

AUG 31 2011

JULIA C. DUDLEY, CLERK  
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DEPUTY CLERK

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division

ROBERT L. PASCO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 HANK ZIMMERMAN, )  
 individually and in his official capacity )  
 as Chairman of the Board of Trustees )  
 of the Shenandoah County Library, )  
 )  
 BOARD OF TRUSTEES of the )  
 SHENANDOAH COUNTY LIBRARY, )  
 )  
 SHENANDOAH COUNTY LIBRARY, )  
 )  
 and )  
 )  
 JAMES DALLAS MOORE, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Civil Action No.: 5:11CV87

**COMPLAINT**

The plaintiff, Robert L. Pasco, moves the Court for entry of judgment in his favor against Hank Zimmerman, individually and in his official capacity as Chairman of the Board of Trustees of the Shenandoah County Library, the Board of Trustees of the Shenandoah County Library, Shenandoah County Library and Dallas Moore, jointly and severally, and in support of such Complaint avers as follows:

**NATURE OF ACTION**

1. This is a civil action for declaratory relief, injunctive relief and damages brought pursuant to the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1983 and 1988, as amended, and the common law and statutes of Virginia against

Plaintiff's former employer, and those acting on behalf of the former employer under color of state law.

2. Plaintiff Pasco brings this action for both compensatory and punitive damages arising from Defendants' acts and conduct in violation of his rights under Virginia statutory and common law and his rights to protection from unreasonable searches and seizures, and his rights to due process of law, which actions violated Pasco's rights as guaranteed under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution (actionable through 42 U.S.C. §§ 1983).

3. This Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343. The declaratory and injunctive relief sought is authorized by 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983 and Rule 57 of the Federal Rules of Civil Procedure. This Court has supplemental jurisdiction to hear and decide the claims arising out of Virginia statutes and common law pursuant to 28 U.S.C. § 1367.

4. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2). Many of the actions complained of took place in Woodstock, Shenandoah County, Virginia, in this judicial district. Evidence and employment records relevant to the allegations are maintained in this judicial district; Plaintiff would be employed in this judicial district but for the unlawful actions and practices of Defendants; and the Defendants are present and regularly conduct affairs in this judicial district.

#### **PARTIES**

5. Plaintiff, Robert L. Pasco ("Pasco") was, at all relevant times, a natural citizen of the Commonwealth of Virginia a resident of Shenandoah County, Virginia. Plaintiff currently maintains a residence in Bath County, Virginia.

6. Pasco served as the Director of the Shenandoah County Library from January 1, 2002 until he was terminated unlawfully, and in violation of Virginia public policy, from his job on October 12, 2010.

7. Defendant Hank Zimmerman (“Zimmerman”) is sued in his individual and official capacities. He is a natural citizen of the Commonwealth of Virginia. Zimmerman was the Chairman of the Library’s Board of Directors at all times relevant to the matters alleged herein. In his actions set forth herein, Zimmerman is alleged to have been acting under color of statutes, regulations, customs and usages of the Shenandoah County Library and the Commonwealth of Virginia. Except as otherwise alleged herein, Zimmerman’s actions complained of herein were taken in the course and scope of his position with the Defendant Board of Trustees, with the Board of Trustees’ actual or apparent authority and/or with Board of Trustees’ knowledge and acquiescence.

8. Defendant James Dallas Moore is a natural citizen of the Commonwealth of Virginia. At all times relevant to the matters alleged herein, Defendant Moore was employed by Defendant Board of Trustees as the technology director of the Shenandoah County Library. In his actions set forth herein, Moore is alleged to have been acting under color of statutes, regulations, customs and usages of the Shenandoah County Library and the Commonwealth of Virginia. Except as otherwise alleged herein, Moore’s actions complained of herein were taken in the course and scope of his position with the Defendant Board of Trustees.

9. The Defendant Shenandoah County Library is and at all times relevant to the matters alleged herein was a public entity under the authority of Virginia Code Ann. § 42.1-33, *et seq.*, as amended, and is a “person” subject to suit within the meaning of 42 U.S.C. § 1983.

10. Defendant Board of Trustees of Shenandoah County Library is the duly constituted board established pursuant to Virginia Code Ann. § 42.1-35, as amended, with authority to manage and control the operations of the Shenandoah County Library.

