

**IN THE CHANCERY COURT OF THE FIRST JUDICIAL
DISTRICT OF HINDS COUNTY, MISSISSIPPI**

MISSISSIPPI FAIR COMMISSION

PLAINTIFF

VS.

CIVIL ACTION NO. G2015-1479 O/3

CITY OF JACKSON, MISSISSIPPI

DEFENDANT

CITY OF JACKSON'S MOTION TO DISMISS

COMES NOW the City of Jackson, by and through counsel, and submits this Motion to Dismiss pursuant to Miss.R.Civ.P. 12(b)(6), and in support thereof would show unto this Court the following:

INTRODUCTION

1. This matter arises from the assertion that the City of Jackson must provide reasonable and sufficient police presence for the Mississippi State Fair, which is held from October 7, 2015 through October 18, 2015.

2. By inference, although not clearly articulated, the Mississippi Fair Commission (the "Commission") is demanding that the City of Jackson absorb the cost of supplying traffic and security personnel for an event that is State sponsored.

3. Notwithstanding the fact that Plaintiff's Complaint for injunctive relief is devoid of any legal merit, Plaintiff has not established that it has standing to bring this lawsuit. Indeed, it is questionable as to what, if any injury, the Commission will incur if the City of Jackson does not act as the State Fair's traffic and security personnel. The City of Jackson is not intentionally withholding security for the State Fair; rather, it has

agreed to provide such services that are fiscally reasonable and congruent with what is allowable under the fiscal year 2016 budget.

4. This Complaint is based on pure speculation, and is a veiled attempt to force the City to pay for the services of a State-sponsored event in a manner that is contrary to the power granted to the governing authorities of the City of Jackson. Thus, for this reason, and other reasons asserted herein, Plaintiff's lawsuit must be dismissed with prejudice.

STANDARD OF REVIEW

5. To defeat a motion to dismiss filed pursuant to Rule 12(b)(6) of the Mississippi Rules of Civil Procedure, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." ***Bell Atlantic Corp. v. Twombly***, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A claim meets the plausibility test "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." ***Ashcroft v. Iqbal***, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (internal citations omitted). While a complaint need not contain detailed factual allegations, it must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." ***Twombly***, 550 U.S. at 555 (citation omitted). The "[f]actual allegations of [a complaint] must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in

the complaint are true (even if doubtful in fact)." ***Id.*** (quotation marks, citations, and footnote omitted).

6. Here, Plaintiff fails to allege what, if any, adverse effect it will sustain as a result of the Jackson Police Department not providing private security and traffic management services for their event. The Complaint is devoid of any such allegation and contains one-sentence conclusory statements throughout.

ARGUMENT

I. This Court lacks jurisdiction to hear this matter.

7. There is no indication that the Commission is authorized by state statute or the Attorney General to institute this action. Mississippi Code Annotated Section 7-5-1 states "No arm or agency of the state government shall bring or defend a suit against another arm or agency without prior written approval of the Attorney General." Further, Section 7-5-39 states: "No civil legal action on behalf of the state, any arm or agency of the state, or any statewide elected officer acting in his official capacity may be taken until seven (7) working days' written notice of the proposed legal action is given to the statewide elected officer or proper person in charge of the arm or agency unless irreparable injury to the state would result by waiting for the expiration of the seven-day period." There has been no showing of irreparable harm which would excuse the provision of seven (7) working days written notice.

8. The Mississippi Fair Commission is created by state statute pursuant to Section 69-5-1. Therefore, the Commission is an "arm or agency of the state government" as contemplated by Miss.Code Ann §7-5-1. Plaintiff's Complaint fails to

state whether the Attorney General has given consent to bring this action against the City of Jackson, and the City of Jackson certainly has not been given seven (7) working days' notice of this litigation. The Commission filed its Complaint on October 2, 2015 and scheduled a hearing on the motion for October 6, 2015. Because of the Commission's failure to receive authority from the Attorney General to bring this action against the City of Jackson, this Court does not have jurisdiction to hear this matter, and this claim must be dismissed.

9. Further, upon information and belief, the Commission as a body was not noticed of a public meeting wherein the matter of proposed litigation was discussed in either an open or closed executive session. No vote was taken by the Commission, either to permit or not allow litigation, and no approval was obtained from the Attorney General of the State of Mississippi authorizing the filing of this action. There are no minutes to demonstrate a meeting was held to authorize this lawsuit, and there are no minutes that document if a meeting occurred, or that there was a quorum present to approve the lawsuit. As previously stated, the City of Jackson will provide an amount of law enforcement that is fiscally reasonable and within the confines of its budget. Therefore, Plaintiff has not met its burden to show that it has standing to bring this lawsuit. See **Gaddy v. Bucklew**, 580 So.2d 1180 (Miss. 1990).

