

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

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES **PLAINTIFF**

v. **CAUSE No. 22-cv-286-EFP**

MISSISSIPPI COMMUNITY EDUCATION CENTER, INC., ET AL. **DEFENDANTS**

and

MISSISSIPPI COMMUNITY EDUCATION CENTER, INC. **COUNTER-PLAINTIFF**

v.

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES **COUNTER-DEFENDANT**

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
DEWEY PHILLIP BRYANT TO PRODUCE DOCUMENTS
RESPONSIVE TO SUBPOENA DUCES TECUM**

In support of Mississippi Community Education Center's ("MCEC") Motion to Compel Dewey Phillip Bryant ("Governor Bryant") to Produce Documents Responsive to Subpoena Duces Tecum, MCEC would show:

Governor Byrant's Documents are Relevant to MDHS's Claims

The documents Subpoenaed from Governor Bryant relate to the Volleyball Facility, its funding, or its lease agreements, and are relevant to the Claims.

In its Complaint, MDHS claims it is entitled to recover \$1,100,000 paid to Favre Enterprises, Inc. MDHS speculates that MCEC paid Favre \$1,100,000 simply for the "purpose of enriching" him. Doc. 2, ¶130. The evidence, however, shows that MCEC paid Favre \$1,100,000 expressly to provide Favre with additional funds to use for construction of the Volleyball Facility.

On July 24, 2017, a meeting was held at USM. In attendance were Favre, John Davis, Teddy DiBiase, Nancy New, USM Athletic Staff and other MDHS and MCEC officials. Ex. 2.

Supposedly, this was the first time Favre asked MDHS for funding for his Volleyball Facility. Yet, MDHS, on the spot, committed \$4 million in TANF funds for construction of the Volleyball Facility. Even Favre was surprised, “John mentioned 4 million and not sure I heard him right,” Favre texted after the meeting. Ex. 3.

While Favre was pleased with MDHS’s \$4 million commitment, he knew a state-of-the-art Volleyball Facility was likely to cost more. To make matters worse, USM apparently had a policy that any construction project on campus had to be funded fully, and the money deposited in USM’s account, before construction could begin. Therefore, Favre sought to secure additional funds that he knew would be needed to break ground.

On July 29, 2017, Favre texted New, “... I want to help you and was thinking a PSA [public service announcement] is one option that could be done quick and easy to put together 😊.” Ex. 4. New agreed, and Favre texted, “I could record a few radio spots ... *and whatever compensation could go to USM.*” Ex. 5 (emphasis added).

Within days of proposing the PSA, Favre’s concerns over the cost of the Volleyball Facility were confirmed. On August 2, 2017, Favre texted New. “Looks as though the facility is gonna be more than we thought which is always the case.” Ex. 6.

Pursuant to Favre’s July 29, 2017 proposal, MCEC paid Favre \$1,100,000 for “a few radio spots” to help fund construction of the Volleyball Facility. Ex. 5. These funds were paid in addition to the \$5 million committed by MDHS for the Volleyball Facility.

In its Complaint, MDHS seeks to recover the \$1,100,000 paid to Favre Enterprises, Inc. These funds were intended, and used, for construction of the Volleyball Facility. Therefore, the Volleyball Facility and its funding are squarely at issue in this lawsuit.

Governor Bryant's Documents are Relevant to MCEC's Defenses and Counterclaims

The documents Subpoenaed from Governor Bryant relate to the Volleyball Facility, its funding, or its lease agreements, and are relevant to MCEC's Defenses and Counterclaims.

In its Answer, MCEC raises Defenses and Counterclaims that preclude or limit MDHS from recovering from MCEC for TANF expenditures, alleged to be impermissible, but which were made with the knowledge, involvement, or approval of MDHS Executives, including Governor Bryant. *See* MCEC's Answer, Affirmative Defenses, and Counterclaims, Doc. 70, pp. 2-5, 28-30.

MCEC's Defenses and Counterclaims are not based on speculation or conjecture. The evidence suggests that MDHS Executives, including Governor Bryant, knew that Favre was seeking funds from MDHS to build the Volleyball Facility; approved, expressly or impliedly, the use of MDHS funds for construction of the Volleyball Facility; and participated in directing, approving, or providing Favre MDHS funds to be used for construction of the Volleyball Facility. MCEC is entitled to discover documents related to these actions by MDHS Executives, including Governor Bryant, as these actions impact directly MCEC's Defenses and Counterclaims.

By August 3, 2017, Favre had received a \$4 million commitment from MDHS to fund construction of the Volleyball Facility. Ex. 3. However, Favre had grown impatient with USM, which was moving slowly. Favre contacted Governor Bryant to speed things along. In response, Governor Bryant called Nancy New. "Wow," New texted Favre, "just got off the phone with Phil Bryant! He is on board with us! We will get this done!" Ex. 7.

New was invigorated by Governor Bryant's support, and others were too, it seems. USM is "moving ahead to get this done," New texted Favre days after receiving the Governor's call. Ex. 8. Before the month was over, New was able to report that, "meetings went well on accepting the money," "there is another meeting with MDHS attorney and USM to make sure all the wording is

good before it goes to IHL,” and the “target date for having everything complete for [IHL] board approval is Sept 22.” Ex. 9 and 10. The bureaucratic logjam apparently had been removed, and everyone now pursued the “short time line” established to avoid a delay in “bidding the project as currently scheduled.” Ex. 10.

