

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GERALD LYNN BOSTOCK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO: 1:16-cv-01460-ELR-WEJ
CLAYTON COUNTY,)	
)	
Defendant.)	

**DEFENDANT’S ANSWER TO PLAINTIFF’S
SECOND AMENDED COMPLAINT**

COMES NOW, Clayton County (“the County”), the Defendant in the above-referenced matter, and files this, its Answer to Plaintiff’s Second Amended Complaint (“SAC”). The County shows this Honorable Court as follows:

FIRST DEFENSE

The SAC and each of its causes of action fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Some or all of Plaintiff’s claims are barred by the applicable statute of limitations, including the failure to file the instant lawsuit within the time period required by the applicable statute.

THIRD DEFENSE

Plaintiff's damages are limited to those remedies and those amounts provided for by statute.

FOURTH DEFENSE

Even if any adverse actions were taken against the Plaintiff for reasons related to Plaintiff's protected class status or any exercise by Plaintiff of protected rights, Plaintiff would have been subject to adverse employment actions or otherwise for reasons unrelated to any protected class status or activities, including after-acquired evidence.

FIFTH DEFENSE

Any adverse action taken against Plaintiff was done so in good faith without malice or reckless indifference to Plaintiff's protected rights.

SIXTH DEFENSE

All claims of the Plaintiff brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., are barred to the extent that they were never made the subject of a charge of discrimination with the applicable government agency within the time required by law or because the claims are not within the scope of any charge of discrimination filed by Plaintiff.

SEVENTH DEFENSE

Some or all of Plaintiff's claims are barred by Plaintiff's failure to exhaust administrative remedies.

EIGHTH DEFENSE

Plaintiff has failed to mitigate damages as required by law.

NINTH DEFENSE

Some or all of Plaintiff's claims are barred by the doctrines of waiver, estoppel, fraud and/or illegality.

TENTH DEFENSE

The SAC fails to state a claim for punitive, actual, special, exemplary, liquidated, and/or compensatory damages.

ELEVENTH DEFENSE

Plaintiff has unclean hands.

TWELFTH DEFENSE

The Defendant reserves the right to assert any additional affirmative defenses allowed by Rule 8 depending upon any evidence discovered in pursuit of this litigation.

THIRTEENTH DEFENSE

For answer to the respective paragraphs of the SAC, Defendant shows as follows:

PARTIES

1.

Defendant admits the allegations pled in paragraph 1 of the SAC.

2.

Defendant admits that Plaintiff attempts to invoke jurisdiction, and denies the remaining allegations pled in paragraph 2 of the SAC.

3.

Defendant admits that it a political subdivision of the State of Georgia and is subject to the jurisdiction of this Court. Defendant denies the remaining allegations pled in paragraph 3 of the SAC.

4.

Defendant admits the allegations pled in paragraph 4 of the SAC.

5.

Defendant admits the allegations pled in paragraph 5 of the SAC.

ADMINISTRATIVE

6.

Defendant admits that Plaintiff filed a timely charge of sexual orientation discrimination with the Equal Employment Opportunity Commission. Defendant denies the remaining allegations pled in paragraph 6 of the SAC.

7.

Defendant admits the allegations pled in paragraph 7 of the SAC.

JURISDICTION AND VENUE

8.

Defendant admits that Plaintiff attempts to invoke subject matter jurisdiction, and denies the remaining allegations pled in paragraph 8 of the SAC.

9.

Defendant admits that Plaintiff attempts to invoke venue, and denies the remaining allegations pled in paragraph 9 of the SAC.

10.

Defendant admits that Plaintiff attempts to invoke venue, and denies the remaining allegations pled in paragraph 10 of the SAC.

STATEMENT OF FACTS

11.

Defendant admits the allegations pled in paragraph 11 of the SAC.

12.

Defendant admits that Plaintiff held himself out as being gay, and is without knowledge or information sufficient to admit or deny the truth of the remaining allegations pled in paragraph 12 of the SAC. Further responding, Defendant shows that the fact that Plaintiff held himself out as being gay was widely known to employees who worked in the Clayton County Juvenile Court during most of Plaintiff's employment with the County.

13.

Defendant admits that, at the time of his termination, Plaintiff held the position of Child Welfare Service Coordinator, that he was assigned to the Clayton County Juvenile Court, and that he was responsible for overseeing the Clayton County Court Appointed Special Advocate program. Defendant denies the remaining allegations pled in paragraph 13 of the SAC.

14.

Defendant admits that Plaintiff received good performance evaluations and that the County's CASA program received various awards. Defendant is without

knowledge or information to admit or deny the truth of the remaining allegations pled in paragraph 14 of the SAC.

15.

