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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RURIKO PAGE,

Plaintiff and Appellant,

v.

CITY OF LONG BEACH,

Defendant and
Respondent.

B262466

(Los Angeles County
Super. Ct. No. BC516227)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rita Miller, Judge. Affirmed.

KO Legal and Carla Elisa Kimberly Lind for Plaintiff and Appellant.

Charles Parkin, City Attorney, Haleh R. Jenkins, Deputy City Attorney; Alderman & Hilgers and Allison R. Hilgers for Defendant and Respondent.

* * * * *

Plaintiff and appellant Ruriko Page sued her employer the City of Long Beach (City) after she was terminated from her job. On appeal, the sole question is whether she raised a triable issue of material fact to withstand summary judgment. The only cause of action she continues to pursue is her claim that she was terminated in retaliation for whistleblowing conduct.

The parties' separate statements showed that Page was terminated based on an investigative report identifying serious misconduct. The misconduct was undisputed except that Page emphasized she never personally profited from it and was attempting to help others. After review, we conclude Page fails to raise a triable issue of material fact supporting the inference that the City's reasons for terminating her were pretextual. We affirm the entry of summary judgment in the City's favor.

FACTS AND PROCEDURE

1. Page's Employment and Termination

For 17 years, Ruriko Page was employed by the City as a housing rehabilitation counselor. Her responsibilities included assisting homeowners with the rehabilitation of their homes using federal and state loans and other grants. In the course of performing her duties, Page regularly interacted with homeowners, inspectors and contractors. Although the exact dates are unclear, during at least a portion of her employment at the City, Page's supervisor was Robin Grainger, and Grainger's supervisor was Angela Reynolds. According to Page, in May 2012, her supervisor was Patrick Ure.

Page was suspended from her job on June 20, 2012. The notice of suspension indicated that she had been suspended pending further investigation of the following incidents:

“1. On Monday, February 6, 2012 you used your City of Long Beach email to communicate with Carlyn Biser and members of Llergo Construction in an attempt to have a fraudulent invoice submitted for payment to the City for an amount of \$2,000.00.

“2. On March 12, 2012, you disclosed a competitor’s bid information to another bidder during the bid solicitation process.

“3. There were significant changes made to a construction project for Carlyn Biser that you managed, but no required change orders could be located, either because you did not seek the appropriate change orders or because you did not properly document the file.”

Page was terminated on July 26, 2012.

2. Page’s Alleged Whistleblowing Conduct

In her complaint filed July 25, 2013, Page alleged that her termination was in retaliation for whistleblowing conduct in violation of Labor Code section 1102.5 (section 1102.5).¹ She alleged that she performed her work in a capable and competent manner. Page alleged that she “complained that code violations were concealed rather than repaired to cut costs.”² Page

¹ Page’s complaint included other causes of action, but they are not relevant to this appeal.

² Page also alleged that she complained of Reynolds’s “illegal misappropriation of federal funding for the Neighborhood Services Program and Single Family Rehabilitation Loan Program.” In her reply brief, Page makes clear that she is abandoning that allegation. Page testified in her deposition that she did not tell anyone in management that she believed Reynolds was misappropriating federal money. Nor did she tell anyone in management or in any other department that she believed Reynolds was committing illegal activities.

complained that “inspectors were directed to turn a blind eye leaving properties non-compliant and that pre-existing contracts with the owners of properties and the contractors working on them were breached . . .” Page alleged that her complaints about code violations “played a major role in the decision to terminate” her.

In her declaration in opposition to summary judgment, Page averred: “When I tried to correct Ms. Reynolds regarding health and safety code violations, I was reprimanded by my supervisor Robin Grainger.” Page does not provide the date of her statements or of the alleged reprimand. Page also averred, “I brought many safety code violations to Ms. Reynolds’ and Mr. Grainger’s attention but was ignored. Specific examples of health and safety issues at rehab projects include: electrical and plumbing code violations at a property on Earl Street, electrical code violations regarding unsafe breakers on Easy Street, code violations due to corroded vents on Falcon Street.” Again, Page does not identify when she voiced her concerns to Reynolds or Grainger. Page averred that she included her concerns regarding code compliance in a May 22, 2012 e-mail to Ure. In 2011, Page reported one property with code violations to a committee board member and indicated that Reynolds demanded work be completed for \$60,000 even though one contractor bid \$90,000. Page also reported code violations sometime before June 2012 to Ellie Tolentino, bureau manager for housing services. One month prior to her termination, Page sent an e-mail to her supervisors notifying them that the City did not honor a

Page makes clear that she is focusing on the “complaints she made regarding violations of local building, health and safety codes.”

contractual payment schedule. According to Page, the city attorney followed up regarding the contractual payment schedule and contacted Reynolds on June 19, 2012, the day before she was suspended.³

After her suspension, on July 18, 2012, Page wrote a deputy city attorney stating that her suspension was related to her complaints about the breach of the “Rehab contracts” and that she had “been pursuing a resolve in this matter to get contractors paid.” The letter further stated that Reynolds concealed rather than repaired code violations.⁴

In her deposition, Page testified there were no health and safety code violations that she saw Reynolds commit. She further testified there were no health and safety code violations that she saw performed under Reynolds’s instructions. She testified she observed code violations that she attributed to Reynolds.

