72012-1

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No. 72012-1-I

DIVISION I, COURT OF APPEALS
OF THE STATE OF WASHINGTON

REBECCA A. RUFIN,

Plaintiff/Appellant,

v.

CITY OF SEATTLE and JORGE CARRASCO,

Defendants/Respondents,

ON APPEAL FROM KING COUNTY SUPERIOR COURT
(Hon. Beth M. Andrus)

Case No. 11-2-01374-7

REPLY BRIEF OF APPELLANT

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Despite the fact that summary judgment in discrimination cases is "seldom appropriate," in this case the trial court granted partial summary judgment and dismissed a significant portion of Rebecca Rufin's claim of retaliation. Even though the court found that there existed an issue of fact as to whether the City retaliated against Rufin in failing to select her for the Civil/Mechanical Engineer Manager ("CMEM") position in 2010, 2011, and 2012, the court nevertheless ruled that no issue of fact existed concerning whether the City's non-selection of Ms. Rufin for the Large Projects Senior Manager ("LPSM") position in 2012 was similarly retaliatory. Such decision by the trial court was internally inconsistent, primarily owing to the fact that the court explicitly declined to consider Ms. Rufin's evidence cumulatively and instead analyzed evidence related to the two hiring processes "separately." RP (Feb. 27, 2014), at 58:8-12.[1]

There was no basis to distinguish the multiple failures of the City to select Ms. Rufin for the CMEM position from its non-selection of her for the LPSM position during the same time period. The trial acknowledge

[1] The claim to the contrary, at pp. 33-34 of the City's brief, was not made when the court ruled on summary judgment and is inconsistent with the court's prior oral ruling on summary judgment. The statement quoted by the City was made months *after* the summary judgment ruling, after trial was complete, and after a motion for a new trial was filed claiming that the court had erred in evaluating the claims "separately." *See* CP 3661. Notably, months earlier Ms. Rufin filed a motion for reconsideration making the same assertion that the court had erred in analyzing the claims "separately." The court's order denying that motion made no attempt to "correct the record" nor claim that the motion was inaccurate about how the court had evaluated the evidence. *See* CP 2394, 2444.

that with respect to both hiring processes, "witnesses den[ied] ... outright" Mr. Carrasco's influence.[2] Yet, the Court still determined that a jury could find that Ms. Rufin's protected activities had "tipped the scales one way or the other" with respect to any of the City's multiple non-selections of Ms. Rufin for the CMEM position. *See id.*, 60:5-6. That finding, taken in combination with other circumstantial evidence that Ms. Rufin presented, provided an adequate basis for the jury to also find that a causal link similarly existed between Ms. Rufin's protected activities and her non-selection for the LPSM position.

The circumstantial evidence that Ms. Rufin presented in support of her retaliation claim as a whole, and specifically with respect to the LPSM hiring process, was sufficient to create triable issues of fact for the jury concerning causation and "factors" in her non-selection. Rufin presented evidence that after she engaged in protected activities, management including City Light's HR Director DaVonna Johnson (a direct report to Superintendent Carrasco), viewed Rufin as having "burned her bridges." CP 628, 2146. HR Director Johnson told Ms. Rufin that she would never be considered for "any" management positions at the utility. *Id.* Darnell Cola, the City's hiring manager for the LPSM position, who was earlier involved in Rufin's bid for the CMEM in which her non-selection was

[2] RP (Feb. 27, 2014) at 59:14-23

unusual under the circumstances,[3] confessed to Rufin that her non-selection for the CMEM job was "political." CP 2103. It is reasonable to infer from such statement that Mr. Cola would view Ms. Rufin's selection for any position as potentially political.

Mr. Cola admits that in August 2011, before he made such comment and well before he made hiring decisions relating to the LPSM position, Ms. Rufin told Cola about potential "difficulties" in her relationship with Superintendent Jorge Carrasco. *See* CP 1123, 2311. Ms. Rufin testified she told Mr. Cola that Carrasco did not like her and that it was perhaps because she had been "outspoken." CP 2307 (¶ 1), 2311.

