

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

SCOTT V. PHILLIPS-GARTNER,

Plaintiff,

V.

Civil Action No.: 2:18cv565

CITY OF NORFOLK, VIRGINIA,

Defendant.

COMPLAINT

COMES NOW the plaintiff, Scott V. Phillips-Gartner (hereinafter "Gartner") and for his Complaint against City of Norfolk, Virginia (hereinafter "Norfolk"), states as follows:

The Parties

1. At all times relevant to this action, Gartner was an individual and a resident of Suffolk, Virginia and an employee of Norfolk.
2. At all times relevant to this action, Norfolk was a municipal corporation employing more than 500 individuals in the Norfolk, Virginia area. At all times relevant to this action, Norfolk was an "employer" within the meaning of Title VII §701, 42 U.S.C. §2000e(b) in that Norfolk was a person engaging in an industry affecting commerce and had fifteen or more employees for each working day in each of the twenty or more calendar

weeks during the years that it employed Gartner or the preceding calendar year.

Jurisdiction and Venue

3. This case involves an action discrimination in employment based on sex, hostile work environment based upon gender and retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq.
4. This Court has subject matter jurisdiction pursuant to 42 U.S.C. §2000e-5(f) and 28 U.S.C. §1343(4).
5. Gartner timely filed charges of gender discrimination and retaliation with the United States Equal Employment Opportunity Commission (“EEOC”) on March 15, 2017 (See Attached Exhibit A, charge number 437-2017-00543), on September 5, 2017 (See attached Exhibit B, charge number 437-2017-01088) on November 9, 2017 (See attached Exhibit C, charge number 437-2018-00127) and again on February 15, 2018 (See attached Exhibit D, charge number 437-2018-00568).
6. On December 7, 2017, Norfolk advised Gartner that his employment would be terminated. As a result of this advice, Gartner resigned in lieu of termination advising Norfolk that his employment would end on December 31, 2017. The retirement dates was eventually extended to January 31, 2018.
7. On July 25, 2018, Gartner received Notice of Right to Sue letters from the United States Department of Justice on each charge.

8. Gartner has exhausted his administrative remedies prior to filing this action.
9. Venue is proper in this Honorable Court as all acts giving rise to plaintiff's cause of action occurred within the Eastern District of Virginia in the Norfolk division.

Facts

10. Gartner became employed by Norfolk in April of 1991 as a telecommunications officer. In 2013, Gartner was promoted from firefighter cardiac technician to Assistant Fire Marshall for the City of Norfolk. During his tenure in the Norfolk Fire Department, Gartner was an Assistant Fire Marshall for Norfolk and a senior member of the Norfolk Bomb Squad.
11. Gartner is a veteran of the United States Navy with war time service.
12. Gartner is a homosexual male and a member of a protected class within the meaning of Title VII of the Civil Right Act of 1964.
13. In October of 2014, a female employee of the Norfolk Fire Department named Karen Baka solicited a large number of staff to write letters of complaint regarding Chief Burris and Captain Ansell of the Norfolk Fire Department disparate treatment of female employees.
14. At all times relevant to this action, Chief Burris and Chief Wise were direct supervisors of Gartner.
15. Another female employee of the Norfolk Fire Department, Karen Barnes, filed a complaint with the City of Norfolk alleging gender discrimination by Chief Burris in the fall.

16. In October 2014, Gartner, a male, married his longtime partner whom is also male.
17. After his marriage, Gartner updated his personnel records with the city via its computer system. Chief Burriss and Chief Wise of the Norfolk Fire Department had access to these records.
18. In October of 2014, in the presence of Gartner and others, Captain Ansell with the Norfolk Fire Department made a disparaging comment about gay marriage when a television commercial was broadcast in a common area of the fire department.
19. Throughout 2015, Chief Burriss routinely subjected Gartner and Barnes to verbal attacks and treated them less favorably than similarly situated heterosexual male employees.
20. In December 2015, Chief Burriss verbally attacked Gartner's sexuality during an open staff meeting by asking "Where is Ms. Gartner?" which prompted other coworkers to laugh. Gartner made a complaint about this conduct to Norfolk.
21. In January 2016, Chief Wise of the Norfolk Fire Department advised Gartner and Karen Barnes that he was "looking into" their complaints about the conduct of Chief Burriss at the December 2015 meeting.
22. In February 2016, Chief Mann was brought in to investigate the complaints of discrimination by Gartner and Barnes. Chief Mann and Chief Burriss would go to lunch often during this period and Chief Mann advised Gartner that Chief Burriss was a friend of his.