11. The actions of Defendants Dallas Moore, in combination with others, including without limitation the Defendant Zimmerman, were taken under color of state law, rendering these individuals liable for their individual and/or collective actions under federal constitutional law principles.

### FACTS

12. Pasco is and at all times relevant hereto was a well qualified and experienced director of the Library, and adequately performed his job. Pasco had been employed as the Library Director since January 1, 2002, receiving regular merit pay increases over that period and substantially increasing the services provided to the citizens by the Library system in Shenandoah County.

13. Pasco held a legitimate expectation that he would not be terminated from his employment absent just cause.

14. By the summer of 2010, the Defendant Moore had become a disciplinary problem at the Shenandoah County Library. He had taken an unnatural interest in Keith Brown, another employee at the Library, during the summer of 2010. Brown had complained of the continuing efforts by Defendant Moore to be involved in Brown's life. The Defendant Moore also exhibited performance deficiencies, and was tardy to work more and more frequently.

15. On the morning of October 1, 2010, Defendant Moore again was late for work. Plaintiff Pasco needed information held by Moore in Moore's capacity as technology coordinator of the Library for a required monthly report. Plaintiff reprimanded Moore for what other employees had referred to as Moore's habit of tardiness.

16. Later on the morning of October 1, 2010, Defendant Moore came to Plaintiff's office and inquired about Brown's arrival time that morning. Plaintiff reminded Defendant Moore that Brown's arrival time was not Defendant Moore's concern.

17. Not satisfied with Plaintiff's handling of the situation relating to Mr. Brown, Moore returned a second time to Plaintiff's office. Plaintiff was seated at his desk working on his office computer. This time, Moore barged into Plaintiff's office without permission, startling Pasco who is deaf in his left ear. Moore physically pushed Plaintiff back from his computer, and seized two external computer hard-drives that were on Plaintiff's desk near his computer but on the side of the desk opposite the doorway through which Defendant Moore entered the office.

18. Plaintiff, who as Library Director served as the chief personnel officer of the Library, maintained personnel files of all Library employees in his office and on the office computer, along with other confidential matters. Plaintiff's office computer contained sensitive personnel information as well as patron information ranging from material challenges to reviews of requested materials that might be questionable. Plaintiff used the office external hard-drive to back-up this computer data and information. No employees were allowed access to the office or computer files maintained by the Director in his office. Moore had no authorization to access Plaintiff's computer or his back-up files.

19. One of the external computer hard-drives seized by Moore was the one owned by the Library which had been used by Plaintiff in his capacity as Director as a back-up for his office computer. The other external computer hard-drive seized by Moore was Plaintiff's personal computer hard-drive which contained personal information, including tax records, family research and photographs and other personal files. Plaintiff used that computer hard-drive with his personal lap-top computer.

20. Upon Defendant Moore's unauthorized, unreasonable and larcenous seizure of the hard-drives, Plaintiff got up from his desk and stated emphatically "That is my personal property" referring to his personal external computer hard-drive.

21. Moore attempted to leave Plaintiff's office with both computer hard drives with the intention of seizing them, taking them to the Shenandoah County Administrator and depriving Plaintiff of their possession. Defendant Moore later told Defendant Zimmerman that he was seizing the computer hard-drives in an effort to use information he falsely claimed was on them against Plaintiff in an effort to get Plaintiff terminated.

22. Moore had no valid reason or authority to seize the computer hard-drives.

23. Plaintiff justifiably attempted to retrieve the computer hard-drives Moore had unlawfully seized. Plaintiff was entitled to immediate possession of both computer hard-drives.

24. When Plaintiff attempted to retrieve the computer hard-drives, Moore threw both drives to the floor, and they shattered.

25. Moore immediately claimed that he had been assaulted by Plaintiff, and that he was going to go to the police.

26. Plaintiff sustained a cut over his eye and had a bloody nose in attempting to retrieve the illegally seized computer hard-drives.

27. Defendant Moore's conduct destroyed the Plaintiff's computer hard-drive, rendering it useless and the files on it irretrievable. The other hard drive, which contained back-up files for the Library, lay broken on the floor. Plaintiff does not know whether that drive was totally destroyed by Moore's conduct or by subsequent action of the Defendants.