Months later, in April 2012, after Cola and City Light failed to select Ms. Rufin for the LPSM position, Rufin left Cola a voicemail, asking him to meet again and discuss what Rufin was "doing wrong" in the hiring processes that Cola was involved in. CP 2312. At the April meeting, Cola told Rufin the CMEM decision was "political." He also told Rufin that there were four candidates who had interviewed for the LPSM position and that all of them were exceptional, but that the job had gone to Glynda Steiner. *Id.* Cola did not mention that Rufin had been unanimously rated "high" by the interview panel, or that there was a second interview with any candidate, instead leaving Ms. Rufin with the impression that

[3] *See* Brief of Appellant, at 10-20; *see also* CP 3731 (Order Denying in Part Defendant's Motion for Summary Judgment).

there was just one interview. *Id.* Nor did Cola tell Rufin that Cheryl Ooka, a candidate who was not a licensed professional engineer like Rufin and did not have any background in an electrical utility, was given a second interview that Rufin did not receive. *See* CP 2312-13.

In the April 2012 meeting, Ms. Rufin asked Mr. Cola what it was that had given Ms. Steiner the edge over her. CP 2312. Cola explained that Rufin's greatest weakness had been that she did not have much experience in the City's "**disciplinary process**," especially the later steps, and that her lack of experience in the City's disciplinary process was the "*deciding factor*" in giving Ms. Steiner the position. *Id.*

Months later, Ms. Rufin received a copy of the hiring process file – the City's only contemporaneous record related to the LPSM hiring decisions – and she discovered for the first time that the interview panel for the LPSM position in fact gave Rufin unanimous "high" ratings, along with two other candidates (Ooka and Steiner), and that it "unanimously recommended" **all three** candidates for a second interview. CP 2312-13. The contemporaneous hiring record nowhere indicates that "the hiring panel unanimously decided Ms. Steiner and Ms. Ooka were the strongest candidates," as the City now claims. *See* Brief of Respondent, at 39; *cf.* CP 1120 Similarly, the explanation that Cola gave Rufin in April 2012 as the "deciding factor" for her non-selection, *i.e.*, her alleged inexperience in the

"disciplinary process," nowhere appears in the City's contemporaneous documentation about the hiring decision. *See* CP 1120. *Cf.* Godwin v. Hunt Wesson, Inc., 150 F.3d 1217, 1222 (9th Cir. 1998) *and* Sect. B *generally*, *infra*, at 14-16.

Instead the contemporaneous documentation and testimony by the Personnel Specialist who was involved in the LPSM hiring process reflect that, in February 2012, when Ms. Rufin's non-selection for LPSM occurred, Mr. Cola stated that the reason for the decision was based on the other highly-rated candidates' "**technical expertise and familiarity with** CL [**City Light**] **projects**." *See* CP 1120, 2303 (¶ 5). Such documented, contemporaneous explanation for Rufin's non-selection is not only inconsistent with the "disciplinary process" explanation that Cola later gave Rufin, as well as inconsistent with the reasons given in the declarations that the City filed on summary judgment, *see, e.g.*, CP 1124, ¶ 7; the contemporaneous explanation recorded in the City's hiring file also reflected criteria that, if applied properly, weighed in *favor*, not against, selecting Ms. Rufin for a second interview. *See, e.g.*, CP 2313-14 and 1302 (LPSM interview panelist wrote about Rufin: "very good technical—[Seattle City Light] background."). Mr. Cola admits that the only explanation for not selecting Ms. Rufin that the City Light contemporaneously recorded – *i.e.*, the hiring file note, "due to technical

expertise and familiarity with [City Light] projects" – was not the true reason for the decision. CP 1124 (¶ 8). In the context of a motion for summary judgment, any attempt by Mr. Cola or the City to explain away the inaccuracy of their only contemporaneous record regarding Rufin's non-selection is irrelevant. "[I]t is not for the... court to resolve these inconsistencies but rather to recognize that they create material issues of fact as to the real reason" for the non-selection. Sellsted v. Washington Mut. Sav. Bank, 69 Wn. App. 852, 861, 851 P.2d 716 (1993).