23. From January 2016 through March 2016, Chief Wise routinely belittled Gartner in front of colleagues.
24. In May, 2016, Gartner and Karen Barnes brought their complaints about Chief Burris and the hostile work environment at the fire department to Norfolk's City Auditor, John Sanderlin. Gartner specifically advised Sanderlin that ever since he was married and Chief Burris became aware that he was in a homosexual marriage, he had been treated far less favorably than his similarly situated heterosexual male coworkers. Gartner also advised Sanderlin that he had been retaliated against for his opposition to said discrimination.
25. In July 2016, Chief Burris said that he was going to place Gartner "in the middle of a large crowd of demonstrators holding up a sign" implying that he wished he could set Gartner up to be attacked by protestors that opposed homosexual marriage. During this same encounter, Chief Burris asked Gartner if he "knew what was going on" with the gender discrimination complaint that had been filed by Karen Barnes.
26. On March 6, 2017, Gartner was suddenly called in to a meeting with Chief Wise and Chief Brooks. Chief Wise demanded that Gartner turn in his city issued firearm, computer and cell phone and was handed a letter stating that Gartner's police powers had been removed. Chief Wise also stripped of his duties as an Information Technology administrator for the department. Gartner was also no longer allowed to use Norfolk vehicles.

Gartner was demoted and reassigned to a temporary facility miles from his usual office with little to no job duties.

27. On March 16, 2017, Gartner filed his first charge of discrimination based on gender and retaliation with the U.S. Equal Employment Opportunity Commission ("EEOC"). Gartner also filed nine (9) internal grievances with the City of Norfolk complaining of discrimination based on sexual orientation and retaliation.
28. After Gartner filed his first discrimination charge with the EEOC, the City of Norfolk continued to retaliate against Gartner. On March 23, 2017, the City denied Gartner's request for routine bomb squad training and denied Gartner the ability to maintain various work certifications that directly resulted in Gartner losing pay and benefits.
29. On March 24, 2017 Norfolk ordered Gartner to retire his service dog in a deliberate attempt to hurt Gartner.
30. From April 1, 2017 through November 2017, Norfolk kept Gartner on temporary work assignments with little or no work to do and never restored his police powers or ability to complete training or certification activities. During this time period, Norfolk refused to restore Gartner's former job privileges (use of City issued firearm, vehicle, computer, cell phone and IT duties).
31. Finally, on November 3, 2017, Chief Wise advised Gartner that we was actively attempting to have Gartner terminated.

32. Rather than be terminated as Chief Wise indicated, on December 7, 2017, Gartner reluctantly tendered his written resignation to Chief Wise ending his 27 year career with the City of Norfolk. (See attached Exhibit E).

Count I (Title VII--Hostile Work Environment)

33. Paragraphs 1 through 32 of the Complaint are hereby fully incorporated by reference as if fully re-alleged herein.

34. As a term and condition of his employment, Norfolk subjected Gartner to an offensive, demeaning, humiliating and hostile work environment based upon Gartner's sexual orientation (a homosexual male).

35. The conduct of Norfolk was unwelcome, was based upon Gartner's gender and sexual orientation (a homosexual male) and was severe and pervasive enough to create an objectively hostile, offensive and abusive working environment based upon sex/gender so as to alter the conditions of Gartner's employment.

36. The offensive conduct of Norfolk was severe and pervasive enough to cause Gartner to suffer humiliation and stress at work as well as psychological harm that interfered with his job performance.

