



TO: MAYOR AND MEMBERS OF TROY CITY COUNCIL
FROM: LORI GRIGG BLUHM, CITY ATTORNEY
ALLAN T. MOTZNY, ASSISTANT CITY ATTORNEY
DATE: May 16, 2007
SUBJECT: MORRELL v TROY, ET AL

Plaintiff Kenneth Morrell filed the attached lawsuit against the City of Troy and Troy Police Officer Meghan Broderick. In the complaint, Mr. Morrell alleges a count of assault, gross negligence, a violation of Michigan's Persons with Disabilities Civil Rights Act (PWDCRA), Constitutional violations, false imprisonment, and racial discrimination. The lawsuit was filed in Oakland County Circuit Court and assigned to Judge Steven N. Andrews.

According to the complaint, the Plaintiff is a disabled person who is African-American. He contends that the PWDCRA entitles him to have employees of self-service gas stations pump gasoline into his car on demand. He alleges that on April 28, 2006 he drove to the BP gas station at Maple and John R., seeking some gasoline for his car. Plaintiff claims that his request for gasoline was denied, and that the gas station owner/ operator instead contacted the Troy Police, who sent Officer Broderick to the scene. In his complaint, he alleges that Officer Broderick aided and abetted the gas station employees in violating his rights under the PWDCRA. He also complains that Officer Broderick drew a weapon (a handgun) on the Plaintiff without justification. Officer Broderick denies that she drew a handgun, although the circumstances may have justified it. She did take her department issued taser out of the holster, but did not use it. Plaintiff also complains that another unidentified Troy police sergeant told him he was permanently barred from the BP gas station, and that he would be arrested for trespassing if he returned. He claims the incident resulted in emotional agitation, forcing him to seek medical help, including medication for his nerves. He is seeking over \$25,000 in damages, plus attorney fees and costs. Plaintiff has also named the gas station owners and its manager as co-defendants in this lawsuit.

Absent any objection from City Council, our office will proceed with aggressive defense of the City and Officer Broderick in this case. If you have any questions concerning the above, please let us know.



JUDGE STEVEN N. ANDREWS
COUNTY MORRELL, KENNE V RHAR INC

STATE OF MICHIGAN
RECEIVED FOR FILING

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KENNETH MORRELL,

201 APR 25 P 12:24

Plaintiff,

OAKLAND COUNTY CLERK

Case No:

NO

vs.

BY: _____
OAKLAND COUNTY CLERK

R.H.A.R., INC., d/b/a MAPLE & JOHN R
AMOCO, ARMADA OIL COMPANY,
MIKE ANKOWI, CITY OF TROY,
and OFFICER BRODRICK,

Defendants.

ROBERT J. DINGES & ASSOCIATES
ROBERT J. DINGES (P12799)
Attorney for Plaintiff
615 Griswold Street
1300 Ford Building
Detroit, Michigan 48226
(313) 963-1500

COMPLAINT

There is no other pending or resolved civil action
between these parties arising out of the same transaction
or occurrence as alleged in this complaint.

NOW COMES Plaintiff, KENNETH MORRELL, by and through his attorney, Robert J.

Dinges, and states as follows:

COMMON ALLEGATIONS

1. The amount in controversy exceeds the sum of Twenty-Five Thousand & 00/100 (\$25,000.00) Dollars, exclusive of taxable costs and attorney fees.

2. Plaintiff, Kenneth Morrell, is a resident of the City of Troy, County of Oakland, State of Michigan.

3. Plaintiff, Kenneth Morrell, is an African-American and a disabled person, having been paralyzed from the waist down as a result of a shooting that occurred in 1992.

4. Defendant, City of Troy, is a municipal corporation and operates, among other things, a police department.

5. Defendant, Officer Broderick, is a police officer employed by the City of Troy.

6. Defendant, R.H.A.R., Inc., d/b/a Maple & John R Amoco owns or leases a gas station located at 1980 E. Maple, Troy, Michigan 48083.