³ The trial court summarily sustained evidentiary objections excluding Page’s entire declaration. The trial court abused its discretion with respect to the evidence we have summarized. Page could testify to these facts from her personal knowledge. No additional foundation was required. The trial court’s summary ruling finding all of Page’s declaration inadmissible was an abuse of discretion. (*Twenty-Nine Palms Enterprises Corp. v. Bardos* (2012) 210 Cal.App.4th 1435, 1437.)

⁴ The City argues there was no evidence it received Page’s July 18, 2012 letter. But evidence that the City produced it during discovery undermines the City’s argument. There is no evidence indicating the date it was received by the City.

3. Reasons for Page's Termination

It was *undisputed* that the Citadel report “was *the basis* for the termination of” Page.⁵ (Italics added.) The Citadel investigation commenced sometime in March 2012. The City requested it after an anonymous caller reported misconduct by Page.⁶ The report reached the following conclusions: (1) Page had personal relationships with current or former City clients whose projects she supervised. (2) On behalf of one of her friends—Carlyn Biser—Page requested a \$2,000 fraudulent invoice so that Biser could receive a grant.⁷ (3) Page obtained tenants for a contractor while supervising the renovation project on behalf of the City.

Page stated that she was not interviewed as part of the investigation. In contrast, the Citadel report documented Page’s interview by a representative of the Citadel Group during which Page explained that Reynolds had a personal agenda against her. Page admitted that she had previously been disciplined for fraudulent behavior. In 2005, Page increased a change order in the amount of \$8,000 to provide financial assistance to a homeowner who was losing rental income during construction. The \$8,000 was fraudulent as it did not represent any work performed. The Citadel investigator was concerned that Page’s

⁵ The following fact was in Page’s separate statement of additional material facts: “The Citadel Report . . . was the basis for the termination of Plaintiff.”

⁶ Page insinuates that Reynolds fabricated the anonymous call but no evidence supported that suggestion.

⁷ Biser’s declaration indicated that Page sent Llargo Construction the request for an invoice without Biser’s consent.

rationalization of her conduct was “troubling” and that she failed to recognize her potential and actual conflicts.

In addition to the 2005 misconduct, the request for a \$2,000 fraudulent invoice, it also was undisputed that on March 12, 2012, Page disclosed one entity’s bid information to another bidder, who was her friend. Page did not deny sharing the information, but explained that the only reason she disclosed the bid to her friend was to show him an example of a substandard proposal. Page emphasized that she did not benefit financially from the misconduct and that she believed that she had acted in the best interest of the City. Even if Page were not interviewed in connection with the Citadel investigation, she does not dispute the misconduct reported by Citadel.

After receiving the Citadel report, the City concluded that Page’s “conduct was found to be in violation of the City’s Code of Ethics and various provisions of the City’s Civil Service Rules and Regulations regarding inexcusable neglect of duty, dishonesty, and other failure of good behavior” Page claims that instead she was terminated because she spoke out about her concerns regarding building code violations. She disputed the City’s statement of fact that her conduct was found to violate the City’s code of ethics stating that it “was pretextual.”

4. Judgment

Following the City’s motion for summary judgment, the trial court entered summary judgment in favor of the City.

DISCUSSION

1. Standards for Summary Judgment

Standards governing summary judgment are well established. “Summary judgment and summary adjudication provide courts with a mechanism to cut through the parties’

pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citations.] A defendant moving for summary judgment or summary adjudication may demonstrate that the plaintiff's cause of action has no merit by showing that (1) one or more elements of the cause of action cannot be established, or (2) there is a complete defense to that cause of action." (*Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 587.) "A defendant moving for summary judgment or summary adjudication need not conclusively negate an element of the plaintiff's cause of action. [Citations.] Instead, the defendant may show through factually devoid discovery responses that the plaintiff does not possess and cannot reasonably obtain needed evidence." (*Ibid.*)

"After the defendant meets its threshold burden, the burden shifts to the plaintiff to present evidence showing that a triable issue of one or more material facts exists as to that cause of action or affirmative defense. [Citations.] The plaintiff may not simply rely on the allegations of its pleadings but, instead, must set forth the specific facts showing the existence of a triable issue of material fact. [Citation.] A triable issue of material fact exists if, and only if, the evidence reasonably permits the trier of fact to find the contested fact in favor of the plaintiff in accordance with the applicable standard of proof." (*Collin v. CalPortland Co., supra*, 228 Cal.App.4th at p. 588.)

