

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Orlando Division**

FRANCIS R. CARTER, JR.

Plaintiff,

vs.

Case No.: 6-11-CV-824-Orl-22DAB

**THE CITY OF MELBOURNE, a Florida
Municipal Corporation, DONALD L.
CAREY, former Chief of Police for the City
of Melbourne, and JACK M. SCHLUCKEBIER,
City Manager for the City of Melbourne,**

Defendants.

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Francis R. “Frank” Carter (“Carter”) sues the City of Melbourne (“the City”), Donald L. Carey (“Carey”) and Jack M. Schluckebier (“Schluckebier”), and states:

INTRODUCTION

1. This is a section 1983 action by Carter against the City of Melbourne; the Chief of Police (Carey); and City Manager (Schluckebier) for violation of Carter’s rights, privileges and immunities as secured by the United States Constitution.

2. Carter served as a highly decorated police officer for the City of Melbourne for twenty-two (22) years and, in retaliation for voicing his concerns about the City’s selection of Carey as Chief of Police had his career destroyed.

3. In retaliation and in violation of his Constitutional rights Carey and Schluckebier initiated multiple (1) internal affairs investigations against Carter, (2) fabricated felony charges against Carter for writing traffic tickets, (3) had Carter arrested, and (4) publically defamed Carter by attacking his character and career.

JURISDICTION AND VENUE

4. These actions arise under, but are not limited to, the First and Fourth Amendments to the Constitution of the United States.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331.

6. Venue is appropriate in this District because the acts or omissions described herein accrued in Brevard County, Florida, and because Defendants reside in Brevard County, Florida.

7. All conditions precedent to bringing this action have occurred, have been performed, or have been waived.

8. Carter has retained the law firm of Morgan & Morgan, P.A., agreeing to pay its reasonable attorneys' fees and costs.

PARTIES

9. Plaintiff, Francis R. Carter, Jr. is an individual residing at 160 Ruby Street, Rockledge, Florida 32955, in Brevard County, Florida.

10. Defendant, City of Melbourne, is a Municipal Corporation organized and existing under the laws of the State of Florida. It is responsible for the policies, procedures, and practices implemented through its various agencies, agents, departments

and employees and for any injury caused thereby. It was also the public employer of Defendants Carey and Schluckebier at all times relevant to this action.

11. Defendant, Donald C. Carey, is an individual residing in Osceola County, Florida. At all times relevant to this action, Carey served as Chief of Police for the Melbourne Police Department.

12. Defendant, Jack M. Schluckebier, is an individual residing in Brevard County, Florida. At all times relevant to this action, Defendant Schluckebier served as City Manager for the City of Melbourne.

13. Except as provided herein, Carey and Schluckebier were acting under color of law within the meaning of 42 U.S.C. § 1983.

FACTUAL ALLEGATIONS

14. On or about December 10, 2002, the Melbourne City Council appointed Schluckebier as City Manager.

15. Shortly thereafter, Schluckebier was tasked with selecting the new Chief of Police for the City of Melbourne.

16. Carey was not one of original candidates considered for the job. However, when a candidate dropped out, Schluckebier selected Carey as a finalist.

17. Before becoming a candidate for Police Chief, Carey served as chief of police for fourteen years in Blacksburg, Virginia; four years in Independence, Missouri; and five years in Omaha, Nebraska.

18. Carey received votes of “no confidence” while serving as Chief of Police in Blacksburg and Independence. The Omaha Police Department was in the process of passing a vote of “no confidence” when Carey resigned.¹

19. Carter discovered Carey’s history after researching each of the potential candidates for Chief. Carter then informed the Police Benevolent Association (“PBA”) of Carey’s history for the purpose of gaining support for other candidates.

20. The PBA was the Melbourne police officers’ union at this time.

21. On or about May 12, 2003, Schluckebier selected Carey as Chief of Police for the Melbourne Police Department despite strong disapproval from the police officers.

