

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-CA-00156-SCT

MANN AGENCY, LLC

v.

***MISSISSIPPI DEPARTMENT OF PUBLIC
SAFETY***

DATE OF JUDGMENT:	12/18/2018
TRIAL JUDGE:	HON. JOSEPH ANTHONY SCLAFANI
TRIAL COURT ATTORNEYS:	MICHAEL FARRELL SAMUEL L. BEGLEY JAMES A. BOBO STEVEN JAMES GRIFFIN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	MICHAEL FARRELL SAMUEL L. BEGLEY
ATTORNEY FOR APPELLEE:	J. WADE SWEAT
NATURE OF THE CASE:	CIVIL - CONTRACT
DISPOSITION:	ON DIRECT APPEAL: AFFIRMED. ON CROSS-APPEAL: AFFIRMED - 09/24/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KING, P.J., COLEMAN AND BEAM, JJ.

KING, PRESIDING JUSTICE, FOR THE COURT:

¶1. After the Mississippi Department of Public Safety (MDPS) reinterpreted a provision in a contract between it and the Mann Agency, LLC, the MDPS refused to pay more than \$700,000 in invoices submitted by the Mann Agency. The Mann Agency filed suit against the MDPS for breach of contract, *inter alia*. The trial court dismissed each party's breach-of-contract claim, found that the case involved a bona fide dispute, and denied the Mann

Agency's claim for interest and attorneys' fees. The Mann Agency appeals the trial court's decision to deny its claim for interest and attorneys' fees and argues that the MDPS acted in bad faith. The MDPS cross-appeals and argues that the trial court erred by dismissing as moot its breach-of-contract claim. We affirm the decisions of the trial court.

FACTS AND PROCEDURAL HISTORY

¶2. The MDPS first contracted with the Mann Agency in 2008 to create, produce, and place federally funded public-safety ads. Each contract was for a twelve-month term with the option of yearly renewals. At that time, the Mann Agency would create media ads and place the ads with various media vendors. The MDPS then would pay each media vendor directly and write separate checks to each media outlet. In 2010, the MDPS proposed a new contract that shifted the burden of paying each media outlet to the Mann Agency. The Mann Agency alleged that at that time, it objected to language that could be construed to require it to first pay the media outlets and then seek reimbursement from the MDPS. It averred that the parties agreed that the contract should not be construed to require the Mann Agency to first pay the media vendors. Thus, the parties agreed that the Mann Agency would place the media ads, collect the invoices from the media outlets, and present the invoices in bulk to the MDPS. The MDPS then would pay the Mann Agency a lump sum for the ads, and the Mann Agency would disburse the money to the media vendors. The Mann Agency also invoiced the MDPS for its production costs and online advertising. This practice continued from 2010 to 2013 and from 2014 to 2016.¹

¹The MDPS awarded the 2013 contract to a different ad agency but returned to the Mann Agency in 2014.

¶3. On March 3, 2014, the MDPS and the Mann Agency entered into a new written contract. The 2014 contract provided that “[t]his Contract shall constitute the entire agreement of the parties with respect to the subject matter contained herein and it supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, related thereto as between the parties.” The contract provided that

Contractor shall pay all media placement and production cost and be reimbursed by the [MDPS] upon presentation of detailed media invoices.

All media purchases will be completed on a flat rate rather than commission. Further, all advertising money is “pass through” and not subject to any general and administrative (G&A) fees or profit.

It stated that the agreement “shall not be modified, altered, or changed except by mutual consent of the parties.” Any modification was to be in writing and was to be executed by an authorized representative from each party. The contract included a provision stating that the “[f]ailure of either party hereto, to insist upon strict compliance with any of the terms, covenants, and conditions hereof, shall not be deemed a waiver or relinquishment. . . .” It also provided that

Failure by the [MDPS] at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract, or any part thereof, or the right of the [MDPS] to enforce any provision at any time in accordance with the contractual terms.

¶4. The 2014 contract was extended to February 28, 2017. As previously stated, the parties continued the practice of the Mann Agency’s submitting unpaid invoices from media vendors and the MDPS’s paying the Mann Agency the invoice amounts in bulk. However, in August 2016, Ray Sims began employment as the executive director with Public Safety

Planning, the division of the MDPS in charge of contracting with the Mann Agency. Carol Mann, the owner of the Mann Agency, met with Sims and other staff on November 4, 2016, to discuss an overdue payment on a \$600,000 invoice for an ad campaign. At that time, a new staff attorney employed at the MDPS stated that she interpreted the contract to require the Mann Agency to first pay the media vendors and then request reimbursement from the MDPS. Carol stated that she protested that interpretation and informed the MDPS that the Mann Agency was not in a financial position to first pay the media vendors. She averred that Sims agreed that the parties would continue the payment practice, and the MDPS paid the \$600,000 invoice submitted by the Mann Agency.