It was error for the trial court to "slice and dice" City Light's treatment of Ms. Rufin and for it to remove City Light's treatment of her in the LPSM hiring process from the overall presentation of her claim for retaliation. The trial court's error in dismissing such a significant portion of Ms. Rufin's retaliation claim was not harmless and it warrants a new trial on the entire claim.

A. Ms. Rufin raised a genuine issue of fact as to whether there was a causal link between her prior protected activities and City Light's repeated failure to rehire her, including its non-selection of her for the LPSM position.

The City challenges only one element of Ms. Rufin's retaliation claim, whether she presented evidence of a "causal connection between [her] protected activity and the adverse employment action," *i.e.*, her non-selection for the LPSM position. Brief of Respondent, at 27. With regard to such element, Ms. Rufin does not need to show that her protected

activities were the "sole or principal reason" for her non-selection, only that they "tip[ped] the scales one way or the other." Renz v. Spokane Eye Clinic, P.S., 114 Wn. App. 611, 621, 60 P.3d 106 (2002).

Ms. Rufin's prima facie burden is "not onerous," but rather "*minimal* and does not even need to rise to the level of a preponderance of the evidence." Fulton v. Dep't of Social & Health Svcs., 169 Wn.App. 137, 152, 279 P.3d 500 (2012) (italics in original), *quoting* Wallis v. J.R. Simplot Co., 26 F.3d 885, 889 (9th Cir.1994). *See also* McGinest v. GTE Service Corp., 360 F.3d 1103, 1124 (9th Cir. 2004) ("[A]ny indication of discriminatory motive ... may suffice to raise a question that can only be resolved by a fact-finder."); Chuang v. Univ. of Cal. Davis, 225 F.3d 1115, 1124 (9th Cir. 2000) (plaintiff "need produce very little evidence ... to overcome an employer's motion for summary judgment").

City Light's different treatment of Ms. Rufin in the LPSM hiring process -- *i.e.*, its failure to advance her to a second job interview after both the resume review panel and first interview panel each unanimously rated her "highly," just like the two women who City Light selected to advance to the second round of interviews[4] -- is a significant fact that suggests retaliatory motivation. *See* Vasquez v. State, 94 Wn. App. 976, 985, 974 P.2d 348 (1999) ("Among the factors suggesting retaliatory

[4] CP 4094-95; CP 1300-06.

motivation is ... satisfactory work performance and evaluations."); *and* Johnson v. Chevron U.S.A., Inc., 159 Wn. App. 18, 33, 244 P.3d 438 (2010) ("Proof of different treatment by way of comparator evidence is relevant and admissible" evidence of discriminatory intent). *Accord* Johnson v. Palma, 931 F.2d 203, 207 (2d Cir. 1991) (stating that "causal connection" between protected activities and adverse employment action may be established with evidence showing "disparate treatment of fellow employees who engaged in similar conduct").

Additionally, the statement to Ms. Rufin from Mr. Carrasco's direct report, H.R. Director DaVonna Johnson, that Rufin had "burned her bridges" and would never be hired for ***any*** City Light management position is also relevant, circumstantial evidence of retaliation -- even if "not made directly in the context of [the LPSM] employment decision [and] uttered by a non-decision-maker." *See* Scrivener v. Clark College, 181 Wn.2d 439, 450, n.3, 334 P.3d 541 (2014). Mr. Cola's similar statement that a hiring decision about Ms. Rufin was "political" is likewise relevant. Where an employee offers such direct evidence of discriminatory motive, "a triable issue as to the actual motivation of the employer is created even if the evidence is not substantial." Estevez v. Faculty Club of Univ. of Washington, 129 Wn. App. 774, 801, 120 P.3d 579 (2005).