22. From 2003 to 2009, Carter continued to voice his concern regarding Carey’s abilities to manage the Melbourne Police Department.

23. On or about May 2009, Carter decided to run for Chairman of the union on the promise of challenging Carey’s polices and practices and changing the Melbourne union to the Fraternal Order of Police (“FOP”).

24. On or about November 2, 2009, after receiving a complaint from Carter’s disgruntled ex-girlfriend, Karen Gregory (“Gregory”), Internal Affairs Sergeant Danny Lynch (“Lynch”) began investigating Carter for using a free apartment as an unauthorized gratuity.

¹ A no confidence vote is a means to communicate to the community and city management that the police union perceives the police chief as incompetent, disinterested and/or uncaring, so that he or she can be removed from office.

25. Not only was Carey behind the apartment investigation, but he also took an usually active role in the investigation of the complaints by Ms. Gregory and interviewed her personally.

26. It was ultimately determined by the Florida Department of Law Enforcement (“FDLE”) that Gregory was not a credible witness.

27. On November 19, 2009, Carter was elected Chairman of the union. The FOP also replaced the PBA as Melbourne police officers’ union at this time.

28. Threatened by Carter’s new position and influence, the City of Melbourne, Carey, Schluckebier, and others began targeting Carter in retaliation for his public disapproval of Carey’s performance as Chief.

29. On November 25, 2009, Carter received a memo from Carey informing him that an internal investigation was being conducted in Case No. IA-2009-52 for obtaining a free apartment as an unauthorized gratuity. A copy of this memo is attached as **Exhibit A**.

30. On or about November 25, 2009, the Florida Department of Law Enforcement executed and served a search warrant on Carter’s phone. Carter was simultaneously served with an administrative suspension, a pre-requisite to terminating Carter.

31. On or about December 4, 2009, Carey instructed Lynch to download surveillance videos from Carter’s police vehicle in order to assist with the apartment investigation.

32. At that time, Carey specifically instructed Lynch to find five separate acts of misconduct for the purpose of establishing cause to terminate Carter's employment.

33. Following Carey's order, Lynch and others spent well over 1000 hours and hundreds of thousands of taxpayer dollars reviewing Carter's surveillance videos and conducting the investigation.

34. On January 4, 2010, Carter received a memo from Carey informing him that an internal investigation was being conducted in Case No. IA-2009-59 for "a pattern of conduct of racial profiling." A copy of this memo is attached as **Exhibit B**.

35. On January 25, 2010, Carter received a memo from Carey informing him that there may be probable cause to believe that Carter engaged in official misconduct and records falsification. Consequently, at Carey's urging, Carter's case was turned over to the Florida Department of Law Enforcement ("FDLE"). A copy of this memo is attached as **Exhibit C**.

36. On January 28, 2010, Carter was arrested and charged with five counts of official misconduct and several counts of falsification of records. At that time, Carey and Schluckebier, on behalf of the City, issued or approved a press release announcing Carter's arrest to the public, claiming that the charges were "emanating from a number of traffic stops...made on people of color." A copy of the news release announcing this information to the public is attached as **Exhibit D**.

37. Upon information and belief, FDLE did not investigate Carter's case prior to the arrest. Instead, FDLE made the arrest based solely on the information provided by the Melbourne Police Department.

38. At the time of his arrest, Carter was a 21-year veteran of the Melbourne Police Department with an impeccable record.

39. Carter's honors include, but are not limited to:

- a. Four-time winner of the Melbourne police's Humanitarian of the Year Award for his work with charities and for helping residents;
- b. Four certificates of commendation;
- c. Combat Cross Medal in 2001 for coming under gunfire while attempting to arrest a dangerous suspect;
- d. Chief's Achievement Award in 2002; and
- e. Fourteen recognitions for exemplary work, including helping save the life of a woman by administering CPR and his superior dedication during hurricanes Frances and Jeanne.