¶5. The MDPS then requested that the Mann Agency place another ad campaign in December 2016. The Mann Agency asked for written clarification that the MDPS would first pay the Mann Agency, and the Mann Agency would then pay the media vendors. The MDPS did not respond to the Mann Agency's request for written clarification. But on December 5, 2016, the Mann Agency claimed that James "Jeb" Stuart, the public safety planning accounting and auditing director for the MDPS, visited Mann Agency's office and assured Carol Mann that if the December 2016 ad campaign was placed, the MDPS "would pay for the ads on a two-day turnaround after the Mann Agency submitted invoices."

¶6. Therefore, in December 2016, the Mann Agency entered into contracts with more than eighty vendors for the new ad campaign. The Mann Agency subsequently submitted invoices to the MDPS for \$680,531.79, plus \$32,212 for expenses. In January 2017, the MDPS refused to pay any invoices submitted by Mann Agency after December 1, 2016, asserting

that it was under no obligation to reimburse the Mann Agency until it first paid all media placement and production costs.

¶7. On June 30, 2017, the Mann Agency filed suit against the MDPS for breach of contract and fraud and requested a judgment in the amount of \$712,743.79, plus legal fees and 18 percent prejudgment interest. The MDPS deposited with the court the amounts claimed due by each media vendor and filed a motion to join the more than eighty media vendors as parties. The MDPS asked the trial court to complete the dispute-resolution process set forth in the contract or, in the alternative, to order the MDPS fully discharged from liability against the Mann Agency or any additional parties. If the deposited funds were paid to the media vendors, the MDPS asked that the court fully assign the vendors' claims to the MDPS. The Lamar Companies (Lamar Advertising) and Comcast Cable Communications Management LLC (Comcast) were owed the most money. The MDPS and Lamar Advertising filed a joint motion that asked the court to issue checks payable out of the funds interpled by the MDPS in the amount of \$97,950. In exchange for the amount paid, Lamar agreed to assign to the MDPS its rights and interests of claims against the Mann Agency. The MDPS and Comcast entered a similar joint motion.² The trial court granted both motions. The trial court then granted the MDPS's motion to release the remaining money to the eighty-two remaining vendors.³

²Comcast requested a check in the amount of \$59,520.

³The Mann Agency states that the remaining vendors were paid after a court-supervised settlement conference on May 7, 2018.

¶8. The MDPS also filed a motion for partial summary judgment, arguing that the Mann Agency’s claim should be dismissed as a matter of law. In support, James W. Younger, Jr., senior attorney for the MDPS, submitted an affidavit stating that the commissioner of the MDPS was required to review all contracts and was the sole authorized signatory for the MDPS. Younger averred that the commissioner had not agreed to modify the 2016 contract between the MDPS and the Mann Agency. In addition, he stated that a contract had no effect until the Personal Services Contract Review Board approved it. The MDPS also attached a document titled “Policy and Procedure Order 27/03” that stated all contracts must be submitted to the legal department for approval.

¶9. Catoria Parker Martin, the director of the Personal Service Contract Review Board (Board), also submitted an affidavit that stated the contract required the MDPS and the Mann Agency to obtain the approval of the Board for any renewals or modifications of the contract. The Board approved the 2014 contract between the MDPS and the Mann Agency. She wrote that the parties renewed the contract for one year in 2016 but did not alter its terms and conditions. Martin averred that she “would have never recommended a modification” allowing the Mann Agency to be paid by the state before it had paid its media vendors.

¶10. Lastly, Jeb Stuart submitted an affidavit stating that at no time had he been given authority to contract on behalf of the MDPS and at no time had he ever acted in a manner that would portray such authority. He wrote that he had never had the authority to tell Carol Mann that the contract did not first require her to pay the media vendors.

¶11. The Mann Agency opposed the motion for partial summary judgment, arguing that the parties had not amended the contract but instead had construed the contract as having a workable definition of the term “reimburse.” The Mann Agency also moved the court for partial summary judgment and asked the court to hold that the MDPS breached the contract when it refused to pay the invoices that it had submitted and to hold that the MDPS’s decision was arbitrary and capricious. Additionally, the Mann Agency asked the court to find that the MDPS had breached the contract when it failed to pay the Mann Agency its contract fee and expenses for production costs and social-media costs.