28. The Defendant Zimmerman came to the office later on the morning of October 1, 2010. At the time he arrived at the Library, Zimmerman knew that Moore had made or was about to make a complaint to law enforcement against Plaintiff for assault and battery, but did not advise Plaintiff of that fact.

29. Zimmerman, who had spoken to Defendant Moore before arriving at the Library, asked Plaintiff not to file a criminal complaint against Defendant Moore. Zimmerman suggested that Plaintiff wait until after Plaintiff had returned from a scheduled conference in

Colorado to make a decision about Moore's employment, and to try to use mediation to settle any differences with Moore. Plaintiff was willing to do so based upon the information he had at the time.

30. On October 2, 2010, a Sheriff's deputy came to Plaintiff's home and advised Plaintiff that Defendant Moore had made a complaint against Plaintiff for assault and battery. The officer said that the complaint lacked merit and that Plaintiff should take out a "no trespass" order against Moore because of Moore's bizarre behavior.

31. Plaintiff, as the Director of the Library who was responsible for personnel decisions, determined that Moore's behavior and false statements to law enforcement about his conduct had broken all trust and that he may harm others and further harm Plaintiff. Plaintiff described Defendant Moore's illegal conduct to the deputy, and then informed Zimmerman that he was terminating, and did terminate, Moore's employment due to such conduct.

32. On or around October 2, 2010, Moore submitted a grievance seeking reinstatement to his job. The grievance form shown to Pasco contained no content other than the request for reinstatement. Pasco now is informed and believes that the grievance included the false allegation that Moore had been assaulted by Plaintiff. The termination grievance was to be heard on October 7, 2010, Plaintiff's first day back after his trip to Colorado on behalf of the Library.

33. Moore did not show up for the grievance hearing on October 7, 2010. Moore thus failed to address the reason he had illegally seized the computer hard-drives and assaulted and battered the Plaintiff. Plaintiff denied the grievance as he was authorized to do.

34. After Moore's scheduled grievance hearing, Zimmerman asked Plaintiff to resign and let the Board "celebrate his success." Plaintiff refused because he had done nothing wrong in attempting to protect his and the Library's property, and in attempting to protect himself from further harm by Defendant Moore.

35. Before October 7, 2010, Zimmerman had obtained commitments from the other members of the Board of Trustees to terminate Plaintiff's employment, despite knowing that Moore had assaulted and battered Plaintiff and that Moore had illegally seized and destroyed Plaintiff's property as well as illegally seizing and damaging Library property.

36. On October 12, 2010, the Board of Trustees met at the home of one of its members and voted to terminate Plaintiff's employment. The Board notified Plaintiff by telephone of the termination of his employment.

37. The Board reinstated Moore to his job. By so doing and by terminating Plaintiff's employment, Defendants Zimmerman, Board of Trustees and Shenandoah County Library adopted, ratified and acquiesced in Defendant Moore's illegal behavior as the acts of all Defendants.

38. Defendants' actions, as described above, were willful and malicious, and undertaken with a deliberate disregard for the civil rights and welfare of Plaintiff. Further, such actions were deliberate, intentional, outrageous and intolerable and taken with a specific intent to injure Plaintiff personally, in his employment and his future career, as well as in his property.

39. As a result of Defendants' actions, Plaintiff has suffered great physical and emotional distress, damage to his reputation, humiliation, embarrassment, financial and economic damages, lost wages and employment related benefits, loss of his property and other damages for which he seeks compensatory, consequential and incidental damages.

## **CAUSES OF ACTION**

### **COUNT ONE** **Under 42 U.S.C. § 1983**

40. The allegations contained within Paragraphs 1-39 above are realleged and reasserted as if set forth here.

41. Because Defendant Moore and the other Defendants had no right to seize Plaintiff's computer hard-drive, because the seizure of Plaintiff's property was unreasonable and



because Plaintiff objected to the seizure, Plaintiff had both a statutory right and a constitutional right to possession of the computer hard-drive.

42. The Defendants' conduct violated clearly established statutory and constitutional rights of which a reasonable person would have known, including the right to be free from unlawful searches and seizures, and the right to protection from unlawful takings without due process of law under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and made actionable under 42 U.S.C. § 1983.

43. Defendants, through state action, subjected Plaintiff to the deprivation of his rights, privileges, or immunities secured for him by the Constitution and other laws. Moreover, his actions to protect his rights resulted in the unlawful termination of his job.