40. On February 1, 2010, Carey informed Carter of his intent to place Carter on unpaid administrative leave effective February 5, 2010. A copy of this letter is attached as **Exhibit E**.

41. On February 3, 2010, Carter received a memo from Carey informing him that an internal investigation was being conducted regarding an alleged unlawful search and seizure. A copy of this memo is attached as **Exhibit F**.

42. On February 11, 2010, Carter's attorney received a letter from Carey directing Carter to report to the Internal Affairs Unit on February 16, 2010 for an interview regarding the apartment incident. A copy of this letter is attached as **Exhibit G**.

43. Carter had already made plans to be out of the country between February 16 and February 24, 2010. Pursuant to departmental policy, Carter notified his immediate supervisors that he would be out of the country. Carter's attorney also sent letters to the City of Melbourne's counsel, Lynch and Carey informing them that Carter would be out of the country during these dates.

44. While Carter was out of the county, the FOP issued a press release stating that it was actively seeking the formal resignation of Carey. A copy of this press release is attached as **Exhibit H**.

45. Also, on February 11, 2010, Lynch issued a memo refusing to reschedule the interview despite Carter's absence. A copy of this letter is attached as **Exhibit I**.

46. Carter's attorney thereafter sent Carey a formal request asking to reschedule the interview until sometime after February 25, 2010. A copy of this letter is attached as **Exhibit J**.

47. On February 16, 2010, Carey sent a letter to Carter's attorney denying his formal request to reschedule the interview. A copy of this letter is attached as **Exhibit K**.

48. On February 26, 2010, Carter was put on administrative leave due to pending criminal charges. Carter was also issued an 80-hour suspension without pay for failure to appear for the statement before Internal Affairs and because Carey asserted that Carter violated Department policy by using the apartment for personal gain while on duty. A copy of this letter is attached as **Exhibit L**.

49. On or about March 2010, the FOP passed a vote of "no confidence" against Carey.

50. On or about April 9, 2010, Carey, who was then on medical leave, announced that he would not return to his job. Instead, he planned to use his paid and unpaid leave during his absence until he was eligible to collect his full retirement, which he now enjoys.

51. On or about April 9, 2010, Steve Mimbs (“Mimbs”) was appointed Interim Chief of the Melbourne Police Department.

52. On May 27, 2010, Carter received a letter from Angela Hundt, the benefits coordinator for the City of Melbourne, informing him that his benefits would be terminated effective May 31, 2010. These benefits included Carter’s medical insurance and pension. A copy of this letter is attached as **Exhibit M**.

53. A hearing regarding Carter’s prospective termination was scheduled on July 6, 2010. On the advice of counsel and due to pending criminal charges against him, Carter did not attend this hearing.

54. On August 19, 2010, Mimbs informed Carter that he had been terminated from the Melbourne Police Department for: (1) issuing citations to citizens for infractions they did not commit; (2) failure to properly use his in-car video system; (3) trespassing persons from areas where they were not legally eligible to be trespassed; (4) failing to follow oral and written direct orders given by supervisors regarding his attendance during the internal investigation; and (5) obtaining a free apartment as an unauthorized gratuity. A copy of this letter is attached as **Exhibit N**.

55. On or about August 26, 2010, Carter began the grievance process pursuant to the terms of Collective Bargaining Agreement. A copy of the Collective Bargaining Agreement is attached as **Exhibit O**.

56. Subsequently, the City of Melbourne informed Carter that he is not entitled to arbitration since the FOP is no longer the Melbourne Police union, and also that the arbitration has been abandoned due to inactivity despite its knowledge that Carter's attorney was facing disciplinary proceedings with the Florida Bar.

57. On or about March 18, 2011, the state attorney dropped all criminal charges against Carter for official misconduct and falsifying records.