¶12. The trial court dismissed as moot the breach-of-contract claims for failure to pay the media vendors, but it granted as a matter of law the Mann Agency’s breach-of-contract claim for failure to pay media, agency fees, and production costs. The trial court then denied the Mann Agency’s claim for statutory interest, the MDPS’s counterclaims for breach of contract, and the MDPS’s claim for attorneys’ fees and expenses.

ISSUES

¶13. The Mann Agency appeals the trial court’s decision and raises three issues:

- I. Whether the trial court erred in holding that the parties had a bona fide dispute, thus making the Timely Payment Statute, Mississippi Code Section 31-7-301, inapplicable and rendering moot its claim for interest and legal fees.
- II. Whether the MDPS arbitrarily and capriciously applied a new interpretation retroactively to a contract that had already been performed.
- III. Whether the trial court erred in not awarding interest and legal fees on the judgment of \$43,000, after having found that the MDPS had not submitted any affidavits to dispute that amount.

The MDPS counterclaims and raises two issues:

IV. Whether the MDPS was improperly stripped of its rights.

V. Whether the MDPS disputed the Mann Agency's invoices in good faith.

¶14. The above claims can be consolidated into two issues: 1) whether the trial court erred by finding that the parties were engaged in a bona fide dispute; and 2) whether the trial court erred by dismissing as moot the MDPS's breach of contract claim.

ANALYSIS

¶15. This Court reviews summary judgment motions de novo. *Inland Fam. Prac. Ctr., LLC v. Amerson*, 256 So. 3d 586, 589 (Miss. 2018) (citing *Collins v. City of Newton*, 240 So. 3d 1211, 1215 (Miss. 2018)). A summary judgment motion should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56(c).

I. Whether the trial court erred by finding that the parties were engaged in a bona fide dispute.

¶16. The trial court denied the Mann Agency's claim for interest, finding that the parties had been involved in a good-faith dispute. The Mann Agency argues that because no bona fide dispute existed between the parties, the trial court's decision was error, and it is entitled to interest and legal fees. Mississippi Code Section 31-7-305(2) provides that, "in the event of a bona fide dispute, the public body shall pay only the amount not disputed." Miss. Code Ann. § 31-7-305(2) (Rev. 2010). Section 31-7-305(3) requires payment of an invoice to be mailed or delivered no later than forty-five days after receipt of the invoice. Miss. Code Ann.

§ 31-7-305(3) (Rev. 2010). Otherwise, the public body is responsible to the vendor at an interest rate of 1.5 percent per month. *Id.* That section applies only to “undisputed amounts for which payment has been authorized.” *Id.* And Section 31-7-309 mandates that in a judicial action to collect interest, a public body must pay reasonable attorneys’ fees if the vendor prevails. Miss. Code Ann. § 31-7-309 (Rev. 2010). “The purpose of prejudgment interest is not to penalize wrongdoing, but to provide ‘compensation for the detention of money overdue.’” *Arcadia Farms P’ship v. Audubon Ins. Co.*, 77 So. 3d 100, 105 (Miss. 2012) (quoting *Moeller v. Am. Guar. & Liab. Ins. Co.*, 812 So. 2d 953, 958 (Miss. 2002)).

¶17. The Mann Agency contends that the MDPS had not acted in good faith because the MDPS had waited until three days after the contract expired and after the Mann Agency had performed its duties under the contract to reinterpret the contractual provision and determine it would not pay. We disagree. This Court previously has discussed bad faith and stated that the “[t]erm ‘bad faith’ is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity. . . .” *Bailey v. Bailey*, 724 So. 2d 335, 338 (Miss. 1998) (quoting *Bad faith*, Black’s Law Dictionary (6th ed. 1990)). Bad faith usually involves an “interested or sinister motive.” *Id.* (quoting *Bad faith*, Black’s Law Dictionary (6th ed. 1990)). We cannot say that the MDPS had a sinister motive in reinterpreting the contract to require Mann Agency to first pay the media vendors before receiving reimbursement. The contract stated that the Mann Agency “shall pay all media placement and production cost and be reimbursed by the [MDPS] upon presentation of detailed media invoices.” The term “reimburse” is defined as “to pay back someone :

repay.” *Reimburse*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/reimburse?src=search-dict-hed> (last visited September 22, 2020). Thus, the MDPS could have determined in good faith that the contract required the Mann Agency to first pay the media invoices before being *reimbursed* by the MDPS.