> Moreover, if the employee establishes that he or she participated in an opposition activity, the employer knew of the opposition

> activity, and [an adverse employment action is taken], then a rebuttable presumption is created in favor of the employee that precludes us from dismissing the employee's case.

Estevez, 129 Wn. App. at 799; Renz v. Spokane Eye Clinic, P.S., 114 Wn. App. 611, 621-22, 60 P.3d 106 (2002); Wilmot v. Kaiser Aluminum & Chem. Corp., 118 Wn. 2d 46, 69, 821 P.2d 18, 29 (1991).

The City reluctantly acknowledges that the trial court's summary judgment decision necessarily determined that the City knew of Ms. Rufin's opposition activity. *See* Brief of Respondent at 30, n. 18 ("The trial court obviously found sufficient circumstantial evidence that Mr. Carrasco knew about the protected conduct to allow the CME claim to proceed to trial."). As Ms. Rufin's employer knew about her opposition activities and failed to advance her to a second round of interviews for the LPSM position, despite her receiving unanimous "high" ratings like the candidates who were advanced to the second round, there should be a rebuttable presumption of retaliation.

The City's brief cites no case interpreting the Washington Law Against Discrimination ("WLAD") that has required an employee pursuing a retaliation claim pursuant to the WLAD to show anything more than that "*the employer*" in general had knowledge of the protected activity. *See generally* Brief of Respondent, and *id.*, at 28-30, 40-41. Nevertheless, to present her RCW 49.60 claims of retaliation to the jury,

the City would like to require Ms. Rufin to present testimony from managers confessing that Superintendent Carrasco had influenced their decisions to not hire Rufin; or alternatively, to require that Rufin present video or eyewitness testimony showing that Superintendent Carrasco had told employees that Rufin was *persona non grata* at City Light, that she had "burned her bridges" at the utility, and that she must never return. The Washington Law Against Discrimination ("WLAD") is more robust than that. No court applying the WLAD has ever required such direct evidence of retaliation to avoid summary judgment, and specifically in this case, the trial court did not require such direct evidence in order to allow the City's CMEM hiring decisions to be reviewed by the jury. It is undisputed that Ms. Rufin is "not required to produce 'direct or 'smoking gun' evidence.'" Renz, 114 Wn. App. at 623.

In the absence of any authority under state law imposing such a requirement, the City's brief discusses multiple unpublished federal court opinions in order to request that this Court require Ms. Rufin to present direct evidence that individual decision-makers either had "knowledge" of her protected activities or that such persons were influenced by the agency head, Jorge Carrasco, who is admitted to have such knowledge. *See* Brief of Respondent at 30-32 and fn. 18.

The WLAD's standard for creating a rebuttable presumption of

retaliation, as discussed, for example, in Estevez, 129 Wn. App. at 799; Renz, 114 Wn. App. at 621-22; and Wilmot, 118 Wn. 2d at 69, speaks only to showing that "*the employer*" had knowledge of prior protected activities before an employment action was taken. *Id.* Such standard under the WLAD is consistent with federal precedents interpreting Title VII, including those previously cited in the Brief of Appellant. *See id.*, at 37, *discussing, e.g.,* Gordon v. New York City Bd. of Educ., 232 F.3d 111, 117 (2000) (stating that "to satisfy the knowledge requirement, [nothing] more is necessary than general corporate knowledge that the plaintiff has engaged in a protected activity.") The City in its brief discusses Miller v. State of California, 212 Fed. Appx. 592 (9th Cir. 2006), an unpublished opinion interpreting Title VII. That opinion has no precedential value and should not be considered by the Court for any purpose; its citation and discussion in the City's brief violates GR 14.1(b), RAP 10.4(h) and 9th Cir. Rule 36-3(c).[5]