58. In May 2011, The City of Melbourne, through its Attorney Paul Gougelman, confirmed that, in spite of the fact that all charges had been dropped against Carter in all cases, the City would not offer Carter his job back. In a final act of damage to Carter's reputation, Attorney Gougelman stated to the media that Carter was seeking a "huge bag of gold" from the City as a result of the horrific damage that the City had caused to the life and career of Carter. A copy of the article quoting Mr. Gougelman is attached as **Exhibit P**.

59. At all times relevant to this matter, Carter also worked as an independent marketing representative for Melaleuca. Melaleuca is a wellness company that provides different nutritional, cosmetic, and skin care products.

COUNT I

Violation of Plaintiff's First Amendment Rights Under 42 U.S.C. § 1983

60. This is an action by Carter against each Defendant for depriving Carter of his First Amendment rights.

61. Carter realleges and incorporates herein by reference paragraphs 1 through 59 above.

62. At all times relevant to this action, Carter was a public employee.

63. At all times relevant to this action, the City of Melbourne, Carey, and Schluckebier were state actors within the meaning of 42 U.S.C. § 1983.

64. Carter exercised his First Amendment rights by:

- a. Speaking out and gathering support against Carey's initial appointment;
- b. Speaking out and gathering support of his fellow officers against the policies and practices of Carey;
- c. Rallying support against Carey and the PBA in favor of a new union for the Melbourne police, the FOP; and
- d. As Chairman of the FOP, challenging the policies, practices and performance of Carey and attempting to procure a vote of "no confidence" against Carey.

65. Carter engaged in protected political speech when he publically announced his disapproval of Carey's appointment.

66. At all times relevant to this action, Carter's speech involved a matter of public concern.

67. Defendants harassed, disciplined, arrested, and ultimately terminated Carter in retaliation for his union association and speech in violation of the First Amendment to the United States Constitution.

68. Defendants' actions are not privileged.

69. The harassment, discipline, arrest, and termination of Carter had a chilling effect on speech.

70. Defendants created a general fear of retaliation by Defendants and their agents in Carter, residents of Brevard County, and other Melbourne police officers.

71. As a direct and proximate result of Defendants' actions, Carter has been harmed.

72. Defendants are jointly and severally liable for all damages sustained as a result of the violation of Carter's First Amendment rights.

WHEREFORE, Carter demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees as authorized by 42 U.S.C. § 1983, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

COUNT II

False Arrest and False Imprisonment Under 42 U.S.C. § 1983

73. This is an action by Carter against each Defendant for false arrest and false imprisonment under 42 U.S.C. § 1983.

74. Carter realleges and incorporates herein by reference paragraphs 1 through 59 above.

75. On January 28, 2010, Carter was arrested and thereby physically restrained or confined against his will.

76. Carter's person was detained wrongfully, illegally, without reason or probable cause and in violation of the Fourth Amendment.

77. Carter spent time in custody and jail as a result of this false arrest.

78. Defendants instigated or directly procured his arrest despite a lack of probable cause as a means of punishing Carter for speaking out against and opposing the policies and practices of Carey.

79. As a direct and proximate cause of Defendants actions, Carter has been harmed.

80. In committing the acts described herein, Defendants exhibited a complete disregard for Carter's rights and person and said acts were malicious and intentional in nature.

WHEREFORE, Carter demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees as authorized by 42 U.S.C. § 1983, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

COUNT III
Malicious Prosecution Under 42 U.S.C. § 1983

81. This is an action by Carter against each Defendant for malicious prosecution under 42 U.S.C. § 1983.

82. Carter realleges and incorporates herein by reference paragraphs 1 through 59 above.

83. On January 28, 2010, Carter was arrested without probable cause in violation of his Fourth Amendment right to be free from unreasonable seizures.

84. Carter was wrongfully charged with five counts of official misconduct and several counts of falsification of records “emanating from a number of traffic stops...made on people of color.”

85. On or about March 18, 2011, the criminal proceedings were terminated in favor of Carter.

86. The initiation of these criminal proceedings was instigated or directly caused by Defendants who coerced individuals within the FDLE and the State Attorney’s office to bring charges against Carter based on false and fabricated evidence.