7. Defendant, Armada Oil Company is, on information and belief, the owner of the BP gas station located at 1980 E. Maple, Troy, Michigan 48083. Alternatively, Aramada is the exclusive distributor for the BP gas station.

8. Defendant, Mike Ankowi, is the manager of the BP gas station.

9. At all times mentioned herein, Plaintiff, Kenneth Morrell was wheelchair bound.

10. Plaintiff was a long time customer at the BP gas station and, between March 23, 2006 and April 19, 2006, the Plaintiff was at the BP gas station on nine occasions.

11. At all times, Plaintiff owned a BP Amoco Credit Card and the aforesaid BP gas station was the closest BP Amoco gas station to his apartment in Troy.

12. As a result of all of his visits, the owner and employees of the BP gas station knew that the Plaintiff was a disabled person.

13. Under the Rules adopted by the Michigan Department of Civil Rights, a disabled person is entitled to assistance at a self-service gas station. In particular, a disabled person may

request that an employee of the gas station operate the pump.

14. At the aforesaid BP gas station, there was an established procedure for accommodating disabled persons:

- (a) The disabled person would drive his/her motor vehicle to a window in order to speak to a representative.
- (b) At the window, the disabled person was then directed to a particular pump.
- (c) After being directed to a particular pump, the disabled person would then wait for a representative from the gas station to operate the pump.

15. On April 19, 2006, at approximately 2:50 p.m. the Plaintiff drove his motor vehicle to a window and, at the window, he was directed to a particular pump.

16. After arriving at the pump, Mike Ankowi (hereinafter "Mike"), arrived. Mike asked the Plaintiff, "how much gas do you want?" The Plaintiff replied "\$5,00." Mike said "no, no. You need to fill it up. I'm not going to pump it." As a result, the BP gas station refused to accommodate service from the Plaintiff and consequently he went to another gas station.

17. When the Plaintiff returned to his apartment, he placed a call to Armada and spoke to a representative and complained about disability and racial discrimination at the BP gas station. He was told that "BP does not tolerate this activity."

19. On Thursday, April 27, 2006 at approximately 2:50 p.m., the Plaintiff again drove his motor vehicle to the BP gas station. The Plaintiff drove the motor vehicle to the window. At the window, Mike appeared and told the Plaintiff, that "I know you called Armada. You called a civil rights complaint. You are a son of a bitch." In addition, Mike threatened to

Plaintiff and said that he had all of the Plaintiff's information including where he lived. Mike told the Plaintiff to "get the fuck out of her."

20. When the Plaintiff returned to his apartment, he again called Armada Oil and complained about the discrimination.

21. On the evening April 27, 2006, the Plaintiff called the Troy Police Department and complained about the threats by Mike.

22. During the evening of Thursday, April 27, 2006, a Troy police officer interviewed the Plaintiff regarding his complaint.

23. On Friday, April 28, 2006, the Plaintiff again called Armada and told a representative by the name of Theresa that he had called the Troy Police.

24. On Friday, April 28, 2006, a approximately 2:14 p.m., the Plaintiff returned to the BP gas station. The Plaintiff again drove to the window and at the window, he was directed by Mike to a pump. At the pump, the Plaintiff sat for approximately 15 minutes waiting for assistance. Suddenly, a scout car from the Troy Police Department appeared. The scout car was being operated by Officer Brodrick.

25. Officer Broderick told the Plaintiff that "I want you to exit the vehicle." The Plaintiff told Officer Brodrick that he could not do that because he was paralyzed.

26. Officer Brodrick then asked for I.D. and this was supplied to the Officer. However, the Police Officer did not like that way the Plaintiff was handling his identification and, without justification, she drew a weapon on the Plaintiff.

27. Officer Broderick pointed the weapon at the Plaintiff and then he heard a noise indicating that she had triggered the weapon and he reasonably believed that he was in imminent

danger of harm.

28. Other Police Officers from the Troy Police Department arrived at the scene.

29. The Plaintiff was advised by a Sergeant from the Troy Police Department that the BP gas station did not “want you here anymore.” He said you are “permanently barred.” The Sergeant further stated that if caught at the BP gas station “you’ll be arrested.”

