



TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: February 26, 2008
SUBJECT: Kocenda v. Troy et. al.

Plaintiff David Kocenda filed a lawsuit against the City of Troy, Troy Police Chief Charles Craft, Captain Edward Murphy, Captain Colleen Mott, Lieutenant Richard Hay, Lieutenant Charles Pappas, and Lieutenant Robert Rossman. The lawsuit was filed in Oakland County Circuit Court and assigned to Judge Fred M. Mester. In his complaint, Kocenda alleged Defamation (Count I) and Intentional Infliction of Emotional Distress (Count II).

According to the complaint, the Plaintiff, who is a police officer for the City of Troy, was offered a job as a police officer for the City of Palm Beach Gardens, Florida (PBG). Co-Defendant PBG Police Officer Ellen Lovejoy then initiated an extensive background investigation and fitness for employment evaluation. The PBG job offer was subsequently retracted. In his complaint, Plaintiff alleged that the individual Troy defendant officers provided false information to PBG Officer Lovejoy, which led to the retraction of the PBG job offer. He claimed that remarks made by the Troy police officers to PBG Officer Lovejoy resulted in damage to his reputation, loss of income, emotional distress, humiliation, mortification, embarrassment, sleeplessness, anxiety and other damages.

We initiated an aggressive joint defense of the City and the individual Troy command officers, and filed a Motion for Summary Disposition as our first responsive pleading. We argued the defamation claim was barred by the applicable statute of limitation, and that both of Kocenda's claims were barred by governmental immunity. We alternatively argued that his claims should be dismissed, since he failed to plead a viable claim against the City or the individual command officers. In response, Plaintiff argued the defamation claim was not barred by the one year statute of limitation, since he didn't immediately know about the allegedly defamatory remarks, and he claimed that the date of the discovery was controlling, instead of the date that the statements were spoken. Plaintiff also alleged that individual defendant police officers acted with malicious intent and/or in a grossly negligent manner, and therefore they were not immune from liability. Upon receiving our motion to dismiss the case, Plaintiff filed a motion asking the Court for permission to add a count of "Tortious Interference with An Advantageous Business Relationship" against the City and the individual officers.

On February 13, 2008, Judge Mester granted our Motion for Summary Disposition and dismissed the complaint. The Court also denied Plaintiff's Motion to Amend the Complaint. Although we had asked the Court for sanctions and attorney fees, based on the frivolous nature of the complaint, Judge Mester did not grant our request. The Court's orders dismissing the City, individual Troy command officers, and also PBG Officer Lovejoy are attached, and the case is now closed. By filing the motion for dismissal so early, we were able to avoid the time and costs associated with the discovery phase of litigation, as well the time and costs associated with proceeding to trial. Plaintiff has a right to file an appeal with the Michigan Court of Appeals, but he must do so by March 5, 2008.

Please let us know if you should have any questions.

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KOCENDA,DAVID,,
V
TROY CITY

Plaintiff,
Defendant,

NO: 2007-085524-CZ
HON. FRED M. MESTER

In the matter of:

ORDER REGARDING MOTION

Motion Title: Plaintiff's Motion to Amend Complaint

The above named motion is:

- granted.
- granted in part, denied in part.
- denied.
- for the reasons stated on the record.

In addition:

DATED: 02/13/2008

/s/Fred Mester

HON. FRED M. MESTER
Circuit Court Judge

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STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KOCENDA, DAVID,,
V
TROY CITY

Plaintiff,
Defendant,

NO: 2007-085524-CZ
HON. FRED M. MESTER

In the matter of:

ORDER REGARDING MOTION

Motion Title: Defendant Lovejoy's Motion for Summary Disposition

The above named motion is:

- granted.
- granted in part, denied in part.
- denied.
- for the reasons stated on the record.

In addition:

DATED: 02/13/2008

/s/Fred Mester

HON. FRED M. MESTER
Circuit Court Judge

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STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KOCENDA,DAVID,,
V
TROY CITY

Plaintiff,

Defendant,

NO: 2007-085524-CZ
HON. FRED M. MESTER

In the matter of:

ORDER REGARDING MOTION

Motion Title: Defendants' Motion for Summary Disposition and for Sanctions

The above named motion is:

- granted.
- granted in part, denied in part.
- denied.
- for the reasons stated on the record.

In addition: Defendants' Motion for Summary Disposition is granted.
Defendants' Motion for Sanctions is denied.

DATED: 02/13/2008

/s/Fred Mester

HON. FRED M. MESTER
Circuit Court Judge

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