City's performance under the Severance Pay Agreement could be excused.

COUNT I - BREACH OF CONTRACT

16. Paragraphs 1 through 15 are realleged and incorporated herein by reference.
17. Pursuant to the terms of the Severance Pay Agreement, Swinson is and has been entitled to receive severance pay, which is specified as "continued salary and benefits at the employee's then current rate of compensation, paid bi-weekly in the normal manner, for a period of six months of salary plus already accrued annual leave...."
18. The City has breached its obligations to Swinson and has stated a refusal to honor the terms of the Severance Pay Agreement, although the City has failed and refused to provide any legitimate justification for its position.
19. As a result of the City's breach of contract, Swinson has sustained damages and continues to suffer damages.

COUNT II - FRAUD (ACTUAL OR CONSTRUCTIVE)

20. Paragraphs 1 through 19 are realleged and incorporated herein by reference.
21. This count is pled in the alternative to Swinson's breach of contract claim, as permitted by Rule 1:4(k) of the Rules of the Supreme Court of Virginia.

22. Based upon the City's actions and communications with Swinson during and after her employment, it appears that the City never intended to honor the Severance Pay Agreement attached hereto as Exhibit A.
23. When Swinson and Chapman were negotiating the terms of her employment in November 2022, Chapman represented to Swinson that the Severance Pay Agreement was standard and appropriate, and Chapman led Swinson to believe that the City would honor it.
24. Swinson relied upon representations made by Chapman to the effect that Exhibit A constituted a legitimate and enforceable contractual agreement between the City and Swinson, and that it would be honored by the City.
25. As a result of Chapman's misrepresentations on behalf of the City that caused Swinson to sign the Severance Pay Agreement and commence working with the City as a Deputy City Manager, and as a result of Swinson's reasonable reliance on the misrepresentations that induced her to commence working for the City, and as a result of the City's failure and refusal to honor the commitments set forth in the Severance Pay Agreement, Swinson has been damaged and is continuing to suffer damages, both financial and personal in nature.
26. Swinson's damages include loss of income, damage to her employability, damage to her reputation, embarrassment and

stress.

27. If the evidence proves that Chapman, on behalf of the City, made one or more intentional and knowing misrepresentations to Swinson, then the City is liable for actual fraud.
28. However, if the evidence demonstrates that Chapman's misrepresentations made on behalf of the City were made innocently or negligently, then that constitutes constructive fraud.
29. In the event that Swinson proves her fraud claim, she will also be entitled to receive attorney's fees and hereby makes a claim for such relief.

COUNT III - WRONGFUL DISCHARGE

30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.
31. Swinson was terminated because of her refusal to engage in deceit and lies that were requested and directed by her supervisor, Chapman.
32. Chapman, acting on behalf of the City, terminated Swinson as a result of Swinson's refusal to lie and engage in dishonest communications that would have interfered with an investigation into the manner in which gift cards had been and were being handled.
33. Swinson refused to engage in illegal and dishonest behavior as a condition of her employment, and was discharged because of her

refusal.

34. Terminating an employee based upon the employee's refusal to lie, commit acts of dishonesty and interfere with an investigation violates Virginia public policy and provides grounds for a common law wrongful termination claim.
35. As a result of the City's wrongful termination of Swinson, Swinson has suffered and continues to suffer damages, including loss of income, damage to her employability, damage to her reputation, embarrassment and stress.

WHEREFORE, for the foregoing reasons, plaintiff Sunshine Swinson requests the following relief:

- A. Pursuant to Count I, Swinson requests compensatory damages from the City of Portsmouth in an amount demonstrated by the evidence up to the sum of \$100,000.00, plus costs, pre-judgment and post-judgment interest, and all other relief allowable as a matter of law;
- B. Pursuant to Count II, Swinson requests an award of compensatory damages in an amount demonstrated by the evidence up to the sum of \$500,000.00, plus an award of attorney's fees (as allowed in fraud cases) and costs, pre-judgment and post-judgment interest, and such other and further relief as allowed by law; and
- C. Pursuant to Count III, Swinson requests an award of compensatory damages in an amount demonstrated by the evidence up to the

sum of \$500,000.00, plus an award of costs, pre-judgment and post-judgment interest and all other relief as allowed by a matter of law.

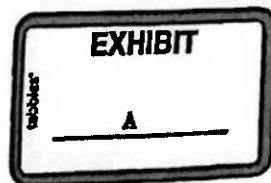
Trial by jury is demanded.