30. The Plaintiff left the BP Amoco Gas Station as soon as possible.

31. Thereafter, the Plaintiff became emotionally agitated and upset and he was forced to seek medical help including medication for his nerves.

COUNT I - ASSAULT

32. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 31 of the Common Allegations as if fully stated herein.

33. On April 28, 2006, the Plaintiff was lawfully on the premises of the BP gas station.

34. At that time and place, Defendant, Officer Broderick, made an intentional and unlawful threat to do bodily injury to Plaintiff, Kenneth Morrell, by pulling a handgun, aiming the handgun at the Plaintiff, and threatening to shoot him.

35. The threat to the Plaintiff, Kenneth Morrell, was made under circumstances that created in him a well-founded fear of imminent peril.

36. Defendant, City of Troy, is liable for all injuries proximately caused by intentional and *ultra vires* conduct of its employees committed during the course of employment.

37. As a direct and proximate result, Plaintiff, Kenneth Morrell sustained physical injury, mental injury and he was required to seek medical assistance in the care and treatment of

his injuries and therefore Plaintiff medical expenses, Plaintiff also sustained mental anguish, loss of social pleasures, loss of enjoyment of life and loss of dignity and he will continue to sustain same in the future.

WHEREFORE, Plaintiff demands judgment against Defendants, City of Troy and Officer Broderick, jointly and severally, in an amount to be determined, but in excess of Twenty-Five Thousand (\$25,000.00) Dollars plus reasonable attorney fees, interest and taxable costs.

COUNT II - GROSS NEGLIGENCE

38. Plaintiff realleges and incorporated herein by reference Paragraphs 1 through 31 of the Common Allegations and Paragraphs 32 through 36 of Count I as if fully stated herein.

39. Plaintiff, Officer Broderick, knew or should have known that the Plaintiff was paralyzed and wheelchair bound and that he did not pose a threat to any person or thing.

40. In light of the knowledge of Defendant, Officer Broderick, actual or constructive, her misconduct amounted to gross negligence, or conduct so reckless as to demonstrate a substantial lack of concern whether an injury resulted.

41. Plaintiff realleges and incorporates hereby by reference Paragraphs 1 through 37 of Count I as fully stated herein.

WHEREFORE, Plaintiff demands judgement against Defendants, City of Troy and Officer Broderick, jointly and severally, in an amount to be determined, but in excess of Twenty-Five Thousand (\$25,000.00) Dollars plus reasonable attorney fees, interest and taxable costs.

COUNT III - VIOLATION OF DISABILITY ACT

42. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 31 of the Common Allegations and Paragraphs 32 through 37 of Count I as if fully stated herein.

43. Plaintiff, Kenneth Morrell, was a disabled person within the meaning of the Michigan Persons with Disabilities Civil Rights Act (PWDCRA) MCL 37.2101 *et seq.*

44. Under PWDCRA, the Plaintiff was entitled to equal access to public accommodations including self-service gas stations open to the public.

45. At the self-service gas station, the Plaintiff was entitled to an accommodation. In particular, he was entitled to assistance pumping gasoline.

46. The Plaintiff was denied equal rights to access the gas station when the BP gas station failed or refused to pump gasoline and ordered the removal of the Plaintiff from the premises and permanently barred him from further entry.

47. Defendant, Officer Broderick, aided and assisted the BP gas station to violate the Plaintiff's statutory rights under PWDCRA by the following acts and/or omissions to the act:

- (a) Pointing a weapon at the Plaintiff while he was at the BP gas station, even though she knew or should have known he was disabled and knew or should have known that he was not armed.
- (b) Assisting the BP gas station in refusing service because the Plaintiff was disabled.
- (c) Assisting the BP gas station in removing the Plaintiff from the premises because he was disabled.
- (d) Assisting the BP gas station in permanently barring the Plaintiff from the premises because he was disabled.
- (e) Threatening to arrest the Plaintiff if he appeared at the BP gas station again.

(f) Otherwise discriminating against the Plaintiff because of his disability.

48. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 37 of Count I as if fully stated herein.

