SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00930

RICKY L. HAGGARD

APPELLANT

VS.

CITY OF JACKSON, MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

LOUIS H. WATSON, JR.
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SUPREME COURT OF MISSISSIPPI

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Ricky L. Haggard v. City of Jackson, Mississippi

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

1. Ricky L. Haggard, Appellant;

2. Louis H. Watson, Jr., Attorney for Appellant;

3. Nick Norris, Attorney for Appellant;

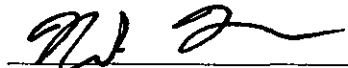
5. City of Jackson, Mississippi, Appellee;

6. Pieter Teeuwissen, Attorney for Appellee;

7. Claire Barker Hawkins, Attorney for Appellee;

9. Honorable W. Swan Yerger, Circuit Court Judge.

This the 25th day of October, 2010.



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STATEMENT OF THE ISSUES

1. Whether The Circuit Court Erred In Granting Defendants' Motion to Dismiss as to Appellant's breach of contract claim?

2. Whether The Circuit Court Erred In Granting Defendants' Motion for Summary Judgment as to Appellant's race discrimination claim?

SUPREME COURT OF MISSISSIPPI

COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00930

Ricky L. Haggard v. City of Jackson, Mississippi

STATEMENT REGARDING ORAL ARGUMENT

This case presents a very important issues before the Court: whether the Circuit Court erred in granting Defendant's Motions to Dismiss and for Summary Judgment. Oral argument is warranted.

SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00930

Ricky L. Haggard v. City of Jackson, Mississippi

STATEMENT OF THE CASE

On September 5, 2007, the Appellant filed his complaint against the Appellee alleging claims for breach of contract, fraudulent and/or negligent misrepresentation, promissory estoppel, and race discrimination. (R. at 3). On November 19, 2007, the Appellees filed their motions for summary judgment seeking to dismiss all of Appellant's claims. *Id.* at 22. On November 13, 2009, the trial court entered an Order granting Defendant's Motion to Dismiss on all claims except for the race discrimination. *Id.* at 41. At that time the trial court found that it would allow the parties forty-five (45) days to submit additional evidence where it would treat the motion as a motion for summary judgment. On April 16, 2010, the trial court entered an Order finding that Appellant's race discrimination claim should be dismissed with prejudice. *Id.* at R. 82.

STATEMENT OF THE FACTS

From April 1, 2003 until August 23, 2006, Appellant, Ricky L. Haggard, was employed as the Project Manager for the Metropolitan Medical Response Systems Grant (MMRS) with the Appellee, City of Jackson, Mississippi. *Id.* at 50. The MMRS program

called for a Project Manager who was responsible for the administration of the grant. *Id.* at 4. Appellant managed and coordinated a strategic plan in the event of a terrorist attack involving the use of weapons of mass destruction (WMD). *Id.* The MMRS grant provided a salary of $70,000.00 for twelve (12) months and fringe benefits (FICA, Medicare, Pension and Medical Insurance) for the Project Manager. *Id.* Appellant performed the duties of the Project Manager since the retirement of Deputy Fire Chief Charles Graham on or about March 31, 2003. *Id.* However, Appellant's salary was never raised as set forth by the grant despite numerous requests and promises that it would be raised. *Id.*

In August or September 2005, Todd Chandler became the Fire Chief for Appellee. *Id.* at 50. When Mr. Chandler became Fire Chief he made the statement, "I am going to take the fire department back like it was twenty-five years ago" in a meeting with most of the fire department. *Id.* Appellant perceived this statement to be a clear intention of the Fire Chief's plan to adopt of policy of race discrimination as the fire department was predominately comprised of white males twenty-five (25) years ago. *Id.* After making this statement the Fire Chief began drastically changing the predominantly black command staff to a white command staff. *Id.* George Farrell, who is white male, was promoted over Willie Rankin, who is a black male, to the position of deputy chief. *Id.* Mr. Rankin later retired from his position of division chief and was never replaced. *Id.*

