

NORTH CAROLINA

ROWAN COUNTY

TOWN OF LANDIS,
Plaintiff

Vs.

DOUGLAS "REED" LINN and GINGER
GIBSON,
Defendants

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 19CV5624

2019 MAR 20 P 3:18

ROWAN CO., C.S.C.

BY _____

COMPLAINT

NOW COMES the Town of Landis, plaintiff herein, and for its cause of action, says, alleges, and declares:

1. That the plaintiff, Town of Landis (the "Town"), is a municipal corporation organized and existing under the laws of the State of North Carolina.

2. That the defendant, Douglas "Reed" Linn ("Linn"), is a citizen and resident of Rowan County, North Carolina, and has worked as Town Administrator/Manager for the Town since March 26, 2004.

3. That the defendant, Ginger Gibson ("Gibson"), is a citizen and resident of Rowan County, North Carolina, and has worked as Finance Officer for the Town since 2007.

4. Linn served as Town Manager for the Town until his resignation on February 7, 2019.

5. Gibson served as Finance Officer for the Town until her resignation on February 7, 2019.

6. On June 24, 2017, the Town Board adopted financial compensation for the position of Town Administrator/Manager, held by Linn, set at \$69,077 annually, to begin on July 1, 2017.

7. On June 24, 2017, the Town Board adopted financial compensation for the position of Finance Officer, held by Gibson, set at \$58,937 annually to begin on July 1, 2017.

8. During Linn's time as Town Administrator/Manager, the Town contracted and then participated in a payroll plan by and through a Flex-Pay Payroll Services account used to track and pay payroll. That said payments were based upon amounts

authorized and approved as actual compensation consistent with the approved budget as adopted by the Town Board. That in addition to payment of salary, Linn participated in the North Carolina Total Retirement Plan as managed by the Department of State Treasurer (Department), to include the NC 401(k) Plan ("Plan").

9. During Gibson's time as Finance Officer, the Town contracted and then participated in a payroll plan by and through a Flex-Pay Payroll Services account used to track and pay payroll. That said payments were based upon amount authorized and approved as actual compensation to payment of salary, Gibson participated in the North Carolina Total Retirement Plan as managed by the Department of State Treasurer (Department), to include the NC 401(k) Plan ("Plan").

10. Payroll payments were made via Automatic Clearing House (ACH), a direct deposit by Gibson at Linn's direction for Gibson and Linn's salary.

11. ACH direct deposit representing actual and/or reported compensation were then sent directly to the personal bank accounts of Gibson and Linn. That payments representing both employee deferrals and employer, (Town's) contributions were made payable to the "Plan". That the aforementioned payments were being made based upon inflated compensation not properly authorized which automatically triggered ineligible compensation/contribution, in the form of Town funds.

12. Gibson was also tasked with maintaining and reporting employee compensation and account information to the Board. However, it was later discovered that Gibson removed any and or elected not to represent/report individual employee compensation account activity by itemizing the same. Instead, account information regarding salaries for employee's as paid by Flex-Pay were disclosed in a lump sum. Whereas, all other employee compensation appears to be consistent with Board approved amounts, those of Gibson and Linn are inflated.

13. In sum, Gibson controlled the entire flow of financial information from the Flex-Pay account to the bank, to the accountant, and to the Board. Defendant Gibson was responsible for collecting payroll information internally alongside account information from the bank, reporting this information to Flex-Pay for payroll disbursements to employees. Gibson was responsible insuring the accuracy of the information provided to Flex-Pay and presenting financial accounts and reports to the Board.

14. The Board requested additional information be provided explaining expenditures following a Town Board Meeting held on February 4, 2019. Subsequently Linn and Gibson submitted their resignations, as outlined in the paragraphs above.

15. Following the February 4, 2019 Town Board Meeting, the Board authorized interim Town Administrator/Manager, Kenny Isenhour, and interim Finance Officer, Roger Hosey, to further investigate the complaints raised at the aforementioned Town Board Meeting regarding Town Finances.

16. Interim Finance Officer, Roger Hosey, upon review of the Flex-Pay account, did discover monies assigned in excess of \$25,000.00 for unauthorized payment of salary and contributions to the Plan on behalf of or to the benefit of Linn.

17. Interim Finance Officer, Roger Hosey, upon review of the Flex-Pay account, did discover monies assigned in excess of \$25,000.00 for unauthorized payment of salary and contributions to the Plan on behalf of or to the benefit of Gibson.

FIRST CAUSE OF ACTION

CONVERSION (Against Defendants Douglas "Reed" Linn and Ginger Gibson)

18. Paragraphs 1-17 of the Complaint are incorporated by reference and re-alleged as if fully set forth herein.

19. Linn, during his time as Town Administrator/Manager for the Town, wrongfully, deceitfully, and without authorization converted funds from the Town's Flex-Pay Payroll Services account for his own benefit and did allow inflated compensation to be made to the "Plan".

20. Linn also wrongfully, deceitfully, and without authorization caused and received excess payroll payments from Flex-Pay Payroll Services account for his own benefit.

21. Linn further misappropriated funds belong to the Town through unauthorized use of a Flex-Pay Payroll Services account.

22. The acts of Linn have directly and proximately caused damages to the plaintiff in excess of \$25,000.00.

23. Gibson, during her time as Finance Officer for the Town, wrongfully, deceitfully, and without authorization converted funds from the Town's Flex-Pay Payroll Services account for her own benefit and did allow inflated compensation to be made to the "Plan".

24. Gibson also wrongfully, deceitfully, and without authorization caused and received excess payroll payments from Flex-Pay Payroll Services account for her own benefit.

25. Gibson further misappropriated funds belong to the Town through unauthorized use of a Flex-Pay Payroll Services account.