On October 19, 2017, New texted Favre. “It’s a go. All approved by IHL!” Ex. 11. However, the thrill of IHL approving the Volleyball Facility lease apparently was short-lived. Favre responded, “I hope it’s enough now. Jon [Gilbert at USM] said 500k has to go to renovations for reed green [coliseum] and another 500 to maintenances fund.” *Id.*

As Favre’s funding request for the Volleyball Facility grew, New stayed in contact with Governor Bryant. “I saw the Gov last night,” New told Favre, “it’s all going to work out.” Ex. 12.

On December 28, 2017, Favre texted New. “Nancy Santa came today and dropped some money....” Ex. 13. Favre Enterprises, Inc. had received its first installment - \$600,000 - under its PSA agreement with Favre. New asked Favre for an update on construction, since the PSA funds were intended to fund construction. “How is the building coming along and Beach Volleyball?” *Id.* “Well it’s more of when they will start it,” Favre lamented. “Now it’s February they are saying.” *Id.*

On March 28, 2018, Favre texted New that the construction bids for the Volleyball Facility were in and they were much higher than expected. “Nancy I wanted to update you on facility. The bids all are in and shockingly the lowest is 6.9.” Ex. 14. “Wow, that is disturbing,” New responded. “Lordy, all this time and now to find this out.” *Id.* “We can still have the fundraiser at the Governor’s mansion, too. We can use Phil’s business list that he offered earlier.” *Id.*

On January 1, 2019, MDHS Executive Director John Davis calendared a meeting. “This meeting was requested by Brett Favre and the Governor to discuss the Educational Research

Program that addresses brain injury caused by concussions [Prevacus]. They also want to discuss the new [Volleyball] facility at USM.” Ex. 15.

On May 15, 2019, Favre texted, “Nancy I asked the college [USM] for an update on what is owed as of today and it’s 1,070,000.” Ex. 16.

By May 30, 2019, the number had grown. Favre texted, “Nancy are you still confident you can cover the 1.8 [million dollars]....” Ex. 17.

On June 26, 2019, Favre texted, “Nancy as of today the number is 1.95 mill [million dollars] for everything.” Ex. 18.

On July 2, 2019, New reached out to Governor Bryant, “Governor, may I please meet with you for a few minutes this morning?” Ex. 19. Governor Bryant responded, “I can see you at 8:30 at the Sillers Office.” *Id.*

On July 16, 2019, in the wake of John Davis’s “retirement,” Favre texted New. “Nancy if I can help you in any way you know I will.” Ex. 20. New responded. “I am ok, just politics and people. We are trying to stay above all the foolishness and we will. Too much good stuff to get done. I am concerned though that I may not be able to assist you in Aug. as we had planned.” *Id.*

Favre reacted quickly to the bad news. “Oh goodness,” he responded. Ex. 20. Favre immediately contacted Governor Bryant about whether John Davis’s departure would affect the Volleyball Facility’s funding. Governor Bryant responded, and Favre forwarded the Governor’s response to New. “I will handle that...,” the Governor said, “long story but had to make a change [at MDHS]. But I will call Nancy [New] and see what it will take.” Ex. 21.

Not satisfied with a text from the Governor, Favre met with the Governor in person later that afternoon. “About to see Governor Bryant,” Favre texted New. Ex. 20.

After the meeting between Governor Bryant and Favre, Governor Bryant texted New. “Just left Brett Farve. Can we help him with his project.” Ex. 22. “We should meet soon,” the Governor continued, “to see how I can make sure we keep your projects on course.” *Id.*

New responded to the Governor, “I would really appreciate having the opportunity to follow through with all the good things we are working on, especially projects like Brett’s...” *Id.* Governor Bryant chose a meeting time saying, “I can do 4pm on Thursday.” *Id.*

New texted Favre, “I am meeting with the Gov at 4 on Thursday. He wants me to continue to help you and us get our project done.” Ex. 23.

On July 25, 2019, Favre, apparently anxious to hear from the Governor, texted New. “You think I should send the Governor a message?” Ex. 24. Not waiting to hear back from New, Favre texted the Governor. “Just back in town,” the Governor responded. *Id.* “Met with new [MDHS] Director today. It will take time to get the Auditor’s Report. Working on it.” *Id.* Favre told New the Governor also “said for us to keep the faith... 😊” *Id.*

On August 2, 2019, Favre asked New whether she had met with the new MDHS Director yet. New responded, “Not yet, but I have asked for one ASAP.” New continued, “the Gov wants me too [sic], so I am counting on his push, too.” Ex. 25.