In Hernandez v. SpaceLabs Medical, Inc., 343 F.3d 1107 (2003), an earlier opinion that the Ninth Circuit Court of Appeals selected for publication, the relevant decision-makers for a termination testified that they were unaware of the employee's protected activity prior to

[5] *See* Condon v. Condon, 177 Wn. 2d 150, 166, 298 P.3d 86, 93 (2013), *citing* Skamania County v. Woodall, 104 Wn. App. 525, 536 n. 11, 16 P.3d 701 (2001). 9th Cir. Rule 36-3(c) prohibits citation of unpublished 9th Circuit opinions "issued before January 1, 2007...." except in limited circumstances that do not apply in this case.

terminating him. *Id.*, at 1113-14. The district court in the case had held that because the plaintiff "failed to show that [the decision-maker] was aware that [he] had engaged in protected activity..., this 'eviscerate[d]' [the] retaliation claim because it prevented a finding of a causal connection between the protected activity and the termination." *Id.* The Court of Appeals disagreed, concluding that the circumstantial evidence was such that the jury could have inferred otherwise, reversed summary judgment for the employer and remanded the case for trial on Title VII and RCW 49.60 claims of retaliation. *Id.*

> What-did-he-know-and-when-did-he-know-it questions are often difficult to answer, and for that reason are often inappropriate for resolution on summary judgment. It is frequently impossible for a plaintiff ... to discover direct evidence contradicting someone's contention that he did not know something....

Hernandez, 343 F.3d at 1113-14. *See also* Alfonso v. GTE Directories Corp., 137 F. Supp. 2d 1212, 1221 (D. Or. 2001) (stating "[t]he record does not clearly establish whether [HR]... told George that Alfonso had complained.... George denies knowing of such complaints, but facts in the record create an inference of impermissible retaliation"); Price v. Thompson, 380 F.3d 209, 212–13 (4th Cir. 2004) (holding that even though witnesses testified they did not know about or discuss Plaintiff's protected activity, "[a] reasonable factfinder could elect not to credit fully the testimony supportive of [the hiring official] in favor of the

circumstantial evidence tending to show that [the hiring official] knew or strongly suspected that [the plaintiff] was the complainant."); Lam v. University of Hawaii, 40 F.3d 1551, 1564 (9th Cir.1994) ("The existence of an intent to discriminate may be difficult to discern in [declarations and] depositions compiled for purposes of summary judgment, yet it may later be revealed in the face-to-face encounter of a full trial.").

These federal precedents are consistent with the standards that apply to motions for summary judgment, where the Court must "draw all reasonable inferences in favor of the nonmoving party" and "disregard all evidence favorable to the moving party that the jury is not required to believe." Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 150-51 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). *Accord* Renz, 114 Wn. App. at 623 ("[O]n a motion for summary judgment the trial court has no authority to weigh evidence or testimonial credibility....").

Most of the City's argument focuses on the fact that Ms. Rufin lacks eyewitness testimony or similar evidence directly showing that Mr. Carrasco was involved in or influenced the LPSM hiring process. *See, e.g.*, Brief of Respondent, at 10, 28-30, 40-41. However, the fact that Mr. Carrasco's subordinates do not confess to his influencing their decisions comes as no surprise.

> Employers, of course, rarely openly reveal that retaliation was a motive for adverse employment actions. Employees must then

> necessarily resort to circumstantial evidence to demonstrate the retaliatory purpose.

Renz, 114 Wn. App. at 621. *See also* Vasquez, 94 Wn. App. at 985 ("[E]mployers rarely will reveal they are motivated by retaliation"); deLisle v. FMC Corp., 57 Wn. App. 79, 83, 786 P.2d 839, 841 (1990) ("[E]mployers infrequently announce their bad motives...."); *and* Wilmot, 118 Wn. 2d at 69 ("'Ordinarily the prima facie case must, in the nature of things, be shown by circumstantial evidence, since the employer is not apt to announce retaliation as his motive.'").