87. At all times relevant to this action, Defendants acted maliciously.

88. As a direct and proximate result of Defendants actions, Carter has been harmed.

WHEREFORE, Carter demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys’ fees as authorized by 42 U.S.C. § 1983, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

COUNT IV
Defamation Under 42 U.S.C. § 1983

89. This is an action by Carter against each Defendant for defamation under 42 U.S.C. § 1983.

90. Carter realleges and incorporates herein by reference paragraphs 1 through 59 above.

91. At all times relevant to this matter, Carter was a public employee.

92. At all times relevant to this action, the City of Melbourne, Carey, and Schluckebier were state actors within the meaning of 42 U.S.C. § 1983.

93. Defendants made numerous false and defamatory statements, both oral and written, concerning Carter.

94. These statements were not privileged and were published and made public to third parties. The third parties include Florida Today, WESH 2 News, News 13, Hometown News, Fox News, and many others in the local and national media.

95. The slanderous statements include, without limitation:

- a. A January 28, 2010 press release issued by Defendants stating that Carter was arrested for making questionable traffic stops on “people of color,” essentially labeling Carter as a racist to the national media;
- b. That Carter is a “bad cop,” a direct attack on the character and career of Carter;
- c. That Carter is a “rogue cop,” a direct attack on the integrity and character of Carter;
- d. That Carter dishonestly used a free apartment as an unauthorized gratuity, a direct attack on the integrity and character of Carter;

96. Defendants’ statements were intentional and malicious and were made for the purpose of damaging Carter. In the alternative, they were negligent and/or reckless.

97. The above statements are per se defamatory and/or are susceptible to a defamatory meaning in that they subject Carter to hatred, distrust, ridicule, contempt and disgrace.

98. The above statements constitute slander per se as they relate to the integrity and character of Carter and relate to a matter incompatible with Carter's business, trade, profession or office.

99. The above statements and their meanings are false, and Defendants, at the time of making the statements, knew they were false or had serious doubts as to their truth.

100. The above statements are assertions of fact, not opinions.

101. At all relevant times to this action, Carter had a recognizable and protectable property interest in his continued employment with the Melbourne Police Department.

102. As a direct and proximate result of the above slanderous statements, Carter has sustained direct or indirect pecuniary loss including, but not limited to, lost earnings and loss of ability to earn money both as a police officer and as a sales representative for Melaleuca. Additionally, Carter has sustained humiliation, severe emotional distress, and injury to his reputation. All of the above damages are continuing and permanent in nature.

WHEREFORE, Carter demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees as authorized by 42

U.S.C. § 1983, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

COUNT V
Conspiracy to Commit All Counts Under 42 U.S.C. § 1983

103. This is an action by Carter against Defendants for conspiracy in violation of 42 U.S.C. § 1983.

104. Carter realleges and incorporates herein by reference paragraphs 1 through 59 above.

105. At all times relevant to this action, Carter was a public employee.

106. At all times relevant to this action, the City of Melbourne, Carey, and Schluckebier were state actors within the meaning of 42 U.S.C. § 1983.

107. Defendants are associated through employment and public office.

108. Each of these actors conspired and/or agreed to a common, unlawful objective.

109. That common, unlawful objective was to violate Carter's civil rights and to ruin Carter's reputation and career.

110. Each actor acted in furtherance of the common objective as outlined more fully herein.

111. As a direct and proximate result of Defendants' agreement, conspiracy, and overt acts, Carter was damaged.

WHEREFORE, Carter demands a judgment against Defendants for compensatory damages, court costs, and reasonable attorneys' fees as authorized by 42

U.S.C. § 1983, and for an award of punitive or exemplary damages in an amount sufficient to deter the conduct complained of herein.

JURY DEMAND

Plaintiff, Frank Carter, demands a jury trial on all issues so triable.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 19, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send Notice of Electronic Filing to the following:

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