44. As a direct and proximate result of the Defendants' violations of Plaintiff's constitutional rights as described herein, Plaintiff has suffered substantial damages. These damages include the loss of his property, lost salary, lost employee benefits, lost raises, diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.

**COUNT TWO**  
**Conversion**

45. Plaintiff incorporates and relies upon the averments stated in paragraphs 1-44 of the Complaint as if the same were fully restated in Count Two.

46. Defendants had no right to seize Plaintiff's property.

47. These Defendants permanently deprived Plaintiff of possession of his property, constituting conversion.

48. The Defendants' conduct proximately resulted in damage to Plaintiff through unlawful seizure and the destruction of his property.

**COUNT THREE**  
**Violation of Virginia Computer Crimes Act**

49. Plaintiff incorporates and relies upon the averments stated in paragraphs 1-48 of the Complaint as if the same were fully restated in Count Three.

50. The Virginia Computer Crimes Act provides, in part: “Any person whose property or person is injured by reason of a violation of any provision of this article may sue therefore and recover for any damages sustained, and costs of the suit.” Va. Code Ann. § 18.2-152.12.

51. Defendants have, without authorization, unlawfully engaged in computer trespass, permanently disabled Plaintiff’s computer data, seized, obtained, used, deprived Plaintiff of, and destroyed, his computer files and data, all in violation of the Virginia Computer Crimes Act, Va. Code Ann. §§ 18.2-152.1 - 18.2-152.15.

52. Plaintiff has been injured and damaged by Defendants’ actions in violating the Virginia Computer Crimes Act. These damages include the loss of his property, lost salary, lost employee benefits, lost raises, diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, humiliation, embarrassment, loss of reputation, inconvenience, mental and emotional anguish and distress and other compensatory damages.

**COUNT FOUR**  
**Assault and Battery**

53. Plaintiff incorporates and relies upon the averments stated in paragraphs 1-52 of the Complaint as if the same were fully restated in Count Four.

54. Defendant Moore touched Plaintiff in an unlawful manner without authority or permission, which constituted battery each and every time he touched Plaintiff as alleged herein. Moore’s conduct initially was undertaken for personal reasons, and did not arise out of his employment, although such conduct occurred during the course of his employment.

55. Defendants Zimmerman, Board of Trustees and Shenandoah County Library ratified, adopted and acquiesced in Defendant Moore's conduct.

56. Defendants caused by their actions and words reasonable fear in the mind of Plaintiff that Defendant Moore was about to cause him bodily injury.

57. Defendant Moore assaulted and battered Plaintiff, by the offensive, unlawful and unreasonable touching, for which all of the Defendants are responsible.

58. As a result of the assault and battery, Plaintiff suffered damages as aforesaid.

59. Defendants are jointly and severally liable for Plaintiff's damages as set forth herein.

**COUNT FIVE**  
**Violation of Virginia Constitution**

60. Plaintiff incorporates and relies upon the averments stated in paragraphs 1-59 of the Complaint as if the same were fully restated in Count Five.

61. At all times relevant hereto, the conduct of the Defendants was subject to the restraints and proscriptions of the Virginia Constitution.

62. The Defendants deprived Plaintiff of his property without due process of law.

63. The deprivation of property without due process of law violated Virginia Constitution Article 1, § 11, which provides in part:

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly . . .

64. The foregoing constitutional rights are affirmative grants of the right to protect liberty and property, including the possession of property, are self-executing and therefore actionable.

65. As a direct and proximate result of Defendants' conduct, Plaintiff suffered damages, including the loss of his property, lost salary, lost employee benefits, lost raises, diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, humiliation, embarrassment, loss of reputation, inconvenience, mental and emotional anguish and distress and other compensatory damages.

66. Defendants are jointly and severally liable for Plaintiff's damages as set forth herein.

**COUNT SIX**  
**Wrongful Discharge in Violation of Public Policy**

67. Plaintiff incorporates and relies upon the averments stated in paragraphs 1-66 of the Complaint as if the same were fully restated in Count Six.

68. Virginia statutes, including the Virginia Computer Crimes Act, Virginia Code Ann. §§ 18.2-152.1 - 18.2-152.15, evince and are based upon the public policy in Virginia to prevent and remedy computer crimes, including the larceny of computer data, computer fraud and computer trespass.