At least with regard to the declaration testimony of Mr. Kern, the CMEM hiring manager, Mr. Kern does not go so far as to resolutely deny that Carrasco or HR Director Johnson ever provided directions to not hire Rebecca Rufin. Rather, Mr. Kern could testify only that he "d[id]n't recall" that and had "no memory" of it happening. CP 1188, ¶ 5.

B. The lack of accurate, contemporaneous documentation of the basis for Ms. Rufin's non-selection for the LPSM job, along with multiple and shifting explanations for her non-selection, make the City's most recent stated reasons for its action less believable and create additional bases to infer retaliation.

The causation and pretext inquiry often overlap such that evidence establishing a prima facie case may also establish pretext and vice versa. *See, e.g.,* Emeldi v. Univ. of Or., 698 F.3d 715, 729 (9th Cir.2012). *See also* Rice v. Offshore Sys., Inc., 167 Wn. App. 77, 89, 272 P.3d 865 (2012) (stating that with regard to pretext, the employee is "not required to

produce evidence beyond that offered to establish the prima facie case...."). Importantly, Ms. Rufin "does not need to disprove each of the employer's articulated reasons to satisfy the pretext burden of production." Scrivener, 181 Wn.2d at 447.

In evaluating issues of causation and/or pretext, Washington courts recognize that an employer presenting "[m]ultiple, incompatible reasons" for an applicant's non-selection "support[s] an inference that none of the reasons given is the real reason." *See* Renz, 114 Wn. App. at 623; Dumont v. City of Seattle, 148 Wn. App. 850, 869, 200 P.3d 764 (2009) ("when ... explanations ... change over the course of an action ... courts may consider this as evidence that the employer's proffered explanation is pretextual").

In Godwin v. Hunt Wesson, Inc., 150 F.3d 1217, 1222 (9th Cir. 1998), the court was presented with issues similar to this case, where the employer's "contemporaneous" hiring record failed to include the rationale that witnesses asserted in litigation was the basis for their hiring decision. The court in Godwin wrote:

> The evidence in this record of the contemporaneous reasons for the selection of the male applicant... is inconsistent in material ways with the statements upon which the employer relies.... Although ... declarations and depositions indicate that 'creativity' was the most important criterion for selecting the male Wesson marketing manager, the criterion of 'creativity' does not appear in the contemporaneous memorandum prepared at the time of the selection. Although 'shifting explanations are acceptable when viewed in the context of other surrounding events ... such weighing of the evidence is for a jury, not a judge.'

Id., 150 F.3d at 1217, *quoting* Payne v. Norwest Corp., 113 F.3d 1079, 1080 (9th Cir.1997) (holding that "one who tells the truth need not recite different versions of the supposedly same event."). *Accord* Washington v. Garrett, 10 F.3d 1421, 1434 (9th Cir.1993) (holding that "fundamentally different justifications for an employer's action would give rise to a genuine issue of fact with respect to pretext since they suggest the possibility that neither of the official reasons was the true reason."). *See also* Griffith v. Schnitzer Steel Industries, Inc., 128 Wn. App. 438, 450, 115 P.3d 1065 (2005) ("An employer's "lack of documentation ... may be circumstantial evidence that the proffered ... justifications were fabricated post hoc"); *and* Currier v. Northland Servs., Inc., 182 Wn. App. 733, 749, 332 P.3d 1006, 1014 (2014), *review denied*, 182 Wn. 2d 1006, 342 P.3d 326 (2015) (finding circumstantial evidence of discrimination included "lack of documentation for ... purported nondiscriminatory reasons").