37. Even after Gartner and others reported the severe and pervasive harassment by Gartner's supervisors to Norfolk's human resources department and the City Auditor, Norfolk took no remedial action.

38. As a direct and proximate result of the hostile and offensive work environment based upon gender/sexual orientation that was created and maintained by Norfolk, Gartner has suffered damages including denial of

job promotions, termination of employment, pain and suffering and loss of enjoyment of life.

Count II (Title VII—Gender Discrimination)

39. Paragraphs 1 through 32 of the Complaint are hereby fully incorporated by reference as if fully re-alleged herein.
40. Norfolk routinely treated its male homosexual employees less favorably than similarly situated heterosexual male employees.
41. Norfolk, through its supervisors, routinely discriminated against its male homosexual employees, including Gartner, subjected them to harsh and demeaning terms and conditions of employment while not subjecting similarly situated male heterosexual employees to those same terms and conditions of employment.
42. At all times that Gartner was subjected to the foregoing adverse employment actions, Gartner performed his job duties at a level that reasonably met Norfolk's legitimate expectations.
43. As a direct and proximate result of Norfolk's actions, Gartner was subjected to adverse employment actions based upon his gender and sexual orientation.
44. As a direct and proximate result of Norfolk's actions, Gartner suffered damages including lost salary and benefits as well as pain and suffering, inconvenience and loss of enjoyment of life.

Count III (Title VII—Retaliation—Oppositional Activities)

45. Paragraphs 1 through 33 of the Complaint are hereby fully incorporated by reference as if fully re-alleged herein.
46. Norfolk knowingly and intentionally retaliated against Gartner, including but not limited to constructively terminating his employment, in direct retaliation for Gartner's actions taken to oppose gender discrimination against Karen Barnes and in direct retaliation for Gartner's actions taken to oppose gender and sexual orientation discrimination against himself. Those actions include, but are not limited to: Gartner's actions in supporting Karen Barnes' complaints of general discrimination to management and for reporting gender and sexual orientation discrimination at Norfolk Fire Department both to management at Norfolk's City Auditor and Human Resources Department and to the EEOC.
47. In fact, the retaliatory conduct by Norfolk towards Gartner increased and became more severe after Gartner complained to management at Norfolk's City Auditor and Human Resources Department and to the EEOC.
48. As a direct and proximate result of Norfolk's retaliation against Gartner, he has suffered damages including lost salary and benefits as well as pain and suffering, inconvenience and loss of enjoyment of life.

Count IV (Title VII—Retaliation—Participation Activities)

49. Paragraphs 1 through 33 of the Complaint are hereby fully incorporated by reference as if fully re-alleged herein.
50. Norfolk knowingly and intentionally retaliated against Gartner, including but not limited to constructively terminating his employment, in direct retaliation for Gartner's filing complaints for gender discrimination with the EEOC and for supporting Karen Barnes in her efforts to report and oppose gender discrimination through the EEOC.
51. As a direct and proximate result of Norfolk's retaliation against Gartner for participating in EEOC proceedings, he has suffered damages including lost salary and benefits as well as pain and suffering, inconvenience and loss of enjoyment of life.

Jury Demand

52. Gartner demands a trial by jury on all issues so triable in this action.

Relief Sought

WHEREFORE, Gartner moves this Honorable Court to enter judgment in his favor against Norfolk and to award:

- A. All of Gartner's lost salary and benefits from March 16, 2017 until entry of judgment in this action plus interest on such back pay;
- B. Gartner's lost future salary and benefits;
- C. Damages for emotional pain and suffering, inconvenience and loss of enjoyment of life;

- D. An award of Gartner's attorney's fees and costs incurred in this action as well as other costs incurred in this action.

Respectfully Submitted,

SCOTT V. PHILLIPS-GARTNER

A handwritten signature in black ink, appearing to read 'W. Barry Montgomery', is written over a solid horizontal line.

Of Counsel

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