On August 8, 2019, New texted Favre, “Gov. texted and said y’all are meeting on the [volleyball funding] proposal I gave him.” Ex. 26. The Governor “only had 15 minutes,” Favre told New, “but he did say at the end that he will get this done with you!!!” *Id.* “He sure came across as sincere and believable,” Favre told New. *Id.*

Later that day, New texted Favre details the Governor wanted added to Favre’s funding proposal to MDHS. The Governor “said something about project managers,” New recalled. Ex. 27. “We will need those, too. We have to make this all about teaching, education, obesity

prevention, exercise, etc....” *Id.* “Should I forward this to him as well,” Favre asked? *Id.* New responded, “Sure that is fine.” *Id.*

On August 10, 2019, New texted Favre. “What did the Gov say to you about our proposal? I know the new director knows about it because I brought it up to him. He asked if that was the one that the Gov’s name was to go on the bld??? I said yes but honestly I couldn’t get a read why he asked that about his name. Keep that quiet right now. Lots of politics I think.” Ex. 28. Favre responded, “The only the [sic] thing Phil said was the questions I relayed to you but Phil is adamant it will get done.” *Id.*

On August 14, 2019, Governor Bryant texted Favre. “In Ghana, Africa today. Be back on Saturday. Nancy has to provide the proper documentation to MDHS. It’s all up to her get the paperwork in and then I can help.” Ex. 28. New, knowing she already had submitted the funding proposal to MDHS, and discussed it with the MDHS Director, responded, “Wow, I have given the proper information to several people several times.” *Id.*

While the Governor’s text to Favre said New needed to “get the paperwork in,” the Governor confided to Favre on a call that he had already seen Favre’s proposal. Favre texted New, the Governor “said to me just a second ago that he has seen [the funding proposal] but hint hint that you need to reword it to get it accepted.” Ex. 28.

New was confused, “Rword??” “Wonder what he means,” New asked Favre. Then New told Favre to relay to the Governor, “Just let him know that it was submitted [to MDHS] but I am reworking it today.” *Id.*

On August 16, 2019, Governor Bryant texted Favre. “That’s all I know to tell her. Hopefully she can put more details in the proposal. Like how many times the facility will be used and how many child [sic] will be served and for what specific purpose.” Ex. 28. New responded,

“... I am getting even more details added to the proposal and sent as an addendum now.” *Id.* That same day, Favre texted New, “I really feel like [the Governor] is trying to figure out a way to get it done without actually saying it.” *Id.*

On August 16, 2019, Governor Bryant texted Favre again. “I would have listed the number of people proposed to be reached by the program and the number of employees necessary to achieve these goals. Taking off from Ghana so may be my last message for a while.” Ex. 29. Favre forward the Governor’s text to New, and added, “From Governor just now. He did like it but added above text [suggestions].” *Id.* New responded to Favre, “Great. I can send that in as well!” Favre asked, “Would lke [sic] me to send the latest copy [of the funding proposal to MDHS] to the Governor?” *Id.* New responded, “I am going through it again in a little bit and then let’s send it.” *Id.*

On August 23, 2019, Favre texted New, the “Governor said we should meet with him and new director [about the additional funding proposal for the Volleyball Facility].” Ex. 30. New responded, “Is the Governor setting it up?” *Id.* Favre texted the Governor, and the Governor responded, “I am gone all next week.. have Nancy get with Bethany and schedule something for us all..” *Id.* On August 26, 2019, New texted Favre. “It’s confirmed! The Gov’s office. September 4th at 2:00.” *Id.*

On September 4, 2019, Governor Bryant, Brett Favre, Nancy New and MDHS Executive Director Chris Freeze met regarding additional funding proposal for the Volleyball Facility. On September 6, 2019, two days later, Freeze wrote New confirming that MCEC’s TANF subgrant was to be increased by \$1,172,992. Ex. 31.

On December 18, 2019, Governor Bryant texted Nancy New, “Did y’all get any Of the new programs [and funding] from DHS.?” New responded, “Yes, we did. From all the craziness

going on, we had been made to believe we were not getting refunded. But we did. ‘Someone’ was definitely pulling for us behind the scenes.” Ex. 32. Governor Bryant responded, “☺”. *Id.*

Conclusion

The evidence detailed herein suggests, quite strongly, that Governor Bryant knew MDHS funds were being sought by Favre to construct the Volleyball Facility; approved of the use of MDHS funds to construct the Volleyball Facility, and participated in securing MDHS funds for construction of the Volleyball Facility. This evidence of involvement by MDHS Executives, including Governor Bryant, directly impacts MCEC’s Defenses and Counterclaims to MDHS’s Claims, including its Claim to recover \$1,100,000 paid to Favre Enterprises, Inc. for construction of the Volleyball Facility.

MCEC respectfully submits that it is entitled to discover Governor Bryant’s documents, as requested in the Subpoena, and respectfully requests that the Court grant its Motion to Compel.

Respectfully submitted, this the 12th day of September, 2022.

CARROLL BUFKIN, PLLC

/s/ Thomas G. Bufkin
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On behalf of Defendant MCEC

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CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the above and foregoing *via* MEC, which automatically provides a copy to all counsel of record.

I also certify that I have this day provided notice of this motion to compel to counsel for Governor Phil Bryant, as required by Mississippi Rule of Civil Procedure 45(d)(2)(B).

Dated: September 12, 2022

/s/ Thomas G. Bufkin
Thomas G. Bufkin