II. Plaintiff does not have standing to bring this matter.

10. Plaintiff files this matter stating that it "will suffer irreparable harm and injury if the Court does not require the City of Jackson to fulfill its statutory obligation

to provide police service, traffic regulation, security and protection outside the fairgrounds fence at the Mississippi State Fair.” Complaint, ¶9.

11. However Plaintiff fails to state what “irreparable harm” it will incur. The entire Complaint lacks any description of the harm that the Commission will sustain if the Jackson Police Department does not act as the State’s private security and traffic personnel.

12. "Standing' is a jurisdictional issue which may be raised by any party or the Court at any time." ***In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Horn Lake***, 822 So. 2d 253, 255 (Miss. 2002) (quoting ***City of Madison v. Bryan***, 763 So. 2d 162, 166 (Miss. 2000)). It is well settled that "Mississippi's standing requirements are quite liberal." ***Burgess v. City of Gulfport***, 814 So. 2d 149, 152-53 (Miss. 2002). In Mississippi, parties have standing to sue "when they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise provided by law." ***Id.*** See also ***Ball v. Mayor and Bd. of Aldermen of City of Natchez***, 983 So. 2d 295, 301 (Miss. 2008). Further, for a plaintiff to establish standing on grounds of experiencing an adverse effect from the conduct of the defendant/appellee, the adverse effect experienced must be different from the adverse effect experienced by the general public. ***Burgess***, 814 So. 2d at 153. See also ***City of Madison v. Bryan***, 763 So. 2d 162, 166 (Miss. 2000).

13. Here, there is no indication of whether the Commission will suffer monetary harm if JPD does not act as a private security detail, or whether the Plaintiff is filing this on behalf of the general public for safety reasons. Either way, Plaintiff lacks

standing because there is no articulable adverse effect that will be suffered by Plaintiff. JPD has maintained that it will provide the reasonable police protection for the safety of the entire City of Jackson.

14. Plaintiff appears to file this motion for injunctive relief based on “irreparable harm” caused by lack of attendance; however, there are no facts or allegations to support such claim. Plaintiff does not attach an affidavit from the chairperson of the Commission detailing the prospected lack of attendance and does not supply any facts or evidence to support this statement of “irreparable harm.” It is pure speculation.

15. If the Plaintiff is requesting injunctive relief out of concern for the safety and welfare of the patrons, there is no statutory authority that allows and/or permits such action by the Commission. The powers and duties of the Commission are set forth in Section 69-5-3 of the Mississippi Code. These powers and duties do not include dictating to the City of Jackson the method by which it manages and controls traffic on municipal thoroughfares located in proximity to State owned land. Plaintiff is essentially inserting itself into the budgetary decisions of the City of Jackson and demanding that the City of Jackson employ an unspecified amount of police personnel in overtime hours, which will force the City to unbudgeted overtime wages. Simply put, the Commission is refusing to use its own resources to provide security and traffic services created by an event that is sponsored by the Plaintiff.

RELIEF REQUESTED

16. The City of Jackson requests this Court to dismiss this lawsuit with prejudice. Plaintiff has not established that it has standing to bring this claim, in that Plaintiff fails to identify how it will be irreparably harmed should this injunction not be issued. Moreover Plaintiff fails to state on whose behalf it is filing this motion for injunctive relief, and further fails to identify the injury in question.

17. Furthermore, upon information and belief, Plaintiff has not notified its commission members of the instant litigation, and there is no indication that this litigation was approved by a majority of the members of the Commission. Therefore, Plaintiff has not demonstrated that it has standing to bring this case on behalf of the Commission. For these reasons, the City requests that this Court grant the City's Motion to Dismiss.

Respectfully submitted, this the 5th day of October 2015.

THE CITY OF JACKSON, MISSISSIPPI

By: /s/ Claire Barker
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CERTIFICATE OF SERVICE

I, Claire Barker, one of the attorneys for the Defendants, do hereby certify that I have served this day via the Electronic Filing System and United States Mail, postage prepaid, a true and correct copy of the above and foregoing ***Motion to Dismiss*** on the following:

John C. Corlew
CORLEW MUNFORD & SMITH, PLLC
Post Office Box 16807
Jackson, MS 39236-6807

So certified, this the 5th day of October 2015.

/s/Claire Barker
Claire Barker