WHEREFORE, Plaintiff demands judgement against Defendants, City of Troy and Officer Broderick, jointly and severally, in an amount to be determined, but in excess of Twenty-Five Thousand (\$25,000.00) Dollars, plus reasonable attorney fees, interest and taxable costs.

COUNT IV - CONSTITUTIONAL VIOLATION

49. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 31 of the Common Allegations and Paragraphs 32 through 37 of Count I as if fully stated herein.

50. At all times, Defendant, City of Troy, by custom, policy, and/or practice failed to properly train, evaluate, supervise, investigate, review and/or discipline its employees and condoned violations of the Disability Act by private businesses involved in public accommodations.

51. At all times, Defendant, Officer Broderick, was acting under the color of law and she subjected the Plaintiff to a deprivation of his rights, privileges and immunities secured by the constitutions and laws of the United States and the State of Michigan, including the liberty interest in freedom from an assault with a weapon.

52. Defendant, City of Troy, is liable for the acts and omissions which resulted in the deprivation of Plaintiff's rights, privileges and immunities secured by the constitution and laws of the State of Michigan and the constitution and laws of the United States.

WHEREFORE, Plaintiff demands judgement against Defendants, City of Troy and Officer Broderick, jointly and severally, in an amount to be determined, but in excess of Twenty-Five Thousand (\$25,000.00) Dollars, plus reasonable attorney fees, interest and taxable costs.

COUNT V - FALSE IMPRISONMENT

53. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 31 of the Common Allegations and Paragraphs 32 through 37 of Count I as fully stated herein.

54. Defendant, Officer Broderick, physically restrained the Plaintiff and deprived him of his personal liberty and freedom of movement when she pulled a firearm, aimed it at the Plaintiff, and triggered the weapon.

55. The imprisonment and restraint were against the Plaintiff's will.

56. Defendant accomplished the imprisonment and restraint by actual physical force and the deprivation of Plaintiff's liberty and freedom was intentional, unlawful, unprivileged and without probable cause.

WHEREFORE, Plaintiff demands judgement against Defendants, City of Troy and Officer Broderick, jointly and severally, in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars and to be determined by the jury, plus reasonable attorney fees, interest and taxable cost.

COUNT VI

57. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 31 of the Common Allegations and Paragraphs 32 through 37 of Count I as fully stated herein.

58. Defendant, Officer Brodrick, assaulted the Plaintiff because he is African-American.

59. Plaintiff was a victim of unlawful and unconstitutional acts and omissions to act because of his race.

WHEREFORE, Plaintiff demands judgment against Defendants, City of Troy and Officer Brodrick, jointly and severally, in an amount to be determined, but in excess of Twenty-Five Thousand (\$25,000.00) Dollars, plus reasonable attorney fees, interest and taxable costs.

COUNT VII - VIOLATION OF PWDCRA

60. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 31 of the Common Allegations and Paragraphs 32 through 37 of Count I as fully stated herein.

61. Defendant, R.H.A.R., Inc., d/b/a Maple & John R Amoco, is a public entity for the purposes of public accommodations and services operated by a private entity under the PWDCRA.

62. Defendant, BP gas station, operated a self-service gas station that was open to the public.

63. Defendants, BP gas station and Mike Ankowi, owed a duty to comply with PWDCRA and that duty included, without limitation, the following:

- (a) It was required to operate a self-service gas station with access for disabled persons.
- (b) It was required to allow a disabled driver access to a drive window in order to communicate to gas station personnel about his/her disability status.
- (c) It was required to direct a disabled driver to an available pump.
- (d) It was required to attend the pump and operate the pump for

disabled drivers.

- (e) It was required to accommodate disabled drivers at the self-service gas station.