Vincent Allen, who is a black male, was demoted from deputy chief to captain. *Id.* at 51. Willie Gray, who is a black male, was demoted from deputy chief to district chief. *Id.* Keith Simpson, who is a black male, was reassigned from acting division chief to captain. *Id.* On August 23, 2006, Appellant, who is a black male, was removed from his Project Manager position, and was replaced by C.T. Davis, who is a white male. *Id.* at 50. Around this same time in August or September 2005, the Fire Chief also attempted to reassign his executive administrative secretary, Linda McFarland, who is a black female, but could not reassign her because of pay issues. *Id.* at 51. After not being able to reassign Ms. McFarland she was not allowed to perform many duties for the Fire Chief, and those duties were given to Beverly Massey, who is a white female. *Id.*

In 2008, Mr. Chandler was demoted from his fire chief position when further evidence of his discriminatory motives were discovered when a video from 1994 was sent to the media. *Id.* In the 1994 video that was recorded at fire station number 12 there is a confederate flag placed on a blackboard, and Mr. Chandler is seen making derogatory gestures and comments that are stereotyping blacks. *Id.*

STANDARD OF REVIEW

When reviewing a grant of a motion for summary judgment, the Supreme Court "...conducts *de novo* review of orders granting or denying summary judgment and looks at all the evidentiary matters before it-admissions in pleadings, answers to

interrogatories, depositions, affidavits, etc." *Aetna Cas. and Sur. Co. v. Berry,* 669 So.2d 56, 70 (Miss.1996) (citing *Mantachie Natural Gas v. Miss. Valley Gas Co.,* 594 So.2d 1170, 1172 (Miss.1992)). The Supreme Court also conducts *de novo* review of orders granting motions to dismiss pursuant to Miss. R. Civ. P. 12(b)(6). *Arnona v. Smith,* 749 So.2d 63, 65 (Miss. 1999).

SUMMARY OF THE ARGUMENT

Appellant's breach of contract claim was improperly dismissed as Appellant was a third party beneficiary. The trial court erred in dismissing Appellant's race discrimination claim as Appellee adopted a policy or pattern of race discrimination through its Fire Chief.

ARGUMENT

I. WHETHER THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO APPELLANT'S BREACH OF CONTRACT CLAIM.

At the trial court level Appellant contended that he was a third party beneficiary to the federal grant that was entered into by Appellee and the federal government. (R. at 42). However, the trial court found that Appellant was not a third party beneficiary as the contract between Appellee and the federal government was only entered into for the benefit of the public. *Id.* The Mississippi Supreme Court has held the following in regard to third-party beneficiaries.

> In order for the third person beneficiary to have a cause of action, the contracts between the original parties must have been entered into for his benefit, or at least such benefit must be the direct result of the performance within the contemplation of the parties as shown by its terms. There must have been a legal obligation or duty on the part of the promisee to such third person beneficiary. This obligation must have a legal duty which connects the beneficiary with the contract. In other words, the right (of action) of the third party beneficiary to maintain an action on the contract must spring from the terms of the contract itself.

Stewart ex rel. Womack v. City of Jackson, 804 So.2d 1041, 1051 (Miss. 2002) (citations omitted). First, the trial court correctly found that the contract was entered into for the benefit of the public, but erred in finding it was not also entered into for the benefit of whomever performed for the Project Manager position. To provide the public with the benefit of a strategic plan in the potential case of a WMD attack the parties agreed that a Project Manager would be used to manage and coordinate a strategic plan for a potential terrorist attack. Obviously knowing that no individual would perform this full time job with no compensation, the parties agreed in the grant to compensate the individual with a salary of $70,000.00 for twelve (12) months. These express terms of the contract are a clear intent to provide a benefit as compensation to the individual who performed the Project Manager position. Second, even if the grant was not entered into for the benefit of Appellant, the benefit of the $70,000.00 yearly salary was clearly an intended direct result of the performance of the grant that was contemplated by Appellee and the federal

government. Under the grant, the federal government as one promisee agreed to give Appellee $70,000.00 per year to compensate the Project Manager, and Appellee as other promisee agreed to pay the Project Manager a yearly salary of $70,000.00 as allotted by the federal government. As such, it is clear Appellant's breach of contract claim should not have been dismissed as Appellant was a third party beneficiary to the MMRS grant.