We review the order granting summary judgment de novo. (*Collin v. CalPortland Co., supra*, 228 Cal.App.4th at p. 588.) Our task is to determine whether a triable issue of material fact exists. (*Ibid.*)

2. The Trial Court Properly Granted Summary Judgment

At the relevant time section 1102.5 provided:⁸ “An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.” (Former § 1102.5, subd. (b), effective 2004-2013.) For purposes of this appeal, we assume that when Page reported code violations she was reporting a violation of a federal regulation. Part 92.251(a)(1) of the 24 Code of Federal Regulations (former and current 2016) requires entities receiving federal grants to follow local building codes.

To demonstrate retaliation based on whistleblowing activity, the plaintiff “must show he engaged in [a] protected activity, his employer subjected him to an adverse employment action, and there is a causal link between the two. If the plaintiff meets his prima facie burden, the defendant has the burden to prove a legitimate, nonretaliatory explanation for its actions. To prevail, the plaintiff has to show that the explanation is pretext for the retaliation.” (*Hager v. County of Los Angeles* (2014) 228 Cal.App.4th 1538, 1540.) Assuming that Page could establish a

⁸ Citing no authority, Page argues that a 2014 modification to section 1102.5 should be applied retroactively. We instead apply the version in effect at the time Page allegedly reported misconduct and was terminated. (See *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 475 [“ ‘Generally, statutes operate prospectively only.’ ”].) In any event, our analysis would not differ if the current statute applied retroactively. Under either version, Page’s reporting of code violations fell within the parameters of the statute.

prima facie case her termination was retaliatory, the City provided overwhelming evidence of a nonretaliatory explanation of its decision to terminate her.⁹ As we shall explain, Page fails to identify any evidence supporting the inference that the City's explanation for terminating her was a pretext for retaliation.

First, the undisputed facts show that Page was terminated based on the Citadel report, which identified the misconduct she committed. This undisputed fact contradicts her allegation that her reporting code violations played a major role in the decision to terminate her.

Second, the undisputed nature of the misconduct is significant even if we credit Page's explanations that she did not profit personally and was attempting to help others. In her declaration, Page admitted that (1) in 2005 she "process[ed] a change order in excess of its value." She further admitted that she suggested Biser "contact Llergo Construction for an invoice" even though Llergo Construction did not complete any work on Biser's home. An e-mail from her City account showed that Page requested the fraudulent invoice. Page also acknowledged that she shared a bid with another bidder, who was her friend. Because the underlying misconduct is not disputed, Page has no basis to argue that false allegations of misconduct supported the inference that the City intentionally retaliated against Page. Simply put, the City's stated reason for terminating Page was not false.

In her reply brief, Page emphasized that Reynolds caused the investigation against her to commence, the anonymous

⁹ Even if, as Page argues, the appropriate standard is clear and convincing evidence, the City satisfied this standard.

allegations were unsubstantiated, a friend of Reynolds wanted Page summarily suspended, and the City did not interview her. Assuming for purposes of appeal all of these facts are true, they do not raise an inference that the City terminated Page *because* she reported code violations. There was no evidence that Reynolds fabricated the anonymous phone call that triggered the investigation. Even if City employees believed Page should be suspended, that fact does not support the inference that she was suspended (or ultimately terminated) because she reported code violations. The missing link is evidence supporting an inference that the reason for her termination was her whistleblowing conduct. Even in her postsuspension letter to the deputy city attorney, Page does not attribute her suspension to reporting code violations, but instead attributes it to her reports of the “breach of Rehab contracts,” which does not fall within the whistleblowing conduct identified in section 1102.5. In short, the evidence marshaled by Page does not suggest that the City’s reasons for terminating her were pretext for retaliation or support the inference that she was terminated because she reported code violations. The City was not required to interview Page prior to terminating her, and in any event she does not deny that she committed the acts identified in the Citadel report and identified as the basis for her suspension and ultimate termination.

Additionally, the fact that Page wrote a letter reporting code violations after she was suspended does not raise a triable inference that she was terminated because of her reporting. Temporal proximity may support a *prima facie* case of discrimination but standing alone is insufficient to demonstrate pretext. (*Arteaga v. Brink’s, Inc.* (2008) 163 Cal.App.4th 327,

354, 357.) This is especially true when as here the employer has raised questions about the employee prior to the report. (*Id.* at p. 353.) The City considered terminating Page and suspended her pending an investigation, which revealed undisputed misconduct.

Finally, Page's claim that e-mails show that the "City wanted the investigative report for purposes of terminating the Plaintiff" is unsupported by the record. The portions cited show only that the Citadel report was forwarded to several City workers including Reynolds. At most Page has demonstrated the City wanted to terminate her. Page offers no evidence raising a triable issue of material fact that the City wanted to terminate her because of a retaliatory animus, i.e. because she reported code violations as she alleged in her complaint. For all of these reasons the trial court properly granted summary judgment in favor of the City.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.