¶18. The Mann Agency argues that the MDPS acted in bad faith because in 2010 the MDPS assured it that the intent was not to require it to submit paid invoices and that the parties had created a working definition of reimburse. Carol Mann’s affidavit stated,

The proposed [2010] contract . . . contained some language that could be interpreted to require my agency to first pay the media and then wait on reimbursement from DPS. . . .

Because the media buys could easily be \$650,000, I told DPS officials Shirley Thomas, the [Mississippi Office of Highway Safety] Director, Twyla Jennings, the Media Director, and Mark Allen, the Director of Public Safety Planning (PSP) that my agency was too small to advance such a huge sum of money. They assured me that the intent was for DPS to reimburse my agency after it had presented in bulk (unpaid) invoices from the media vendors. As noted, that was the big change over the previous contracts.

They said some clarifying language would be added when the contract was renewed the following year. In the meantime, they asked me to sign the contract so the ad campaigns could stay on schedule. Otherwise, they said it could not be added then without rebidding the contract, and that would delay the ad campaigns. Based on their representations, I signed the contract on October 5, 2010. . . .

Hence, any ambiguity in the word “reimburse” was resolved at the outset by the parties. . . .

Mann stated that when the contract was renewed, the parties added the language, “[p]ayment (by [M]DPS) for services rendered will be due upon submission of invoices by the Mann Agency and completion of work.” However, the 2014 contract did not contain that language.

Instead, it contained the provision stating that the Mann Agency would be *reimbursed* by the MDPS upon the presentation of detailed invoices.

¶19. Additionally, the 2014 contract stated that the agreement “supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, related thereto as between the parties.” The contract contained a provision stating that the failure to strictly comply with the terms of the contract did not constitute a waiver of any provisions. It also granted the MDPS the ability to enforce any contractual provision at any time. Under the terms of the contract, any prior agreement of the parties became moot upon the signing of the 2014 contract, and the MDPS had the right to enforce the terms of the contract at any time. Therefore, the Mann Agency’s argument has no merit.

¶20. We also find no merit in the Mann Agency’s contention that the MDPS had acted in bad faith by retroactively applying a new interpretation of the contract. Carol Mann, Sims, and other staff members met in December 2016. Then, Carol alleged that a staff attorney for the MDPS stated that she “had discovered a mistake in the way the contract had been administered. She said the contract required my agency to submit paid invoices from vendors before it could get paid.” Following that meeting, the MDPS directed the Mann Agency to begin creating the 2016 Christmas ad campaign. Before organizing the campaign, Mann emailed the MDPS and requested written confirmation that the Mann Agency would be paid upon submitting its unpaid invoices. The MDPS did not respond to her written request. The contract clearly stated that any modification was to be in writing and executed by an authorized representative from each party. Thus, when the Mann Agency placed the 2016

Christmas campaign ads, it did so without a written modification or clarification of the contract terms. Although the Mann Agency argues that Stuart had assured her the invoices would be paid in a two-day turnaround, regardless of whether Stuart had authority to modify the contract, the conversation was not reduced to writing. Also, Mann wrote in her affidavit that Stuart informed her the MDPS would not put anything in writing.

¶21. The term “reimburse” in the 2014 contract can logically be read to require the Mann Agency to first pay for the services of the media vendors before being paid by the MDPS. Therefore, staff attorneys for the MDPS reviewed the contract and applied a reasonable interpretation of the contractual term “reimburse.” “Generally, a client’s reliance upon advice of his attorney prevents a finding of bad faith” *Liberty Mut. Ins. Co. v. McKneely*, 862 So. 2d 530, 536 (Miss. 2003) (citing *Murphree v. Fed. Ins. Co.*, 707 So. 2d 523, 533 (Miss. 1997)). Because the MDPS’s actions lack bad faith, we affirm the trial court’s decision to deny the Mann Agency’s claim for prejudgment interest and attorneys’ fees.

II. Whether the trial court erred by dismissing as moot the MDPS’s breach-of-contract claim.

¶22. The Mann Agency was indebted to Lamar Advertising and Comcast. Lamar Advertising’s and Comcast’s claims against the Mann Agency were then sold to the MDPS for valuable consideration as part of separate contracts. Therefore, the MDPS argues that the Mann Agency became obligated to it and, as a matter of law, that amount should have been recouped or applied to cancel or offset the Mann Agency’s claim for \$43,671.12. The MDPS contends that it should be awarded a judgment against Mann for the balance of \$113,798.98, plus additional damages, attorneys’ fees, and costs.