69. Virginia Code Ann. §§ 19.2-11.01 – 19.2-11.4 (the Crime Victim and Witness Rights Act), evince and are based upon the public policy in Virginia, among other things, to protect victims and witnesses of crimes, to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth, to treat crime victims with dignity, respect and sensitivity, and to ensure that crime victims have the opportunity to be heard by law enforcement as well as the court system.

70. Plaintiff was a crime victim.

71. The Virginia Constitution, Article 1, § 11, evinces and is based upon the public policy in Virginia to protect citizens' fundamental rights to possess and enjoy property free of arbitrary deprivations by the government and takings without due process.

72. Plaintiff had constitutional and statutory rights to protect his computer hard-drive and computer data from unlawful seizure and destruction. He further had statutory rights as a crime victim to report the crimes against him, and to assist in the prosecution of the Defendant Moore for his unlawful behavior.

73. Plaintiff exercised his statutory rights when he reported the Defendant Moore's criminal conduct to the Sheriff's deputy after learning that a false complaint had been made against him by Defendant Moore, and that Defendant Moore had exhibited bizarre behavior. He exercised his statutory and constitutional rights to protect his property from unlawful seizure, and opposed the unconstitutional and illegal seizure and larceny of his property and that of the Library.

74. The termination of Plaintiff's employment was a direct result of Plaintiff's exercise of his constitutional and statutory, legal rights established under the Virginia Constitution, Article 1, § 11, Virginia Code Ann. §§ 19.2-11.01 – 19.2-11.4 and his opposition to Defendant Moore's conduct. The termination of the Plaintiff's employment violates the public policy underlying the statutory pronouncements in Virginia Code Ann. §§ 18.2-152.1 - 18.2-152.15 and Virginia Code Ann. §§ 19.2-11.01 – 19.2-11.4 and the constitutional pronouncements in the Virginia Constitution, Article 1, § 11.

75. Thus, Plaintiff's employment was terminated wrongfully in violation of the public policy underlying the cited Virginia constitutional and/or statutory enactments.

76. Defendant Zimmerman's conduct alleged herein was undertaken with malice, ill will and spite. Alternatively, Defendant Zimmerman's conduct was undertaken with conscious and/or reckless disregard for Plaintiff's rights.

77. As a direct and proximate result of Defendants' conduct, Plaintiff suffered damages, including the loss of employment, loss of his property, lost salary, lost employee benefits, lost raises, diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, humiliation, embarrassment, loss of reputation,

inconvenience, mental and emotional anguish and distress and other compensatory damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Robert L. Pasco, prays for judgment against Defendants as follows:

A. For appropriate declaratory relief that the Defendants engaged in unlawful and unconstitutional acts and practices, all in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution (as made actionable by 42 U.S.C. §§ 1983 and 1988), and Article 1, § 11 of the Virginia Constitution;

B. For appropriate equitable relief against all Defendants (including individual Defendants acting in their individual and official capacities) as allowed by 42 U.S.C. § 1983, including the enjoining and permanent restraining of these violations, and direction to Defendants to take such affirmative action as is necessary to ensure that the effects of the unconstitutional and unlawful employment practices are eliminated and do not continue to affect Plaintiff's employment opportunities;

C. For compensatory damages against the Defendants, jointly and severally, for violations of the United States Constitution as made actionable by 42 U.S.C. § 1983, and for violations of the Virginia state law claims, in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per Defendant, per count on each of Counts One through Five;

D. For compensatory damages against the Defendants Zimmerman, Board of Trustees and Shenandoah Library, jointly and severally, under Count Six in an amount of Five Hundred Thousand Dollars (\$500,000);

E. For punitive damages against Defendant Zimmerman under Count Six in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00);

F. For punitive damages against Defendants Moore and Zimmerman, jointly and severally, in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) per Defendant per count on each of Counts One through Five;

G. For an award of reasonable attorney's fees and costs incurred on Plaintiff's behalf against all Defendants; and

H. For such other and further relief to which Plaintiff may show himself justly entitled.

**PLAINTIFF DEMANDS TRIAL BY JURY pursuant to Rule 38 of the Federal Rules of Civil Procedure.**

Respectfully Submitted,

ROBERT L. PASCO

By   
Counsel

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