II. WHETHER THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO APPELLANT'S RACE DISCRIMINATION CLAIM.

The trial court dismissed Appellant's race discrimination pursuant to 42 U.S.C. § 1983 as it found Appellant could not show Appellee had adopted a policy, practice or custom of race discrimination. However, it is clear Appellee had adopted of policy, practice or custom of race discrimination while Mr. Chandler served as the Fire Chief. Moreover, the United States Supreme Court has found a custom or practice is not always necessary to hold a municipality liable under 42 U.S.C. § 1983, and that a single incident can suffice. *Pembaur v. City of Cincinnati,* 475 U.S. 469 (1986). A majority of the Court held that a single decision by an official with policy-making authority in a given area could constitute official policy and be attributed to the government itself. *Id.* In *Pembaur* the county prosecutor ordered local law enforcement officers to "go in and get" two witnesses who were believed to be inside the clinic of their employer, a doctor who had been indicted for fraud with respect to government payments for medical care provided to welfare recipients. The officers had capiases for the arrest of the witnesses, but no search warrant for the premises

of the clinic. Pursuant to the county prosecutor's order, they broke down the door and searched the clinic. *Id.* at 472-3. In the current case, the single decision of demoting Appellant and replacing him with a white male could be sufficient as it was done by the Fire Chief, who is a policy-making authority in Appellee's fire department. Additionally, the trial court's finding that the Appellee had not adopted a policy of race discrimination because it later demoted Mr. Chandler after the 1994 video was published by the media is simply misplaced. The fact that a municipality takes action to eliminate a policy of race discrimination after being embarrassed from the media attention it has attracted does not mean the policy, practice or custom did not exist. The policy or practice of race discrimination that was implemented for a three (3) year period by Appellee through its Fire Chief was also clearly known by Appellee. While Appellee did not have knowledge of the 1994 video prior to its publication by the media, it is simply absurd for the trial court to find Appellee was not aware of the five (5) adverse employment decisions by the Fire Chief that were evidence of a pattern of race discrimination. Essentially, it would be finding that the Appellee altered the top fire department employees' rank and pay grade without the Appellee having any knowledge. Even if the Fire Chief were a non-policy maker, sufficiently numerous prior incidents of official misconduct may tend to prove a custom and accession to the custom by the municipal policy makers. *Andrade v. City of San Antonio*, 143 F. Supp. 2d 699, 723 (W.D. Tex. 2001); *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d

82, 92-93 (5th Cir. 1992); *Matthias v. Bingley,* 906 F.2d 1047, 1054 (5th Cir. 1990). Finally, as a policy maker the Fire Chief's knowledge alone is sufficient. As the Fire Chief was the sole individual who made the adverse employment decisions that implemented the policy of race discrimination, it is clear he had this policy making authority regarding these employment decisions.

CONCLUSION

The Circuit Court was incorrect in granting Appellee's Motions to Dismiss and for Summary Judgment. As such, the Circuit Court's Orders granting the Motion to Dismiss and Motion for Summary Judgment should be reversed and remanded for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nick Norris, attorney for Appellants, hereby certify that I have this day served, via United States Mail, First Class, postage prepaid, a true and correct copy of the foregoing Brief of Appellants to the following:

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Honorable W. Swan Yerger
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CIRCUIT COURT JUDGE

This the 25th day of October, 2010

LOUIS H. WATSON, JR
MBN [redacted]
NICK NORRIS
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