26. The acts of Gibson have directly and proximately caused damages to the plaintiff in excess of \$25,000.00.

SECOND CAUSE OF ACTION

FRAUD (Against Defendants Douglas "Reed" Linn and Ginger Gibson)

27. Paragraphs 1-26 of the Complaint are incorporated by reference and re-alleged as if fully set forth herein.

28. From July 1, 2017 to February 7, 2019, Linn made false misrepresentations and concealed material facts as to the financial status of the Town to the Board, as well as false misrepresentations and concealments of material fact as to the compensation he was entitled to receive through payroll, as well as what he was actually receiving through payroll, and the nature and purpose of checks he authorized made payable to himself as outlined hereinabove.

29. These false misrepresentations and concealments were reasonably calculated to deceive, were made with the intent to deceive, and did in fact deceive the Town.

30. Plaintiff reasonably relied on the statements of Linn.

31. These false misrepresentations and concealments directly and proximately resulted in damage to the Plaintiff in excess of \$25,000.00.

32. From July 1, 2017, to February 7, 2019, Gibson made false misrepresentations and concealed material facts as to the financial status of the Town to the Board, as well as false misrepresentations and concealments of material fact as to the compensation she was entitled to receive through payroll, as well as what she was actually receiving through payroll, and the nature and purpose of checks authorized made payable to herself outlined hereinabove.

33. These false misrepresentations and concealments were reasonably calculated to deceive, were made with the intent to deceive, and did in fact deceive the Town.

34. Plaintiff reasonably relied on the statements of Gibson.

35. These false misrepresentations and concealments directly and proximately resulted in damage to the Plaintiff in excess of \$25,000.00.

THIRD CAUSE OF ACTION

PUNITIVE DAMAGES (Against Defendants Douglas "Reed" Linn and Ginger Gibson)

36. Paragraphs 1-35 of the Complaint are incorporated by reference and re-alleged as if fully set forth herein.

37. Linn engaged in fraudulent conduct through false misrepresentations and omissions of material facts as set forth in the Second Cause of Action and as detailed in Paragraphs 1-35 of this Complaint.

38. This fraudulent conduct was intended to deceive Plaintiff, was reasonably calculated to deceive, and did in fact deceive and damage the Plaintiff because of its reasonable reliance on Linn's misrepresentations and omissions of material facts.

39. This fraudulent conduct directly and proximately resulted in damage to the Plaintiff in excess of \$25,000.00.

40. Plaintiff is therefore entitled to punitive damages pursuant to N.C.G.S. § 1D-15.

41. Gibson engaged in fraudulent conduct through false misrepresentations and omissions of material facts as set forth in the Second Cause of Action and as detailed in Paragraphs 1-35 of this Complaint.

42. This fraudulent conduct was intended to deceive Plaintiff, was reasonably calculated to deceive, and did in fact deceive and damage the Plaintiff because of its reasonable reliance on Linn's misrepresentations and omissions of material facts.

43. This fraudulent conduct directly and proximately resulted in damage to the Plaintiff in excess of \$25,000.00.

44. Plaintiff is therefore entitled to punitive damages pursuant to N.C.G.S. § 1D-15.

**FOURTH CASUE OF ACTION
CONSTRUCTIVE TRUST (Against Defendants Douglas "Reed" Linn and Ginger Gibson)**

45. Paragraphs 1-44 of the Complaint are incorporated by reference and re-alleged as if fully set forth herein

46. Linn and Gibson, individually and jointly, have wrongfully misappropriated funds from the Town.

47. These funds have been used for the benefit of Linn and Gibson.

48. That all personal property currently retained in the possessions of the defendants, to include but not limited to:

- a. Accounts maintained by the Department, to include Retirement and 401(k), which are in the control or ownership of Defendants Linn or Gibson.

- b. All accounts remaining in the name of the Defendants Linn or Gibson to include co-mingled or conversion of funds, made by the Defendants.
- c. Any and all personal property purchased from the converted funds or goods purchased from the same and currently retained by Defendants Linn or Gibson or subsequently gifted to others.


49. That the Defendants Linn and Gibson be prohibited from withdrawing from the 401(k) accounts as maintained by the Department pending a determination of the employee's compensation and whether such compensation was correct.

WHEREFORE, the plaintiff prays the Court as follows:

1. They have and recover of Defendants Linn and Gibson, all damages plead herein, including punitive damages, together with such interest thereon as is provided by law.
2. That all employee deferrals and employer contributions based on inflated compensation be refunded to the Town or in the alternative transferred to the Plan's forfeiture account. That pending said determination the Defendants be prohibited from withdrawing from the Plan.
3. That the Court impose a constructive trust as to; accounts maintained by the Department to include Retirement and 401(k).
4. All funds or personal property in possession of the Defendants which are traceable to or derived from Plaintiff.
5. For such other and further relief as the Court might deem just and proper.

6. *That Plaintiff's Damages in excess of \$25,000 -*

This the 20th day of March, 2019.

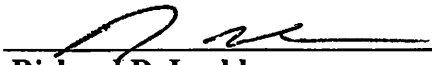

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NORTH CAROLINA

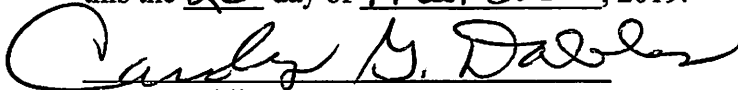
ROWAN COUNTY

VERIFICATION

Richard D. Locklear, being first duly sworn, deposes and says: That he is the attorney for the plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to such matters and things therein stated upon information and belief, and as to those, he believes it to be true.


Richard D. Locklear

Subscribed and sworn to before me,
this the 20 day of March, 2019.


Notary Public

My Commission Expires: 3-22-2021