SUNSHINE SWINSON

By 

Of Counsel

Kevin E. Martingayle, Esquire (VSB #33865)
BISCHOFF MARTINGAYLE, P.C.
3704 Pacific Avenue, Suite 300
Virginia Beach, VA 23451
(757) 233-9991
(757) 416-6009 (direct dial)
(757) 428-6982 (facsimile)
Email: martingayle@bischoffmartingayle.com
Counsel for Plaintiff



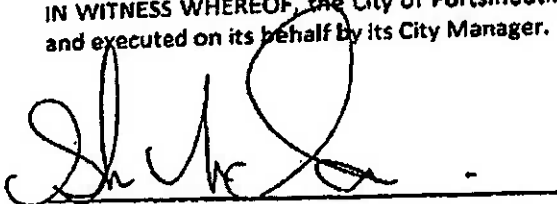
Severance Pay Agreement

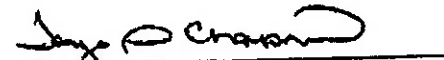
In consideration of the confidentiality, sensitivity, and strategical risks associated with the position of Deputy City Manager, this agreement is entered into and made effective on November 14, 2022 by and between Sunshine Swinson, ("Employee") and the City of Portsmouth, ("Employer").

Employer and Employee agree to the following terms:

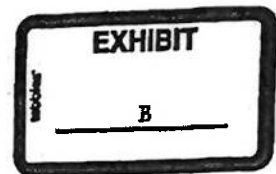
- A. The City of Portsmouth shall have the right to terminate this agreement at any time by providing the employee with written notice setting forth the effective date of termination and paying severance pay, as set forth in Section B below.
- B. In the event of termination of employment by the City of Portsmouth, the Employee shall receive severance pay. Severance pay shall consist of continued salary and benefits at the employee's then current rate of compensation, paid bi-weekly in the normal manner, for a period of six months of salary plus already accrued annual leave (but not exceeding a maximum of 352 hours). Other than said severance pay, the City shall have no other financial obligation to Employee.
- C. If the City of Portsmouth, at any time during the employment of the Employee,
 1. Reduces the salary of other financial benefits of the Employee in greater percentage than an applicable across-the-board reduction for all or substantially all City general employees; or
 2. If City refuses, following written notice to comply with any provision benefiting the Employee herein, then he may resign and his resignation shall be deemed a termination without cause, the provisions of Section B with regard to severance pay shall apply.

IN WITNESS WHEREOF, the City of Portsmouth, Virginia, has caused this Agreement to be signed and executed on its behalf by its City Manager.


Sunshine Swinson


Tonya D. Chapman, City Manager

Office of the City Manager
801 Crawford St • Portsmouth, Virginia 23704-3822
Office: (757) 393-8641 • Fax: (757) 393-3241



THE CITY OF
PORTSMOUTH

December 1, 2022

Electronic Mail & First-Class Mail
Ms. Sunshine Swinson
[REDACTED]

Dear Ms. Swinson:

This letter confirms that your employment with the City of Portsmouth was terminated effective December 1, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Tonya D. Chapman".

Tonya D. Chapman
City Manager



BISCHOFF MARTINGAYLE 2023 FEB -1 PM 3:46

A REPUTATION FOR RESULTS™

CONFIDENTIAL

Reply to Virginia Beach office
E-Mail: martingayle@bischoffmartingayle.com
Direct Dial (757) 416-6009

January 31, 2023

Via Federal Express

Cynthia P. Morrison, Clerk
Portsmouth Circuit Court
1345 Court Street, Suite 101
Portsmouth, VA 23705

Re: Sunshine Swinson v. City of Portsmouth

Dear Ms. Morrison:

Enclosed please find a civil cover sheet and Complaint concerning the above-referenced case which I ask that you file. I have enclosed a check in the amount of \$354.00 for the filing fee. Please contact my assistant, Katie Seabright (757-416-6027), once the attached copies have been processed for service on the defendant so that she may send our private process server to retrieve them.

Thanking you for your assistance, and with kind regards, I am,

Very truly yours,


Kevin E. Martingayle

KM/kls
Enclosures
cc: Sunshine Swinson

bischoffmartingayle.com

Virginia Beach
3704 Pacific Avenue, Suite 300
Virginia Beach, VA 23451-2719
Ph 757 233 9991
Fax 757 428 6982

Norfolk
208 East Plume Street, Suite 247
Norfolk, VA 23510-1794
Ph 757 233 9991
Fax 757 440 3924

Eastern Shore
34 Market Street
Onancock, VA 23417-1910
Ph 757 787 7788
Fax 757 428 6982

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL23-577-00
(CLERK'S OFFICE USE ONLY)

PORTSMOUTH

Circuit Court

SUNSHINE SWINSON
PLAINTIFF(S)

v./In re:

CITY OF PORTSMOUTH
DEFENDANT(S)