Defendant admits that Plaintiff became involved with a gay recreational softball league, and is without knowledge or information sufficient to admit or deny the truth of the remaining allegations pled in paragraph 15 of the SAC.

16.

Defendant denies the allegations pled in paragraph 16 of the SAC.

17.

Defendant denies the allegations pled in paragraph 17 of the SAC.

18.

Defendant admits that Plaintiff was advised that it was conducting an internal audit of program funds that Plaintiff managed. Defendant denies the remaining allegations pled in paragraph 18 of the SAC.

19.

Defendant denies the allegations pled in paragraph 19 of the SAC

20.

Defendant denies the allegations pled in paragraph 20 of the SAC.¹ Further responding, Defendant shows that a former employee (who was hired by Plaintiff and also held himself out as being gay) sent an email to a supervisor alleging that Plaintiff was misusing program funds and urging that an investigation be conducted into Plaintiff's misconduct. This email started a sequence of events that led to the internal audit referenced in paragraph 20 of the SAC.

21.

Defendant denies the allegations pled in paragraph 21 of the SAC.

22.

Defendant admits that it terminated Plaintiff's employment, and denies the remaining allegations pled in paragraph 22 of the SAC.

23.

Defendant admits that it terminated Plaintiff's employment, and denies the remaining allegations pled in paragraph 23 of the SAC.

¹ In addition, Defendant notes that Plaintiff's claim that it initiated the audit because of Plaintiff's failure to conform to a gender stereotype was dismissed by the Court in its July 21, 2017 Order (Doc. .24). Plaintiff did not appeal that portion of the Court's 7/21/17 Order.

COUNT 1
Sex Discrimination in Violation of
Title VII of the Civil Rights Act of 1964, As Amended

24.

Defendant incorporates by reference their responses to paragraphs 1 through 23 of the SAC as though set forth specifically herein.

25.

Defendant admits that Plaintiff held himself out as being gay, and is without knowledge or information sufficient to admit or deny the truth of the remaining allegations pled in paragraph 25 of the SAC. Further responding, Defendant shows that the fact that Plaintiff held himself out as being gay was widely known to employees who worked in the Clayton County Juvenile Court during most of Plaintiff's employment with the County.

26.

Defendant admits the allegations pled in paragraph 26 of the SAC.

27.

Defendant admits the allegations pled in paragraph 27 of the SAC.

28.

Defendant admits the allegations pled in paragraph 28 of the SAC.

29.

Defendant denies the allegations pled in paragraph 29 of the SAC.

30.

Defendant denies the allegations pled in paragraph 30 of the SAC.

31.

Defendant denies the allegations pled in paragraph 31 of the SAC.

32.

Defendant denies the allegations pled in paragraph 32 of the SAC.

33.

Defendant denies the allegations pled in paragraph 33 of the SAC.

34.

Defendant denies that Plaintiff is entitled to any of the relief set forth in his Prayer for Relief in Sections (a) – (h) after paragraph 33 of the SAC.

35.

Any allegations in the SAC not heretofore answered, qualified, or denied are here and now denied as though set forth specifically and denied.

WHEREFORE, the Defendant in the above-referenced civil action respectfully request that this Court:

1. Dismiss with prejudice Plaintiff's SAC;

2. Award Defendant its reasonable attorney's fees, costs, and expenses pursuant to 42 U.S.C. § 1988 or otherwise; and
3. Award any and all other relief to Defendant that this Court may deem necessary and proper.

DEMAND FOR TRIAL BY JURY

Defendant demands trial by jury as to all issues alleged in this civil action.

FREEMAN MATHIS & GARY, LLP

/s/Jack R. Hancock

Jack R. Hancock
Georgia Bar No. 322450
William H. Buechner, Jr.
Georgia Bar No. 086392
Michael M. Hill
Georgia Bar No. 770486

Attorneys for Clayton County

100 Galleria Parkway, Suite 1600
Atlanta, Georgia 30339
Telephone: (770) 818-0000
Facsimile: (770) 937-9960
jhancock@fmglaw.com
bbuechner@fmglaw.com
mhill@fmglaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing **DEFENDANT'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Thomas J. Mew, IV
Edward D. Buckley
Andrew Beal
Rachel Berlin Benjamin
Buckley Beal LLP
600 Peachtree Street, NE, Suite 3900
Atlanta, GA 30308

This 21st day of October, 2020.

s/ Jack R. Hancock

Jack R. Hancock
Georgia Bar No. 322450

FREEMAN MATHIS & GARY, LLP
100 Galleria Parkway, Suite 1600
Atlanta, GA 30339
T: (770) 818-0000
F: (770) 937-9960
E: j Hancock@fmglaw.com