

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

WASTE MANAGEMENT OF MISSISSIPPI, INC.

PLAINTIFF

V.

CIVIL ACTION NO.: 22-CV-00103

**CHOKWE A. LUMUMBA, Mayor of
Jackson, Mississippi; CITY OF JACKSON**

DEFENDANTS

**CITY OF JACKSON'S MOTION TO DISMISS
AND STAY THE PROCEEDINGS**

COMES NOW Defendant City of Jackson¹ by and through counsel and submits this Motion to Dismiss Waste Management's Appeal and Complaint for Declaratory, Equitable and Injunctive Relief. In support of its motion, Defendant states the following.

I.

Waste Management fails to state a claim upon which relief can be granted. Waste Management filed an appeal and complaint under Miss. Code Ann. § 11-51-75. In order to bring an action under Miss. Code Ann. § 11-51-75, Waste Management must show it has been aggrieved by the judgment or decision of a governing authority. The October 21, 2021 Request for Proposals solicited a contract for solid waste collection and hauling. But the "governing authority" for purposes of § 11-51-75 – the mayor and city council – has not yet awarded a contract. In the absence of a contract, Waste Management cannot show it has been aggrieved by a judgment or decision under § 11-

¹ Mayor Lumumba is sued in his official capacity only. As such, when a Mayor is sued in his official capacity it is tantamount to suing the City itself. See *Kentucky v. Graham*, 473 U.S. 159, 167, 105 S.Ct. 3099, 87 L.Ed. 114 (1985).

51-75. Because it fails to satisfy the jurisdictional prerequisite in § 11-51-75, the complaint must be dismissed for failure to state a claim on which relief can be granted.

Waste Management's Complaint should also be dismissed because it seeks relief that improperly exceeds the scope of § 11-51-75. Section 11-51-75 limits relief to an appeal. In contrast, Waste Management seeks declaratory, equitable, and injunctive relief. The Complaint fails to state a claim on which relief can be granted because it exceeds the scope of § 11-51-75; Waste Management seeks a remedy for which no right exist, and the Complaint should be dismissed under Rule 12(b)(6).

II.

The fact Waste Management prematurely filed its appeal and complaint before a contract was awarded deprives the Court of subject-matter jurisdiction. As discussed above, § 11-51-75 requires a judgment or decision by a governing body which has not occurred. It also limits relief to an appeal. Waste Management's Complaint improperly seeks more.

The previous defects alone justify dismissal, but they also deprive the Court of subject-matter jurisdiction. Negotiations are ongoing, and Waste Management lacks standing. There is no actual controversy when Waste Management cannot show an injury in the absence of proof of a judgment or decision and other jurisdictional prerequisites under § 11-51-75. The matter is not ripe for appeal, and the Court should also dismiss it under Rule 12(b)(1) for lack of subject-matter jurisdiction.

III.

The City requests a stay in the proceedings until this Court resolves the dispositive issues raised in its Motion to Dismiss. A stay is proper in order to conserve

the resources of the Court and allow the Court to make a determination as to whether Plaintiff's claims are properly before it.

IV.

In support of its Motion to Dismiss and Stay the Proceedings, the City relies on its attached Memorandum of Authorities.

WHEREFORE PREMISES CONSIDERED, the Defendant respectfully requests that the Court enter an Order:

- Dismissing the Complaint under 12 (b)(6) for failure to state a claim;
- Dismissing the Complaint under 12 (b)(1) for lack of subject matter jurisdiction; and
- Staying all proceedings until it renders a decision on this Motion.

In addition, City of Jackson seeks all other relief as the Court might decide is appropriate in the circumstances.

Respectfully submitted this the 10th day of March, 2022.

CITY OF JACKSON, MISSISSIPPI

BY: /s/ Jeffrey M. Graves
Catoria P. Martin MSB No. 103938
City Attorney
Claire Barker MSB No. 101312
Special Assistant to the City Attorney
Jeffrey M. Graves MSB No. 104327
Deputy City Attorney

OF COUNSEL:

OFFICE OF THE CITY ATTORNEY
455 East Capitol Street
Post Office Box 2779
Jackson, Mississippi 39207-2779
Telephone: 601-960-1799
Facsimile: 601-960-1756

CERTIFICATE OF SERVICE

I certify that I electronically filed the above document with the Clerk of the Court using the Court's electronic filing system, which sent notification of the filing to all attorneys of record.

Dated: March 10, 2022

/s/ Jeffrey M. Graves