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- ☐ Claim Impleading Third Party Defendant
 - ☐ Monetary Damages
 - ☐ No Monetary Damages
- ☐ Counterclaim
 - ☐ Monetary Damages
 - ☐ No Monetary Damages
- ☐ Cross Claim
- ☐ Interpleader
- ☐ Reinstatement (other than divorce or driving privileges)
- ☐ Removal of Case to Federal Court

Business & Contract

- ☐ Attachment
- ☐ Confessed Judgment
- ☒ Contract Action
- ☐ Contract Specific Performance
- ☐ Detinue
- ☐ Garnishment

Property

- ☐ Annexation
- ☐ Condemnation
- ☐ Ejectment
- ☐ Encumber/Sell Real Estate
- ☐ Enforce Vendor's Lien
- ☐ Escheatment
- ☐ Establish Boundaries
- ☐ Landlord/Tenant
 - ☐ Unlawful Detainer
- ☐ Mechanics Lien
- ☐ Partition
- ☐ Quiet Title
- ☐ Termination of Mineral Rights

Tort

- ☐ Asbestos Litigation
- ☐ Compromise Settlement
- ☐ Intentional Tort
- ☐ Medical Malpractice
- ☐ Motor Vehicle Tort
- ☐ Product Liability
- ☐ Wrongful Death
- ☐ Other General Tort Liability

ADMINISTRATIVE LAW

- ☐ Appeal/Judicial Review of Decision of (select one)
 - ☐ ABC Board
 - ☐ Board of Zoning
 - ☐ Compensation Board
 - ☐ DMV License Suspension
 - ☐ Employee Grievance Decision
 - ☐ Employment Commission
 - ☐ Local Government
 - ☐ Marine Resources Commission
 - ☐ School Board
 - ☐ Voter Registration
 - ☐ Other Administrative Appeal

DOMESTIC/FAMILY

- ☐ Adoption
 - ☐ Adoption - Foreign
- ☐ Adult Protection
- ☐ Annulment
 - ☐ Annulment - Counterclaim/Responsive Pleading
- ☐ Child Abuse and Neglect - Unfounded Complaint
- ☐ Civil Contempt
- ☐ Divorce (select one)
 - ☐ Complaint - Contested*
 - ☐ Complaint - Uncontested*
 - ☐ Counterclaim/Responsive Pleading
 - ☐ Reinstatement - Custody/Visitation/Support/Equitable Distribution
- ☐ Separate Maintenance
 - ☐ Separate Maintenance Counterclaim

WRITS

- ☐ Certiorari
- ☐ Habeas Corpus
- ☐ Mandamus
- ☐ Prohibition
- ☐ Quo Warranto

PROBATE/WILLS AND TRUSTS

- ☐ Accounting
- ☐ Aid and Guidance
- ☐ Appointment (select one)
 - ☐ Guardian/Conservator
 - ☐ Standby Guardian/Conservator
 - ☐ Custodian/Successor Custodian (UTMA)
- ☐ Trust (select one)
 - ☐ Impress/Declare
 - ☐ Reformation
- ☐ Will (select one)
 - ☐ Construe
 - ☐ Contested

MISCELLANEOUS

- ☐ Appointment (select one)
 - ☐ Church Trustee
 - ☐ Conservator of Peace
 - ☐ Marriage Celebrant
- ☐ Bond Forfeiture Appeal
- ☐ Declaratory Judgment
- ☐ Declare Death
- ☐ Driving Privileges (select one)
 - ☐ Reinstatement pursuant to § 46.2-427
 - ☐ Restoration - Habitual Offender or 3rd Offense
- ☐ Expungement
- ☐ Firearms Rights - Restoration
- ☐ Forfeiture of U.S. Currency
- ☐ Freedom of Information
- ☐ Injunction
- ☐ Interdiction
- ☐ Interrogatory
- ☐ Judgment Lien-Bill to Enforce
- ☐ Law Enforcement/Public Official Petition
- ☐ Name Change
- ☐ Referendum Elections
- ☐ Sever Order
- ☐ Taxes (select one)
 - ☐ Correct Erroneous State/Local
 - ☐ Delinquent
- ☐ Vehicle Confiscation
- ☐ Voting Rights - Restoration
- ☐ Other (please specify)

☒ Damages in the amount of \$ 1,100,000.00 are claimed.

DATE

KEVIN E. MARTINGAYLE, ESQUIRE

PRINT NAME

3704 PACIFIC AVE, STE 300

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

VIRGINIA BEACH, VA 23451 (757) 233-9991

martingayle@bischoffmartingayle.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

☐ PLAINTIFF

☐ DEFENDANT

☒ ATTORNEY FOR

☐ PLAINTIFF

☐ DEFENDANT

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.