Mr. Cola's lack of candidness with Ms. Rufin about the purported basis for her non-selection -- telling her that the "deciding factor" concerned her lack of experience with the City's "disciplinary process," and failing to mention the vague basis now stated in his sworn declaration (*i.e.*, "some concerns about the lack of detail in [Rufin's] responses to some of the questions") – also creates an issue of fact concerning causation. *See* Hill v. BCTI Income Fund-I, 144 Wn.2d 172, 23 P.3d 440 (2001) ("[T]he

trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as 'affirmative evidence of guilt.'").

C. Even if the trial court properly dismissed Ms. Rufin's claim related to non-selection for the LPSM job, which it did not, the facts of her LPSM non-selection were still admissible as another retaliatory act that supported her claim of retaliation based on her non-selection for CMEM.

The City argues that once the trial court determined that retaliation was not a factor in Ms. Rufin's non-selection for LPSM, the evidence of such non-selection was inadmissible under ER 404(b). Brief of Respondent, at 42. It writes that "under ER 404(b), the trial court must, ... find that the prior acts were proved by a preponderance of the evidence and determine whether the evidence is relevant. State v. Guzman, 119 Wn. App. 176, 182 (2003)." *Id.* The City is mistaken on what ER 404(b) requires to present evidence of prior bad acts to the jury, as it relies on a criminal case where the ultimate burden of proof is "reasonable doubt" in this civil action involving claims of employment discrimination. As already stated in Ms. Rufin's opening brief and left unaddressed in the City's response, the Washington Supreme Court has suggested that "the preponderance standard for [prior acts] testimony may be too stringent in

the civil context, where the ultimate standard itself is preponderance." Brundridge v. Fluor Federal Services, Inc., 164 Wn.2d 432, 448, 191 P.3d 879 (2008). For the reasons previously stated, a jury could reasonably infer retaliatory intent from the City's treatment of Ms. Rufin in the LPSM hiring process under CR 56's standards for presenting the acts as part of a claim to the jury and certainly under ER 404(b)'s relaxed standard to present the evidence as a prior bad act that supports Ms. Rufin's claim for retaliation based on her non-selection for the CMEM position.

CONCLUSION

The City offers a substantial amount of evidence and very different story from Ms. Rufin regarding both the CMEM and LPSM hiring processes, which on review of a motion for summary judgment only demonstrates that Plaintiff's story is contested and that factual issues remain in dispute for a jury to decide.

While the City maintains that "trial courts grant partial summary judgment every day,"[6] it fails to identify a single case where the court granted partial summary judgment in the manner done in the case, where a plaintiff's claim for retaliation was split into discrete parts, not due to a lack of timeliness in filing the claim, but rather based on lack of causation. Having found that an issue of fact existed concerning whether a factor in

[6] *See* Brief of Respondent at 2,

Ms. Rufin's repeated non-selection for CMEM was retaliation, it defies logic that an issue of fact would not also exist regarding whether an additional hiring decision in the same time period was also retaliatory; particularly where the employer set forth multiple, inconsistent and inaccurate explanations for Ms. Rufin's non-selection and failed to treat her like similarly-rated job applicants. For all of the foregoing reasons, summary judgment should be reversed as to the LPSM retaliation claim and this case should be remanded for a new trial on Ms. Rufin's entire claim for retaliation, including her non-selection for both the CMEM and LPSM positions.

RESPECTFULLY SUBMITTED this 16th day of March, 2015.

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DECLARATION OF SERVICE

Patti Lane states and declares as follows:

1. I am over the age of 18, I am competent to testify in this matter, I am a legal assistant employed by the Sheridan Law Firm, P.S., and I make this declaration based on my personal knowledge and belief.

2. On March 16, 2015, I caused to be delivered via email addressed to:

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David Bruce / Ryan Solomon
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a copy of REPLY BRIEF OF APPELLANT.

3. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of March, 2015 at Seattle, King County, Washington.

s/Patti Lane
Patti Lane
Legal Assistant