

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO.

JAMES N. THIVIERGE,

Plaintiff

v.

TOWN OF AMESBURY, MAYOR KEZER,
TOWN ASSESSOR, TOWN CLERK,
AGENT OF LIBRARY,

Defendants

ANSWER

Defendants Town of Amesbury, Mayor Kezer, Town Assessor, and Town Clerk answer the unnumbered paragraphs of the Complaint as follows:

Page 1, Paragraph 1:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations set forth in this paragraph.

Page 1, Paragraph 2:

The defendants are without sufficient information or knowledge to enable them to admit or deny whether the plaintiff has “broken no law” and deny the remaining allegations set forth in this paragraph to the extent they pertain to the defendants.

Page 1, Paragraph 3, Sentence 1:

This sentence sets forth the relief requested by the plaintiff and therefore requires no response. To the extent it sets forth factual allegations, they are denied.

Page 1, Paragraph 3, Sentence 2:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of this sentence.

Pages 1-2, Paragraph 4, Sentence 1:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of this sentence.

Page 2, Paragraph 1, Sentence 1:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of this sentence to the extent they pertain to the plaintiff's feelings. To the extent they do not pertain to the plaintiff's feelings, said allegations are denied.

Page 2, Paragraph 1, Sentences 2-3:

The defendants deny the allegations of these sentences.

Page 2, Paragraph 2:

The defendants deny the allegations of this paragraph.

THE FACTS

Page 2, Paragraph 3, Sentence 1-2:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of these sentences.

Page 2, Paragraph 3, Sentence 3:

Admitted that the plaintiff appeared in the office of the Town Clerk and demanded to know why the Town Clerk received a copy of an email sent by a City Councilor. The defendants are without sufficient information or knowledge to enable them to admit or deny the remaining allegations of this sentence.

Page 2, Paragraph 3, Sentence 4:

Admitted that during the incident described in the Complaint, the plaintiff directed an expletive at the Town Clerk and left the office of the Town Clerk. Denied as to the remaining allegations of this sentence.

Page 2, Paragraph 3, Sentence 5:

Denied.

Page 2, Paragraph 3, Sentence 6:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of this sentence.

Page 3, Paragraph 1:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of this paragraph.

Page 3, Paragraph 2, Sentence 1:

The defendants are without sufficient information or knowledge to enable them to admit or deny whether the plaintiff has “broken no law,” but denied as to the remaining allegations of this sentence.

Page 3, Paragraph 2, Sentence 2:

This sentence describes the relief the plaintiff is requesting and requires no response. To the extent this sentence contains allegations of fact, they are denied.

SOURCES OF LAW

Page 3, Paragraph 3:

This paragraph is merely an introduction to a recitation of legal authority and therefore requires no response. To the extent this paragraph contains allegations of fact, they are denied.

Pages 3-4, Paragraph 4:

This paragraph is merely a recitation of plaintiff's interpretation of legal authority and therefore requires no response. To the extent it contains allegations of fact, they are denied.

Page 4, Paragraph 1:

The letter from Mayor Kezer speaks for itself. All remaining allegations of this paragraph are denied.

Page 4, Paragraph 2:

This paragraph is merely a recitation of legal authority and therefore requires no response. To the extent it contains allegations of fact, they are denied.

Page 4, Paragraph 3, Sentences 1-3:

These sentences merely recite plaintiff's interpretation of legal authority and therefore contain allegations of fact, they are denied.

Page 4, Paragraph 3, Sentence 4:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of this sentence.

Page 4, Paragraph 3, Sentence 5:

This sentence is a plea to the Court to understand the plaintiff's contentions, to which no response is required.

Page 4, Paragraph 3, Sentence 5:

Denied.

Pages 4-5, Paragraph 4:

Denied.

BACKGROUND INFORMATION

Page 5, Paragraph 1:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of this, in part because the plaintiff failed to serve any of the described attachments upon the defendants with the Complaint.

IN CLOSING

Page 5, Paragraph 2, Sentence 1:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations of this sentence with regard to whether the plaintiff has “broken no law.” The remaining allegations of said sentence are a request for relief from the Court to which no response is required.

Pages 5-6, Paragraph 2, Sentence 2:

Denied.

Pages 5-6, Paragraph 2, Sentence 3-4:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations in these sentences.