64. Defendants, BP gas station and Mike Ankowi, violated the aforesaid duty by the following

acts and omissions to act:

- (a) On April 19, 2006, Mike refused to operate the gas pump because the Plaintiff ordered \$5.00 of gas.
- (b) On April 27, 2006, Mike refused to operate the gas pump because Plaintiff called Armada and complained of civil rights violations.
- (c) On April 28, 2006, BP gas station refused to operate the gas pump and called the Troy Police and told the police that the Plaintiff was permanently barred from the gas station.
- (d) From April 19, 2006 to April 28, 2006 the BP gas station to accommodate the Plaintiff's disability.
- (e) On April 28, 2006 the BP gas station violated its duty of equal treatment by barring the Plaintiff from the premises.
- (f) On April 27, 2006 and April 28, 2006, the BP gas station and Mike retaliated against the Plaintiff because he complained about civil rights violations.

WHEREFORE, Plaintiff demands judgment against Defendants, R.H.A.R., Inc., d/b/a Maple & John R Amoco and Mike Ankowi, jointly and severally, in an amount to be determined

and in excess of Twenty-Five Thousand (\$25,000.00) Dollars, plus reasonable attorney fees, interest and taxable costs.

COUNT VIII - RACIAL DISCRIMINATION

65. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 31 of the Common Allegations as fully stated herein.

66. At all times Defendant, Mike Ankowi, was the manager of the BP gas station.

67. The misconduct of Mike was a result of a conscious belief that African-Americans are not good customers.

68. Defendants, BP gas station and Mike Ankowi, owed a duty under the Michigan Elliott-Jarsen Civil Rights Act (ELCRA) to provide public accommodations without practicing racial discrimination.

69. By virtue of various acts and omissions to act, Defendants engaged in racial discrimination by among other things, barring the Plaintiff from the premises.

WHEREFORE, Plaintiff demands judgment against Defendants, R.H.A.R., Inc., d/b/a Maple & John R Amoco and Mike Ankowi, jointly and severally, in an amount to be determined and in excess of Twenty-Five Thousand (\$25,000.00) Dollars, plus reasonable attorney fees, interest and taxable costs.

COUNT IX - AIDING AND ABETTING CIVIL RIGHTS VIOLATIONS

70. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 31 of the Common Allegations and Paragraphs 60 through 64 of Count VII and Paragraphs 64 through 68 of Count VIII as fully stated herein.

71. At all times, Defendant, Armada Oil Company, by virtue of its ownership of

the gas station or by virtue of its exclusive distributorship of BP Amoco products to the gas station, maintained actual or de facto control over the operation of the gas station.

72. The actual or defacto control included, without limitation, instructions on the accommodation of disabled drivers and the treatment of minorities at a self-service gas station.

73. From April 19, 2006 to April 28, 2006, Defendant spoke to representatives from Armada and they promised to intervene and assist the Plaintiff equal rights under the civil rights laws.

74. Instead of assisting the Plaintiff, Defendant, Armada aided and abetted the BP gas station in its violation of the civil rights laws.

75. In particular, Armada contacted the gas station and apparently informed a representative of the BP gas station that he could bar the Plaintiff from entering the gas station.

76. Under the PWDORA and ELCRA, person or company may not aid and abet another person or company in a violation of civil rights. Defendant violated this duty by the following acts or omissions to act:

- (a) Breaching its promise to Plaintiff that it would assist him to obtain equal rights and treatment at the self-service gas station.
- (b) Providing information to the BP gas station in order to bar the Plaintiff from the premises in violation of his civil rights.
- (c) Failing to properly monitor the civil rights policies of BP gas station.
- (d) Failing to instruct or train the employees of the gas station to obey the civil rights laws of the State of Michigan including the laws against racial discrimination and disability discrimination.

- (e) Failing to enforce the laws against racial discrimination and disability discrimination at a self-service gas station.

WHEREFORE, Plaintiff demands judgment against Defendants, R.H.A.R., Inc., d/b/a Maple & John R Amoco and Mike Ankowi, jointly and severally, in an amount to be determined and in excess of Twenty-Five Thousand (\$25,000.00) Dollars, plus reasonable attorney fees, interest and taxable costs.

Respectfully submitted,



ROBERT J. DINGES (P12799)
Attorney for Plaintiff
615 Griswold Street
1300 Ford Building
Detroit, Michigan 48226
(313) 963-1500

Dated:

APR 24 2007