

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF SUFFOLK

MARIA KATTMANN,

Plaintiff,

v.

CASE NO.: CL08-412

CITY OF SUFFOLK,

Defendant.

DEFENDANT'S MOTION CRAVING OYER

NOW COMES Defendant City of Suffolk (the "City"), by counsel, and craves oyer of the following documents referenced in Plaintiff's complaint, namely the "2006-2007 Compensation Plan", the "2007-2008 Compensation Plan" and the "Plan Agreement for Defendant City's 401(A) Plan", which documents Plaintiff avers comprise a contract with the City, or serve as the basis for moneys allegedly owed her by the City. In support of its motion craving oyer, the City states:

1. A motion craving oyer is a common law pleading still in use in Virginia, under which documents not exhibited with the Complaint "may be made a part of the record for purposes of demurrer if demanded by the demurrant." Boyd, Graves & Middleditch, Va. Civ. Proc 1982 Ed. (Section 8.2); see also Lucy v. Kia, 48 Va. Cir. 460 (Newport News 1999); Luckett v. City of Harrisonburg School Board, 14 Va. Cir. 761 (Rockingham County 1988).

2. In Counts I and II of her complaint, Plaintiff claims breaches of different contracts by the City, and her allegations reference various compensation or benefits plans. Specifically, Plaintiff attempts to incorporate the "2006-2007 Compensation Plan" and the "2007-2008 Compensation Plan" into the alleged employment agreement she claims the City breached, but fails to attach either plan to the complaint. Plaintiff also claims the City breached the "Plan Agreement for Defendant City's 401(A) Plan", but also fails to attach this document to her complaint.

3. It is necessary that oyer be taken of these documents and that they become part of the pleadings in this case, as if attached to the complaint. Oyer of these documents will facilitate a just and expeditious resolution of the claims before this Court and is fully warranted under Virginia law. Indeed, the City should be given a complete set of the documents Plaintiff claims govern these claims, and the documents should be made part of the Court's record, as if originally attached to the complaint.

WHEREFORE, Defendant City of Suffolk, by counsel, moves this Court for entry of an order granting its motion craving oyer and directing that the "2006-2007 Compensation Plan", the "2007-2008 Compensation Plan" and the "Plan Agreement for Defendant City's 401(A) Plan" be made part of the record as exhibits to Plaintiff's complaint filed herein, and awarding the City its attorneys' fees and costs incurred in the defense of this matter.

Respectfully submitted,

CITY OF SUFFOLK

By Counsel

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CERTIFICATE OF SERVICE

26th I hereby certify that a true copy of the foregoing was sent via mail and facsimile this day of June, 2008 to:

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