Page 6, Paragraph 1:

The defendants are without sufficient information or knowledge to enable them to admit or deny the allegations in this paragraph.

Page 6, Paragraph 2:

This paragraph merely describes the relief requested by the plaintiff and requires no response.

FIRST DEFENSE

The complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The complaint should be dismissed for improper service of process.

THIRD DEFENSE

The complaint should be dismissed for insufficiency of process.

FOURTH DEFENSE

The defendants acted at all times relevant hereto in good faith and pursuant to their statutory and regulatory authority under federal, state and/or local law.

FIFTH DEFENSE

The complaint fails to state a cause of action for which relief may be granted against the defendants Town Clerk and Town Assessor in that it states no personal involvement, specific regulation or official policy or knowledge by said defendants of the alleged wrongdoing or of any pattern of wrongful behavior.

SIXTH DEFENSE

Defendants Mayor Thatcher Kezer, Town Clerk and Town Assessor deny all of plaintiff's allegations of wrongful conduct and state that they were at all relevant times public employees acting within the scope of their employment with good faith and in the reasonable belief that their actions were lawful.

SEVENTH DEFENSE

The complaint fails to state a claim for which punitive damages are available against any of the defendants.

EIGHTH DEFENSE

The actions and conduct of the individual defendants, to the extent they occurred as alleged, were objectively reasonable under the circumstances of which the defendants were aware, and they enjoy qualified immunity from all liability therefor.

NINTH DEFENSE

The actions and conduct of the individual defendants did not violate any clearly established constitutional or Federal statutory rights of which they reasonably should have been aware, and they are therefore entitled to qualified immunity.

TENTH DEFENSE

Any injury or damages suffered by the Plaintiff, to the extent actually incurred, were caused by reason of the Plaintiff's own wrongful acts, reckless and criminal misconduct and negligence.

ELEVENTH DEFENSE

The actions and conduct of the individual defendants, to the extent they occurred as alleged, were undertaken in the good-faith performance of their official duties, without malice, and were therefore privileged under the applicable state law.

TWELFTH DEFENSE

Plaintiff fails to state a claim for which relief may be granted under 42 U.S.C. §1983 because he has failed to allege that the Defendants owed him a constitutional duty or that the Defendants breached that constitutional duty.

THIRTEENTH DEFENSE

Plaintiff fails to state a claim for which relief may be granted under the Massachusetts Civil Rights Act, G.L. c.12, §11H-I because he has failed to allege that the Defendants interfered with, or attempted to interfere with, rights secured by the federal or state constitutions or by law through threats, intimidation, or coercion against the Plaintiff, nor has he alleged that the Defendants made him fearful or apprehensive of injury or harm.

FOURTEENTH DEFENSE

The Town of Amesbury is immune from liability for any claims set forth pursuant to the Massachusetts Civil Rights Act, G.L. c.12 §11H-I.

FIFTEENTH DEFENSE

The claims arising out of the subject matter of the transactions and occurrences alleged are barred as the Defendants were carrying out his executive and administrative functions in good faith.

SIXTEENTH DEFENSE

Any claims against the individual defendants in their official capacities are duplicative to the claims against defendant Town of Amesbury and should be dismissed.

SEVENTEENTH DEFENSE

The defendants deny all of plaintiff's allegations of wrongful conduct and state there is no custom or policy amounting to a constitutional violation.

EIGHTEENTH DEFENSE

The claims arising out of the subject matter of the transaction and occurrences alleged are barred as the defendants were carrying out executive and administrative functions in good faith.

NINETEENTH DEFENSE

The defendants say that this action consists of a claim based upon the performance or failure to perform a discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment, and therefore, the plaintiff cannot recover in this action.

TWENTIETH DEFENSE

The City may not be held liable on a theory of *respondeat superior*.

TWENTY-FIRST DEFENSE

Plaintiff's claims are barred because he has an adequate state law remedy.

TWENTY-SECOND DEFENSE

The action filed by the plaintiff is frivolous, wholly insubstantial and not advanced in good faith, and defendants are entitled to recovery of all costs, expenses and attorney's fees associated with the defense of this action.

JURY CLAIM

The defendants respectfully claims a trial by jury.

DEFENDANTS,

By their attorneys,

/s/Mark R. Reich

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Dated: January 25, 2008