

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-40537
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 13, 2017

Lyle W. Cayce
Clerk

PHILLIP DAVID HASKETT,

Plaintiff-Appellant

v.

SCOTT BECKMEN; JEFFEREY CROOK; DANIEL CHERKASSKY,
Individually, doing business as Orange Energy Consultants, L.L.P.,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:14-CV-348

Before CLEMENT, PRADO, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Phillip David Haskett appeals the dismissal of his complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Both Haskett and the appellees have filed their opening briefs, but further briefing was suspended when Haskett's motion for

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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leave to proceed in forma pauperis (IFP) on appeal was submitted to the court. The IFP motion is granted, and we dispense with further briefing.

Haskett has waived review of the dismissal of his claims for a declaratory judgment and respondeat superior by failing to challenge their dismissal on appeal. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). This portion of the district court's judgment is affirmed.

The district court erred in dismissing his claim for failure to hire under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* *See Leal v. McHugh*, 731 F.3d 405, 410 (5th Cir. 2013). Haskett's allegations, liberally construed, plausibly permit the reasonable inferences that he applied for landmen positions for which he was qualified, younger persons were hired to fill these positions, and the defendants did not hire him because of his age. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This portion of the district court's judgment is vacated.

IFP motion GRANTED. AFFIRMED in part; VACATED in part; and REMANDED for further proceedings consistent with this opinion.