¶23. The trial court found that because Lamar’s and Comcast’s breach-of-contract claims against Mann Agency were resolved when the MDPS’s funds were disbursed to the companies, the MDPS’s counterclaim for breach of contract against Mann Agency was rendered moot. The MDPS asks this Court to reverse and render the trial court’s decision to deny judgment as a matter of law and to remand this case for the limited purpose of determining additional damages, attorneys’ fees, and costs. We agree with the trial court’s finding that the MDPS’s claim was rendered moot upon payment.

¶24. The trial court’s order granting the MDPS’s and Lamar Advertising’s joint motion to release funds stated that claims against Mann Agency “to the extent of the payment of the deposited funds” should be assigned to the MDPS. In dismissing the MDPS’s counterclaim for breach of contract, the trial court stated,

[I]t is undisputed that Lamar and Comcast provided to MDPS the media services that are the subject of the contracts between Mann and Lamar/Comcast. Thus, it would be inequitable to allow MDPS to receive the benefit of the contracts and avoid payment for the media services as the result of a court-ordered compromise.

The MDPS argues that the trial court erred by creating an equitable remedy. It contends that it did not pay \$157,470.10 for claims extinguished by the very act of payment. Yet the MDPS directed the Mann Agency to create and publish an ad campaign, and the Mann Agency did just that. The MDPS does not argue that the Mann Agency was derelict in its duties nor does the MDPS dispute the amounts that the media vendors charged. It argues that it reinterpreted the contract to mean that the Mann Agency was required to first pay the media vendors before being reimbursed. The contract provided that “[c]ontractor shall pay all media

placement and production cost and be reimbursed by the [MDPS] upon presentation of detailed media invoices.”

¶25. The Mann Agency submitted detailed invoices for the media campaign it produced at the direction of the MDPS. Instead of submitting the money for the invoices to the Mann Agency, the MDPS directly paid the invoices to the media vendors. Therefore, the contract was fulfilled. The MDPS cannot now obtain a recovery for services it contracted for and received. *See Silver v. Abstract Pools & Spas, Inc.*, 658 S.E.2d 539, 543 (S.C. Ct. App. 2008) (Party “is not permitted to reinterpret written contract terms midstream because he is unhappy with the contract he executed.”). Allowing it to do so would encourage parties to reinterpret contract terms in order to avoid payment for services rendered.

¶26. The MDPS cites several provisions of the Mississippi Constitution. We find no merit in the MDPS’s contention that fundamental law prohibited the State from acting to extinguish the personal debts of an independent contractor such as the Mann Agency. Mississippi Constitution article 4, section 66, states, “No law granting a donation or gratuity in favor of any person or object shall be enacted except by the concurrence of two-thirds of the members elect of each branch of the legislature, nor by any vote for a sectarian purpose.” Miss. Const. art. 4, § 66. Article 4, section 66, does not apply in this case because the trial court’s holding did not result in a donation but in payment for services rendered.

¶27. Article 4, section 96, states that “[t]he Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made” Miss. Const. art. 4, § 96. Again, this provision does

not apply. The extinguishment of the MDPS’s claim fulfilled the contract between the parties and could not be considered extra compensation. Lastly, the MDPS argues that Mississippi Constitution article 14, section 258, prohibits the credit of the State from being “pledged or loaned in aid of any person, association, or corporation.” Miss. Const. art. 14, § 258. Yet “[a] fair exchange by the State of value for value does not offend the prohibition as to a loan, pledge, or gift of state credit.” 81A C.J.S. *States* § 360, Westlaw (database updated June 2020). The trial court’s holding results in a fair exchange of value for value and therefore does not offend article 14, section 258.

¶28. The Mann Agency contends that the MDPS’s claims are barred by ultra vires. Because the MDPS’s arguments lack merit, it is unnecessary to address this contention.

CONCLUSION

¶29. Because the MDPS’s actions lacked the element of bad faith, we affirm the trial court’s decision to deny the Mann Agency’s claim for interest and attorneys’ fees. Because the trial court also did not err in its decision to dismiss as moot the MDPS’s breach-of-contract claim, we affirm the dismissal.

¶30. **ON DIRECT APPEAL: AFFIRMED. ON CROSS-APPEAL: AFFIRMED.**

RANDOLPH, C.J., KITCHENS, P.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.